

# **BTSValidation TERMS OF USE AGREEMENT, BTSVALIDATON as Software as a Service (SaaS)**

*Effective Date: January 1, 2022*

This Busch Technology Solutions, LLC, BTSValidation Terms of Use Agreement (the “**Agreement**”) is between you and Busch Technology Solutions, LLC (“**BTS**”). If you are agreeing to this Agreement as an Authorized User, you are then referred as the “**User**” or “**you**,” and you are binding yourself to this Agreement. BTS may modify this Agreement from time to time, subject to the terms in Section 28 (Changes to this Agreement) below.

**By clicking on the “I agree” (or similar button) that is presented to you at the time of your Order, or by using or accessing BTS products, you indicate your assent to be bound by this Agreement.**

## **1 Scope of the Agreement**

This Agreement governs your consent to use BTSValidation as an Administrator or authorized User. BTSValidation is a cloud-based software application that helps support the validation and verification process. It is comprised of various web pages operated by BTS which is offered to you conditioned on your acceptance without modifications of the terms, conditions, and notices contained herein (the “**Terms**”). This Agreement includes our [Privacy Policy](#), our [Acceptable Use Policy](#), [Service-Specific Terms](#), and any other referenced policies and attachments. This Agreement also applies to BTS add-ons, templates, or plug-ins that you are able to access from your BTSValidation account. However, it does not apply to add-ons or plugins from other vendors. By creating an account and using certain features of the SaaS that integrate Atlassian Jira®/Trello®, SAP® sites and services, for example, you expressly consent to your transports being shared with both BTS and/or BTS, SAP, as elected by you or your company, and such data will be subject to BTS Privacy Policy and/or Atlassian or SAP respective Terms and Privacy Policies.

## **2 Types of BTS Products**

This Agreement governs (a) BTS’s commercially available Software as a Service (SaaS) products, currently designated as “Database” hosted or cloud-based deployments (Hosted Services), (b) BTS’s Plug-ins solutions, currently designated as “Plug-ins” hosted deployments (Plug-ins) and

(c) any related support or maintenance services provided by BTS. Hosted Services and Plug-ins products, together with related Documentation, are referred to as “Products.” The Products and their permitted use are further described in BTS’s standard documentation (“**Documentation**”). Section 6 (Software Terms) applies specifically to Plug-in Services, and Section 7 (Hosted Services Terms) applies specifically to Hosted Services, but unless otherwise specified, other provisions of this Agreement apply to all Products.

### **3 Account Access Requirements.**

**3.1 Internet Connection.** BTSValidation is a cloud-based Hosted Service and will require an active internet connection to operate properly.

**3.2 Email Address Confirmation.** Any authorized User must confirm their email address first, before they can be granted access to their designated account. This means if you are the main Administrator of the account, you received your first request to confirm your email, at initial account setup, via email. If you are an additional authorized User then, your main Administrator has allowed you to be an authorized User and you will receive a “Confirm your Email” notice via email from BTSValidation.com. It is important to notice that you will NOT be able to login until you confirm your email address first.

**3.3 Access.** Users will be allowed to access their designated BTSValidation account once they have confirmed their email address using the email sent out from when the Administrator added this User as an authorized User, and the User has agreed to the terms of this agreement. If the new User never got the email. Administrator can resend this email confirmation notice using Settings or also the User should check your Junk Folder to see if the email was sent to that Folder.

### **4. Your Account.**

Once you have access to your BTSValidation account. You are responsible for maintaining the confidentiality of your account and password and for restricting access to your computer, and you agree to accept responsibility for all actions taken that occur under your account or password. You may not assign or otherwise transfer your account to any other person or entity. You acknowledge that BTS is not responsible for third party access to your account that results from theft or misappropriation of your account. BTS and its associates reserve the right to refuse or cancel service, terminate accounts, or remove or edit content in our sole discretion.

### **5. Electronic Communications.**

Visiting [BTSValidation.com](https://BTSValidation.com), sending emails to BTS or agreeing to this be an authorized User, constitutes electronic communications. You consent to receive electronic communications and you agree that all agreements, notices, disclosures, and other communications that we provide to you electronically, via email and on the Site, satisfy any legal requirement that such communications be in writing. Any information that you provide to us must be accurate, current, and complete. You must also update your information if anything changes so that we may send notices, updates, and other information to you by email or through your account.

## **6 Software Terms.**

**6.1 Your License Rights.** Subject to the terms and conditions of this Agreement, BTS grants you a non-exclusive, and non-transferable license to access and use the Plug-ins during the applicable License Term in accordance with this Agreement, your applicable Scope of Use, and the Documentation. The term of each Software license (“**License Term**”) will be specified in your account Settings. Your License Term will end upon any termination of this Agreement, even if it is identified as “perpetual” or if no expiration date is specified. The Software requires an instance deployment in order to operate, which will be delivered as described in Section 9 (Delivery).

**6.2 Number of Instances.** Unless otherwise specified, for each Plug-in that you purchase, you may access one production instance of the Plug-in on systems owned or operated by you (or your third-party service providers so long as you remain responsible for their compliance with the terms and conditions of this Agreement). You are not to resell BTS Plug-ins or modify them without BTS written consent.

## **7 Hosted Services Terms.**

**7.1 Access to Hosted Services.** Subject to the terms and conditions of this Agreement, BTS grants you a non-exclusive right to access and use the Hosted Services during the applicable Subscription Term (as defined below) in accordance with this Agreement, your applicable Scope of Use, and the Documentation. If BTS offers client software (e.g., a desktop or mobile application) for any Hosted Service, you may use such software solely with the Hosted Service, subject to the terms and conditions of this Agreement. You acknowledge that our Hosted Services are on-line, subscription-based products and that we may make changes to the Hosted Services from time to time.

**7.2 Subscription Terms and Renewals.** Hosted Services are provided on a subscription basis for a set term specified in the Order. Your Administrator is responsible for the renewal of the Order and your access to your BTSValidation account.

**7.3 Technical Support.**

For Technical Support, User can use their FEEDBACK button at the bottom of all BTSValidation pages. When you use this button, a support ticket will be created with your request. All support tickets are handled in the order they are received.

**7.4 Credentials.** You are responsible for any and all actions taken using your accounts and passwords, and you agree to immediately notify the account's Administrator of any unauthorized use of which you become aware.

**7.5 Your Data.** "Your Data" means any data, content, code, video, images, templates, or other materials of any type that you upload, submit, or otherwise transmit to or through Hosted Services. You will retain all right, title, and interest in and to Your Data in the form provided to BTS. Subject to the terms of this Agreement, you hereby grant to BTS a non-exclusive, worldwide, royalty-free right to (a) collect, use, copy, store, transmit, modify and create derivative works of Your Data, in each case solely to the extent necessary to provide the applicable Hosted Service to you and (b) for Hosted Services that enable you to share Your Data or interact with other people, to distribute and publicly perform and display Your Data as you (or your Authorized Users) direct or enable through the Hosted Service. BTS may also access your account or instance in order to respond to your support requests.

**7.6 Security.** BTS implements security procedures to help protect Your Data from security attacks. However, you understand that use of the Hosted Services necessarily involves transmission of Your Data over networks that are not owned, operated, or controlled by us, and we are not responsible for any of Your Data lost, altered, intercepted, or stored across such networks. We cannot guarantee that our security procedures will be error-free, that transmissions of Your Data will always be secure or that unauthorized third parties will never be able to defeat our security measures or those of our third-party service providers.

**7.7 Storage Limits.** There may be storage limits associated with a particular Hosted Service. These limits are described in the services descriptions on our websites or in the Documentation for the particular Hosted Service. BTS reserves the right to charge for additional storage or

overage fees at the rates specified on our website. We may impose new, or may modify existing, storage limits for the Hosted Services at any time in our discretion, with or without notice to you.

### **7.8 Responsibility for Your Data.**

**7.8.1 General.** You must ensure that your use of Hosted Services and all Your Data is at all times compliant with our [Acceptable Use Policy](#) and all applicable local, state, federal and international laws and regulations (“**Laws**”). You represent and warrant that: (i) you have obtained all necessary rights, releases and permissions to provide all Your Data to BTS and to grant the rights granted to BTS in this Agreement and (ii) Your Data and its transfer to and use by BTS as authorized by you under this Agreement do not violate any Laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies. Other than its security obligations under Section 7.5 (Security), BTS assumes no responsibility or liability for Your Data, and you shall be solely responsible for Your Data and the consequences of using, disclosing, storing, or transmitting it.

**7.8.2 Sensitive Data.** You will not submit to the Hosted Services (or use the Hosted Services to collect): (i) any personally identifiable information, except as necessary for the establishment of your BTSValidation account; (ii) any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations; or (iii) any other information subject to regulation or protection under specific laws such as the Gramm-Leach-Bliley Act (or related rules or regulations) ((i) through (iii), collectively, “Sensitive Data”). You also acknowledge that BTS is not acting as your Business Associate or subcontractor (as such terms are defined and used in HIPAA) and that the Hosted Services are not HIPAA compliant. “HIPAA” means the Health Insurance Portability and Accountability Act, as amended and supplemented. Notwithstanding any other provision to the contrary, BTS has no liability under this Agreement for Sensitive Data.

**7.8.3 Indemnity for Your Data.** You will defend, indemnify and hold harmless BTS from and against any loss, cost, liability or damage, including attorneys’ fees, for which BTS becomes liable arising from or relating to any claim relating to Your Data, including but not limited to any

claim brought by a third party alleging that Your Data, or your use of the Hosted Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law. This indemnification obligation is subject to your receiving (i) prompt written notice of such claim (but in any event notice in sufficient time for you to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonable necessary cooperation of BTS at your expense.

**7.9 Removals and Suspension.** BTS has no obligation to monitor any content uploaded to the Hosted Services. Nonetheless, if we deem such action necessary based on your violation of this Agreement or in response to take down requests that we receive following our guidelines for [Reporting Copyright and Trademark Violations](#), we may (1) remove Your Data from the Hosted Services or (2) suspend your access to the Hosted Services. We will generally alert you when we take such action and give you a reasonable opportunity to cure your breach, but if we determine that your actions endanger the operation of the Hosted Service or other Users, we may suspend your access immediately without notice. You will continue to be charged for the Hosted Service during any suspension period. We have no liability to you for removing or deleting Your Data from or suspending your access to any Hosted Services as described in this section. Therefore, you should constantly download and save any and all your information at all times.

**7.10 Deletion at End of Subscription Term.** We may remove or delete Your Data within a reasonable period of time after the termination of your Subscription Term.

**7.11 Service-Specific Terms.** Some of our Hosted Services may be subject to additional terms specific to that service as set forth in our [Service-Specific Terms](#).

**Support and Maintenance.** BTS will provide the support and maintenance services for the Products described in the [BTS Support Policy](#) (“**Support and Maintenance**”) during the period for which your Administrator has paid the applicable fee. Support and Maintenance is subject to the terms of the BTS Support Policy and will be provided at the support level and during the support term specified in your Order. The BTS Support Policy may be modified by BTS from time to time to reflect process improvements or changing practices. Support and Maintenance for Software includes access to New Releases, if and when available. You may use any New

Releases that we provide to you during a valid support term in the same way that you use Software, and New Releases are included in the definition of Software in that case. “**New Releases**” are bug fixes, patches, major or minor releases, or any other changes, enhancements, or modifications to the Software that we make generally commercially available.

## **8 Delivery.**

**8.1 Administrator.** For the definition of what is an Administrator see Section 1.3 of Service-Specific Terms. If you are the Administrator once you complete New Account setup.

BTSValidation will create an exclusive database using the Company Key Name you chose and two emails will be sent to the email address provided in the new account setup registration. For security purposes, the first email will be a BTSValidation request to “Confirm your Email Address.” The second email will have specific instructions on how to access your BTSValidation account. You must first confirm your email address before you will be allowed to access the account. **Notice that you will NOT be allowed to login until you confirm your email address first.** As the Administrator, are responsible to setup additional authorized Users according to the subscription plan purchased. You can setup additional authorized Users under Settings. In the case of Plug-ins products we will make it possible for Users to access Plug-ins once we have received payment of all applicable fees and a set of instructions will be emailed to Administrator and to the email addresses specified in the Order on how to access Plug-in. All deliveries under this Agreement will be electronic. For the avoidance of doubt, you are responsible for accessing the created account or the plug-in and you acknowledge that BTS has no further delivery obligation with respect to the accessing of the account or plug-in after delivery of the access instructions. If you have problems at login or accessing your plug-in, you can contact us at [help@btsvalidation.com](mailto:help@btsvalidation.com).

**8.2 Additional Users.** If you are not the Administrator but an additional authorized User. The Administrator is responsible to add new Users in Settings. Once, the Administrator completes the “Add” new user registration. New Users will be notified, via email, to the email address provided by the Administrator that they are invited to be an authorized User. You will receive two emails from BTSValidation. For security purposes, the first email will be a BTSValidation request to “Confirm your email address.” The second email will have specific instructions on

how to access your BTSValidation account. You must first confirm your email address before you will be allowed to access the account. **Notice that you will NOT be allowed to login until you confirm your email address first.** In the case of Plug-ins Products, once we have received payment of all applicable fees, a set of instructions will be emailed to Administrator and to the email addresses specified in the Order on how to access the Plug-in. All deliveries under this Agreement will be electronic. For the avoidance of doubt, you are responsible for accessing the created account or the plug-in and you acknowledge that BTS has no further delivery obligation with respect to the accessing of the account or plug-in after delivery of the access instructions.

**9 Customer Portal.** Once, you have accessed your BTSValidation account. Our website [BTSValidation.com](https://btsvalidation.com) provides an easy way for you to access your account. On the main page of [BTSValidation.com](https://btsvalidation.com), there is a "Customer Portal" button that will ask you for your Company Key Name. Enter Company Key Name and submit entry. This will lead you to your exclusive database. This Customer Portal directs Users to the login screen of their account without having to type the database link into their browser.

#### **10 Links to Third Party Sites.**

[BTSValidation.com](https://btsvalidation.com) may contain links to other websites ("Linked Sites"). The Linked Sites are not under the control of BTS and BTS is not responsible for the contents of any Linked Site, including without limitation any link contained in a Linked Site, or any changes or updates to a Linked Site. BTS is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by BTS of the site or any association with its operators.

#### **11 Third Party Services.**

Certain services made available via BTSValidation are delivered by third party sites and organizations. By using any product, service or functionality originating from the <https://btsvalidation.com/> domain, you hereby acknowledge and consent that BTS may share such information and data with any third party with whom BTS has a contractual relationship to provide the requested product, service or functionality on behalf of BTSValidation Users and customers. Therefore, by accessing your BTSValidation account and using certain features of the SaaS that integrate Atlassian Jira®/Trello®, SAP® sites and services, for example, you expressly consent to your transports being shared with both BTS and/or SAP, as elected by you or your company, and such data will be subject to BTS Privacy Policy and/or Atlassian or SAP respective Terms and Privacy Policies.

#### **12 Restrictions.**



**12.1** Except as otherwise expressly permitted in this Agreement, you will not: (a) rent, lease, reproduce, modify, adapt, create derivative works of, distribute, sell, sublicense, transfer, or provide access to the Products to a third party, (b) use the Products for the benefit of any third party, (c) incorporate any Products into a product or service you provide to a third party, (d) interfere with any license key mechanism in the Products or otherwise circumvent mechanisms in the Products intended to limit your use, (e) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any Products, except as permitted by law, (f) remove or obscure any proprietary or other notices contained in any Product, or (g) publicly disseminate information regarding the performance of the Products.

**12.2** Restrictions on No-Charge Products. We may offer certain Products to you at no charge, including free accounts, trial use, and access to Beta Versions as defined below (“**No-Charge Products**”). Your use of No-Charge Products is subject to any additional terms that we specify and is only permitted for the period designated by us. You may not use No-Charge Products for competitive analysis or similar purposes. We may terminate your right to use No-Charge Products at any time and for any reason in our sole discretion, without liability to you. You understand that any pre-release and beta products we make available (“**Beta Versions**”) are still under development, may be inoperable or incomplete and are likely to contain more errors and bugs than generally available Products. We make no promises that any Beta Versions will ever be made generally available. In some circumstances, we may charge a fee in order to allow you to access Beta Versions, but the Beta Versions will still remain subject to this Section 13.2 (No-Charge Products). All information regarding the characteristics, features or performance of Beta Versions constitutes BTS’s Confidential Information. To the maximum extent permitted by applicable law, we disclaim all obligations or liabilities with respect to No-Charge Products, including any Support and Maintenance, warranty, and indemnity obligations.

### **13 Your Development of Add-Ons.**

**13.1 License to Developer Guides.** From time to time, BTS may publish SDK’s or API’s and associated guidelines (“**Developer Guides**”) to allow you to develop plugins, extensions, add-ons or other software products or services that interoperate or are integrated with the

Products (“**Add-Ons**”). You may distribute your Add-Ons to third parties, but only for those Products permitted by BTS, and only in accordance with the Developer Guides.

**13.2 Conditions to Development of Add-Ons.** Notwithstanding anything in this Agreement to the contrary, BTS has no support, warranty, indemnification or other obligation or liability with respect to your Add-Ons or their combination, interaction or use with the Products. You shall indemnify, defend and hold us harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys’ fees and costs) arising out of or in connection with any claim brought against us by a third party relating to your Add-Ons (including but not limited to any representations or warranties you make about your Add-Ons) or your breach of this Section.

**14 License Certifications and Audits.** At our request, you agree to provide a signed certification that you are using all Products pursuant to the terms of this Agreement, including the Scope of Use. You agree to allow us, or our authorized agent, to audit your use of the Products. We will provide you with at least 10 days advance notice prior to the audit, and the audit will be conducted during normal business hours. We will bear all out-of-pocket costs that we incur for the audit, unless the audit reveals that you have exceeded the Scope of Use. You will provide reasonable assistance, cooperation, and access to relevant information in the course of any audit at your own cost. If you exceed your Scope of Use, we may invoice you for any past or ongoing excessive use, and you will pay the invoice promptly after receipt. This remedy is without prejudice to any other remedies available to BTS at law or equity or under this Agreement. To the extent we are obligated to do so, we may share audit results with certain of our third party licensors or assign the audit rights specified in this Section to such licensors.

**15 Ownership and Feedback.** Products are made available on a limited license or access basis, and no ownership right is conveyed to you, irrespective of the use of terms such as “use,” “purchase” or “sale.” BTS and its licensors have and retain all right, title and interest, including all intellectual property rights, in and to the Products (including all No-Charge Products), their “look and feel”, any and all related or underlying technology, and any modifications or derivative works of the foregoing created by or for BTS, including without limitation as they may incorporate Feedback (“**BTS Technology**”). From time to time, you may choose to submit comments, information, questions, data, ideas, description of processes, or other information

to BTS, including sharing Your Modifications or in the course of receiving Support and Maintenance (“**Feedback**”). BTS may in connection with any of its products or services freely use, copy, disclose, license, distribute and exploit any Feedback in any manner without any obligation, royalty or restriction based on intellectual property rights or otherwise. No Feedback will be considered your Confidential Information, and nothing in this Agreement limits BTS's right to independently use, develop, evaluate, or market products, whether incorporating Feedback or otherwise.

**16 Confidentiality.** Except as otherwise set forth in this Agreement, each party agrees that all code, inventions, know-how, business, technical and financial information disclosed to such party (“**Receiving Party**”) by the disclosing party (“**Disclosing Party**”) constitute the confidential property of the Disclosing Party (“**Confidential Information**”), provided that it is identified as confidential at the time of disclosure. Any BTS Technology and any performance information relating to the Products shall be deemed Confidential Information of BTS without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may also disclose Confidential Information if so required pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law. For the avoidance of doubt, this Section shall not operate as a separate warranty with respect to the operation of any Product.

**17 Term and Termination.** This Agreement is in effect for as long as you have a valid License Term or Subscription Term (the “Term”), unless sooner terminated as permitted in this Agreement. Either party may terminate this Agreement before the expiration of the Term if the other party materially breaches any of the terms of this Agreement and does not cure the breach within thirty (30) days after written notice of the breach. Either party may also terminate the Agreement before the expiration of the Term if the other party ceases to operate, declares bankruptcy, or becomes insolvent or otherwise the Administrator is unable to meet its financial obligations. You may terminate this Agreement at any time with notice to BTS, but you will not be entitled to any credits or refunds as a result of convenience termination for prepaid but unused Plug-in, Hosted Services subscriptions, or Support and Maintenance. Except where an exclusive remedy may be specified in this Agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. Once the Agreement terminates, you (and your Authorized Users) will no longer have any right to use or access any Products, or any information or materials that we make available to you under this Agreement, including BTS Confidential Information. You are required to delete any of the foregoing from your systems as applicable (including any third party systems operated on your behalf) and provide written certification to us that you have done so at our request. The following provisions will survive any termination or expiration of this Agreement: Sections 7.7.3 (Indemnity for Your Data), 13 (Restrictions), 14.2 (Conditions to Development of Add-Ons), 15 (License Certifications and Audits), 16 (Ownership and Feedback), 17 (Confidentiality), 18 (Term and Termination), 20.2 (Warranty Disclaimer), 21 (Limitation of Liability), 23 (Third Party Vendor Products), 26 (Dispute Resolution), 27 (Export Restrictions), and 29 (General Provisions).

**18 Consent.**

BTS Services are not directed to individuals under 18. If you are under 18, you may use BTSValidation only with permission and supervision of a parent or guardian.

**19 Warranty and Disclaimer.**

**19.1 Due Authority.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement, and that, if you are an entity, this Agreement and each

Order is entered into by an employee or agent of such party with all necessary authority to bind such party to the terms and conditions of this Agreement.

**19.2 WARRANTY DISCLAIMER.** ALL PRODUCTS ARE PROVIDED “AS IS,” AND BTS AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY, OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED, OR STATUTORY. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. BTS SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES AND OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF BTS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER BTS NOR ANY OF ITS THIRD PARTY SUPPLIERS MAKES ANY REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY PRODUCTS OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY PRODUCTS WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE PRODUCTS WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE PRODUCTS (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE PRODUCTS) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS); (D) ANY STORED DATA WILL BE ACCURATE OR RELIABLE OR THAT ANY STORED DATA WILL NOT BE LOST OR CORRUPTED; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE PRODUCTS (OR ANY SERVER(S) THAT MAKE A HOSTED SERVICE AVAILABLE) ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

**20 Limitation of Liability.** NEITHER PARTY (NOR ITS SUPPLIERS) SHALL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. NEITHER PARTY’S AGGREGATE LIABILITY TO THE OTHER SHALL EXCEED THE AMOUNT ACTUALLY

PAID BY YOU TO US FOR PRODUCTS AND SUPPORT AND MAINTENANCE IN THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT, OUR AGGREGATE LIABILITY TO YOU IN RESPECT OF NO-CHARGE PRODUCTS SHALL BE US\$20. THIS SECTION 21 (LIMITATION OF LIABILITY) SHALL NOT APPLY TO (1) AMOUNTS OWED BY YOU UNDER ANY ORDERS, (2) EITHER PARTY'S EXPRESS INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT, OR (3) YOUR BREACH OF SECTION 13 (RESTRICTIONS) OR SECTION 2 (COMBINING THE PRODUCTS WITH OPEN SOURCE SOFTWARE) OF THIRD PARTY CODE IN BTS PRODUCTS). TO THE MAXIMUM EXTENT PERMITTED BY LAW, NO SUPPLIERS OF ANY THIRD-PARTY COMPONENTS INCLUDED IN THE PRODUCTS WILL BE LIABLE TO YOU FOR ANY DAMAGES WHATSOEVER. The parties agree that the limitations specified in this Section 21 (Limitation of Liability) will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

**21 IP Indemnification by BTS.** We will defend you against any claim brought against you by a third party alleging that a Product, when used as authorized under this Agreement, infringes a United States or European Union patent or registered copyright (a "**Claim**"), and we will indemnify you and hold you harmless against any damages and costs finally awarded by a court of competent jurisdiction or agreed to settlement by BTS (including reasonable attorneys' fees) arising out of a Claim, provided that we have received from you: (a) prompt written notice of the claim (but in any event notice in sufficient time for us to respond without prejudice); (b) reasonable assistance in the defense and investigation of the claim, including providing us a copy of the claim and all relevant evidence in your possession, custody or control; and (c) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of the claim. If your use of a Product is (or in our opinion is likely to be) enjoined, if required by settlement, or if we determine such actions are reasonably necessary to avoid material liability, we may, at our option and in our discretion: (i) procure a license for your continued use of the Product in accordance with this Agreement; (ii) substitute a substantially functionally similar Product; or (iii) terminate your right to continue using the Product and refund, in the case of Software, the license fee paid by you as reduced to reflect a three year straight-line depreciation from the license purchase date, and in the case of a Hosted Service, any prepaid amounts for the terminated portion of the Subscription Term. BTS's indemnification obligations

above do not apply: (1) if the total aggregate fees received by BTS with respect to your license to Software or subscription to Hosted Services in the 12 month period immediately preceding the claim is less than US\$50,000; (2) if the Product is modified by any party other than BTS, but solely to the extent the alleged infringement is caused by such modification; (3) if the Product is used in combination with any non-BTS product, software or equipment, but solely to the extent the alleged infringement is caused by such combination; (4) to unauthorized use of Products; (5) to any Claim arising as a result of (y) Your Data (or circumstances covered by your indemnification obligations in Section 7.7.3 (Indemnity for Your Data)) or (z) any third-party deliverables or components contained with the Products; (6) to any unsupported release of the Software; or (7) if you settle or make any admissions with respect to a claim without BTS's prior written consent. THIS SECTION 22 (IP INDEMNIFICATION BY BTS) STATES OUR SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY PRODUCT OR OTHER ITEMS PROVIDED BY BTS UNDER THIS AGREEMENT.

**22 Third Party Vendor Products.** BTS or third parties may from time to time make available to you (e.g., through the [www.btsvalidation.com](http://www.btsvalidation.com)) third-party products or services, including but not limited to add-ons and plugins as well as implementation, customization, training, and other consulting services. If you procure any of these third party products or services, you do so under a separate agreement (and exchange of data) solely between you and the third party vendor. BTS does not warrant or support non-BTS products or services, whether or not they are designated by BTS as "verified" or otherwise, and disclaims all liability for such products or services. If you install or enable any third-party products or services for use with BTS products, you acknowledge that BTS may allow the vendors of those products and services to access Your Data as required for the interoperation and support of such add-ons with the BTS products. BTS shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by third party add-on vendors.

**23 Publicity Rights.** We may identify you as an BTS customer in our promotional materials. You may request that we stop doing so by submitting an email to [help@btsvalidation.com](mailto:help@btsvalidation.com) at any time. Please note that it may take us up to 30 days to process your request.

**24 Improving Our Products.** We are always striving to improve our Products. In order to do so, we need to measure, analyze, and aggregate how Users interact with our Products, such as usage patterns and characteristics of our User base. We collect and use analytics data regarding the use of our Products as described in our [Privacy Policy](#).

## **25 Dispute Resolution**

**25.1 Dispute Resolution; Arbitration.** In the event of any controversy or claim arising out of or relating to this Agreement, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If the parties do not reach settlement within a period of 60 days, any unresolved controversy or claim arising out of or relating to this Agreement shall proceed to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce. The parties shall seek to mutually appoint an arbitrator. If the parties cannot agree on a single arbitrator, then there shall be three (3) arbitrators: one selected by each party, and a third selected by the first two. Arbitration will take place in one of the following cities as mutually agreed between the parties: Los Angeles, CA (USA), Nashville, TN (USA) or Salt Lake City, UT (USA). If the parties are unable to agree to one of these cities, then the arbitration shall proceed in Salt Lake City, UT. All negotiations and arbitration proceedings pursuant to this Section will be confidential and treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence of applicable legislation and jurisdictions. The language of the arbitration shall be English.

**25.2 Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the applicable laws of the State of Utah, USA, without giving effect to the principles of that State relating to conflicts of laws. Each party irrevocably agrees that any legal action, suit or proceeding that is not otherwise subject to the arbitration provisions of Section 26.1 (Dispute Resolution; Arbitration) must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the State or Federal court in Salt Lake City, Utah, USA, and each party irrevocably submits to the sole and exclusive personal jurisdiction of the courts in Salt Lake City, Utah, USA, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party.



Notwithstanding the foregoing, BTS may bring a claim for equitable relief in any court with proper jurisdiction.

**25.3 Injunctive Relief; Enforcement.** Notwithstanding the provisions of Section 26.1 (Dispute Resolution; Arbitration), nothing in this Agreement shall prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights, confidentiality obligations or enforcement or recognition of any award or order in any appropriate jurisdiction.

**25.4 Exclusion of UN Convention and UCITA.** The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted.

**26 Export Restrictions.** The Products are subject to export restrictions by the United States government and import restrictions by certain foreign governments, and you agree to comply with all applicable export and import laws and regulations in your use of the Products. You shall not (and shall not allow any third-party to) remove or export from the United States or allow the export or re-export of any part of the Products or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. You represent and warrant that (i) you are not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list and (ii) that none of Your Data is controlled under the US International Traffic in Arms Regulations. The Products are restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology without the prior permission of the United States government.

**27 Changes to this Agreement.** We may update or modify this Agreement from time to time, including any referenced policies and other documents. If a revision meaningfully reduces your rights, we will use reasonable efforts to notify you (by, for example, sending a notification in the

News Feature in your BTSValidation account, or posting on our blog, through your BTS account, or in the Product itself). If we modify the Agreement during your License Term or Subscription Term, the modified version will be effective upon your next renewal of a License Term, Support and Maintenance term, or Subscription Term, as applicable. In this case, if you object to the updated Agreement, as your exclusive remedy, you may choose not to renew, including cancelling any terms set to auto-renew. With respect to No-Charge Products, accepting the updated Agreement is required for you to continue using the No-Charge Products. You may be required to click through the updated Agreement to show your acceptance. If you do not agree to the updated Agreement after it becomes effective, you will no longer have a right to use No-Charge Products. For the avoidance of doubt, any Order is subject to the version of the Agreement in effect at the time of the Order.

**28 General Provisions.** Any notice under this Agreement must be given in writing. We may provide notice to you via email or through your account. Our notices to you will be deemed given upon the first business day after we send it. You may provide notice to us by post to Busch Technology Solutions, LLC, c/o BTS, 3115 Lion Lane, Suite 160, Salt Lake City, UT, 84121, USA. Attn: General Counsel. Your notices to us will be deemed given upon our receipt. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency. You may not assign this Agreement without our prior written consent. We will not unreasonably withhold our consent if the assignee agrees to be bound by the terms and conditions of this Agreement. We may assign our rights and obligations under this Agreement (in whole or in part) without your consent. The Products are commercial computer software. If you are an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Products, or any related documentation of any kind, including technical data and manuals, is restricted by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Products were

developed fully at private expense. All other use is prohibited. This Agreement is the entire agreement between you and BTS relating to the Products and supersedes all prior or contemporaneous oral or written communications, proposals, and representations with respect to the Products or any other subject matter covered by this Agreement. If any provision of this Agreement is held to be void, invalid, unenforceable, or illegal, the other provisions shall continue in full force and effect. This Agreement may not be modified or amended by you without our written agreement (which may be withheld in our complete discretion without any requirement to provide any explanation). As used herein, "including" (and its variants) means "including without limitation" (and its variants). No failure or delay by the injured party to this Agreement in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder at law or equity. The parties are independent contractors. This Agreement shall not be construed as constituting either party as a partner of the other or to create any other form of legal association that would give on party the express or implied right, power, or authority to create any duty or obligation of the other party.