

## Latitude 39 SimplyComp Agreement

*Effective starting: May 1, 2023*

This Latitude 39 SimplyComp Agreement (the “**Agreement**”) is entered into and effective by and between you and **Latitude 39.0, Inc.**, a Delaware corporation (“**Latitude 39,**” “**we**” or “**us**”). If you are agreeing to this Agreement not as an individual but on behalf of your company, then “**Customer**” or “**you**” means your company, and you are binding your company to this Agreement.

Latitude 39 may modify this Agreement from time to time, subject to the terms in Section 12.11 (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 the Latitude 39 SimplyComp Service, you indicate your agreement to be bound by this Agreement.**

**1. Scope of Agreement.** This Agreement governs your initial purchase of the SimplyComp Service and related Support Services, as well as any future purchases made by you that reference this Agreement. This Agreement includes any Orders, and any other policies and attachments referenced in this Agreement. As used in this Agreement “**SimplyComp Service**” means Latitude 39’s hosted or cloud-based solutions currently marketed under the name Latitude 39 SimplyComp, together with the end user documentation made available by Latitude 39, accessible from within the SimplyComp Service (“**Latitude 39 Reference Guide**”), ordered by you in accordance with the terms of Section 3 below.

**2. Registration.** You are required to register for a Latitude 39 account in order to place Orders and access the SimplyComp Service. All registration information that you provide to us must be accurate, current and complete. You must keep your registration information up to date so that we may send notices, statements and other information to you by email or through your account. You are responsible for all actions taken through your accounts and you agree to immediately notify Latitude 39 of any unauthorized use of which you become aware.

**3. Orders; Authorized Users.** You may order the SimplyComp Service and Consulting Services via the online purchasing process at <https://signup.simplycomp.com/appsignup> (each, an “**Order**”). During the online purchasing process you will select a specific Subscription Term and number of Subscriptions for the SimplyComp Service. The term “**Order**” also includes any applicable renewals of the Subscription Term or additional purchases you make to increase the number of Subscriptions purchased. You must purchase a subscription to the SimplyComp Service (“**Subscription**”) for each individual (a) who uses or accesses the SimplyComp Service or (b) whose information is stored on the SimplyComp Service for compensation calculation or reporting purposes. Only the specific individuals for whom you have paid the required fees and whom you designate through the SimplyComp Service (“**Authorized Users**”) may access and use the SimplyComp Service. You may reassign Subscriptions from time to time to new Authorized Users who replace former Authorized Users who no longer use or need access to the SimplyComp Service or for whom you are no longer calculating, processing, modeling or storing compensation; however, you may not allow more than one individual to use or otherwise share a single Subscription. Authorized Users may be you or your employees, representatives, consultants, contractors, agents, or other third parties who are acting for your benefit or on your behalf. You must ensure that all Authorized Users keep their user IDs and passwords for the SimplyComp Service strictly confidential and not share such information with any unauthorized person. You are responsible for compliance with this Agreement by all Authorized Users.

### **4. SimplyComp Service Terms.**

**4.1 Access to SimplyComp Service.** In exchange for payment of the fees listed on the Order and subject to the terms of this Agreement and the applicable Order, Latitude 39 grants you a nonexclusive, nontransferable right, solely during the Subscription Term, to access and use the SimplyComp Service solely for your internal business purposes in accordance with this Agreement and the applicable Latitude 39 Reference Guide. You acknowledge that the SimplyComp Service is an on-line, subscription-based product and that we may make changes to the SimplyComp Service from time to time. If your use of the SimplyComp Service involves processing personal data that is subject to the data protection laws of the United Kingdom, the European Economic Area, or Switzerland, and/or transferring personal data outside the United Kingdom, European Economic Area or Switzerland to any country not deemed by the European Commission as providing an adequate level of protection for personal data, the terms of the data processing addendum accessible at <https://www.latitude39.com/data-processing-addendum/> shall apply to such personal data and be incorporated into this Agreement upon the processing of such data. Latitude 39 may offer certain services to you at no charge, including free accounts and trial use (“**No-Charge Services**”), solely for the period specified by Latitude 39. Latitude 39 may terminate your right to use the No-Charge Services at any time and for any reason in our sole discretion, without liability to you.

**4.2 Restrictions.** You shall not (i) modify, copy, display, republish or create derivative works of the SimplyComp Service or the underlying software; (ii) use the SimplyComp Service for the benefit of any third party; (iii) frame, scrape, link to or mirror any content forming part of the SimplyComp Service; (iv) 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 the SimplyComp Service or the underlying software, except as permitted by law; (v) access the SimplyComp Service in order to build a competitive product or service, or copy any ideas, features, functions or graphics of the SimplyComp Service; (vi) sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the SimplyComp Service available to any third party other than Authorized Users; (vii) use the SimplyComp Service to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (viii) use the SimplyComp Service to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or that violates third-party privacy rights; (ix) upload to the SimplyComp Service or use the SimplyComp Service to send or store viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (x) interfere with or disrupt the integrity or performance of the SimplyComp Service or the data contained therein; (xi) interfere with any license key mechanism in the SimplyComp Service or otherwise circumvent mechanisms in the SimplyComp Service intended to limit your use, or otherwise attempt to gain unauthorized access to the SimplyComp Service or its related systems or networks; (xii) remove or obscure any proprietary or other notices contained in the SimplyComp Service; or (xiii) conduct any platform or system level testing of the SimplyComp Service.

**4.3 Support Services.** Latitude 39 will provide support services for the SimplyComp Service in accordance with its then-current support policies ("**Support Services**"). For purposes of this Agreement, Support Services are not included within the definition of the "SimplyComp Service." In the event that the level of support is not identified on the applicable Order, Latitude 39 will provide its "standard" level of support that is included in the SimplyComp Service. Latitude 39 may modify its support policies from time to time to reflect process improvements or changing practices.

**4.4 Consulting Services.** You may purchase consulting services packages from Latitude 39 under this Agreement as described in one or more Orders (collectively "**Consulting Services**"). For purposes of this Agreement, Consulting Services are not included within the definition of the "SimplyComp Service." Subject to the terms of this Agreement and the applicable Order, Latitude 39 grants you a nonexclusive, nontransferable license, to copy and use the results of the Consulting Services (excluding any information provided by you incorporated therein, "**Results**"), solely for your internal business purposes in accordance with this Agreement.

**4.5 Customer Data. "Customer Data"** means any data, content, code, or other materials of any kind that you or your Authorized Users upload, submit or otherwise transmit to or through the SimplyComp Service. As between Latitude 39 and you, you will retain all right, title and interest in and to the Customer Data in the form provided to Latitude 39. Subject to the terms of this Agreement, you hereby grant to Latitude 39 a non-exclusive, worldwide, royalty-free right (a) to collect, use, copy, store, transmit, modify and create derivative works of the Customer Data, in each case solely to the extent necessary to provide the SimplyComp Service, Consulting Services and Support Services to you, to confirm compliance with the terms of this Agreement, or otherwise at your direction or request; (b) to distribute and publicly perform and display Customer Data to your Authorized Users and otherwise as you direct or enable through the SimplyComp Service; and (c) to use Customer Data in anonymized and aggregated form for generating "**Benchmarking Statistics**" relating to industry trends, provided that the anonymized data does not include information that identifies or provides a reasonable basis to identify a company or an individual, where, without limitation, the following identifiers have been removed: company names and the names of individuals, addresses, phone numbers, e-mail address(es) and any other information which could reasonably be anticipated to identify, when taken in the aggregate, a specific company, organization or individual. Latitude 39's rights with respect to such Benchmarking Statistics will survive any expiration or termination of this Agreement.

**4.6 Customer's Responsibilities.** You are responsible for all actions taken through your accounts. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data. You must ensure that your use of the SimplyComp Service and all Customer Data is at all times compliant with this Agreement and all applicable local, state, federal and international laws and regulations ("**Laws**"). You represent and warrant that: (a) you have the legal power and authority to enter into this Agreement, and if you are an entity, that this Agreement and each Order is entered into by your employee or agent with all necessary authority to bind you to the terms and conditions of this Agreement; (b) you have obtained all necessary rights, releases and permissions to provide all Customer Data to Latitude 39 and to grant the rights granted to Latitude 39 in this Agreement; and (c) the Customer Data and its transfer to and use by Latitude 39 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. Latitude 39 assumes no responsibility or liability for Customer Data, and you shall be solely responsible for Customer Data and the consequences of using, disclosing, storing, or transmitting it. You will not, and you will not permit your Authorized Users to, use the SimplyComp Service to send or store personal data or personal information that is subject to specialized security regimes or contractual handling requirements, including

but not limited to credit card information, credit card numbers and magnetic stripe information, social security numbers, driver's license numbers, passport numbers, government issued identification numbers, medical or other health-related information (including protected health information subject to HIPAA), biometric data, genetic data, financial account information, personally identifiable information collected from children under the age of 13 or from online services directed toward children, real time geo-location data which can identify an individual, or information deemed "sensitive" under applicable law (such as racial or ethnic origin, political opinions, or religious or philosophical beliefs ("**Sensitive Data**"). Notwithstanding any other provision to the contrary, Latitude 39 has no liability under this Agreement in connection with Sensitive Data.

**4.7 Removals and Suspension.** Latitude 39 has no obligation to monitor any content uploaded to the SimplyComp Services. Nonetheless, if we deem such action necessary based on your violation of this Agreement, we may (a) remove Customer Data from the SimplyComp Service or (b) suspend your access to the SimplyComp Service. 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 SimplyComp Service or other users, we may suspend your access immediately without notice. You will continue to be charged for the SimplyComp Service during any suspension period. In addition, we may remove or delete Customer Data within a reasonable period of time after the termination of your Subscription Term. We have no liability to you for removing or deleting Customer Data from or suspending your access to any SimplyComp Services as described in this Section 4.7.

## **5. Fees and Taxes.**

**5.1 Fees.** You agree to pay all fees in accordance with each Order. Except as otherwise specified in the applicable Order, all fees are payable in United States dollars at the time you place your Order. Except as specified in Section 9.1 (Indemnification by Latitude 39), fees paid are non-refundable and non-cancellable. Fees for the SimplyComp Service are based on Subscriptions purchased and not actual usage. Additional capacity limitations may apply, such as storage limits. The number of Subscriptions purchased cannot be decreased during a Subscription Term. If you add Authorized Users during a Subscription Term or otherwise exceed your authorized capacity, we will charge you for the increased number of Authorized Users or other excess use pursuant to the then-currently applicable rates in your next billing cycle. We will invoice you or bill your credit card for services purchased, including renewals, additional Authorized Users, and unpaid fees, as applicable. You acknowledge that your purchase of the SimplyComp Service is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Latitude 39 with respect to future functionality or features. If any payments on your account are overdue, in addition to any of its other rights or remedies Latitude 39 reserves the right to suspend your access to the SimplyComp Service until such amounts are paid in full.

**5.2 Taxes.** Unless otherwise stated, Latitude 39's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with your purchases hereunder, excluding taxes based on Latitude 39's net income or property. If Latitude 39 has the legal obligation to pay or collect Taxes for which you are responsible under this Section, the appropriate amount shall be invoiced to and paid by you, unless you provide Latitude 39 with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **6. Proprietary Rights.**

**6.1 Reservation of Rights.** Except for the limited rights expressly granted to you hereunder, Latitude 39 reserves all rights, title and interest in and to the SimplyComp Service, including the Latitude 39 Reference Guide and underlying software, the Consulting Services, the Results and the Support Services, including all related intellectual property rights inherent therein. No rights are granted to you hereunder other than as expressly set forth in this Agreement.

**6.2 Intellectual Property Rights Ownership.** "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world. Latitude 39 alone (and its suppliers, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to all of Latitude 39's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) (hereafter, "**Latitude 39 Technology**") made available to you by Latitude 39 in providing the SimplyComp Service and the Latitude 39 Technology, and you hereby assign to Latitude 39 any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you relating to the SimplyComp Service or the Latitude 39 Technology. Latitude 39 may use such submissions as it deems appropriate in its sole discretion. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the SimplyComp Service, the Latitude 39 Technology or the Intellectual Property Rights owned by Latitude 39 and its suppliers. The Latitude 39 name, the Latitude 39 logo, and the product names associated with the SimplyComp Service are trademarks of Latitude 39 or its suppliers, and unless expressly granted herein, no right or license is granted to use them. You will not accrue any residual rights to the Latitude 39 technology or the SimplyComp Service, including

any rights to the Intellectual Property Rights in connection therewith.

**6.3 Suggestions.** Latitude 39 shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use, copy, disclose, license, distribute and exploit, without obligation, royalty or restriction based on intellectual property rights or otherwise, any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or your Authorized Users relating to the features, functionality or operation of the SimplyComp Service, Consulting Services or the Support Services.

**7. 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 or that, at the time of disclosure, reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure. The SimplyComp Service, including the Latitude 39 Reference Guide and underlying software, the Consulting Services and Results, the Support Services, and any performance information relating to the SimplyComp Service shall be deemed Confidential Information of Latitude 39 without any marking or further designation. The Receiving Party will use at least the same level of care to prevent unauthorized use or disclosure of the Confidential Information as it uses to protect its own confidential and proprietary information of like kind, but in no event less than a reasonable standard of care. The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission. Either party may disclose Confidential Information to its personnel and its auditors who are subject to confidentiality obligations comparable in scope to those herein. 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 without the use of or reference to the Confidential Information of the Disclosing Party. 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 to the extent legally permitted). 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 seek appropriate equitable relief in addition to whatever other remedies it might have at law.

**8. Warranty Disclaimer.**

ALL SERVICES ARE PROVIDED "AS IS," AND LATITUDE 39 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. LATITUDE 39 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 LATITUDE 39. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER LATITUDE 39 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 SERVICES OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF ANY SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; OR (C) ERRORS OR DEFECTS WILL BE CORRECTED. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT (I) THE SIMPLYCOMP SERVICE AND CONSULTING SERVICES DO NOT CONSTITUTE THE PROVISION OF LEGAL ADVICE OR SERVICES IN ANY MANNER; (II) THE SIMPLYCOMP SERVICE AND CONSULTING SERVICES DO NOT ENSURE CUSTOMER'S COMPLIANCE WITH ALL APPLICABLE LABOR OR EMPLOYMENT LAWS; AND (III) CUSTOMER IS SOLELY RESPONSIBLE FOR ITS COMPLIANCE WITH ALL APPLICABLE LAWS.

**9. Indemnification.**

**9.1 Indemnification by Latitude 39.** Provided that you comply with the procedures set forth in this Section 9.1, Latitude 39 will defend you against any claim brought against you by a third party alleging that the use of the SimplyComp Service as authorized under this Agreement, directly infringes a U.S. patent, copyright, or trademark of a third party or misappropriates such third party's trade secrets, and we will indemnify and hold you harmless against all reasonable damages and costs (including reasonable attorneys' fees) finally awarded against you by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by Latitude 39, in connection with such claim, provided that you (a) give Latitude 39 prompt written notice of the claim; (b) give Latitude 39 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) provide Latitude 39 sole control of the investigation, defense and settlement of the claim. Notwithstanding the foregoing, Latitude 39 shall have no

indemnification obligation if: (i) if the total aggregate fees received by Latitude 39 with respect to your Subscriptions to the SimplyComp Service in the 12 month period immediately preceding the claim is less than \$50,000; (ii) the alleged infringement is caused by use of the SimplyComp Service in combination with any product, software, data, services, business processes or equipment that is not provided by Latitude 39; or (iii) your use of the SimplyComp Service is not in compliance with the terms of this Agreement.

If your use of the SimplyComp Service is enjoined or is held or likely to be held infringing, 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: (x) procure a license for your continued use of the SimplyComp Service in accordance with this Agreement; (y) substitute a substantially functionally similar service; or (z) terminate your right to continue using the SimplyComp Service and refund any prepaid amounts for the terminated portion of the Subscription Term. THIS SECTION 9.1 (INDEMNIFICATION BY LATITUDE 39) STATES OUR SOLE LIABILITY AND YOUR EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY SERVICES PROVIDED BY LATITUDE 39 UNDER THIS AGREEMENT.

**9.2 Indemnification by Customer.** Provided that Latitude 39 complies with the procedures set forth in this Section 9.2, you will defend, indemnify and hold Latitude 39 harmless from and against any loss, cost, liability or damage, including attorneys' fees, for which Latitude 39 becomes liable arising from or relating to any claim relating to Customer Data, including but not limited to any claim brought by a third party alleging that Customer Data, or your use of the SimplyComp Service in breach of this Agreement, infringes or misappropriates the intellectual property rights, privacy or other rights of a third party or violates applicable law. Your indemnification obligation is subject to Latitude 39 providing: (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 (provided any settlement that would require Latitude 39 to take any action or refrain from taking any action requires the advance written consent of Latitude 39); and (iii) reasonable assistance in the defense and investigation of the claim, including providing you a copy of the claim and all relevant evidence in our possession, custody or control, at your expense.

## **10. Limitation of Liability.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ITS SUPPLIERS HAVE ANY LIABILITY FOR ANY LOST PROFITS, LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY, OR FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY'S NOR ITS SUPPLIERS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER UNDER THE APPLICABLE ORDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

THE LIMITATIONS SET FORTH IN THIS SECTION 10 SHALL NOT APPLY TO (A) AMOUNTS OWED BY CUSTOMER UNDER ANY ORDERS, (B) EITHER PARTY'S EXPRESS INDEMNIFICATION OBLIGATIONS IN THIS AGREEMENT, OR (C) YOUR BREACH OF SECTION 4.2 (RESTRICTIONS). The parties agree that the limitations specified in this Section 10 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## **11. Term and Termination.**

**11.1 Subscription Terms and Renewals.** The SimplyComp Service is provided on a subscription basis for a set term specified in your Order ("**Subscription Term**"). Except as otherwise specified in your Order, all Subscriptions will automatically renew for periods equal to your initial Subscription Term (and you will be charged at the then-current rates) unless you cancel your Subscription(s) through your account accessible at <https://login.simplycomp.com/apploginuser>, or by contacting the Support department ([support@latitude39.com](mailto:support@latitude39.com)). If you cancel, your Subscription(s) will terminate at the end of then-current billing cycle, but you will not be entitled to any credits or refunds for amounts accrued or paid prior to such termination. Latitude 39 reserves the right to increase the fees for the SimplyComp Service once annually at the anniversary date of the commencement of each Subscription Term.

**11.2 Term of Agreement.** This Agreement commences on the Effective Date and continues until all Subscriptions granted in accordance with this Agreement have expired or been terminated.

**11.3 Termination.** Either party may terminate this Agreement or an Order for cause: (a) if the other party is in material breach under this Agreement and fails to cure such breach within thirty (30) days of receipt of written

notice of such material breach from the non-breaching party; or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. You may terminate this Agreement at any time upon written notice to Latitude 39, but you will not be entitled to any credits or refunds as a result of termination for convenience. 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 the SimplyComp Service or any information or materials that we make available to you under this Agreement, including Latitude 39's 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. Termination shall not relieve you of your obligation to pay any fees accrued or payable to Latitude 39 prior to the effective date of termination, and you shall immediately pay to Latitude 39 all such fees upon the effective date of termination. Upon your request and subject to your payment of applicable fees at Latitude 39's then prevailing professional services rates, Latitude 39 will download Customer Data for you. Within a reasonable time following your written request, or following termination of the Agreement, Latitude 39 will delete all Customer Data in its systems or otherwise in its possession or under its control.

**114 Surviving Provisions.** The following provisions shall survive any termination or expiration of this Agreement: Sections 4.2 (Restrictions), 4.5 (Customer Data), 5 (Fees and Taxes), 6 (Proprietary Rights), 7 (Confidentiality), 8 (Warranty Disclaimer), 9 (Indemnification), 10 (Limitation of Liability), 11 (Term and Termination), and 12 (General Provisions).

## **12 General Provisions.**

**121 Export Control.** You and your Authorized Users shall not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information to anyone outside the U.S. in connection with this Agreement without first complying with all export control laws and regulations that may be imposed by the U.S. Government and any country or organization of nations within whose jurisdiction you operate or do business, such as the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce, trade and economic sanctions maintained by the United States Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the United States Department of State, and shall not cause Latitude 39 to violate the same. You represent and warrant that (a) 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 (b) that none of the Customer Data is controlled under the US International Traffic in Arms Regulations.

**122 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**123 Notices.** 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 U.S. Mail or overnight courier service to Latitude 39 Corporation, 3494 Camino Tassajara, Suite 239, Danville, CA 94506, USA, Attn: General Counsel. Your notices to us will be deemed given upon our receipt.

**124 Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**125 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be void, invalid, unenforceable or illegal, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in full force and effect.

**126 Assignment.** 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. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**127 Governing Law; Jurisdiction.** This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of laws rules, the United Nations Convention on the International Sale of Goods, or the Uniform Computer Information Transactions Act. Each party irrevocably agrees that any legal action, suit or proceeding arising out of or relating to this Agreement must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the state courts located in Contra Costa County, California, USA, and the Federal courts located in the Northern District of California, USA the and each party irrevocably submits to the sole and exclusive personal jurisdiction of such courts, generally and unconditionally, with respect to any action, suit or proceeding brought by it or against it by the other party. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. Notwithstanding the foregoing, Latitude 39 may bring a claim for equitable relief in any court with proper jurisdiction.

**128 Force Majeure.** Neither party shall be liable for delay or non-performance of its obligations hereunder (except for a failure to pay fees) if the cause of delay or non-performance is an event which is unforeseeable, beyond the control of the party affected, and cannot be remedied by the exercise of reasonable diligence, including without limitation acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Latitude 39's possession or reasonable control, and denial of service attacks.

**129 Publicity.** Latitude 39 may identify you as a customer of Latitude 39 in our promotional materials by referencing your company's name and logo.

**1210 Federal Government End Use Provisions.** Latitude 39 provides the SimplyComp Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the SimplyComp Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Latitude 39 to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

**1211 Changes to this Agreement.** Latitude 39 may update or modify this Agreement from time to time, including any referenced policies and other documents. If a revision meaningfully reduces your rights, Latitude 39 will use reasonable efforts to notify you (by, for example, sending an email to the billing or technical contact you designate in the applicable Order, through your account with Latitude 39, or in the SimplyComp Services). If Latitude 39 modifies the Agreement during your Subscription Term, the modified version will be effective upon your next renewal of the Subscription Term. 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. 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 the SimplyComp Services. For the avoidance of doubt, any Order is subject to the version of the Agreement in effect at the time of the Order.

**1212 Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Orders, constitutes the entire agreement between the parties, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties are not relying and have not relied on any representations or warranties whatsoever regarding the subject matter of this agreement, express or implied, except for the representations and warranties set forth in this Agreement. This Agreement may not be modified or amended by you without Latitude 39's written agreement (which may be withheld in Latitude 39's complete discretion without any requirement to provide any explanation). To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order, the terms of such exhibit, addendum, or Order shall prevail. No terms or conditions set forth on any purchase order, preprinted form or document shall add to or vary the terms and conditions of this Agreement, and all such terms or conditions shall be null and void.