



Master Subscription Service and Maintenance Agreement

THIS MASTER SUBSCRIPTION SERVICE AND MAINTENANCE AGREEMENT ("**AGREEMENT**") GOVERNS THE SERVICES AND YOUR PURCHASED SERVICES.

IF YOU PURCHASE AND/OR SUBSCRIBE TO OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN YOUR PURCHASE, AND/OR ONGOING USE OF, THE PURCHASED SERVICES.

This Agreement is between You and Us. You acknowledge that the Service and Purchased Services are hosted for Us by Salesforce.com. By agreeing to these terms, You confirm that You accept and agree to abide by the Salesforce Platform Terms. If You are subscribing to the Service or Purchased Services, You agree to all of the terms, conditions, rules, policies, regulations and provisions (the "**Applicable Terms and Conditions**"), as amended from time to time, and as set forth in this Agreement and/or in the User Guide, the Salesforce Platform Terms, the Order Forms, and/or the Third Party Applications, and all other notifications, standards, rules, policies and procedures promulgated and/or provided by Us and/or located on or posted to our website from time to time.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO ALL OF THE APPLICABLE TERMS AND CONDITIONS. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT AND TO ALL OF THE APPLICABLE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT OR WITH ANY OF THE APPLICABLE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES OR SUBMIT ANY ORDER FORMS.

You may not access the Services or Purchased Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services or Purchased Services for purposes of monitoring the availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement is effective between You and Us commencing as of the date that You accept this Agreement and continuing through the end of the Subscription Term set forth in the last Order Form submitted by You and accepted by Us.

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1. DEFINITIONS.

"**Affiliate**" means any person or entity which directly or indirectly controls, is controlled by, or is under common control with the subject person or entity. For purposes of this definition, "Control" means direct or indirect ownership or control of more than 50% of the voting interests of, or control of or over, the subject person or entity or the ability to direct the management or direction of the subject person or entity.

"**AppExchange**" means the online directory of on-demand applications that work or might operate or interoperate with the Services or Purchased Services, located at <http://appexchangesalesforce.com> or at any successor websites.

"**Applicable Laws**" means all ordinances, regulations, statutes, codes, rules, orders, decrees, determinations, covenants and restrictions of all applicable federal, state, local and other governmental agency, department, commission, board, bureau, instrumentality and authority.

"**Applicable Terms and Conditions**" shall have the meaning set forth on page 1 of this Agreement.

"**Claim**" has the meaning set forth in **Section 9.1** hereof.

"**Confidential Information**" shall have the meaning set forth in **Section 7.1** hereof.

"**Damages**" has the meaning set forth in **Section 9.1** hereof.

"**Disclosing Party**" has the meaning set forth in **Section 7.1** hereof.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and/or other harmful or malicious code, files, scripts, agents or programs.

"**Order Form**" means the order form and any other order documents required by Us from time to time for subscriptions and/or purchases hereunder, including addenda thereto, that is entered into between You and Us from time to time. Order Forms shall be deemed incorporated herein by reference.

"**Purchased Services**" means Services that You or Your Affiliates purchase under an Order Form.

"**Receiving Party**" has the meaning set forth in **Section 7.1** hereof.

"**Salesforce**" shall mean Salesforce.com, and its successors and assigns.



"**Salesforce Platform Terms**" means the Salesforce.com Platform Terms of Use for Platform Enterprise Edition OEM Services Subscription for XtremeMortgageWorX, LLC (and related products).

"**Services**" means the online, Web-based applications and platform provided by Us via <https://appexchange.salesforce.com/listingDetail?listingId+a0N3000000B4aVnEAJ>.

"**Taxes**" has the meaning set forth in **Section 5.6** hereof.

"**Term**" or "**Subscription Term**" shall be the Subscription Term set forth in the Order Form.

"**Third-Party Applications**" means online, Web-based applications and offline software products that are provided by third parties, operate and/or interoperate with the Purchased Services, and are identified as third-party applications, including but not limited to those listed on the AppExchange.

"**User Guide**" means the user guide for the Purchased Services, accessible via a secured line through Support@XtremeSalesWorX.com. XtremeMortgageWorX will send a copy of updates to the User Guide to the designated person You provided.

"**Users**" means You and Your Affiliates, employees, representatives, consultants, contractors and/or agents who are authorized by You to use the Purchased Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by You (or by Us at Your request).

"**We**", "**Us**" or "**Our**" means XtremeMortgageWorX, LLC, as further described in **Section 12** hereof.

"**You**" or "**Your**" means You and the company or other entity for which You are executing and/or accepting this Agreement, and all of Your Affiliates, Users and Affiliates of such company or entity.

"**Your Data**" means all electronic data or information submitted by You, the Users or Your Affiliates to the Purchased Services.

2. PURCHASED SERVICES.

2.1. Provision of Purchased Services. We shall make the Purchased Services available to You pursuant to this Agreement and the relevant Order Forms during the Subscription Term(s). You agree that Your subscription and/or purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

2.2. User Subscriptions. Unless otherwise specified in the applicable Order Form, (i) Purchased Services are purchased as User subscriptions and may be accessed by no more than the specified number of Users, (ii) additional User subscriptions may be added during the Subscription Term at the then current pricing provided by Us, prorated for the remainder of the Subscription Term in effect at the time the additional User subscriptions are added, and (iii) the added User subscriptions shall terminate on the same date as the pre-existing subscriptions.

User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require on-going use of the Purchased Services.

3. USE OF THE PURCHASED SERVICES.

3.1 Our Responsibilities. During the Subscription Term, We shall (i) provide to You basic support for the Purchased Services pursuant to Our Standard Success Plan at no additional charge, and/or such upgraded support if purchased separately by You subject to the payment by You of additional charges for such upgraded support, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for (a) planned downtime (of which We shall give You reasonable advance notice via the Purchased Services) which We will use good faith efforts to schedule, to the extent reasonably practicable, during the weekend hours from 6:00 p.m. Pacific time Friday to 3:00 a.m. Pacific time Monday, or (b) any unavailability, interruptions or disruptions caused by circumstances beyond Our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, weather, civil unrest, acts of terror, strikes or other labor problems (other than those involving Our employees), Internet service provider failures or delays, and/or Salesforce service or connection interruptions, disruptions or issues, and (iii) provide the Purchased Services only in accordance with Applicable Laws.

3.2. Your Responsibilities. You shall (i) be responsible for all of Your Users' compliance with this Agreement, all Applicable Terms and Conditions, the Salesforce Platform Terms, all Order Forms, and all Third Party Applications, (ii) be solely responsible for the accuracy, quality, integrity and legality of Your Data and of the means by which You acquired, used, supplied, downloaded, and/or manipulated Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Purchased Services, and notify Us promptly of any unauthorized access or use of the Services or the Purchased Services, and (iv) use the Purchased Services only in accordance with all Applicable Terms and Conditions, the User Guide, the Salesforce Platform Terms, this Agreement, the Third Party Applications, and all Applicable Laws. You shall not (a) make the Purchased Services available to anyone other than Users, (b) sell, resell, rent, lease, license, sublicense, transfer, assign, distribute, timeshare or otherwise commercially exploit or make available to any third parties the Services or Purchased Services, (c) send, store or transmit, or use the Purchased Services to store or transmit, infringing, libelous, obscene, threatening or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights or any Applicable Laws, (d) send, store or transmit, or use the Purchased Services to store or transmit, Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services, Purchased Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services, the Purchased Services or any related systems or networks or to access or use other parties' data or Confidential Information.

3.3. Usage Limitations. Purchased Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls You are permitted to make against Our application programming interface, and, for Purchased Services that enable You to provide public websites, on the number of page views by visitors to those websites. Any such

limitations may be specified in the Applicable Terms and Conditions as may be amended, promulgated and/or provided from time to time. The Purchased Services provide real-time information to enable You to monitor Your compliance with such limitations.

4. THIRD-PARTY PROVIDERS.

4.1. Acquisition of Third-Party Products and Services. We may offer Third-Party Applications for sale, subscription, license and/or use under Order Forms. Any other acquisition, subjecting, license and/or use by You of third-party products, applications or services, including but not limited to Third-Party Applications and implementation, customization and other consulting services, and any exchange of data between You and any third-party provider, is solely between You and the applicable third-party provider. We do not warrant or support Third Party Applications or other third-party products, applications or services, whether or not they are designated by Us as “certified” or otherwise, except as specified in an Order Form. No purchase, subscription, license and/or use of Third Party Applications or other third-party products or services is required to use the Purchased Services.

4.2. Third-Party Applications and Your Data. If You install or enable Third-Party Applications or other third party products, applications and/or services for use with Purchased Services, You acknowledge that We may allow providers of those Third-Party Applications or other third party products, applications and/or services to access Your Data as required for the interoperation of such Third-Party Applications or other third party products, applications and/or services with the Purchased Services. We shall not be responsible for any disclosure, modification or deletion of Your Data resulting from any such access by Third-Party Application providers or other third party products, applications and/or services. The Purchased Services shall allow You to restrict such access by restricting Users from installing or enabling such Third-Party Applications or other third party products, applications and/or services for use with the Purchased Services.

4.3 Transmission of Data. Should You transmit Data to any other service, or add on Third-Party Applications or other third party products, applications and/or services that transmit Your Data outside the Purchased Services, whether or not you use the Purchased Services to do this, You do this at Your own risk and You acknowledge that the security and validity of Your Data is Your responsibility.

4.4 Google Services. Service features that operate or interoperate with Google services depend on the continuing availability of the Google API and program for use with the Purchased Services. If Google, Inc., ceases to make the Google API or program available on reasonable terms for the Purchased Services, We may cease providing such Service features without entitling You to any refund, credit, or other compensation.

5. FEES AND PAYMENT FOR PURCHASED SERVICES.

5.1. User Fees. You shall pay all fees and charges specified in all Order Forms or otherwise required pursuant to the Applicable Terms and Conditions. Except as otherwise specified herein or in an Order Form, (i) fees and charges are quoted and payable in United States dollars, (ii) fees and charges are based on Purchased Services and not actual usage, (iii) payment

obligations are non-cancellable and fees and charges paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during the relevant Subscription Term stated in the Order Form. User subscription fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the Subscription Term.

5.2. Invoicing and Payment. You will provide Us with valid and updated credit card information, and with a valid Order Form or alternative documents reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit for all Purchased Services listed in the Order Form for the initial Subscription Term and any renewal Subscription Term(s) as set forth in Section 11.2 hereof. Such charges and payments shall be made in advance, either annually or in accordance with any different billing or payment frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You, and You will pay, all fees and charges in accordance with the provisions in the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for maintaining complete and accurate billing and contact information.

5.3. Overdue Charges. If any fees and charges are not received by Us from You by the due date, then at Our discretion, (a) such fees and charges may accrue late interest at the rate of 1.5% of the outstanding balance per month or the maximum rate permitted by law, whichever rate is lower, from the date such payment was due until the date all such fees and charges are paid in full, and/or (b) We may condition the continued use of the Purchased Services, future subscription renewals and Order Forms, on payment in advance and/or payment terms shorter than those specified in Section 5.2 hereof.

5.4. Suspension of Service and Acceleration. If any amount owing by You under this Agreement or any other agreement for Our Services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid obligations under this Agreement or such agreements so that all such obligations become immediately due and payable, and suspend Our Services to You until such amounts are paid in full.

5.5. Payment Disputes. We may, at our option, elect shall not to exercise Our rights under Sections 5.3 or 5.4 hereof if the applicable fees or charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.

5.6. Taxes. Unless otherwise stated, Our fees and charges for the Purchased Services do not include any taxes, levies, duties or similar governmental taxes, assessments or charges of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with Your subscriptions and purchases hereunder for all Purchased Services, and we may charge You for such Taxes. If We have the legal right or obligation to pay or collect Taxes for which You are responsible under this Section 5.6, the

appropriate amount shall be invoiced to and timely paid by You unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. PROPRIETARY RIGHTS.

6.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interests in and to the Services, including all related intellectual property rights. No rights are granted to You hereunder other than the limited right to use the Purchased Services upon payment of all fees and charges therefor as expressly set forth herein.

6.2. Restrictions. You shall not (i) access or permit any third party to access the Services or Purchased Services except as permitted herein and in an Order Form, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services or Purchased Services, other than copying or framing of Your Data for Your own internal business purposes, (iv) reverse engineer the Services or Purchased Services or any intellectual rights in or to the Services or Purchased Services, or (v) access or use the Services or Purchased Services (a) in order to build a competitive product or service or copy any features, functions or graphics of the Services, or (b) for any use other than as expressly permitted herein.

6.3. Ownership of Your Data. As between Us and You, You exclusively own all rights, title and interest in and to all of Your Data. Notwithstanding the foregoing, We shall have access to, and the right to use, manipulate, compromise and reformat Your Data in Our data base or products, provided we do not divulge or disclose any Confidential Information to third parties.

6.4. Suggestions. We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, and perpetual right and license to use or incorporate into the Services any suggestions, enhancements, modifications, derivative works, changes, recommendations and/or other feedback provided by You, Your Users and/or Your Affiliates, and/or performed relating to the Services, Purchased Services or operation/functionability or use of the Services or Purchased Services. Without limiting the foregoing, (i) You hereby grant Us a non-exclusive, royalty-free license to use, copy, manipulate, combine, modify and create derivative works from Your Data in connection with the Purchased Services, (ii) any pre-existing or preparatory materials including, without limitation, ideas, sketches, initial copy, concepts, proofs of concepts, artwork and type, will remain Our sole and exclusive property, and (iii) any software, algorithms, methods, processes, identifier codes or other technology developed by Us in connection with the Services or Purchased Services or render any consulting services to You will remain Our sole and exclusive property.

6.5. Federal Government End Use Provisions. We provide the Services, 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 Services 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 conveyed under these terms, it must negotiate with Us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

7. CONFIDENTIALITY.

7.1. Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information shall include Your Data; Our Confidential Information shall include the Services, the Purchased Services and all other data, services, applications and information available through or In connection with the Services, the Purchased Services and/or Confidential Information of each party shall include the specific and expressed business terms and conditions set forth in the Order Forms, as well as confidential and proprietary business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party to the other party. However, Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall (i) use the same degree of care (but in no event will the Receiving Party use less than reasonable care) with respect to the Disclosing Party's Confidential Information that it uses (a) to protect the confidentiality of its own Confidential Information of like kind, and (b) not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party pertaining to the Confidential Information and containing protections no less stringent than those set forth herein.

7.3. Protection of Your Data. Without limiting the above but subject to the provisions of **Section 6.4** hereof, We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law or court order in accordance with **Section 7.4** (Compelled Disclosure) or as expressly permitted in writing by You, or (c) access Your Data except to provide the Purchased Services or prevent or address service or technical problems, or at Your request in connection with customer support matters.

7.4. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law or court order to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally

permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law or court order to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

7.5 Agreed Disclosure. You agree to allow Us to reference You as a customer and user of the Purchased Services and Our technology, and to use Your tradenames, trademarks, logos and copyrighted materials, on Our website and in print copy or marketing collateral. You will provide Us with an approved company logo and other trademarks and copyrighted materials that We may publish on Our website and/or in marketing collateral to communicate such relationship.

8. WARRANTIES AND DISCLAIMERS

8.1. Our Warranties. We warrant that (i) the Purchased Services shall perform materially in accordance with the Salesforce User Guide, and (ii) subject to **Section 4.4** hereof, the functionality of the Purchased Services will not be materially decreased during a Subscription Term. For any breach of either such warranty, Your exclusive remedy shall be as provided in **Section 11.3** hereof and **Section 10.4** hereof.

8.2. Mutual Warranties. Each party represents and warrants that (i) it has the legal right, power and authority to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code (except for Malicious Code previously transmitted to the warranting party by the other party).

8.3. Disclaimer. WE MAKE NO WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO WITH RESPECT TO THE SERVICE OR PURCHASED SERVICES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. WITHOUT LIMITING THE FOREGOING, WE MAKE NO REPRESENTATION, WARRANTY OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR PURCHASED SERVICES. WE DO NOT REPRESENT OR WARRANT THAT (A) THE PURCHASED SERVICES WILL BE AVAILABLE, SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH THE SALESFORCE SERVICE OR ANY OTHER APPLICATION, SOFTWARE, HARDWARE, SYSTEM OR DATA, (B) THE SERVICE OR PURCHASED SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY DATA STORED USING THE PURCHASED SERVICES WILL BE ACCURATE, RELIABLE, OR SECURE, (D) ERRORS OR DEFECTS IN THE PURCHASED SERVICES WILL BE CORRECTED, OR (E) THE PURCHASED SERVICES OR THE SYSTEMS USED TO MAKE THE PURCHASED SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE PURCHASED SERVICES ARE PROVIDED STRICTLY ON AN "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE DISCLAIM ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PURCHASED SERVICES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR

A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. MUTUAL INDEMNIFICATION.

9.1. Indemnification by Us. We shall defend You against any claim, demand, suit, or proceeding (" **Claim**") made or brought against You by a third party alleging that the Purchased Services infringe or misappropriate the intellectual property rights of a third party, and shall indemnify You for any actual out of pocket third party damages ("**Damages**") finally awarded against, and for reasonable attorney's fees incurred by, You in connection with any such Claim; provided, however, Our obligations under this **Section 9.1** are conditioned on You (a) promptly giving Us written notice of the Claim, (b) giving Us sole control of the handling, defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability), and (c) providing Us with all reasonable assistance, at Our expense.

9.2. Indemnification by You. You shall defend Us against any Claim made or brought against Us by a third party alleging that Your Data, or Your use of the Purchased Services in violation of this Agreement and/or the Applicable Terms and Conditions infringes and/or misappropriates the intellectual property rights of a third party or violates Applicable Law, and shall indemnify Us for any Damages finally awarded against, and for reasonable attorney's fees incurred by, Us in connection with any such Claim; provided, however, Your obligations under this **Section 9.1** are conditional on Us (a) promptly giving You written notice of the Claim, (b) giving You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally releases Us of all liability), and (c) providing You with all reasonable assistance, at Your expense.

9.3. Exclusive Remedy. This **Section 9** (Mutual Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this **Section 9**.

10. LIMITATION OF LIABILITY.

10.1. Limitation of Liability. IN NO EVENT SHALL OUR AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT INCLUDING PURSUANT TO **SECTION 9** ABOVE, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER OR, WITH RESPECT TO ANY SINGLE INCIDENT, THE LESSER OF \$10,000.00 OR THE AMOUNT PAID BY YOU FOR THE PURCHASED SERVICES HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT.

10.2. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR

REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, SPECULATIVE OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER SHALL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW OR CLAIMED BY OR OWED TO THIRD PARTIES. FURTHERMORE, NOTWITHSTANDING THE FOREGOING, THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER **SECTION 5** HEREOF.

11. TERM AND TERMINATION.

11.1. Term of Agreement. This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement and/or any Order Forms have expired or been terminated.

11.2. Term of Purchased Services. The Purchased Services and User subscriptions purchased and/or obtained by You commence on the start date specified in the applicable Order Form and continue for the Subscription Term specified therein. Except as otherwise specified in the applicable Order Form, the Purchased Services and all User subscriptions shall automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant Subscription Term. The per-unit pricing during any such renewal Subscription Term shall be the same as that during the prior Subscription Term unless We have given You written notice of a pricing increase at least 10 days before the end of such prior Subscription Term, in which case the pricing increase shall be effective upon renewal and for the renewal Subscription Term.

11.3. Termination for Cause. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach (other than as provided in **Subclause (ii)** below) if such breach remains uncured at the expiration of such period, (ii) upon 10 days written notice to You if You fail to timely pay Us any amounts due to Us and such breach is not cured within such 10 day period, provided that We shall only be obligated to provide 10 day written notice of only 2 monetary defaults or breaches by You during any calendar year and thereafter there shall be no further required default notices or cure periods for any other monetary defaults during such calendar year, or (iii) immediately and without notice 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.

11.4. Refund or Payment upon Termination. Upon any termination for cause by You, We shall not refund You any prepaid fees or charges covering the remainder of the Subscription Term of all subscriptions after the effective date of such termination. Upon any termination for cause by Us, You shall immediately pay all unpaid fees and charges covering the remainder of the Subscription Term of all Order Forms for all periods after the effective date of such termination. In no event shall any termination relieve You of the obligation to pay any fees and charges payable to Us for the period prior to the effective date of such termination.

11.5. Return of Your Data. Upon request by You made within 30 days after the effective date of termination of the Purchased Services, We will make available to You for download a file of Your Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, We shall have no obligation to maintain or provide any of Your Data and shall thereafter, unless legally prohibited, delete all of Your Data in and from Our systems and the Purchased Services or otherwise in Our possession or under Our control.

11.6. Surviving Provisions. Sections 3.2, 4.4, 5, 6, 7, 8.3, 9, 10, 11.4, 11.5, 12 and 13 shall survive any termination or expiration of this Agreement.

12. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION.

12.1. General. You are contracting with XtremeMortgageWorX, LLC at 10,000 N. Central Expressway, Suite 900, Dallas, TX 75231, Fax 1-866-855-5070 and 214-954-9541, Attention: Rhett Broussard, CEO, with a copy to Glen A. Bellinger, Chief Legal Officer. The governing law is Texas and United States Federal Law. The courts having exclusive jurisdiction for all matters arising under, pursuant to or in connection with the Services, this Agreement, the Order Forms and all other agreements and arrangements between the parties hereto are located in Dallas, Texas, U.S.A

12.2. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, consents, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon (i) personal delivery, (ii) the second business day after mailing by certified mail, (iii) the day sent by confirmed facsimile if sent on a business day, or the first business day after such facsimile is sent if sent on a non-business day, or (iv) the day sent by confirmed email if such email is sent on a business day, or the first business day after such email is sent if sent on a non-business day. Notices to You shall be addressed to the system administrator designated by You for Your Purchased Services account, and in the case of billing-related notices, to the relevant billing contact designated by You.

12.3. Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts referenced above.

12.4. Waiver of Jury Trial. Each party 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.

13. GENERAL PROVISIONS.

13.1. Export Compliance. Each party shall comply with the export laws and regulations of the United States and all other applicable jurisdictions in providing and using the Purchased Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services or Purchased Services in violation of any U.S. export embargo, prohibition or restriction.

13.2. 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.

13.3. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

13.4. 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.

13.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such 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 effect.

13.6. Attorney Fees. You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of **Section 5.2** hereof.

13.7. Assignment. You may not assign any of Your rights or obligations hereunder, whether by operation of law or otherwise, without Our prior written consent (not to be unreasonably withheld). Notwithstanding the foregoing, You may assign this Agreement in its entirety (including all Order Forms), without Our consent but without releasing You, to Your Affiliates in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Your assets not involving a direct competitor of Ours. One of Our remedies for any purported assignment by You in breach of this **Section 13.7** shall be, at Our election, termination of this Agreement upon written notice to You and/or the assignee. In the event of such a termination, We shall not refund to You any prepaid fees covering the remainder of the Subscription Term after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

13.8 Further Contact. We may contact You at any time regarding new or other services, features and offerings.

13.9. Entire Agreement. This Agreement, including all exhibits and addenda hereto and all Order Forms and Applicable Terms and Conditions, constitutes the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, 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 Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any order documentation (excluding Order Forms) shall be incorporated into or form any part of



this Agreement, and all such terms or conditions shall be null and void, unless We expressly accept such terms or conditions in writing.

In Witness Whereof, the parties hereto have executed this Agreement to be effective as of the commencement of the Subscription Term.

YOU:

a _____

By: _____
Name: _____
Title: _____
Date: _____

US:

XtremeMortgageWorX, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____
Date: _____

Confidential and Proprietary