



Carbyne Universe Standard Proposal 24-Month Renewal

Amanda Tienda, MPA, ENP, 9-1-1 Program Manager

South Texas Development Council

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November 30, 2023

Carbyne Contact:

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New York, NY 10001
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Manager

South Texas Development Council
912 Matamoros Street, Laredo, TX
78040

Carbyne, Inc.
45 W 27th St, Floor 2
New York, NY 10001

Carbyne is pleased to submit a Standard Proposal Renewal to **South Texas Development Council** for Universe. By selecting the proposed term of 24-months and signing this agreement, **South Texas Development Council** agrees to continue service from December 1, 2023 through November 30, 2025 under the terms of Terms and Conditions (defined below). In the event **South Texas Development Council** requests additional changes outside the terms of the contract, Carbyne shall submit to **South Texas Development Council** a revised addendum clearly indicating all changes and additional costs, prior to implementing any such changes.

Carbyne created the Universe solution to enable emergency communications specialists to efficiently dispatch, with confidence, by providing the right information as quickly as possible. Universe is uniquely positioned to minimize response times and maximize efficiency while improving situational awareness between the caller and emergency services during emergency and non-emergency situations.

The power of the Universe platform is that it is a cloud native solution. Therefore, it can simply be installed on any computer having an internet connection with zero interruption to existing working products, whether it be 9-1-1, 3-1-1, or any Emergency Communications Center.

Use of Carbyne products and services is subject to the terms and conditions which are attached or otherwise provided to **South Texas Development Council** ("Terms and Conditions"). This proposal is not deemed a part of or incorporated into the Terms and Conditions. This proposal is valid for 90 days.

Carbyne extends its thanks to **South Texas Development Council** for allowing us to share how we can serve as your ***provider of precise location information with video, pictures, and chat to enhance your current 9-1-1 and computer aided dispatch systems from 9-1-1 to Live-1-1.*** If you have questions related to this proposal, please contact me by phone at +1 715.497.5179 or by email at matheusc@carbyne.com.

Sincerely,

Mat Cornacioni

Customer Success Manager



Quote

The following pricing includes Universe licenses and any related services, if applicable. All fees are on an annual subscription basis. The term of the subscription is two years (12/1/2023 - 11/30/2025).

Remote support for the term of subscription is included in the subscription fees.

Project Fees

Description	
Annual Subscription Fees Include:	\$184,800
• Universe Platform ○ Caller Location ■ Carbyne Location ■ Advanced Mobile Location ■ ANI / ALI Location ○ Video ○ Silent Chat ○ Incident Conferencing ○ Mapping Layers ○ Questionnaire • Auto-Detect • Responder Connect • Control Center - 7 Sites ○ Events History ○ Video Board • 22 Concurrent Licenses	
Annual Subscription Fee Subtotal	\$184,800
Renewal Discount	(\$72,072)
Total Annual Subscription Fees	\$112,728
Summary	
Total Year 1 Fees	\$112,728
Total Year 2 Fees	\$112,728
Total Renewal Fees	\$225,456

Payment Terms

Upon contract execution, **South Texas Development Council** will be invoiced for all of year one annual subscription fees in the amount of \$112,728.

Year two subscription fees will be invoiced on the one-year anniversary of the contract execution date in the amount of \$112,728.

Additional optional features can be added at any time via a mutually agreed upon sales order(s) and applicable subscription fees will be prorated from the date such feature is added through the end of the subscription term of this sales order.

Annual subscription fees may be subject to a fee adjustment on each anniversary date of the subscription start date to account for changes to the U.S. Department of Labor Consumer Price Index ("CPI"). Such fee adjustments are limited to the greater of 3% or the change in the CPI for the twelve month period preceding the anniversary date.

All mutually agreed upon Quotes and any use of Carbyne's products and services are subject to Carbyne's Terms and Conditions which are attached below ("Terms and Conditions"). By signing below, you agree to this Quote and the Terms and Conditions. As used in the Terms and Conditions, "Sales Order" refers to this Quote.

Terms & Conditions

In the event the customer upgrades the solution to APEX platform (Carbyne Cloud Call-Taking Solution) ("APEX"), unused subscription fees for the remainder of the subscription term may be taken into consideration toward the subscription to APEX. Upgrading to APEX may be subject to additional terms, including pricing, as mutually agreed upon in writing between the parties.

All mutually agreed upon Quotes and any use of Carbyne's products and services are subject to Carbyne's Terms and Conditions which can be found at <https://carbyne.com/legal/> ("Terms and Conditions"). The current version of the Terms and Conditions are also attached below. By signing below, you agree to this Quote and the Terms and Conditions.



Signatures of Authority

This Quote and the Terms and Conditions are entered into by and between **Carbyne Inc.**, with a principal place of business at 45 W 27th St, Floor 2, New York, NY 10001; and **South Texas Development Council**, with a principal place of business at 912 Matamoros Street, Laredo, TX 78040.

South Texas Development Council

Joseph Neeb, Manager

+1 956.791.7300 | jneeb@ci.laredo.tx.us

Carbyne, Inc.

Rahul Sheth, CFO

+1 516.302.7434 | rahuls@carbyne.com

Customer Signature

Carbyne Signature

Date

Date



Carbyne Terms and Conditions

These Carbyne Terms and Conditions ("**Agreement**") govern your access to and use of the Solution offered by us or our Affiliates. By using the Solution, or upon your agreement to the Order Form for the Solution, you indicate you have read, understand and agree to the terms and conditions of this Agreement. If you use the Solution on behalf of an organization, you agree to this Agreement on behalf of that organization and you represent and warrant that you have the authority to do so. "**Carbyne**", "**us**", "**we**" or "**our**" refers to Carbyne Ltd., Carbyne, Inc. or Carbyne911 Mexico S. de RL de CV, as specified on the Order Form, on behalf of itself and its Affiliates, and "**Customer**", "**you**" and "**your**" refers to the customer signing below.

DEFINITIONS

Affiliates means any other person that directly or indirectly controls, or is controlled by or under common control with a party, with 'control' as applied to any party being the direct or indirect ownership of more than fifty percent (50%) of the equity or voting interest in such party.

Authorized User means you or your employees, consultants, agents or contractors who are granted access to the Solution by you as part of their support of your internal business or operations.

Confidential Information means information (whether oral, written or in some other tangible form) disclosed by one party (the "disclosing party") to the other party (the "receiving party") that is obtained by the receiving party under or in connection with this Agreement and that is marked as confidential, is by its nature confidential or relates to the business or affairs of the disclosing party.

Documentation means the then-current standard product sheet provided or made available by us with respect to the Solutions which describes its features and functionalities. Documentation specifically excludes marketing and promotional materials and proposals.

Intellectual Property Rights means any and all intellectual property rights including patents, trademarks, design rights, copyright, rights in databases, know-how, look-and-feel, domain names and all similar rights (whether or not registered or capable of registration and whether subsisting in any part of the world), together with any and all goodwill relating or attached thereto, all derivative works and all extensions and renewals thereof.

License Designation refers to the permitted Software installation and Solution use rights as follows:

(a) **Primary License:** you may install the Software on your workstations up to the number of licenses specified on the Order Form and access and use the Solution from such workstations.

(b) **Backup License:** you may install the Software on your backup workstations up to the number of licenses specified on the Order Form and access and use the Solution from such workstations only for backup purposes.

(c) **Concurrent License:** you may install the Software on your workstations up to the number of licenses specified on the Order Form, and you may access and use the Solution from only up to 50% of such workstations at any given time (unless otherwise indicated in the Order Form).

If no License Designation is provided on the Order Form, the License Designation is considered a Primary License.

Order Form refers to the ordering document, such as a quote, agreed to in writing between you and us which is subject to this Agreement and describes the Solution (including the number of Software licenses, as applicable) and Support Services you wish to purchase from us and the applicable fees.

Platform means the hosted platform, software as a service and/or other hosted product or service which we or our Affiliate(s) make available to you pursuant to this Agreement. The Platform excludes Software.

Privacy Policy means the policy found at <https://carbyne.com/app-privacy-policy/>, which describes how we use personal data you and your Authorized Users provide to us, including personal data which is shared with us in connection with your use of the Solutions.

Solution means the Software and Platform which we or our Affiliate(s) make available to you pursuant to this Agreement. The Solution does not include Third Party Content.

Software means the software in object code we provide to you for download under this Agreement which enables you and your Authorized Users to access the Platform. Software includes any upgrades we provide in accordance with the Support Terms and Service Level Agreement. Software excludes the Platform.



Subscription Term means the duration of your subscription to use the Solution specified in the applicable Order Form.

Support Services means the maintenance and support services provided in connection with your use of the Solution in accordance with the Support Terms and Service Level Agreement.

Support Terms and Service Level Agreement (or SLA) means the document provided by us describing the Support Services provided by us, which includes our commitment regarding the performance of the Platform, as updated and which is incorporated into this Agreement by this reference.

Supplemental Terms means additional terms and conditions that apply to specified products and services or address specific requirements, as mutually agreed upon between the parties in writing, which are made part of this Agreement.

Third Party Content means applications, materials, services, data and information, such as location, which are provided by a third party and is made available to you through your use of the Solutions.

Your Data means data (including personal data of callers), records, reports, recordings and files you or your Authorized Users enter into the Solution, including the content of any message, video, or chat sent or received using the Platform, or which are otherwise generated by you or your Authorized Users through access or use of the Solution. Your Data includes log information from your use of the Platform, such as log data from your use of the Solution which is stored in Events History. Your Data does not include Third Party Content.

1. USE AND LICENSE OF PRODUCTS

1.1 Carbyne offers a Solution comprised of a cloud-based Platform accessed by Authorized Users through Software installed on an Authorized User's computer. During the Term, provided you are current in your payment obligations, we grant you: (i) the right to access the Platform through the Software; (ii) a non-exclusive, non-transferable, non-sublicensable, limited, revocable right to download, install and use the Software solely for purposes of exercising your rights to access the Platform as part of the Solution. In accordance with the specified License Designation, you may install the Software up to the number of licenses set forth in the Order Form, and you may access and use the Solution for your internal business purposes only. If we provide you with hardware or equipment for your use with the Solution, unless otherwise agreed upon in writing, upon expiration or termination of this Agreement, you

are required to promptly return the hardware or equipment to us.

1.2 You are responsible for obtaining and maintaining your own IT infrastructure and any ancillary services needed to use the Solution (such as internet, electricity, modems, servers and operating systems) and for the security of your systems, including the Software installed on your systems, and will take commercially reasonable steps to exclude malware, viruses, spyware and Trojans from your systems. You and your Authorized Users may use the Platform to send and receive messages, and you are solely responsible for any such messages and their content.

1.3 You may permit Authorized Users to access and use the Solution and Documentation provided you are responsible for: (i) ensuring all Authorized Users use the Solution and Documentation only for support of your internal business and operations in accordance with this Agreement, and (ii) any unauthorized use of the Solution or any breach of this Agreement by an Authorized User.

1.4 As between you and us, we or our licensors retain all rights, title and interest, including Intellectual Property Rights, in and to the Solution, Support Services, Professional Services and Documentation, including specifications, materials and user manuals provided by us. You agree not to copy, distribute, modify or make derivative works of the Solution and Documentation or any other components or content, or to use any of our Intellectual Property Rights in any way not expressly permitted by us.

1.5 As part of your use of the Solution and Support Services, you may receive access to Third Party Content. You are responsible for compliance, including compliance by your Authorized Users, with any terms which apply to Third Party Content. We make any Third Party Content available "AS IS" without support (unless otherwise specified), representations or warranties of any kind. We may suspend or terminate provision or availability of any Third Party Content at any time without any liability, and such suspension or termination will not be deemed a breach of this Agreement.

2. Orders and Fees

2.1 Orders for the Solution, and any related services, are placed when you agree in writing to an Order Form issued by us. Order Forms are subject to this Agreement. Unless otherwise set forth in the applicable Order Form or Supplemental Terms, delivery of the Solution occurs when we make the Software and Platform available to you.

2.2 You agree to pay the fees set forth on the applicable Order Form. We may also invoice you for additional fees if you exceed the permitted use. Fees are payable within 30 days of

the date of the invoice we issue. All payments not made when due are subject to a late charge of 1.5% per month or the maximum amount allowed by law, compounded annually. You agree to pay fees by wire transfer or check to the account details provided by us in writing, or such other account as may be designated by us from time to time. Any fees specified on the Order Form are exclusive of applicable taxes.

2.3 If you fail to pay any fees in accordance with the terms of this Agreement and the applicable Order Form, and you have failed to cure the non-payment after receiving written notice from us and 30 day cure period, in addition to any other rights and remedies available to us, we may suspend or limit your access to the Platform until all outstanding fees have been paid.

2.4 You agree to pay (and to reimburse us or our authorized agent, if applicable, on request if we are required to pay on your behalf) any applicable taxes, assessments and duties of any kind and nature that is levied or imposed by any governmental authority on your use of the Solution, or your receipt of support or other services, but not including taxes based on our net income. If you are exempt from taxes, then you must provide a valid exemption certificate or other government approved documentation to us.

3. Professional Services

3.1 You may request professional services, such as installation and integration services, in connection with your use of the Solution ("Professional Services"). A description of the Professional Services will be set forth in a Statement of Work ("SOW"), as mutually agreed in writing, which will be subject to this Agreement and the Professional Services Terms and Conditions. We will invoice any fees for Professional Services, and such fees are payable, in accordance with the applicable SOW.

3.2 Any changes or modifications to Professional Services will be as mutually agreed in writing in an amendment to the SOW, including any associated changes to fees for Professional Services.

4. Your Obligations and Restrictions

4.1 You represent and warrant (i) that no third party agreement prevents you from using the Solutions as contemplated under this Agreement; (ii) you will manage, secure and protect from unauthorized use or disclosure, and keep confidential, all Software license keys and login credentials used by Authorized Users in connection with use of the Software and Platform.

4.2 You shall not, directly or indirectly: (i) attempt to infiltrate, hack, reverse engineer, decompile or disassemble the

Solution or any part of the Solution for any purpose; (ii) interfere with, modify, disrupt or disable features or functionality of the Solution; (iii) remove or use the name, trademarks, trade-names, logos and other proprietary notices of Carbyne contained on or in Solution or Documentation; (iv) copy any part or content of the Solution or of the Documentation other than for your own internal business purposes (except as specifically permitted in this Agreement); (v) use the Solution or any part thereof to build a competitive product or service; (vi) sell, rent, lease, sublicense, distribute, redistribute, syndicate, create derivative works of, assign or otherwise transfer or provide access to, in whole or in part, the Solution or any data accessed or created by the Solution to any third person (except to the extent expressly permitted in this Agreement); (vii) permit other individuals or entities to create links to the Platform or Solution, or "frame" or "mirror" the Platform on any other server, or wireless or Internet-based device, or otherwise make available to a third party any token, key, password or other login credentials to the Solution; (viii) transmit software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment into the Platform or Carbyne's network environment; (ix) use the Solution or Third Party Content in violation of any applicable law or regulation or any rights of any person. You shall provide us with reasonable assistance to prevent the occurrence of any such activities by any third parties.

4.3 Furthermore, you shall not use the Solution: (i) for any illegal or fraudulent activity; (ii) to violate the rights of others; (iii) to threaten, incite, promote or actively encourage violence, terrorism or other serious harm; (iv) for any content or activity that promotes child sexual exploitation or abuse; (v) to violate the security, integrity or availability of any user, network, computer or communications system, software application, or network or computing device; (vi) to distribute, publish, send or facilitate the sending of unsolicited mass email or other messages, promotions, advertising or solicitations (or "spam").

5. Platform Availability and Support

5.1 You may request Support Services, as described in the Support Terms and Service Level Agreement. We will make the Platform available to you in accordance with the SLA, subject to operational requirements such as regularly scheduled maintenance and downtime. In the event of any downtime of the Platform, your only remedy is as set forth in the SLA or to cease use of the Platform. Our obligations and commitments in the Support Terms and Service Level

Agreement only apply to the Solution and not to any other hardware, equipment, software, products or services.

5.2 We may at any time: (i) introduce new or additional products and services, (ii) update the Solution to improve or add features or functionalities to the Solution, or (iii) modify the Solution to cease providing a feature or functionality. We will make available to you any additional terms applicable to new or enhanced products and services in advance. If we materially degrade or remove a functionality from the Solution that affects your use of the Solution, we will notify you as soon as reasonably practicable and you may terminate this Agreement by notifying us in writing no later than thirty (30) days after the date of such notice. If you terminate this Agreement as permitted in this Section, the termination will be effective as of the date specified in the notice and you will remain responsible for all fees incurred up to, and including, the effective date of such termination. We will refund any prepaid fees prorated from the effective date of the termination, less any applicable discounts not earned as of the effective date of the termination. Your continued use of the Solution after the effective date of any change is deemed as acceptance of the modified Solution. We may also share information about future enhancements or other changes to the Solution in advance, but you should not rely upon this information when deciding to subscribe. Your decision to subscribe should be based upon the functionality available at the time you are making that decision and not on any potential future functionality.

6. Confidentiality

6.1 The receiving party agrees (i) not to disclose the disclosing party's Confidential Information to any third parties other than to its directors, employees, advisors, or consultants (collectively, its "Representatives") on a "need to know" basis and provided that such Representatives are bound by confidentiality obligations not less restrictive than obligations described in this Agreement; (ii) not to use or reproduce any of the disclosing party's Confidential Information for any purposes except to carry out its rights and responsibilities under this Agreement; (iii) to keep the disclosing party's Confidential Information confidential using at least the same degree of care it uses to protect its own confidential information, which shall in any event not be less than a reasonable degree of care. Notwithstanding the foregoing, the receiving party may disclose disclosing party's Confidential Information in its possession to the extent required by legal process or applicable law, rule or regulation, provided prior to such disclosure, if legally allowed, receiving party gives prompt notice to the disclosing party to give disclosing party an

opportunity to seek a protective order or other appropriate relief.

6.2 Confidential Information excludes any information that: (i) is now or subsequently becomes generally available in the public domain through no fault or breach on the part of receiving party; (ii) the receiving party has in its possession without any duty of confidentiality prior to disclosure of the Confidential Information by the disclosing party; (iii) the receiving party rightfully obtains from a third party who has the right to transfer or disclose it, without default or breach of any confidentiality obligations; (iv) the receiving party has independently developed, without breach of this Agreement and/or without any use of or reference to the Confidential Information.

7. Data, Data Privacy

7.1 Our Privacy Policy governs your rights arising from and relating to data protection and privacy, including our practices with respect to the collection, use and disclosure of certain data and/or personal information provided to us in connection with your use of the Solution. We may use contact information you provide to us to communicate with you about the Solution and send you information we think may be of interest to you based on your marketing communication preferences. Our use of your personal data remains subject to the Privacy Policy. The parties may enter into additional Supplemental Terms governing data privacy, if necessary to comply with applicable privacy laws.

7.2 You grant us a license to use, reproduce, transmit and analyze Your Data, solely as required to provide the Solution to you (including performance of operations by the Solution in accordance with Documentation and this Agreement), and to provide Support Services and Professional Services. You retain all rights, title and interest, including Intellectual Property Rights, in and to Your Data. You are solely responsible for all Your Data. You represent and warrant that you own all Your Data, or you have all consents and rights that are necessary to share Your Data with us and to grant us the rights to Your Data under these Terms. You also represent and warrant that neither Your Data, nor your use and provision of Your Data through the Solution, nor our use of Your Data to provide the Solution, Support Services or Professional Services, will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

7.3 Unless you provide us with written instruction otherwise, we will retain Your Data which you submit to the Platform or which is recorded or stored in the course of your use of the Solution, for a period of two years (the period we

retain your data referred to as the “Data Retention Period”), provided that you acknowledge you are responsible for your compliance with any applicable data retention laws. Your Data is automatically deleted after the Data Retention Period; however, at any time prior to such deletion, you may download Your Data which has been stored on the Platform. You will be solely responsible for the retention of such data for any applicable retention periods and for the purposes of any subsequent data requests. We will have no further obligation with respect to Your Data after the Data Retention Period or after you download Your Data.

7.4 We may create anonymized and aggregated statistical data from your usage of the Solution, which does not include your personal data. We may use such anonymized and aggregated data for our own purposes, such as to develop and improve the Solution, to develop new services or products, and to identify usage trends.

8. Compliance

8.1 You agree to use the Solution in accordance with all applicable laws, including any applicable privacy and export laws. You agree to comply with all applicable sanctions (including embargoes) and re-export control laws and regulations including (to the extent applicable) those of the United States of America. We are not obligated to perform under this Agreement if doing so is in violation of national or international foreign trade or customs requirements or any embargoes or other sanctions.

8.2 You agree to report any known or suspected misuse of the Solution to us. We have the right to monitor your use of the Solution (but not Your Data) to verify your compliance with this Agreement at any time. If your use of the Solution exceeds the License Designation, we will provide you with notice of any additional fees or increases in the annual subscription fee for the next annual period. Furthermore, if we reasonably believe that you are using the Solution in an unauthorized or improper manner, we may, without notice and at our sole discretion, without limiting any other remedy available to us, terminate or suspend your right to use the Solution (or any feature, functionality or content which we determine is being used in violation of this Agreement) or take any other action we consider appropriate.

9. Warranties; Disclaimer

9.1 Each party warrants it has the full capacity and authority and all necessary consents to enter into and perform its respective obligations under this Agreement.

9.2 We warrant that the Solution provided to you under this Agreement are in material compliance with the features

and functionalities described in the applicable Documentation. If the Solution fails to perform as warranted in this Agreement, to the extent permissible under applicable law, our sole obligation, and your exclusive remedy, will be (i) to use commercially reasonable efforts to repair or restore the non-conforming Solution so that it conforms to this warranty, or (ii) if such repair or restoration may not be, in our opinion, available within a reasonable time or with reasonable efforts, to terminate the non-conforming Solution and refund to you any prepaid amounts for such Solution on a pro-rata basis for the remainder of the Term.

9.3 YOU ACKNOWLEDGE WE DO NOT PROVIDE TELEPHONE SERVICES, INTERCONNECTED VOIP SERVICES, OR 911 SERVICES. WE MAKE NO REPRESENTATION THAT WE ARE AN INTERCONNECTED VOIP SERVICE OR A COVERED 911 SERVICE PROVIDER, AND YOU MUST OBTAIN SUCH SERVICES FROM THE APPROPRIATE THIRD PARTY SERVICE PROVIDER.

9.4 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, WE PROVIDE THE SOLUTION (INCLUDING ANY INFORMATION AND DATA MADE AVAILABLE THROUGH THE SOLUTION OR ANY FEATURE), SUPPORT SERVICES AND DOCUMENTATION TO YOU ON AN “AS IS” BASIS, WITHOUT WARRANTIES OR REPRESENTATIONS OF ANY KIND. YOUR USE OF THE SOLUTION AND ANY INFORMATION OR DATA MADE AVAILABLE TO YOU IS AT YOUR DISCRETION. WE EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER STATUTORY, EXPRESS, IMPLIED OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR ACCURACY. WE FURTHER DISCLAIM ANY WARRANTY THAT THE OPERATION OF THE PLATFORM OR ANY RELATED SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, FAULT TOLERANT, FAIL SAFE, OR FREE OF HARMFUL COMPONENTS.

10. Our Indemnity; Customer Responsibilities

10.1 Provided you comply with Section 10.2 below, we will defend you from any claims brought by a third party alleging your use of the Solution in accordance with this Agreement infringes their Intellectual Property Rights (“IP Claim”). We will indemnify you from any amount finally awarded against you by a court of competent jurisdiction or amount which is agreed upon in settlement as a result of the IP Claim. This indemnity will not apply to the extent the underlying allegation arises from: (i) your breach of this Agreement or your negligence, or use of the Solution outside the scope of this Agreement; (ii) combination or use of the Solution with third party equipment, hardware, materials, components or applications; or (iii) use of the Solution after you become aware of the IP Claim (unless we agree you can continue to use it). Our entire obligation and

liability in connection with any allegation that a person's intellectual property rights have been infringed are set forth in this Section 10.1.

10.2 To receive the benefit of Section 10.1, you shall (i) promptly notify us in writing of any IP Claim for which indemnity is claimed, provided that failure to so notify will not relieve us of our obligation except to the extent it is prejudiced by your delay in providing us with such notice, and (ii) allow us to solely control the investigation, defense and settlement of the IP Claim, (iii) provide us with reasonable cooperation and assistance in defending such claim (at our cost), and (iv) immediately cease use of the Software and Platform which is subject to the IP Claim.

10.3 You are responsible for any claims, suits or proceedings arising out of or relating to your (or your Authorized Users'): (i) violation of any third party rights (including third party Intellectual Property Rights or privacy rights); (ii) use of the Solution and Documentation in breach of the terms of this Agreement; (iii) the operation and your combination or use of the Solution with Your Data and third party equipment, software, applications, materials and/or services; (iv) Your Data; and (v) breach of Section 4 (Your Obligations).

11. Limitation of Liability

11.1 NOTHING IN THIS AGREEMENT LIMITS A PARTY'S LIABILITY FOR WILLFUL MISCONDUCT OR FRAUD, BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, ITS RESPECTIVE OBLIGATIONS UNDER SECTION 10 (INDEMNITY; RESPONSIBILITIES), OR ANY LIABILITY WHICH CANNOT BE EXCLUDED UNDER APPLICABLE LAW.

11.2 SUBJECT TO SECTION 11.1, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY YOU TO US DURING THE 12 MONTHS PRECEDING THE DATE THE LIABILITY FIRST ARISES.

11.3 SUBJECT TO SECTION 11.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA (INCLUDING YOUR DATA), COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTORY OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. Term; Termination

12.1 The Subscription Term and start date are set forth on the Order Form. The subscription shall automatically renew for additional 12 month periods (each a "**Renewal Term**") after the initial Subscription Term unless either party provides written notice of its desire to terminate to the other party at least 30 days prior to the expiration of the then applicable term, unless otherwise set forth in the Order Form or unless the Agreement is terminated in accordance with the terms of this Section 12.

12.2 Either party may terminate an Order Form or this Agreement immediately by giving written notice to the other party if: (i) the other party breaches a material provision of this Agreement and fails to remedy the breach (if capable of remedy) within thirty (30) days after receipt of written notice; (ii) the other party breaches any of its confidentiality obligations; (iii) the other party is judged bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party, or any petition by or on behalf of such party is filed under any bankruptcy or similar laws. Additionally, we may also terminate this Agreement if we reasonably believe you intend to undergo any of the foregoing or reasonably believe you are, or will be, unable to provide your services which require use of the Solution. Outstanding Order Forms are automatically terminated upon termination of this Agreement.

12.3 Upon expiration of the Subscription Term or termination of the Order Form, any outstanding fees shall become due and payable, and you will immediately cease use of the affected Solution. In the event of termination of this Agreement, you will also return or destroy, at our option, all Confidential Information in your possession (and certify in writing you have done so). Sections 1.4, 1.5, 6, 7, 9.3, 9.4, 10, 11, 12.3 and 14 shall survive any expiration or termination of this Agreement.

13. Betas; Evaluations

We may enable you to access and use the Software and/or Platform for beta-testing, evaluation, preview or any other free of charge purposes (collectively, "Free of Charge Services"). If we do so, you may use Free of Charge Services only for the purpose of evaluating their functionality and to provide feedback to us (which we may use freely). You may not use Free of Charge Services to process any personal data, and any production use is at your own risk. Any use of the Free of Charge Services by you or by your Authorized Users is provided "AS IS" WITHOUT WARRANTY OF ANY KIND AND "AS AVAILABLE". The SLA and any security standards in this Agreement do not apply to Free of Charge Services. We may, at our discretion and without notice, change, limit or discontinue any Free of Charge Services, including your access

and use. Our entire liability for all claims, damages and indemnities arising out or related to your use of Free of Charge Services will not exceed in the aggregate USD \$1,000.00 (or equivalent in local currency). We have no obligation to make Free of Charge Services generally available.

14. General

14.1 The Solution is a commercial product that was developed exclusively at private expense. If the Solution is acquired directly or indirectly for use by the U.S. Government, then the parties agree that the Solution is considered 'Commercial Items' and 'Commercial Computer Software' or 'Computer Software Documentation', as defined in 48 C.F.R. §2.101 and 48 C.F.R. §252.227-7014(a)(1) and (a)(5), as applicable. The Solution may only be used under the terms of this Agreement as required by 48 C.F.R. §12.212 and 48 C.F.R. §227.7202. The U.S. Government will only have the rights set forth in this Agreement, which supersedes any conflicting terms or conditions in any government order document, except for provisions which are contrary to applicable mandatory federal laws. Unless otherwise expressly required, we will not be required to obtain a security clearance or otherwise be involved in accessing U.S. Government classified information.

14.2 Neither party will be liable for events beyond its reasonable control or for delay or failure to perform any obligations under this Agreement (except with respect to any payment obligations) due to any cause beyond its reasonable control. The delayed party will promptly notify the other party of any such event.

14.3 All notices shall be in writing and given in person, by an overnight courier service which provides tracking information to evidence delivery, by registered mail, or by email with confirmation of receipt, addressed to the address or email, as applicable, set forth in this Agreement or to such other address or email as a party may designate to the other in accordance with the notice procedure. All notices delivered in person or by courier service are deemed to have been given upon delivery, notices sent by registered mail are deemed given three calendar days after posting, and notices sent by email are deemed given when received and opened as validated by the read receipt.

14.4 We may, with your prior approval, reference you as a customer or user of our products in our publicity or general marketing communications and activities.

14.5 This Agreement constitutes the entire agreement between you and us and supersedes any previous agreements or representations, either oral or written, including any additional or preprinted terms on purchase orders, with

respect to the subject matter of this Agreement. All amendments will be made only in writing. We may update, amend or modify this Agreement from time to time as required to comply with applicable law or as required by our licensors or vendors with thirty (30) days prior written notice. If there is a conflict between this Agreement, Supplemental Terms and an Order Form, the Order Form, then the Supplemental Terms, will take precedence to the extent of such conflict and only with respect to the applicable Solution, Support Services and any Professional Services under such Order Form and Supplemental Terms. If any part of this Agreement is declared invalid or unenforceable for any reason, such part shall be deemed modified to the extent necessary to make it valid and operative and in a manner most closely representing the intention of the parties. Any failure by a party to insist upon or enforce performance by the other of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement or otherwise by law will not be construed as a waiver or relinquishment of any right to assert or rely upon the provision, right or remedy in that or any other instance. **If this Agreement is provided in response to a request for bid or request for proposal ("RFP"), and such RFP includes a provision requiring that no conflicting terms shall apply, then such RFP terms shall apply only to the extent of any conflict with this Agreement.**

14.6 You may transfer or assign your rights or obligations under this Agreement to a third party only with prior written consent from us. Any purported assignment contrary to this section shall be void. We may assign this Agreement to any of our Affiliates or to a successor entity in the event of a merger or acquisition without your prior written consent, and we will provide you with written notice of such assignment.

14.7 Some of our licensors and suppliers may be third-party beneficiaries under this Agreement.

14.8 If you provide any ideas or feedback regarding any products and services offered by Carbyne (including Free of Charge Services), such as suggestions for changes or enhancements, support requests (including any related information), and error corrections (collectively "Feedback"), we may use Feedback freely.

14.9 This Agreement is governed by the laws of the State of Texas, without regard to its conflict of law principles, and the parties agree to submit to the exclusive jurisdiction of courts in Texas. Notwithstanding the foregoing, if you are a public entity and your state law requires you to contract under your state law, then your state law shall apply to this Agreement.