



GOVERNMENT RETIREMENT & BENEFITS, INC.

**Government Retirement & Benefits, Inc. (GRB)
TERMS OF SERVICE FOR GRB SOFTWARE SERVICES
(updated July 21, 2009)**

PLEASE READ THIS AGREEMENT ("AGREEMENT") CAREFULLY BEFORE USING THE GRB SOFTWARE. BY ACCESSING THE SOFTWARE VIA THE ONLINE SERVICE, YOU ARE ACCEPTING THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT PROCEED.

1. Terms of Service. Customer acknowledges and agrees to the following terms of service shall govern Customer's access and use of the Service (the "Agreement"). In addition, Customer agrees that unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new service(s) subsequently purchased by the Customer will be subject to this Agreement.

1.1. Modification. GRB reserves the right to modify the terms and conditions of this Agreement, effective upon posting of an updated version of this Agreement on the Service. Customer is responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute Customer's consent to such changes.

1.2. Right to Access. Subject to the terms of this Agreement and any and all mutually executed ordering documents executed by Customer and GRB, Inc. (each, an "Order Form"), GRB grants Customer a limited, non-transferable, non-exclusive right to access and use GRB's proprietary, GRB-hosted software products via a web browser as described in an Order Form for the term set forth in an Order Form. The Software is made available to Customer as a hosted service ("Service"). GRB will host and retain physical control over the Software and make such computer programs and code available only through the Internet for access, use and operation through a Web-browser (e.g., Internet Explorer). No provision under this Agreement shall obligate GRB to deliver or otherwise make available any copies of computer programs or code from the Software, whether in object code or source code form.

1.3. Passwords, Access, and Notification. Customer will choose or be given all applicable passwords to use in connection with the Service. Customer is responsible for maintaining the confidentiality of passwords and account

(including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by Customer). Furthermore, Customer is responsible for any and all activities that occur under Customer's account (including, if applicable, the accounts of each user accessing the Service by means of an account established by Customer). User accounts may not be used concurrently or shared by more than one individual named person. GRB will act as though any electronic communications it receives under Customer's account will have been sent by Customer. Customer agrees to immediately notify GRB if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's accounts. GRB will not be liable for any loss or damage arising from Customer's failure to comply with these requirements.

1.4. Ownership. Customer retains all right, title and interest to any and all information provided, inputted or uploaded to the Software by Customer, Customer's employees or by GRB on Customer's behalf. GRB has no right, title or interest in any personally identifiable information related to Customer's employees. GRB shall retain all right, title and interest in and to the Software, Services, the documentation for the Software, and all modifications and/or enhancements to the Software, regardless of the source of inspiration for any such enhancement or modification and regardless of whether Customer have provided input regarding such modifications and/or enhancements. Customer acknowledges that GRB will retain all right, title and interest to transactional and performance data related to use of the Software which GRB may collect, use and disclose for its business purposes (including software use optimization and product marketing) provided that such use does not reveal Customer identity, any of Customer Confidential Information or any personally identifiable information that belongs to Customer. GRB retains ownership and may reuse any Deliverables, provided that such use does not reveal Customer identity or Customer Confidential Information.

1.5. License Restrictions. Except as may be expressly provided elsewhere in this Agreement or except to the extent applicable law precludes such activities from being prohibited by contract, Customer shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; modify, translate, or create derivative works based on the Software or authorize any third party to do so; rent, lease, distribute, sell, resell, assign, or

otherwise transfer rights to the Software; use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; obfuscate, remove or alter any of the logos, trademarks, internet links, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Software or the related documentation; or send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs. Because the GRB Software is proprietary, Customer agrees not to publish or disclose to third parties any evaluation of the Software without GRB's prior written consent..

1.6. Prohibited Uses / Lawful Conduct. Customer agrees to only use the Service for lawful purposes, in compliance with all applicable laws including, without limitations, copyright, trademark, obscenity and defamation laws. Unlawful activities may include (without limit) storing, distributing or transmitting any unlawful material, attempting to compromise the security of any networked account or site, or making direct threats of physical harm. Customer agrees to defend, indemnify and hold GRB harmless against any claim or action that arises from Customer use of the Service in an unlawful manner or in any manner inconsistent with the restrictions and policies stated herein.

1.7. Transmission of Data. Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to GRB's receipt and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by GRB. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Customer agrees that GRB is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored without authorization during

the transmission of any data whatsoever across networks not owned and/or operated by GRB, including, but not limited to, the Internet.

1.8. Ethical Hacks. Customer shall not and shall not allow anyone working on Customer's behalf to (i) perform any technical security integrity review, penetration test, load test, denial-of-service simulation or vulnerability scan without GRB's prior written consent, or (ii) attempt to access the data of another GRB customer. Customer shall not and shall not allow anyone working on Customer's behalf to use any software tool designed to automatically emulate the actions of a human user (such tools are commonly referred to as "Robots") in conjunction with the GRB Service. Common Robots include, without limitation, Loadrunner, Winrunner, Silk performer, Rational Robot, QALoad and WebLOAD and such programs are commonly used for the purpose of data entry, data loading, data migration, load testing, performance testing, performance monitoring, performance measuring and stress testing. If Customer or anyone working on Customer's behalf uses a Robot, including those listed above or other similar programs, with the GRB Service without GRB's prior written consent, it shall constitute a material breach of this Agreement.

1.9. Links/Third Party Data. The Service may provide links to other World Wide Web sites or resources. Because GRB has no control over such sites and resources, Customer agrees that GRB is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. In addition, Customer agrees that GRB is not responsible for any and all third-party information that may be provided to Customer through the Service.

1.10. Support. GRB will provide support in accordance with GRB's then current support policy, which may be acquired from Customer's GRB contact.

1.11. Confidential Information. By reason of the relationship hereunder, each party will have access to certain information and materials concerning the other party's technology business, plans, and customers that are confidential and of substantial value to such party, which value would be impaired if such information were disclosed to third parties ("Confidential Information"). Confidential Information of GRB shall include, without limitation, information

specifically designated as confidential, the features and functions of the Service that are not available to the general public via the public internet (including screen shots of the same), future product plans, any documentation or specifications provided to Customer, the terms (including pricing) of this Agreement but not the mere existence of this Agreement, any Order Forms, statements of work, schedules, addenda or amendments to this Agreement, performance and security test results (whether conducted by GRB or Customer), and any other proprietary, financial or business information supplied to Customer by GRB. Each party agrees that it will not and will ensure that its employees, agents and contractors will not make use of (except in furtherance of the Agreement), disseminate, or in any way disclose any Confidential Information of the other party to any person, firm or business, except for any purpose the disclosing party may hereafter authorize in writing. Each party agrees that it will treat all Confidential Information with the same degree of care as it accords to its own Confidential Information, and each party represents that it exercises reasonable care to protect its own Confidential Information. Notwithstanding the foregoing, "Confidential Information" shall not include: (i) information previously known to the receiving party without reference to Confidential Information, (ii) information which is or becomes publicly known through no act or omission of the receiving party, (iii) information which has been independently developed by the receiving party without reference to the disclosing party's Confidential Information, (iv) information received from a third party under no confidentiality obligation with respect to the Confidential Information, (v) information required to be disclosed pursuant to administrative or court order, government or regulatory requirement or arbitration or litigation arising out of this Agreement.

1.12. Data Storage. GRB shall use reasonable efforts protect Customer data behind a secure firewall system, to conduct data backups, and to store backups on with a recurring frequency.

2. Term and Termination.

2.1. Purchased Services. If Customer is a paying subscriber to the Service, this Agreement shall last for the term set forth in an Order Form.

2.2. Termination. Either party may terminate this Agreement upon thirty (30) days formal written notice to the other party in the event of a material breach of any provision of this Agreement by the other party. Such notice by the complaining party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach ("Notice"). Following receipt of such Notice, the alleged breaching party shall have thirty (30) days to cure such alleged breach, after which time the Agreement shall terminate only if the alleged breach was not cured. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service. If this Agreement is terminated by Customer for any reason other than a termination expressly permitted by this Agreement, Customer agrees that GRB shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of a breach on GRB's part, GRB shall refund the pro rata portion of any fee paid by Customer for the terminated portion of the Term.

2.3. Handling of Customer Data in the Event of Termination. Customer agrees that following termination of Customer's account and/or use of the Service, GRB may immediately deactivate Customer's account and that following a reasonable period of not less than 90 days shall be able to delete Customer's account and related Customer Data from GRB's "live" site, while retaining Customer Data offsite storage. However, in the event that Customer's Service with GRB terminates, GRB will grant Customer temporary, limited access to the Service for the sole purpose of permitting Customer to retrieve lawful Customer Data. Customer further agrees that GRB shall not be liable to Customer nor to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that GRB is in compliance with the terms of this Section 2.3.

3. Warranties.

3.1. Warranty of Functionality. GRB warrants to the Customer that the Service will perform substantially in accordance with any user instructions, manuals, or technical requirements documents that are generally provided by GRB in connection with the Service. In the event of a breach of the foregoing warrant, GRB's sole obligations, and Customer's sole remedy, shall be, at GRB's option, to use commercially reasonable efforts to correct the Service. If

GRB is unable to Service, Customer shall be entitled to terminate the Agreement and shall be entitled to receive a pro-rata refund of the license fees paid for under the Agreement for use of the Service for the terminated portion of the Term. GRB shall have no obligation with respect to a warranty claim unless written notification of such claim within sixty (60) days of the first instance of any material functionality problem.

3.2. Service Level Warranty. GRB warrants that during the Term that GRB will meet the service level specified in the "Service Level Agreement" listed on Schedule I hereto, which is hereby incorporated by reference. In the event that GRB fails to achieve the applicable service level in any month, Customer will be entitled, as its sole and exclusive remedy, to a credit in accordance with the terms set forth in the Service Level Agreement. Customer agrees that GRB's system logs and other records shall be used for calculating any service level events.

4. Disclaimer of Warranty. EXCEPT AS PROVIDED IN SECTION 3 ABOVE, THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND GRB DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOME STATES AND/OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. GRB DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S RISK AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR NETWORK, OR LOSS OF DATA THAT RESULTS FROM CUSTOMER'S USE OF THE SERVICE.

5. Limitation of Liability. EACH PARTY'S TOTAL LIABILITY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), WILL BE LIMITED TO THE FEES PAID BY CUSTOMER TO GRB FOR THE SERVICE UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT OF INJURY THAT GAVE RISE TO THE LIABILITY. NEITHER PARTY SHALL BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, OR INDIRECT, SPECIAL, INCIDENTAL

OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY SUBSTITUTE PROCUREMENT), WHETHER OR NOT FORESEEABLE AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES, SO CERTAIN EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO CUSTOMER.

- 6. Infringement Indemnification.** GRB will indemnify, defend and hold Customer harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against Customer which arise out of or result from the infringement of any copyright, trademark, or misappropriation of a trade secret relating to the Service; provided that Customer (a) promptly gives GRB notice of the claim, suit, action, or proceeding; (b) gives GRB sole control of the defense and related settlement negotiations; and (c) provides GRB with all reasonably available information and assistance necessary to perform GRB's obligations under this paragraph. If the Service is held to infringe, GRB will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; or (b) to replace the Service with a non-infringing Service. Provided that GRB complies with this Section 6, Customer shall be entitled as its sole and exclusive remedy to terminate the Agreement and receive a pro-rata refund of the license fees paid for under the Agreement for the terminated portion of the Term.
- 7. Modification to or Discontinuation of the Service.** GRB reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). In the event that GRB modifies the Service in a manner which removes or disables a feature or functionality on which Customer materially relies, GRB, at Customer's request, shall use commercially reasonable efforts to substantially restore such functionality to Customer. In the event that GRB is unable to substantially restore such functionality (unless enjoined from doing so by a court of competent jurisdiction), Customer shall have the right to terminate the Agreement and receive a pro-rata refund of the license fees paid under the Agreement for the terminated portion of the



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Term. Customer acknowledges that GRB reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. Customer agrees that GRB shall not be liable to Customer nor to any third party for any modification of the Service as described in this Section 7.

Schedule I

SERVICE LEVEL AGREEMENT FOR SUBSCRIBERS OF GRB SOFTWARE SERVICES

Service Level Agreement

GRB commits to provide 99.0% uptime with respect to the Customer's Service during each month of the Term, excluding regularly scheduled maintenance times.

If in any month this uptime commitment is not met by GRB and Customer was negatively impacted (i.e., attempted to log into or access the Service and failed due to the unscheduled downtime of the Service), GRB shall provide, as the sole and exclusive remedy, a service credit equal to one month's fee for the use of the Service.

Scheduled and Unscheduled Maintenance

Regularly scheduled maintenance time does not count as downtime. Maintenance time is regularly scheduled if it is communicated in accordance with the notice section set forth below at least two full business days in advance of the maintenance time.

GRB in its sole discretion may take the Service down for unscheduled maintenance and in that event will attempt to notify customer in advance in accordance with the Notice section set forth below. Such unscheduled maintenance will be counted against the uptime guarantee.

Credit Request

In order to receive a credit under this service level agreement, Customer must request it by contacting GRB Software/Technical Support, within five days of the end of the applicable month. Customers who are past due or in default with respect to any payment or any material contractual obligations to GRB are not eligible for any credit under this Service Level Agreement. GRB shall calculate any service level downtime using GRB's system logs and other records.

Updates/Notice

This Service Level Agreement may be amended by GRB in its discretion but only after providing thirty days advance notice. Notices will be sufficient if provided to a user designated as an administrator of your GRB account either: (a) as a note on the screen presented immediately after completion of the log in authentication credentials at the log in screen, or (b) by email to the registered email address provided for the administrator(s) for Customer's account.