 

# Subscription Service Agreement

This Subscription Service Agreement (the “Agreement”) is made by and between BTerrell Group, LLP (“BTerrell”), a Texas Limited Liability Partnership, and XXX (“Client” or "Customer"), with its principal place of business at xxxxxxx. The Agreement will become effective when approved and executed by all parties as of the last date signed below (the “Effective Date”).

### SUBSCRIPTION SERVICES:

BTerrell agrees to provide to the Customer a subscription to BTerrell’s application program (the “Service”) pursuant to the Order Schedule in Exhibit B. The Order Schedule and its associated terms and conditions are predicated on the Customer being current with a Sage Intacct subscription. Customer represents that they have reviewed and expressly agree to all of the terms of this Agreement as of the Effective Date, and in their current form on the date of any renewal of this Agreement. The Order Schedule will remain in effect until all Customer subscriptions ordered under the Order Schedule have expired or have been properly terminated.

By accessing, using, or installing any part of the Service, Customer expressly agrees and consents to be bound by all of the terms of this Agreement and of the Statement of Work in Exhibit A and of the Order Schedule in Exhibit B. If Customer does not agree to all of the terms of this Agreement, Customer may not access, use or install any part of the Service. The Customer may contact a representative of BTerrell for training, guidance, research or questions regarding the Service.

### TERMS & COST OF SUBSCRIPTION SERVICES:

Subscriptions specified in the Order Schedule will run for a period of one year (the "Initial Term"). All subscriptions will automatically renew for an additional subscription period of one year (the "Renewal Term") subject to these terms unless either party gives the other party notice of non-renewal at least 60 days prior to the end of the relevant subscription period.

If Customer adds subscriptions after the beginning of a subscription period, or after the beginning of a related Sage Intacct subscription period, the initial term of such new subscriptions will run until the end of the then-current subscription period or Sage Intacct subscription period, for a prorated fee. Customer or BTerrell may not re-assign its rights and obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement without the other party's consent to an affiliate or in the event of a sale of all or substantially all of its assets or in the event of a merger, corporate reorganization or business consolidation of the party.

##### Cost of Subscription Access:

The fees applicable to the Service Customer is ordering are set forth in the Order Schedule. Customer shall pay all undisputed invoices within thirty (30) calendar days of the date of invoice. Subscriptions added during the term will be pro-rated and billed for the remainder of the then-current term at the pricing applicable to then-existing subscriptions. BTerrell, from time to time, may change fees but shall not exceed a 5% increase per annum. Customer will be notified at least 30 days in advance of the effective date of

changes in fees. Such changes will become effective upon Customer's next renewal term and will not affect the prices for the Service during the current term. All fees listed in the Order Schedule are exclusive of any taxes. Customer will be responsible for all taxes, including sales, personal property or use taxes, imposed on such amounts.

All payments are non-refundable once the Service has been provided. There are no refunds of any prepaid amounts unless there is termination for convenience by BTerrell or Customer terminates this Agreement for cause.

##### Additional Terms of Use:

1. *Subscriber and System Services.*

The Service is a password protected, cloud-based software program, maintained by BTerrell, which integrates, extends, modifies or customizes Sage Intacct Cloud Financials software.

1. *Service, Registration and Use.*
	1. Ownership - The Service is proprietary to BTerrell and is protected by intellectual property laws, including copyrights. Customer access to the Service is licensed and not sold. BTerrell agrees to provide Customer with non-exclusive access to or use of the Service, through access to a web page. Customer does not own any of the information provided by the Service. All resale, redistribution or other forms of dissemination are strictly prohibited. Customer owns all right, title and interest in and to any and all content, data and information submitted to the Service by Customer (the “Customer Content”). Customer, in its sole discretion, determines and controls the Customer Content. The Customer Content shall be and remain the sole and exclusive property of Customer.
	2. Accessibility - Customer agrees that from time to time the Service may be inaccessible or inoperable for any reason, including, without limitation: (i) equipment malfunctions; ii) periodic maintenance procedures or repairs which BTerrell may undertake from time to time; or (iii) causes beyond the control of BTerrell or which are not reasonably foreseeable by BTerrell. BTerrell shall notify Customer of any periodic maintenance, via electronic mail, at least twenty-four (24) hours in advance and periodic maintenance shall not occur more than two (2) times per month. Should the Service not be available during any one calendar month period for more than two (2) hours, excluding periodic maintenance as notified in writing and excluding events not reasonably within BTerrell’s control (“Outage”), BTerrell shall provide a credit equal to ten percent (10%) of the monthly equivalent of the annual fees paid for the Service. If there are any two (2) consecutive calendar months with an Outage, Customer shall have the option to terminate the Agreement for convenience and shall be entitled to a full refund of all unused prepaid fees prorated by calendar days in the year.
2. *Representation and Warranties*

Customer represents and warrants to BTerrell that: (a) Customer has the power and authority to enter into and perform all Customer obligations under this Agreement; (b) Customer shall comply with all terms and conditions of this Agreement, including, without limitation, the Acceptable Use Policy; c) Customer has provided accurate and complete registration information, including, without limitation, Customer’s legal name, address and telephone number; and (d) Customer will update its registration information if the data changes.

BTerrell represents and warrants to Customer that: (a) BTerrell has the power and authority to enter into and perform all obligations under this Agreement; (b) BTerrell shall comply with all terms and conditions of this Agreement; (c) BTerrell will provide the Service in a good and workmanlike manner consistent with any provided documentation; and (d) the Service will not introduce malicious code into Customer’s systems.

1. *Acceptable Use Policy*

Customer is solely responsible for any and all acts and omissions that occur under the Customer account or password, and Customer agree not to engage in unacceptable use of the Service, which includes, without limitation, use of the Service to: (a) disseminate or transmit any unsolicited messages, chain letters or unsolicited commercial email; (b) disseminate or transmit material that, to a reasonable person may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (c) disseminate or transmit files, graphics, software or other material that actually or potentially infringes the copyright, trademark, patent, trade secret or other intellectual property right to any person; (d) create a false identity or otherwise attempts to mislead any person as to the identity or origin of any communication of the Service; or (e) use, or allow others to use, the information accessed in the Service to harm BTerrell’s business operations or the Service in any way.

1. *Additional Limitations on Accessed Information.*
	1. Security - Customer is solely responsible for the security, confidentiality and integrity of all data content that Customer receives, transmits or stores related, in any way, to the Service. Customer is solely responsible for any authorized or unauthorized access to Customer’s account by any person. Customer agrees to bear all responsibility for the confidentiality of Customer’s password and all use or charges incurred from use of the Service with Customer password.
	2. Privacy - It is the policy of BTerrell to respect Customer privacy. BTerrell will not monitor, edit, or disclose any Confidential Information about Customer or Customer account, including, but not limited to, its contents, without Customer prior consent and Customer will not monitor, edit, or disclose any Confidential Information about BTerrell, without BTerrell's prior consent, unless Customer or BTerrell has a good faith belief that such action is necessary to (i) comply with legal process or other legal requirements of any governmental authority; (ii) protect and defend the rights or property of BTerrell; (iii) enforce this Agreement, provided that BTerrell provides prompt advance notice thereof; to the extent practicable, to enable Customer to seek a protective order or otherwise prevent such disclosure, (iv) protect the interests of users of the Service other than Customer or any other person; (v) was or becomes generally available to the public other than as a result of disclosure by the Recipient (as defined herein) or its Representatives (as defined herein) in violation of this Agreement; (vi) was rightfully in Recipient's possession free of any obligation of confidentiality at, or prior to, the time it was communicated to Recipient by Discloser (as defined herein) as evidenced by its written records; and (vii) was communicated by Discloser to an unaffiliated third party free of any obligation of confidentiality; provided that under the above subsections (i)-(iv), either party required to disclose information will make no disclosure in excess of such required disclosure, and provides prompt advance notice to the other party; to the extent practicable, to enable the other party to seek a protective order or otherwise prevent such disclosure. Customer IP address is transmitted and recorded with each visit to, or download from, the Service. BTerrell may provide anonymized information in aggregate form collected from or relating to Customer to third persons such as advertisers. "Confidential Information" will include (i) all information marked as "Confidential," "Proprietary," or similar legend by the disclosing party ("Discloser") when given to the receiving party ("Recipient"); (ii) information and data provided by the Discloser, which under the circumstances surrounding the disclosure should be reasonably deemed confidential or proprietary, and (iii) means all information communicated whether in oral, written, graphic, in non-tangible form, or electronic form, including but not limited to data, software, know-how and any and all subject matter (whether patentable or not) pertaining to a party's research, inventions, development, materials, technology, trade secrets, work in process, business plans, scientific, engineering and/or manufacturing processes, present or future product plans, pricing, sales, customer lists, investor and contractual relationships in connection with the Service of a party. Without limiting the foregoing, Discloser and Recipient agree that each Discloser's contribution to a SOW(s) shall be considered such Discloser's Confidential Information. Recipient will use the same means it uses to protect its own confidential information, but in any event not less than reasonable means, to prevent the

disclosure and protect the confidentiality of all information communicated to it by the Discloser. Recipient shall only disseminate Confidential Information to those of its employees, officers, directors, advisors, consultants, accountants, counsel and agents (“Representatives”) with a need to know such Confidential Information and Recipient represents, warrants and covenants that all such Representatives will be informed of its confidential nature and cause them to maintain the confidentiality thereof, and will be bound by confidentiality obligations with Recipient that are no less restrictive than those set forth in this Agreement, and the Recipient will be liable to the Discloser for any breach by its Representatives of such obligations. Recipient will use the Discloser’s Confidential Information only in connection with a SOW and in accordance with this Agreement. The Recipient acknowledges that: (a) Confidential Information disclosed by the Discloser may contain material non-public information concerning the Discloser and its affiliates; and (b) the Recipient is aware of the restrictions imposed by U.S. federal and state securities laws, and the rules and regulations promulgated thereunder, on persons in possession of material non- public information. Nothing herein shall constitute an admission by either party that any Confidential Information or other such information in fact contains material non-public information concerning the Discloser or any of its affiliates. Each party acknowledges that any actual or threatened breach of Confidentiality in this Agreement may cause irreparable damage to the other party and hereby agrees that the other party will be entitled to seek specific performance and injunctive relief under this Agreement with respect to such breach or threatened breach as well as such further relief as may be granted by a court of competent jurisdiction.

* 1. Data Security - The parties acknowledge that certain domestic and international laws exist to address privacy and data security relating to the collection, use, processing, and disclosure of personal information (collectively, “Data Privacy Laws”). BTerrell acknowledges that it has, and any of its affiliates and subcontractors have, information and cybersecurity policies in place that (a) are designed and functioning in a manner that complies with applicable Data Privacy Laws (b) will protect client/customer information, and (c) are consistent with the prevailing best practices used in BTerrell’s industry. BTerrell further acknowledges that any information provided to BTerrell by or on behalf of Customer will be subject to such policies and its use, processing and disclosure will be in compliance with applicable Data Privacy Laws.
1. *Termination*

This Agreement is effective upon BTerrell’s acceptance of the Customer’s Order as set forth herein and shall continue in full force until terminated or the end of the subscription period. The Parties have the following termination rights:

* 1. Termination for Cause by Either Party - In the event of a material breach of this Agreement by the other party, which remains uncured within fifteen (15) business days after such party is given notice of the breach, the Agreement can be terminated for cause. Non-payment of any Service or other fees due to BTerrell, Sage Intacct or a Sage Intacct VAR is a material breach. If Customer materially breaches this Agreement, BTerrell may, without limitation of its other rights and remedies, temporarily suspend or terminate Customer's access to the Service or withhold further performance of obligations under this Agreement.
	2. Fees due upon Termination for Convenience by Customer - Customer may terminate this Agreement at any time for convenience, upon proper notice, but shall remain responsible for all fees, costs and expenses remaining to the end of the subscription period.
1. *Limitation of Liability*

Accuracy, completeness, and use of data uploaded, manipulated and/or downloaded through the Service is solely the responsibility of Customer. Except for a breach of confidentiality under Section 5 of this

Agreement, gross negligence or willful misconduct, under no circumstances shall either party be liable to the other party or any other person for any indirect, incidental, consequential or punitive damages arising out of or relating to this Agreement. The maximum liability that each party may have to the other party is for refund of fees actually paid for the work at issue.

1. *Disclaimer of Warranties*

The Service is provided on an “as is” basis without warranty of any kind, express or implied. Customer expressly agrees that the use of the Service will be at Customer's sole risk. BTerrell does not warrant that the Service will be uninterrupted or error free, nor does BTerrell make any warranty as to any results that may be obtained by use of the Service. BTerrell makes no other warranties, expressed or implied, including, but not limited to, any implied warranties of merchantability or fitness for a particular purpose in relation to the Service.

###### BTerrell will not be held responsible for the accuracy of any data on the system. BTerrell makes no express or implied warranty in connection with the Service, or any data obtained through the Service, and expressly disclaims any warranty of marketability or fitness for a particular purpose.

1. *Notices*

Any notices or communications given pertaining to this Agreement must be in writing, to the addresses set forth below. Notices may be delivered by certified US mail (postage prepaid and return receipt requested); by national courier service; or by hand delivery. Notices sent by mail or courier will be deemed delivered as evidenced by the relevant carrier’s delivery record of receipt. Notices delivered electronic means will be deemed delivered when recipient confirms receipt.

BTerrell Group, LLP

Attn: Brian Terrell

 17250 Dallas Parkway, Suite 225

 Dallas, TX, 75248

 brian.terrell@bterrell.com

 Customer Company Name

 Attn: Customer Name

 Customer Company Address

 City, State, Zip Code

 Customer Email

1. *Miscellaneous*
	1. Law and Venue – This Agreement shall be governed by the laws of the State of Texas without reference to conflicts of law. Exclusive venue for any dispute arising or concerning this Agreement shall be Dallas County, Texas.
	2. Amendment – Except as set forth herein, no addition to or modification of this Agreement will be binding on either of the Parties hereto unless reduced to writing and executed by an authorized representative of each of the Parties.
	3. Waiver and Severability – No failure, delay in exercising or enforcing any right or remedy hereunder by BTerrell or Customer shall constitute a waiver of any other right or remedy, or future exercise thereof. If

any provision of this Agreement is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

* 1. Survival – The respective rights and obligations of the parties concerning indemnity, limitation of liability, warranty and use of information survive any termination or expiration of this Agreement.
1. *Amendments to the Entire Agreement*

This Agreement, including any Non-Disclosure Agreement, SOW, Order Schedule, and Purchase Order, cumulatively constitutes the entire agreement between the parties pertaining to the Service, and the terms of any Non-Disclosure Agreement, SOW, Order Schedule, and Purchase Order are hereby incorporated in this Agreement. BTerrell may make changes to the Service at any time, provided that Customer will receive at least substantially similar functionality to that described in this Agreement for the duration of the prepaid

subscription term set forth above.

1. *Logos*

Absent the prior written consent of the other party, neither party shall use the name, trademarks, or logo of the other in promotional materials, publicity releases, advertising, or any other publications or communications.

**Customer Company BTerrell Group, LLP**

**SIGNATURE: SIGNATURE:**

**NAME: NAME:**

**TITLE: TITLE:**

**DATE: DATE:**