

## SOFTWARE AS A SERVICES (SAAS) AGREEMENT

PLEASE READ THE TERMS AND CONDITIONS OF THIS SOFTWARE AS A SERVICES (SAAS) AGREEMENT ("AGREEMENT") CAREFULLY BEFORE CLICKING ON THE "ACCEPT" BUTTON AND/OR USING THE SERVICES (AS DEFINED BELOW), IN WHICH CASE YOU WILL BE BOUND BY THIS AGREEMENT. PLEASE BE AWARE THAT ANY USE OF THE SERVICE CONSTITUTES ACKNOWLEDGEMENT AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, AND YOUR AGREEMENT TO BE BOUND THEREBY. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT CLICK ON THE "ACCEPT" BUTTON AND/OR USE THE SERVICES. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOUR REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

THIS SAAS AGREEMENT ("Agreement"), is made by and between BillRun Technologies Ltd., an Israeli company whose registered office is at \_\_\_\_\_ ("Company"); and you ("Customer");

### BACKGROUND

- (A) The Company has developed certain Services (as defined below) which it makes available to customers, on a subscription basis.
- (B) The Customer wishes to use the Company's Service for its internal business operations.
- (C) The Company has agreed to provide, and the Customer has agreed to take and pay for Company's Service, all subject to the terms and conditions of this Agreement and as further described herein.

### AGREED TERMS

#### 1. INTERPRETATION

1.1 In this Agreement, the following definitions shall have the following meanings:

"**Customer Data**" means, any data submitted via the Services by the Customer and any data produced via the Services by Company, including and without limitation, any information/data of the Customer and/or of other third parties, including any identifying or non-identifying information related to the Customer, its clients or users.

"**Normal Business Hours**" means, 7 am to 7 pm, GMT (Greenwich Mean Time), on each Business Day.

"**Services**" means, (i) an online cloud based software as a service (SaaS) for billing, made available to Customer pursuant to the terms of this Agreement; and (ii) any and all maintenance services performed from time to time by Company in connection therewith; and (iii) any and all support services as may be provided by Company to Customer pursuant to this Agreement; and (iv) other related services in connection therewith, as now offered and/or may be offered in the future.

"**Services Fees**" means, the subscription fees and the monthly charges payable by the Customer to the Company for the Services, as set out in Schedule A attached hereto.

1.2 The headings used in this Agreement are for convenience of reference only and shall not affect the interpretation or meaning of the terms and provisions of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

## **2. GRANT OF RIGHTS; PROHIBITED USE**

2.1 Subject to the terms of this Agreement, Company hereby grants to Customer, during the Term (as defined below), solely for the Customer's internal business operations and for non-commercial purpose, and strictly in accordance with the terms and conditions of this Agreement and with any applicable law, a limited, non-commercial, non-perpetual, non-exclusive, non-transferable right to access and use the Services.

2.2 The Customer shall not: (a) attempt to copy, modify, duplicate, imitate, reproduce, create derivative works from, frame, mirror, or download, all or any portion of the Services in any form or media or by any means; and/or (b) attempt to decompile, disassemble, reverse engineer or otherwise attempt to discover any source code from, all or any part of the Services; and/or (c) sell, rent, lease, transfer, assign, distribute, transmit, display, publish, disclose, or otherwise dispose, commercially exploit, or otherwise make the Services available to any third party; and/or (d) access or use all or any part of the Services in order to build or create a product or service which is similar to, or which competes with, the Services; and/or (e) use the Service (or any part thereof) for commercial purposes or in connection with any commercial activity; and/or (f) attempt to obtain, or assist third parties in obtaining, unauthorized access to the Services; and/or (g) abuse the Services in any way and/or use the Services for advertising or solicitation to buy or sell any products and/or for creating, sharing and sending unsolicited commercial messages, bulk email, "junk mail", "spam" or chain letters; and/or (h) create or send any viruses, worms or trojan horses, flood or mail bombs, or engaging in denial of service attacks while using the Services; and/or (i) use or launch any automated system, including without limitation, any "robots", "spiders", or "offline readers", that accesses the Service in a manner that sends to the servers, cloud or other platform on which the Services operates, more request messages in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser; and/or (j) use or launch any data mining or any similar data gathering and extraction tools, in connection with the Services (including by using software, scripts or automated agents and bots); and/or (k) use the Services in any manner that damages, disables, overburdens, or impairs the Services, or Company's systems or servers, or the cloud or other platform on which the Services operates, and/or otherwise interferes with any other party's use and enjoyment of the Services, and/or (l) access the Services by any means other than through the interface that is provided by Company for accessing and use of the Services; and/or (m) create, edit, store, post, upload, distribute or transmit, while using the Services, or otherwise make available through the Services, any Customer Data not in compliance with Section 5.2 below; (m) use the Services in any manner that is unlawful or prohibited or in violation of this Agreement and/or any applicable law or regulation; (n) permit any third party to do any of the foregoing.

Company reserves the right, at its sole discretion without any liability to the Customer, to disable, suspend or terminate Customer's access to the Services, in the event of any breach by Customer or anyone on its behalf, of the provisions of this Section 2.2.

2.3 Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, it shall promptly notify Company.

2.4 The rights provided under this Section 2 are granted to Customer only, and shall not be considered granted to any subsidiary, affiliate or holding company of the Customer.

### **3. SERVICES**

3.1 The Company shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for: (a) planned maintenance carried out by the Company during the maintenance window at such times and dates as shall be notified by Company in advance; and (b) unplanned maintenance performed, as determined by the Company at its sole discretion, provided that the Company has used reasonable endeavours to give the Customer a prior notice.

3.2 Company will, as part of the Services and at no additional cost to the Customer, provide the Customer with (i) a standard, over the phone, support services, during Normal Business Hours; and (ii) other services as Company, in its sole discretion deems necessary in order to provide the Services. More comprehensive support services may be provided by the Company, subject to the entrance by the parties into a separate Service Level Agreement, and subject to payment by Customer of separate support fees.

3.3 This Agreement shall not prevent Company from entering into similar agreements with third parties, or from independently developing, using, selling, licensing or provide any rights with respect to services, products and/or documentation which are similar to those provided under this Agreement.

### **4. REGISTRATION TO SERVICE**

4.1 Customer acknowledges that the Services require registration. The registration process may require Customer to provide information regarding (but not limited to) its and its customers first and last name, e-mail address, the name of person/company/other entity, the country of its or its business, role and function at such business, credit card information, billing information and/or other information. By performing the registration, Customer represent and warrant that all registration information it submits is accurate and truthful and that it agrees to update and maintain the accuracy of such information. Company reserves the right to disable, suspend or terminate Customer's access to the Services, if registration information submitted by such Customer seems or proves to be false, inaccurate or incomplete.

### **5. CUSTOMER DATA**

5.1 Customer shall own all rights, title and interest, in and to all of the Customer Data, and shall have the exclusive responsibility and liability for the Customer Data, including without limitation, for the legality, reliability, authenticity, integrity, accuracy, content, completeness, availability and quality of the Customer Data.

5.2 Customer represents and warrants that it will not create, edit, store, post, upload, distribute or transmit, while using the Services, or otherwise make available through the Services, any Customer Data that: (i) is unlawful, harmful, threatening, defamatory, offensive, obscene, infringing, harassing or racially or ethnically offensive; and/or (ii) facilitates or relates to illegal activity; and/or (iii) depicts sexually content; and/or (iv) promotes or relates to unlawful violence; and/or (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; (vi) causes or may cause damage or injury to any person or property and/or (v) relates to any third party under the age of 13.

5.3 Customer shall remain exclusively responsible for all acts or omissions in connection with the Customer Data that it creates, edits, stores, posts, uploads, distributes or transmits, while using the Services, or otherwise makes available through the Services. Customer acknowledges, represents

and warrants that: (i) the Company does not control or monitor, and is not responsible for the Customer Data that Customer makes available through the Services; (ii) Company reserves the right to remove any Customer Data which deems to be in violation with any of the terms set forth herein, at Company's sole discretion, and take any action it deems appropriate, including without limitation, disabling, suspending or terminating any or all use of the Services, in any way or manner; (iii) Company makes no representations or warranties as to the Customer Data, and all express, implied and statutory warranties in connection with the Customer Data, including without limitation with respect to the legality, reliability, authenticity, integrity, accuracy, content, completeness, availability and quality thereof, are all expressly disclaimed to the fullest extent permitted by law. Customer undertakes to evaluate and bear all risks associated with the collection, storage, use, distribution of any such Customer Data and/or the provision to Company and the transmission through the Services of any such Customer Data. Under no circumstances will Company be liable in any way for any Customer Data or for any loss or damage of any kind incurred by Customer as a result of the use and/or distribution and/or the provision to Company and/or the transmission through the Services of any Customer Data.

- 5.4 Customer hereby declares towards Company that it has legally acquired and/or owns all right, title and interest, in and to all copies of the Customer Data and that it has the right to use, distribute, provide the Company and transmit through the Services such Customer Data. By using the Services, Customer gives its consent to Company, and grant Company with a worldwide, royalty-free, and non-exclusive license, to collect such Customer Data, store such Customer Data in the Company's servers, third party's external servers or cloud services on which the Services operates, and to use such Customer Data in order to provide it with the Services.

## **6. THIRD PARTY PROVIDERS**

- 6.1 Customer acknowledges that the Company uses third party cloud infrastructure services in order to provide the Services. The Customer acknowledge and agrees that Company is not and shall not be responsible for the availability, performance or security of any such external third party services or resources, and it shall not be held liable for any loss or damage (including loss of data and/or loss of profits), which may be incurred by the Customer, as a result of the lack of availability of, the interruptions or errors in the performance of, and any other problem in those external third party services or resources, or as a result of the lack of availability of, the interruptions or errors in the performance of, and any other problem in the Services provided through such external third party services or resources.
- 6.2 In addition to the aforesaid, Customer acknowledge, that the Company may utilize, include in the Services, automatically distribute and/or download and install on any machine who access the interface that is provided by Company for accessing and use of the Services, certain third-party software, components, cookies and/or libraries that are subject to open source license and/or to other third-parties license terms ("**Third Party Software**"). Customer acknowledges and agrees to the use by the Company of such Third Party Software.
- 6.3 Customer acknowledge and agree that its right to use such Third Party Software in connection with the Services, is subject to and governed by the terms and conditions of the open source or third-party license applicable to such Third Party Software, including, without limitation, any applicable acknowledgements, license terms and disclaimers contained therein. In the event of a conflict between the provisions of this Agreement and the terms of such Third Party Software license, the terms of the applicable Third Party Software license shall prevail with regard to Customer's use of the relevant Third Party Software. Other than the applicable Third Party Software component, in no event, shall the Services (or any part thereof) be deemed to be "open source" or "publicly available" software etc.
- 6.4 In the course of the registration process you will also be required to provide financial information such as a payment method. This process as well as the clearing process shall be made through a

secured website of a reputable third party. Any such financial information shall be used only to bill you for the Services and/or use.

## **7. STATISTICAL INFORMATION**

- 7.1 The Company may compile statistical information related to the performance of the Services, and may use and/or make such information publicly available, provided that such information does not incorporate any Customer Data and/or identify Customer's Confidential Information (as defined below) or include Customer's name. The Company retains all intellectual property rights in such information.

## **8. COMPANY'S OBLIGATIONS**

- 8.1 The Company undertakes to use commercially reasonable endeavours to make the Services available within the time frame set forth in Section 3 above, and further undertakes that the Services will be provided with reasonable commercial skill and care.
- 8.2 The undertaking in Section 8.1 above shall not apply to the extent that any non-conformance which is caused by use of the Services in contrary to the Company's instructions and/or in any way other than in strict compliance with this Agreement. Subject to the foregoing, if the Services do not conform to the undertaking in Section 8.1, Company will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy, and Company's sole liability, for any breach of the undertaking set out in Section 8.1. Notwithstanding the foregoing and in addition to any disclaimers set forth in this Agreement, the Company: (a) does not warrant that the Services will operate error free or without interruption or bugs; nor that the Services will meet the Customer's requirements or expectations; and (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.3 If the Services do not conform to the foregoing undertaking, Company will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Section 8.1.

## **9. CUSTOMER'S OBLIGATIONS**

- 9.1 Without derogating from any other obligation of the Customer pursuant to this Agreement, the Customer undertakes to: (a) provide the Company with all necessary cooperation in relation to this Agreement and in order to render the Services; and (b) comply with all applicable laws and regulations with respect to its activities under this Agreement and its use of the Services; and (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner; and (d) to the extent required, obtain and maintain all necessary licences, consents, and permissions necessary for the Company to perform its obligations under this Agreement, including, without limitation, for the transmission through the Services of any Customer Data; and (e) ensure that its network and systems comply with the relevant specifications provided by the Company from time to time; and (f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Company's data centres, Company's servers, third party's external servers, cloud or other platform on which the Services operates (as shall be instructed by the Company from time to time), and be solely liable for problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the

Customer's network connections or telecommunications links or caused by the internet.

- 9.2 The Company reserves the right, at its sole discretion without liability to the Company, to disable, suspend or terminate Customer's access to the Services in the event of any material breach of Customer or anyone on its behalf of the provisions of this Section 9.
- 9.3 If Customer processes any credit card information using the Service, Customer will: (a) comply with its responsibilities under the Payment Card Industry Data Security Standard ("PCI DSS"); (b) implement and maintain commercially reasonable security measures to protect all cardholder data in Customer's possession or control; and (c) not take any action in connection with using the Service that may place Company in non-compliance with the PCI DSS (for example, storing any cardholder data in any custom fields of the Service).

## **10. CHARGES AND PAYMENT**

- 10.1 For the rights granted hereunder, Customer shall pay to the Company, in accordance with this Section 10, Services Fees in the amounts as set forth in **Schedule A** attached hereto.
- 10.2 The Customer shall, upon registration, provide to the Company valid, up-to-date and complete credit card details. Company will submit the Customers' payment information to the applicable payment gateway and will charge the Customer for the Service Fees as set forth herein. The Customer hereby authorises the Company to charge such credit card: (a) in advance, for the subscription fees payable in respect of the Initial Subscription Term (as defined below); and (b) subject to Section 16.1, at the beginning of each Renewal Period, in advance, for subscription fees payable in respect of the such Renewal Period; and the Customer hereby further authorises the Company to charge monthly charges for the Service based on the dollar amount of the transactions processed by the Service at the rates set forth in **Schedule A** attached hereto. Unless otherwise specified on the Services, any fees which are calculated as a percentage of Customer billings shall be calculated based on gross billings (i.e., following the addition of any sales or similar taxes that are applicable to such billings). Such charges may be modified by Company upon thirty (30) days prior written notice. Payments reflecting charges for the prior month's use of the Service will be billed by Company and deducted from the authorized credit card promptly following the end of each calendar month, or shall otherwise be due and payable in accordance with Company's then-current payment policies. The Customer is responsible for its own merchant bank account fees in addition to fees set forth hereunder. All fees associated with the payment gateway (with the exception of the Company payment gateway are also separate and not included in Company's fees.
- 10.3 If the Company has not received payment within 30 days after the due date of an invoice, and without prejudice to any other rights and remedies available to the Company under any applicable law: (a) the Company may, at its sole discretion without liability to the Customer, disable, suspend or terminate the Customer's and/or anyone on its behalf (as applicable) access to all or part of the Services, and the Company shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and (b) interest shall accrue on any such due amounts at an annual rate equal to the higher of 10% or the highest rate permitted by law, commencing on the due date of such amount and continuing until such amount is fully paid, whether before or after judgment.
- 10.4 All amounts and fees stated or referred to in this Agreement: (a) shall be payable in United States Dollars, according to the representative rate known at the date of payment; (b) are non-cancellable and non-refundable; (c) are exclusive of any sales, value added and other similar taxes, which shall be added to each payment the appropriate rate.
- 10.5 The Company shall be entitled to increase the Services Fees at any time, upon 30 days' prior notice

to the Customer, and **Schedule A** attached hereto shall be deemed to have been amended accordingly. For the avoidance of any doubt, the Customer's continuance use of the Services during following the lapse of such 30 says Period, will be deemed as the Customer's consent to the amended Services Fees.

## **11. PROPRIETARY RIGHTS**

- 11.1 Company shall retain all right, title and interest, including without limitation all patents, copyrights, trade secrets, trademarks, and other intellectual property and proprietary rights in and to the Services and/or its technology, including any improvements, updates, upgrades, error-corrections or other modifications thereof, and any work products thereof. Except for the rights expressly granted to Customer under Section 2.1 above, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Company, its technology, its products and services (including the Services) and/or any documentation ancillary thereof.
- 11.2 Without derogating from the generality of the above, the Company shall be the sole and exclusive owner of all rights in connection with any and all ideas, inventions and/or improvements (whether patentable or not) conceived or derived or result from, or relate to, directly or indirectly, any feedback (written or oral) that Customer voluntarily choose to provide Company regarding the Services and/or its experience while using the Services. Customer irrevocably assigns to the Company any rights that Customer may have or acquire in such ideas, inventions and/or improvements, and it irrevocably waives any right it has or may have in the future to receive any payment, royalty or other consideration (of any kind) with respect to such ideas, inventions and/or improvements.
- 11.3 This Section 11 shall survive any termination or expiration of this Agreement.

## **12. CONFIDENTIALITY**

- 12.1 Each party may be provided with, given access to, or exposed to, Confidential Information of the other party in connection with this Agreement. "**Confidential Information**" shall mean any information and data of a proprietary or confidential nature, whether in oral, written, graphic, machine-readable form, or in any other form, including but not limited to proprietary, technical, development, marketing, sales, price, operating, performance, cost, know-how, business and process information, methods, procedures, data, computer programming techniques and computer code, any information regarding suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others, and all record bearing media containing or disclosing such information and techniques, which is disclosed by one party to the other party pursuant to this Agreement or to which the other party is exposed or given access in connection with this Agreement, whether or not marked as "Confidential" or similar marking. Without derogating from the generality of the foregoing, Confidential Information of the Company shall include also the details of the Services, and the results of any performance tests of the Services and any work products of the Services, and Confidential Information of the Customer shall include also the Customer Data.
- 12.2 Confidential Information shall not include any information that: (a) is or becomes publicly known other than through any act or omission of the receiving party; (b) was in the receiving party's lawful possession before the disclosure, as evidenced by applicable documentary; (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (d) is independently developed by the receiving party, as evidenced by applicable documentary; or (e) is required to be disclosed by any final judicial or administrative order or decree or pursuant to any applicable law.

- 12.3 Each party shall hold the other party's Confidential Information in strict confidence, shall not disclose or make such Confidential Information available to any third party, and shall not use such Confidential Information for any purpose other than for performing its obligations under this Agreement.
- 12.4 Each party shall be entitled to disclose the other party's Confidential Information to its officers, directors, employees and consultants ("**Representatives**"), on a need to know basis, provided that such Representatives are bound by confidentiality obligations of at least scope of this Agreement, and provided further that such party shall be responsible for and liable to any breach or violation of this Agreement by such Representatives.
- 12.5 This Section 12 shall survive any termination or expiration of this Agreement.

### **13. EXPORT**

- 13.1 Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Customer acknowledges and agrees that such export control laws govern Customer's use of the Services, and Customer agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer agrees that no data, information, programs and/or materials resulting from services (or work products thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

### **14. INDEMNITY**

- 14.1 Customer shall defend, indemnify and hold harmless the Company against any and all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs, legal expenses and reasonable legal fees) arising out of, or in connection with, this Agreement and/or the use of the Services by the Customer or by anyone on its behalf (including in connection with Customer Data and/or any infringement of such Customer Data of this Agreement or third parties' rights), provided that: (a) the Customer is given reasonable notice of any such claim; and (b) the Company provides reasonable cooperation to the Customer in the defence and settlement of such claim, at the Customer's expense.

### **15. LIMITATION OF LIABILITY; DISCLAIMERS**

- 15.1 This Section 15 (as well as Section 5 above) sets out the entire sole and exclusive liability of the Company (including any liability for the acts or omissions of its employees, officers, agents and sub-contractors) to the Customer in respect of: (a) any breach of this Agreement; and (b) any use made by the Customer (or anyone on its behalf) of the Services or any part of thereof; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 15.2 EXCEPT AS OTHERWISE EXPRESSLY SPECIFIED HEREIN, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND WHATSOEVER. ALL EXPRESS, IMPLIED AND/OR STATUTORY WARRANTIES IN CONNECTION WITH THE SERVICE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AS WELL AS ANY WARRANTIES REGARDING SECURITY, SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, ACCURACY, ACTUALIZATION AND PERFORMANCE OF THE SERVICES, ARE ALL EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. NO STATEMENT OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE COMPANY (OR ANYONE ON ITS BEHALF) IN ANY MEANS OR FASHION SHALL

CREATE ANY WARRANTY IF NOT EXPRESSLY AND EXPLICITLY SET FORTH IN THIS AGREEMENT.

- 15.3 The Services are being provided by Company in BETA version and, as such, are expected to contain defects that may be material and/or not expected to operate at the level of performance or compatibility of a final, generally available product offering. The Service may not operate correctly and may be substantially modified prior to public availability, or withdrawn.
- 15.4 Except as expressly and specifically provided in this Agreement, the Customer assumes the sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. The Company shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Company by the Customer in connection with the Services (including without limitation, Customer Data), or any actions taken by the Company at the Customer's direction.
- 15.5 Notwithstanding anything to the contrary herein, the Company will not be held liable for any delay or failure in performance or non-availability of the Services resulting, directly or indirectly, from acts of nature, forces, events, omissions, accidents or causes beyond its reasonable control, including, but not limited to, internet failure, network or computer equipment failures, telecommunication equipment failure, electrical power failures, strikes, lock-outs or other industrial disputes, labor disputes, riots, insurrections, civil disturbances, shortages of labor or materials, fires, floods, storms, explosions, breakdown of plant or machinery, acts of God, war, governmental actions or orders, orders of domestic or foreign courts or tribunals or loss of or fluctuations in heat, light or air conditioning.
- 15.6 Notwithstanding anything to the contrary herein: (a) in no event shall the Company be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise, for any loss of profits, loss of business, depletion of goodwill and/or similar losses, loss or corruption of data or information, pure economic loss, or for any special, indirect punitive, incidental, consequential, exemplary or other similar loss, costs, damages, charges or expenses, arising out of or in any way connected with the use of, misuse, inability to use, or the reliance upon, the Services and/or otherwise in connection with this Agreement and/or the Services; and (b) in no event shall the Company's total aggregate liability, in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising out of or in any way connected with the use of, misuse, inability to use, or the reliance upon, the Services and/or otherwise in connection with this Agreement and/or the Services, exceed the total Services Fees paid by Customer for the Services during the 12 months period preceding the date on which the claim leading to liability arose.
- 15.7 This Section 15 shall survive any termination or expiration of this Agreement.

## 16. TERM AND TERMINATION

- 16.1 This Agreement shall commence on the date of subscription for the Services by the Customer and shall continue for the initial subscription term of 12 months ("**Initial Subscription Term**"). Thereafter, this Agreement shall be automatically and without any further action renewed for additional successive periods of 12 months each (each a "**Renewal Period**", and together with the Initial Subscription Term – the "**Term**"). Notwithstanding the foregoing, this Agreement: (a) may be terminated by either party, with prior written notice to the other party of at least 60 days before the end of the Initial Subscription Term or the Renewal Period (as applicable), in which case this Agreement shall terminate upon the expiry of such applicable Initial Subscription Term or Renewal Period (as applicable); or (b) may otherwise be terminated in accordance with the provisions of this Agreement.

- 16.2 Notwithstanding the foregoing, and without prejudice to any other rights or remedies to which the parties may be entitled under this Agreement and/or any applicable law, either party may immediately terminate this Agreement without liability to the other if: (a) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of the breach; and/or (b) if the other party (i) becomes insolvent, (ii) makes an assignment for the benefit of creditors, (iii) files or has filed against it a petition in bankruptcy or seeking reorganization, (v) has a receiver appointed, or (vi) institutes any proceedings for the liquidation or winding up.
- 16.3 Upon termination or expiration of this Agreement for any reason whatsoever: (a) all rights granted to Customer under this Agreement shall immediately terminate; (b) the Customer shall immediately cease any use of the Services; (c) all outstanding Services Fees will immediately become due and payable by Customer; (d) each party shall return and make no further use of any Confidential Information (and all copies of them) belonging to the other party; and (e) the Company shall destroy any of the Customer Data in its possession (if any). For the avoidance of doubt, any provision expressly stated to survive or implicitly surviving termination or expiration, shall not be affected or prejudiced by such termination or expiration.

## **17. MISCELLANEOUS**

- 17.1 This Agreement constitute the entire agreement between the parties regarding the subject matter thereof, and supersede any previous arrangement, understanding or agreement between the parties, written or oral, relating to the subject matter hereof.
- 17.2 No modification to this Agreement, nor any waiver of any rights, will be effective unless assented to in writing and signed by both parties.
- 17.3 Neither party's waiver of any breach or default of any provision of this Agreement shall not constitute a waiver of other provisions or any other right hereunder, or a waiver of any subsequent breach or default.
- 17.4 Unless expressly provided otherwise herein, rights arising under this Agreement are cumulative and do not exclude rights available by law.
- 17.5 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions (or the remainder of the provision) shall remain in full force and effect.
- 17.6 This Agreement does not confer any rights on any third person or party.
- 17.7 The parties expressly agree that they are independent contractors. Nothing in this Agreement is intended to or shall be interpreted to create a partnership or a joint venture between the parties, or authorize either party to act as agent for the other.
- 17.8 The Customer shall not, without the prior written consent of the Company, assign, transfer, or sub-contract this Agreement and/or any of its rights or obligations under this Agreement, and any unauthorized assignment shall be null and void. The Company may, at any time, assign, transfer or sub-contract any of its rights or obligations under this Agreement.
- 17.9 This Agreement and any disputes or claims arising out of or in connection with it or with the subject matter hereof, will be governed by, and construed in accordance with, the laws of the State of Delaware. The parties irrevocably agree that the competent courts in the state of Delaware shall have exclusive jurisdiction to settle any disputes or claims arising out of or in connection with the foregoing (including non-contractual disputes or claims).

- 17.10 Any required or permitted notices hereunder must be given in writing at the address of each party set forth below, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, by one of the following methods: hand delivery; registered, express, or certified mail, return receipt requested, postage prepaid; or nationally-recognized private express courier. Notices will be deemed given within 5 days from the delivery date if sent by mail, or within 1 day from the delivery date if sent by a courier or delivered by hand.

**SCHEDULE A**

**1. SERVICE FEES**

The Services Fees shall be as follows:

**Monthly Subscription Fee:**

Subscription fee will be calculated according to the number of subscribers stored in BillRun Cloud. Subscriber is a unique identifier (such as phone number, IMSI or MAC address). Monthly subscription fee will differ by the type of implementation – BillRun Public Cloud, BillRun Private Cloud or on-Premise implementation.

- (a) BillRun Cloud – A public implementation, managed by BillRun on BillRun cloud (or third party selected by BillRun) facilities, where the customer will have its own instance and will use the standard software of BillRun for the cloud.
- (b) BillRun Private Cloud – A private implementation, on BillRun cloud (or third party selected by BillRun) facilities, where the customer will have its own instance and may modify/amend BillRun Standard software, in accordance with this agreement and on the customer’s sole responsibility.
- (c) BillRun on premise – A BillRun standard implementation on customer site.

<b>Implementation/Delivery type</b>	<b>Monthly subscription fee (per subscriber)</b>	<b>Setup one-time Fee (installation, migration)</b>
BillRun Cloud (Public)	40 US cents	-
BillRun Private Cloud	50 US cents	\$ 5,000
BillRun On-Premise	60 US cents	\$ 20,000

**Setup Fees:**

Additional fees may be charged for various services that will be provided:

- (d) Installation service, either on BillRun private cloud (of non-standard software version) or on customer premises.
- (e) Data Migration – from existing systems to BillRun. The costs will be calculated as per man days, excluding expenses and delivered in Israel