



SOFTWARE AS A SERVICE ("SAAS") AGREEMENT

THIS SOFTWARE AS A SERVICE AGREEMENT ("**AGREEMENT**") SETS FORTH THE TERMS AND CONDITIONS UNDER WHICH DYNAMIC SIGNAL, INC. ("**DYNAMIC SIGNAL**," "**COMPANY**," OR "**WE**"), GRANTS TO YOU ("**YOU**" OR "**CLIENT**") THE RIGHT TO USE THE DYNAMIC SIGNAL CLOUD-BASED PRODUCTS AND SERVICES ORDERED AND PAID FOR BY YOU (THE "**SERVICE**"). BY SIGNING AN ORDER FORM, ACCESSING, RECEIVING, AND/OR USING THE SERVICE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IN NO EVENT MAY YOU ACCESS, RECEIVE OR OTHERWISE USE ANY DYNAMIC SIGNAL PRODUCT OR SERVICE WITHOUT AGREEING TO THESE TERMS (OR ANOTHER AGREEMENT AGREED TO IN WRITING BY DYNAMIC SIGNAL).

1. **Definitions.** Unless otherwise expressly stated herein, the terms defined in this Section, or parenthetically defined elsewhere, shall have the same meaning throughout this Agreement, and any and all Order Forms, SOWs, attachments and amendments hereto.
 - 1.1. "Agreement" means this Agreement together with all Order Forms and any SOWs incorporated herein by reference.
 - 1.2. "API" means application programming interface.
 - 1.3. "Change in Control" means a merger, acquisition, stock sale, corporate reorganization, sale of all or substantially all of assets or similar change of control transaction.
 - 1.4. "Company Technology" means Company's products, technology tools, product designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, trade secret, know-how and includes Company's advocacy and communications platform, apps, APIs, and any other tools or programs used by or for Company on its behalf with regard to its Service, and any related IP Rights related thereto throughout the world and also including any derivatives, improvements, translations, enhancements or extensions of or to the foregoing. Company Technology excludes Client Data and Client Property.
 - 1.5. "Client Data" means all data or information transmitted, generated by or made visible through Client's use of the Service, including without limitation, the content associated with the performance of, and the actions and postings by, Users' social media contacts. Client Data also includes email and names of Client's Users.
 - 1.6. "Client Property" means Client's proprietary property, including Client's Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation, trade secrets, copy, images, logos, trademarks and any related intellectual property rights throughout the world, in each case, which is specific or unique to Client and which is provided to Company for purposes of the Service.
 - 1.7. "Initial Term" means the initial Service Term for the Service as described in the Order Form in which the Service is first ordered by Client.
 - 1.8. "IP Rights" or "Intellectual Property Rights" means all intellectual property rights comprising or relating to patents; trademarks, tradenames, internet domain names, whether or not trademarks, registered by any authorized private registrar or governmental authority, web addresses, web pages, website and URLs; works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; trade secrets; and all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of,

such rights or forms of protection pursuant to the laws of any jurisdiction throughout in any part of the world.

- 1.9. "Order Form" means any document used for the order of the Service agreed to in writing by the parties and made a part of this Agreement, specifying, among other things, the specific services, fees, Usage Limits, Service Term and other charges as agreed to between the parties.
- 1.10. "Party" means each of Client and Company, and collectively the "Parties".
- 1.11. "Renewal Term" means the Service Term for any renewal of the Service as described in an Order Form.
- 1.12. "Service" means the cloud-based service(s) offered by Company that are specifically ordered by and paid for by Client. A service must be specifically ordered by Client under an Order Form to be considered a "Service" covered under this Agreement.
- 1.13. "Service Level Agreement" or "SLA" means the Company's SLA set forth at <https://dynamicsignal.com/sla/>.
- 1.14. "Service Term" means the time period, whether Initial Term or Renewal Term, during which Company agrees to provide to Client, and Client is permitted to use, the Service as specified in an Order Form.
- 1.15. "Territory" means the geographic region within which the Service may be used and where Users may be located, as specified in the Order Form. (If a Territory is not specified in the Order Form, then Territory shall be the United States.)
- 1.16. "Usage Limits" means the specific number and type of Users, licenses and license configurations specifically ordered and paid for by Client.
- 1.17. "Users" means Client's employees, agents, and contractors who have been authorized or enabled, directly or indirectly, by Client to use the Service in accordance with the Usage Limits.

2. Usage Rights.

- 2.1. **Service Usage Grant.** Subject to this Agreement, Company grants to Client a limited, nonexclusive right, solely during the Service Term and within the Territory, to use the Service (including any Company Technology and Documentation specifically made available by Company for use with the Service) in accordance with the Usage Limits. Client shall have no right to use the Company Technology for any purpose other than accessing and using the Service in accordance with this Agreement. Client shall be permitted to designate the Users of the Service, provided that such usage is in accordance with this Agreement and the Usage Limits, and Client shall be responsible for the acts of the Users (including breaches of this Agreement caused by the Users).

2.2. Service Restrictions and Guidelines.

- (a) Client shall use the Service solely for its internal business purposes as contemplated by this Agreement and the applicable Order Form, and only in accordance with the Usage Limits and all applicable laws. In the event Client exceeds its Usage Limits, Client will incur and be billed for additional fees for such excess usage. Except as otherwise agreed upon in writing, Client may not decrease its Usage Limits within any Service Term.
- (b) Client shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code, trade secrets, or know-how in or underlying the Service or Company Technology.
- (c) Client shall not: (i) distribute, rent, lease, sublicense or transfer the Services; (ii) use the Services in a service bureau, outsourcing or time-sharing environment, or otherwise commercially exploit the Services; (iii) use the Service to send spam or any other form of duplicative and unsolicited messages other than marketing and promotional messages to Client's clients and prospective clients as contemplated by the Service; (iv) harvest, collect, gather, or assemble information or data regarding other users of the Service without their consent; (v) transmit through or post on the Service unlawful, immoral, libelous, tortious, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (vi) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs through the Service; (vii) interfere with or disrupt the

integrity or performance of the Service or the data contained therein; (viii) attempt to gain unauthorized access to the Service, computer systems, or networks related to the Service; or (ix) harass or interfere with another user's use of the Service.

- (d) Client acknowledges and agrees that the Service is not intended for use or transmission of any information regarding a person's race, religion, sexual orientation, health, finances, or other similar personal information, Protected Health Information of any person as defined under Health Insurance Portability and Accountability Act, as amended ("HIPAA"), personally identifiable or confidential information of Client's customers (including any financial, credit card, or account information), and/or other similar sensitive personal information (collectively, "Sensitive Information"), and it will not use the Service for the transmission, storage, or communication of any Sensitive Information.
- (e) Client shall be fully responsible for the acts of its Users and ensure that its Users abide by the Service usage restriction. To support the foregoing, Client will have and enforce, among other things, end-user facing Users terms of use, code of conduct, privacy policy or similar policy that describes Users information collection, use and disclosure practices in connection with Client's use and deployment of the Service.

2.3. **Limited Use Grant By Client.** Client agrees that if, in the course of providing the Service, it is necessary for Company to access Client equipment, or use Client Property or Client Data, then Company is hereby granted a limited, revocable, nonexclusive, internal, and royalty-free license, solely during the Service Term and solely to use the Client equipment, Client Property, and/or Client Data for the strict limited purposes of delivering the Service to Client and supporting Client's use of the Service as described herein.

2.4. **Suggestions and Feedback.** Company shall have the right to use or act upon any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client relating to the Service to the extent it does not constitute Client Data, Client Property or Confidential Information of Client.

3. **The Service.**

- 3.1. Company will make commercially reasonable efforts to make the Service available to Client substantially in accordance with the Service Level Agreement.
- 3.2. Company will provide the Support Services ordered by Client and described on the applicable Order Form.
- 3.3. Company will use commercially reasonable efforts to maintain the security of the Service. Company will take commercially reasonable precautions, including the use of industry standard virus protection software and other customary procedures, to screen any software used by it in implementing and operating the Service, platform and websites, and to avoid introducing, and it will not knowingly insert, or knowingly allow to be inserted, any Disabling Devices into any software or platforms used by it in providing the Service hereunder. For purposes of this Agreement, "Disabling Device" means any malware or other computer code (i) designed to disrupt, disable, harm, or otherwise impede in any manner the operation of any software program or code, or any computer system or network (commonly referred to as "malware", "spyware", "viruses" or "worms"); (ii) that would disable or impair the operation thereof or of any software, computer system or network in any way based on the elapsing of a period of time or the advancement to a particular date or other numeral (referred to as "time bombs", "time locks", or "drop dead" devices); or (iii) is designed to or could reasonably be used to permit any third party to access any computer system or network (referred to as "trojans", "traps", "access codes" or "trap door" devices).

4. **Reservation of Rights.**

- 4.1. All rights, title and interest in all Client Data and Client Property, including any and all IP Rights therein, are the sole property of Client, and except as expressly provided for in this Agreement, no rights are granted to Company in Client Data or Client Property.
- 4.2. All rights, title and interest in the Service and all Company Technology, including any and all IP Rights related thereto, are the sole property of Company or its licensors. All rights in and to the Service or Company Technology not expressly granted to Client in this Agreement are hereby reserved by Company and its licensors.

5. Client Data; Safeguards.

- 5.1. For the purposes of this Agreement, Client Data includes all data or information input by or on behalf of Client or User or processed or stored through the Service. Client Data also includes any information that identifies, relates to, describes, or is capable of being associated with, a specific individual ("Personal Information"). Company will not disclose Client Data to any third party, except as may be necessary for Company to fulfill its obligations under this Agreement, in response to a valid court order or otherwise to the extent legally required in response to a request from a law enforcement agency, or as specifically provided for in this section.
- 5.2. Company shall comply with Data Laws (as defined below) applicable to the Service and shall use appropriate methods and safeguards to protect Client Data, including from unauthorized collection, modification, access, use, storage, disposal, and/or disclosure of Client Data by Company's employees, agents or subcontractors. Such methods and safeguards shall include maintenance of an industry standard information security program. If Company discovers or is notified of a breach, suspected breach, or potential breach of the foregoing relating to Client Data, Company shall expeditiously (A) notify Client of such breach, suspected breach, or potential breach, and (B) investigate and use commercially reasonable efforts to remediate the effects of such breach or potential breach, at Company's sole cost. Any notice to Client under this provision shall include a description of the breach, as well as the name and contact information for a primary security contact within Company. Company agrees to fully cooperate with Client in Client's handling of the matter, and will work with Client to otherwise respond to and mitigate any damages caused by the breach. For purposes of this paragraph, a "breach" shall include, but not be limited to: (a) a physical trespass on a secure facility in which Client Data is maintained; (b) intrusion or hacking into a computing system on which Client Data is maintained; (c) loss or theft of a computer, mobile device, hard drive, other information storage device, or printed materials which contain Client Data; or (d) potential or actual misuse, compromise, or unauthorized access to, acquisition of, or release of Client Data. "Data Law" means, as in effect from time to time, any law, rule, regulation, declaration, decree, directive, statute, or other enactment, order, mandate, resolution or self-regulatory guideline or standard, which is applicable to Company or to which Company is required to submit or voluntarily submits, issued or enacted by any domestic or foreign government body related to data security and data privacy.
- 5.3. Company will not publish, share or otherwise distribute, to any party, analytics, statistics or other data related to Client's use of the API, web service, portal or proxy usage. However, Company may aggregate usage data from Client in a manner that does not allow Client Data to be separated from the aggregated data and identified as relating to Client or its Users ("Anonymized Data"), and Company may use this Anonymized Data to analyze and understand how the Service is used.
- 5.4. Upon request by Client at any time during the Term and upon termination or expiration of this Agreement, Company will make Client Data available to Client for download and shall otherwise return all Client Data to Client, and Company shall remove all Client Data from any media and shall securely destroy or securely erase such media. Additionally, during the Term of the Agreement and as part of the Service, Company shall provide Client the ability to obtain extracts of Client Data. For the avoidance of doubt, the provisions of this Section 5 shall control regarding Company's confidentiality obligations with respect to Client Data.

6. Fees & Payment.

- 6.1. **Fees.** The Service shall be provided for the fees specified in the applicable Order Form(s). Unless otherwise stated in the Order Form, all fees are quoted in United States Dollars. Fees are non-refundable except in the case of material breach of this Agreement by Company or as otherwise specifically set forth in this Agreement.
- 6.2. **Other Service Fees.** Any work outside the scope of an Order Form requested by Client shall be subject to pricing and terms to be mutually agreed by the Parties, whether in the form of a statement of work, order form or other document.
- 6.3. **Invoicing & Payment.** Undisputed charges due shall be payable net 30 unless otherwise stated in the applicable Order Form or SOW.

- 6.4. Purchase Orders.** Notwithstanding anything to the contrary in any subsequent writing, in the event any conflict between a Client PO and this Agreement, then this Agreement shall prevail.
- 6.5. Overdue Payments.** Any undisputed payment not received from Client by the due date may, at Company's discretion, accrue late charges at the rate of half percent (0.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Disputed amounts will only be raised in good faith and Client will notify Company of such as soon as reasonably practicable and at least within thirty (30) days after receipt of an invoice. Client shall pay all reasonable costs of collections, including attorneys' and collection agencies' fees.
- 6.6. Suspension of Service.** If Client's account is sixty (60) days or more overdue for any undisputed fees and Client does not pay such fees within fifteen (15) days of notice of such failure to pay, then, in addition to any of its other rights or remedies, Company shall have the right to suspend the Service until such amounts are paid in full.
- 6.7. Taxes.** Company's fees are exclusive of any and all local, state, federal, and foreign taxes, levies, or duties of any nature including any VAT taxes ("Taxes"), and Client is responsible for payment of all Taxes, excluding only taxes based on Company's income, employees, property, and gross receipts. If Company has the legal obligation to pay or collect taxes for which Client is responsible pursuant to this Section, the appropriate amount shall be invoiced to and paid by Client, unless Client provides Company with a valid tax exemption certificate authorized by the appropriate tax authority.
- 6.8. Billing and Contact Information.** Client shall ensure that Client's license administrator maintains complete, accurate, and up-to-date Client billing and contact information via the online Client account section of the Service at all times.

7. Confidentiality.

- 7.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all information marked "confidential" or "proprietary" at the time of disclosure or that otherwise should be understood by a reasonable person to be confidential in nature, provided by a party or on its behalf ("**Disclosing Party**") to the other party ("**Receiving Party**"), including without limitation this Agreement (except to the extent needed to be disclosed to its advisory members, attorneys, accountants, or to enforce the terms hereof). Each party's Confidential Information shall include any of its financial information, customer lists, personnel information, customer data, business and marketing plans, technology and technical information, product designs and information, developments, and business processes (whether in tangible or intangible form, in written or in machine readable form, or disclosed orally or visually). Regardless if marked as such, Company's Confidential Information includes the Company Technology and the Service, and Client's Confidential Information includes the Client Data and the Client Property. Confidential Information shall not include any information that: (i) is or becomes generally known to the public, or is or becomes generally known in the industry, without the Receiving Party's breach of any obligation owed to the Disclosing Party; (ii) the Receiving Party can show was independently developed by the Receiving Party and was not acquired directly or indirectly from the Disclosing Party; or (iii) is rightfully received by the Receiving Party from a third party who obtained such Confidential Information without any obligation of confidentiality.
- 7.2. Protection.** Each party will, and will cause each of its personnel and agents to: (a) not disclose the other party's Confidential Information to any third party, (b) not use the other party's Confidential information for any purpose other than to perform its obligations or exercise its rights under this Agreement, and (c) protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information. Notwithstanding this Section, each party shall be able to disclose Confidential Information of the other party to its personnel and agents (including, without limitation, Users) who have a need to know for the Receiving Party to perform its obligations or exercise its rights under this Agreement, provided such personnel or agents have been previously advised of the confidential nature of the information and have written obligations of confidentiality to the Receiving Party.

- 7.3. **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party (including any Client Data), it shall (where legally permitted) provide the Disclosing Party with prompt prior written notice of such compelled disclosure to permit the other party to seek judicial protection and/or confidential treatment of such information, and reasonable assistance (at Disclosing Party's cost) if the Disclosing Party wishes to contest the disclosure. Further, the Receiving Party shall disclose only that Confidential Information that is required to be disclosed.
- 7.4. **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 7, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek equitable relief, including an injunction to enjoin such acts or specific performance, it being specifically acknowledged by the parties that any such violation may give rise to irreparable injury to the other party such that monetary remedies are inadequate.

8. Warranties & Disclaimers.

- 8.1. **Mutual Representations and Warranties.** Each party represents and warrants that it has full right, power, and authority to agree to this Agreement and to perform its obligations and duties under the Agreement, and that the performance of such obligations and duties does not and will not conflict with or result in a breach of any other agreement of such party or any judgment, order, or decree by which such party is bound. Each party shall use the Service only for lawful purposes and in accordance with this Agreement. Each party will comply with all applicable laws and regulations in its performance and use under this Agreement and, in the event of a failure to comply by a party, the other party will have the right to suspend performance hereunder or terminate this Agreement.
- 8.2. **Client Representations and Warranties.** Client represents and warrants that: (a) its use of the Service, including any Client Data uploaded to the Service, will not violate any applicable law or regulation, nor cause a breach of any agreement with any third party (including without limitation the rules of any social network platform) or unreasonably interfere with use of services offered by the Company to third parties; (b) it shall use the Service strictly in accordance with this Agreement and other written instructions provided by Company; and (c) it will hold in confidence any access credentials (including usernames and passwords) provided to Client by Company. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Company will have the right to suspend immediately any of the Service to prevent harm to Company or its business. If practicable, Company will provide notice and opportunity to cure. Once cured, in Company's reasonable discretion, Company will use reasonable efforts to promptly restore the Service.
- 8.3. **Company Representations and Warranties.** Company represents and warrants that (a) its Service will comply with applicable laws and regulations (including without limitation Data Laws) and the terms; (b) Company is authorized, or has the right, to license or otherwise grant the use of the Service and any third party software contained or otherwise incorporated into the Service to Client; and (c) the Service and Client's use of the Service does not infringe, misappropriate, or violate any third party's IP Rights or any other third party proprietary right.
- 8.4. **Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, ALL COMPANY PRODUCTS AND SERVICES PROVIDED HEREUNDER ARE PROVIDED SOLELY ON AN "AS IS" BASIS. COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, OR ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE, IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.
- 8.5. **Disclaimer of Third Party Actions.** Company does not and cannot control the flow of data to or from Service or within any portion of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt Client's connections to the Internet (or portions thereof). Although Company will use commercially reasonable efforts to take actions it

deems appropriate to remedy and avoid such events with respect to Client's use of the Service, Company cannot guarantee that such events will not occur.

9. Indemnification.

- 9.1. Indemnification by Company.** Subject to this Agreement, Company shall defend, indemnify, and hold Client harmless against any loss or damage, expense or liability (including without limitation reasonable attorney's fees and court costs and related legal expenses incurred in defending against such claim) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Client by a third party (i) alleging that the Service or the Company Technology infringes, misappropriates or otherwise violates any patent, copyright, trademark, or other intellectual property rights of a third party; or (ii) arising from Company's breach of its Confidentiality obligations (including with respect to Client Data); provided, that Client (a) promptly gives written notice of the Claim to Company (provided, however, that failure to so notify shall relieve Company of its liability to Client only to the extent that Company is prejudiced thereby); (b) gives Company sole control of the defense and settlement of the Claim (provided that Company may not settle or defend any Claim unless it unconditionally releases Client of all liability, does not impose any financial obligation on Client or require Client to take or refrain from taking any action, and such defense or settlement does not materially adversely impact Client); and (c) provides to Company, at Company's sole cost, all reasonable assistance requested by Company in the defense and settlement of the Claim. Company shall have no obligations to Client under this Section 9.1 to the extent such Claims arise from Client's or its User's breach of this Agreement or from the combination of the Service with any of Client's products, services, hardware or business processes (unless expressly authorized by Company or contemplated by this Agreement). If any Claim is made or, in Company's sole judgment, is likely to be made, Company may, at its discretion, either, at no additional cost to Client: (i) procure for Client the right to continue to use the Service, as such use is specifically provided for in this Agreement, (ii) replace or modify the Service or Company Technology to avoid infringement, or (iii) terminate this Agreement upon written notice to Client, and refund any paid but unused fees to Client.
- 9.2. Indemnification by Client.** Subject to this Agreement, Client shall defend, indemnify, and hold Company harmless against any loss or damage (including without limitation reasonable attorney's fees) incurred in connection with Claims made or brought against Company by a third party (i) alleging that the Client Data or ClientProperty misappropriates or otherwise violates any IP Rights of a third party; (ii) arising from Client's use of the Service (other than the Claim against which Company is obligated to indemnify Client as set forth in Section 9.1 or where Client's use of the Service is in accordance with written instructions provided by Company and this Agreement); or (iii) arising from Client's breach of Section 2.2; provided, that Company (a) promptly gives written notice of the Claim to Client; (b) gives Client sole control of the defense and settlement of the Claim (provided that Client may not settle or defend any Claim unless it unconditionally releases Company of all liability); and (c) provides to Client, at Client's cost, all reasonable assistance. Client shall have no obligations to Company under this Section 9.2 to the extent such Claims arise from Company's breach of this Agreement or Client's use of Client Data as authorized and contemplated by this Agreement.

10. Limitation of Liability.

- 10.1.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- 10.2.** EXCEPT FOR EACH PARTY'S LIABILITY UNDER FEES & PAYMENT (SECTION 6), CONFIDENTIALITY (SECTION 7) AND INDEMNIFICATION (SECTION 9), AND NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, EACH PARTY'S CUMULATIVE, TOTAL LIABILITY TO THE OTHER PARTY FOR ANY REASON (WHETHER BASED IN CONTRACT, TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY) IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES SHALL IN NO

EVENT EXCEED THE AMOUNT PAID BY CLIENT TO COMPANY FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

11. Term & Termination.

- 11.1. **Term.** This Agreement shall commence on the Effective Date and shall continue until the expiration of the last to expire Service Term for all Services ordered, unless sooner terminated pursuant to this Agreement or the terms of the applicable Order Form.
- 11.2. **Termination for Cause.** A party may terminate this Agreement for cause: (i) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured at the expiration of the notice period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
- 11.3. **Effect of Termination.** Upon the effective date of termination of this Agreement: (i) Company will immediately cease providing the Service to Client; and (ii) any and all undisputed payment obligations of Client for Service provided through the date of termination will immediately become due. Within thirty (30) calendar days of termination or expiration of this Agreement, or at the Disclosing Party's request, each party will return or securely destroy all Confidential Information of the other party (as the other party may elect) in its possession or control (including all copies thereof, in any media). In addition, each party shall purge its computer systems and database of the other party's Confidential Information. Notwithstanding the foregoing return and destroy obligations, a party (a) may retain copies of the other party's Confidential Information in order to comply with any applicable legal or accounting record keeping requirements; and (b) shall not be required to return or destroy any electronic backups of the other party's Confidential Information made in the normal course of business, provided the such party continues to comply with all of the confidentiality and security obligations in this Agreement with respect to such information.
- 11.4. **Surviving Provisions.** The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 1, 2.4, 4, 6, 7, 8.4, 10, 11, and 12.4 through 12.15.

12. General Provisions.

- 12.1. **Professional Service.** Client may request Company to provide certain professional services that are ancillary to the Service, such as integration or customization ("Professional Service"). In such event, the parties will enter into a Statement of Work ("SOW") that refers to and is subject to this Agreement and sets forth the scope and description of the Professional Service, deliverables, parties' responsibilities, completion dates, fees and payment terms, and any other relevant information.
- 12.2. **Publicity.** Company may identify Client as a customer in customer lists. With Client's prior consent: (i) Company and its affiliates will be permitted to use Client's name and logo on their websites, in testimonial content, in press releases, and within marketing materials, provided such use and display is in accordance with Client's trademark usage guidelines communicated to Company from time to time, and (ii) Company and its affiliates may issue press releases relating to this Agreement.
- 12.3. **Insurance.** Company will maintain at its expense insurance with at least the following coverage: (i) workers' compensation insurance and employer's liability insurance meeting federal and state minimum requirements; and (ii) Comprehensive General Liability coverage and Umbrella and/or Excess Liability coverage with a minimum total limit of \$2,000,000 combined single limit for property loss or damage and bodily injury; and (iii) Professional liability insurance with a minimum total limit of \$2,000,000; and (iv) network and information security liability insurance with a minimum limit of at least \$5,000,000. Upon Client's request, Company shall provide Client with certificates of insurance evidencing the Company's insurance coverage.
- 12.4. **Relationship of the Parties.** The parties' relationship is strictly that of independent contractors and this Agreement do not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Neither party has the power to bind the other, make any warranties or representations, or incur, assume or create obligations on the other's

behalf without the other's prior written consent and each party agrees that it will not perform any act or omission to the contrary.

- 12.5. **No Benefit to Others.** The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.
- 12.6. **Notices.** All notices under this Agreement shall be in writing and shall be delivered to the address of the Client account by means evidenced by a delivery receipt or by email. Notice shall be deemed to have been given upon: (i) if personally delivered, upon delivery, (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by fax or electronic mail, at such time as the Party which sent the notice receives confirmation of receipt by the applicable method of transmittal, or (iv) if sent by certified or registered mail, within five (5) days of deposit in the mail. Notices to Company shall be addressed to the attention of its General Counsel.
- 12.7. **Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. The waiver by a party of compliance by the other party with any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement (whether or not similar), or a continuing waiver or a waiver of any subsequent breach by a party of a provision of this Agreement.
- 12.8. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be changed by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect, unless the modification or severance of any provision has a material adverse effect on a party, in which case such party may terminate this Agreement by notice to the other party.
- 12.9. **Assignment.** Neither party may assign any of its rights or obligations under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement, without consent of the other party in connection with a Change in Control; provided, however, that the assignee to which this Agreement is assigned must agree in writing to be bound by the terms and conditions hereof and the assigning party shall notify the other party of such assignment within a reasonable period of time following the Change in Control. Furthermore, if this Agreement (or any Order) provides for an unlimited use or enterprise license, an assignment, Change of Control, acquisition or other business expansion by Client may result in an increase in fees. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto, their respective successors and permitted assigns.
- 12.10. **Governing Law/Venue.** This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the United States and the State of California, without regard to its conflict of law's provisions. The federal and state courts located in the Northern District of California or San Mateo County, California shall have jurisdiction to adjudicate any dispute arising out of or relating to this Agreement, and each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of forum non conveniens or otherwise. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.
- 12.11. **Export Control Laws.** Each party shall comply with United States and foreign export control laws or regulations applicable to its performance under this Agreement.
- 12.12. **Force Majeure.** Neither party will be deemed in breach of this Agreement if the failure to perform is caused by circumstances beyond its reasonable control, including without limitation acts of God, acts of government, flood, fire, earthquake, civil unrest, acts of terror, strikes or labor problems, computer, internet, or telecommunications failures, delays or network intrusions, or denial of service attacks, but only if (a) such party gives prompt written notice to the other party of the force majeure event, and (b) such failure or delay results notwithstanding the exercise of reasonable care and diligence to avoid or mitigate the same in anticipation of or

in response to such causes. The time for performance will be extended for a period equal to the duration of the force majeure event.

- 12.13. **Equal Employment.** Both parties agree to comply with all applicable equal employment opportunity laws, including Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, the Americans with Disabilities Act, and, if applicable, the affirmative action requirements of the Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended.
- 12.14. **Entire Agreement and Construction.** This Agreement, any SOWs, and the Order Form(s) constitute the entire and exclusive agreement between the parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. Except as contemplated to the contrary herein with respect to Order Forms, no modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. In the event of any conflict between the provisions in this Agreement, any SOW, and the Order Form(s), the terms of the Order Form will take first precedence, then this Agreement will take second precedence, and any SOW will take third precedence, provided that any terms of an Order Form that conflict with this Agreement will take precedence solely in connection with those specific services set forth in such Order Form and the delivery thereof. In all other instances, this Agreement shall govern and control. Notwithstanding any language to the contrary therein, no terms or conditions stated in a purchase order issued by Client or in any other Client order documentation shall be incorporated into or form any part of this Agreement.

Updated January 5, 2018