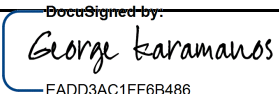# GEM SOFTWARE ORDER FORM

Effective Date: July 15, 2020	Project Sponsor/Account Admin: Rachael Tauber
Customer: AppDynamics LLC	Accounts Payable Email: accountspayable@appdynamics.com

Services:	Gem Software's Workflow Automation SaaS Solution, collectively referred to as the "Services."
Setup / Integration/Platform fee:	$50,000
Base SaaS Fees: (license and support)	10 seats @ 3,450 each **$34,500** • 90 day termination of convenience • To terminate contract, must send email to geoff@gem.com by EOD Oct 15, 2020 notifying desire to be released from the contract.
Additional Terms:	
Service Term:	12 months from the "Effective Date"
Total Amount Due:	$84,500 Due net 90

Upon execution of this Order Form, the customer named above ("**Customer**") shall be entitled to the Services described herein. Customer's use of the Services shall be governed by the terms of this Order Form and the attached Terms and Conditions (collectively, the "**Agreement**"). In the event of a conflict between the terms of this Order Form and the Terms and Conditions, the terms of this Order Form shall prevail.

By signing below, Customer acknowledges and agrees it has read, understands and agrees to be bound by this Agreement.

Gem Software, Inc.	**AppDynamics LLC**
Name: Joe Totten	**Name:** George Karamanos
Title: VP of Sales	**Title:** General Counsel
Signature: *Joe Totten* B03A94FF30644B6...	**Signature:** *George Karamanos* EADD3AC1FF6B486...
Date Signed: July 8, 2020	**Date Signed:** July 8, 2020

TERMS AND CONDITIONS

1. SERVICES AND SUPPORT

These Terms and Conditions (this "Agreement") between AppDynamics LLC, a Delaware limited liability company with its principal place of business located at 303 Second Street, North Tower, 8th Floor, San Francisco, CA 94107 ("Customer") and Gem Software, Inc., a Delaware corporation, with its principal place of business located at 550 Kearny St, Suite 300, San Francisco, CA 94108 ("Service Provider") is effective as of July 8, 2020 (the "Effective Date"). Each Order Form will form part of this Agreement.

In consideration of (and subject to) payment of the fees listed herein and on the applicable Order Form (the "Fees") and subject to full compliance with all the terms and conditions of this Agreement, Service Provider will use reasonable commercial efforts to provide Customer the Services selected in the Order Form and the applicable General Service Level Support Terms identified in Exhibit A. As part of the registration process, Customer will identify an administrative user name and password for Customer's Service Provider account (the "Account").

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 This is a contract for Services and the applicable hosted software will be installed, accessed and maintained only by or for Service Provider. Service Provider hereby grants to Customer and its affiliates, for the term of this Agreement, a worldwide, non-exclusive, non-sublicensable, non-transferable, non-assignable, royalty free license to use, reproduce and distribute internally within Customer's business, and for Customer's internal use only (and only in accordance with this Agreement), the Services described on the Order Form, as well as the Documentation ("**Documentation**") and data provided to Customer by Service Provider (collectively hereinafter referred to as the "Services"). Customer will not (and will not knowingly allow any third party under its control to) directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services (or any underlying software, documentation or data related to the Services); modify, translate, or create derivative works based on the Services or any underlying software; or copy (except for archival purposes), rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any underlying software; use the Services or any underlying software for the benefit of a third party; publish the Services without the prior written consent of Service Provider; or remove any proprietary notices or labels. In addition, Customer agrees that it shall use the Services only for legitimate business purposes related to recruitment and networking with candidates and potential candidates and for no other purpose. Any breach of the foregoing restrictions shall be deemed a material breach of the Agreement not capable of cure and Service Provider shall be entitled to immediately terminate the Agreement.

2.2 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service (collectively, "Equipment"). Customer shall be responsible for compliance with any and all applicable third party terms of service and privacy policies for platforms, networks and/or websites that they run their applications on, including but not limited to, Facebook, Android, Blackberry or iOS/App Store.

2.3 Customer shall be responsible for ensuring that such Equipment is compatible with the Services. Customer shall also be responsible for maintaining the security of the Equipment, the Account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of the Account or the Equipment.

3. CONFIDENTIALITY

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Notwithstanding the foregoing, nothing (except the Services and underlying software, algorithms and information embodied therein) will be considered "Proprietary Information" of the Disclosing Party unless either it is or

was disclosed in tangible or written form and is conspicuously marked "Confidential", "Proprietary" (or the like) at the time of disclosure or it is identified as confidential or proprietary at the time of disclosure and is delivered in the appropriately marked form within thirty (30) days of disclosure.

3.2 The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except as expressly permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after three (3) years following the disclosure thereof (except the Services and underlying software, algorithms and information embodied therein which shall remain confidential indefinitely) or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it without restriction on disclosure prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party, or (e) is required by law to be disclosed. In the performance of the Services, Service Provider is expressly authorized to collect general user data and report on the aggregate response rate and other aggregate measures of the Services' performance, provided that the user data is in aggregate, de-identified and anonymized form.

4. PAYMENT OF FEES

4.1 Customer will pay Service Provider the Fees for the Services as listed on the applicable Order Form. The fees for any renewal term shall be at Service Provider's then standard rates currently in effect, or if applicable, as otherwise stated in the Order Form.

4.2 If Customer believes that Service Provider has billed Customer incorrectly, Customer must contact Service Provider no later than ninety (90) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Service Provider's customer support department. Service Provider shall respond to Customer within three (3) business days after receiving such inquires.

4.3 Service Provider may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Service Provider ninety (90) days after the mailing date of the invoice, or the Services may be terminated. Customer shall be responsible for all taxes and fees associated with Services other than U.S. taxes based on Service Provider's net income.

5. TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Service Term as specified in the applicable Order Form (the "Service Term").

5.2 In addition to any other remedies it may have, Service Provider may also terminate this Agreement upon ten (10) days' notice if Customer materially breaches any of the terms or conditions of this Agreement, and if the breach is capable of remedy, fails to promptly remedy that breach within five (5) business days of receipt of such notice. If this Agreement is terminated as a result of a material breach by Customer during the Service Term, Customer will pay in full all remaining Fees payable through the remainder of the Initial Service Term. If this Agreement is terminated as a result of a material breach by Customer during a Renewal Term, Customer will pay in full for the Services up to and including the last day on which the Services are provided.

Upon termination of this Agreement for Service Provider's breach of the Agreement, Service Provider will refund (within thirty days after such termination) a pro-rata portion of pre-paid fees for unused Services.

5.3 Termination (which includes expiration or non-renewal) of this Agreement shall not limit either party from pursuing other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise owed by Customer under any order form.

5.4   The parties' rights and obligations under Sections 2 ("Restrictions and Responsibilities"), 3 ("Confidentiality"), 4 ("Payment of Fees"), 6 ("Indemnification"), 7 ("Warranty and Disclaimer"), 8 ("Limitation of Liability"), 9 ("Data Protection"), and 10 ("Miscellaneous") shall survive termination.

6.   INDEMNIFICATION

6.1   Service Provider agrees, at its own expense, to indemnify, defend Customer and hold Customer harmless against any suit, claim, or proceeding brought against Customer or its Affiliates alleging (i) a third party claim to the extent such claim arises from its violation of applicable law, or breach of Section 3: Confidentiality, (ii) that the use of Services in accordance with this Agreement infringes any copyright, trademark or patent of a third party, provided that Customer (i) promptly notifies Service Provider in writing of any such suit, claim or proceeding, (ii) allows Service Provider, at Service Provider's own expense, to direct the defense of such suit, claim or proceeding, (iii) gives Service Provider all information and assistance necessary to defend such suit, claim or proceeding, and (iv) does not enter into any settlement of any such suit, claim or proceeding without Service Provider's written consent. The foregoing obligations do not apply with respect to the Services or portions or components thereof (x) not supplied by Service Provider, (y) combined with other products, processes or materials where the alleged infringement would not have occurred without such combination. This section states Service Provider's entire liability and Customer's exclusive remedy for infringement or misappropriation of intellectual property of a third party.

6.2   Customer hereby agrees, at its own expense, to indemnify, defend and hold harmless Service Provider against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any demand, claim, action, suit or proceeding that arises from an alleged violation of Sections 2.1 to 2.3, or otherwise from Customer's use of Services excluded from Service Provider's aforementioned indemnity obligations in the second to last sentence of Section 6.1, above.

7.   WARRANTY AND DISCLAIMER

SERVICE PROVIDER REPRESENTS AND WARRANTS THAT THE SERVICES CONFORMS IN ALL MATERIAL RESPECTS TO ALL FUNCTIONAL PERFORMANCE SPECIFICATIONS THEREFOR AND DOES NOT CONTAIN ANY VIRUSES OR SIMILAR HARMFUL CODE.

SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR MEET CUSTOMER'S REQUIREMENTS; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE PROVIDED "AS IS" AND SERVICE PROVIDER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.   LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, SERVICE PROVIDER'S BREACH OF SECTION 9: DATA PROTECTION, EXHIBIT B: DATA PROCESSING ADDENDUM OR SERVICE PROVIDER'S BREACH SECTION 3: CONFIDENTIALITY, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS OR PROFITS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND

A PARTY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO SERVICE PROVIDER FOR THE APPLICABLE SERVICES UNDER THIS AGREEMENT OR RELATING TO ANY SUBJECT MATTER OF THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY OF THE FOREGOING TYPES OF LOSSES OR DAMAGES. CUSTOMER ACKNOWLEDGES THAT AN INTERRUPTION IN SERVICE(S) DUE TO CIRCUMSTANCES BEYOND THE REASONABLE CONTROL OF SERVICE PROVIDER, SUCH AS A FAILURE OF TELECOMMUNICATIONS OR NETWORK SYSTEMS NOT CONTROLLED BY SERVICE PROVIDER, SHALL NOT BE CONSIDERED A SERVICE OUTAGE OR SERVICE DEFICIENCY FOR PURPOSES OF ANY REMEDY PROVIDED IN THIS AGREEMENT.

9.   DATA PROTECTION

Service Provider represents and warrants that it (1) only use Customer Personal Data for the sole purpose of providing the Services, (2) comply with all applicable data security laws and Exhibit B, and (3) return or destroy all Customer Personal Data on termination of the Agreement, (4) will maintain SOC 2 certification and a written information security program appropriate for the Services (as defined in Exhibit B), (5) follows industry-standard policies and provides features and internal practices to protect the security and integrity of Customer's Confidential Information, (6) will use reasonable efforts to detect and prevent intrusions to the Services, and (7) require obligations consistent with the foregoing of Service Provider's providers related to the Services and ensure such providers are subject to appropriate information security diligence reviews.

10.   MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with Service Provider's prior written consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed on behalf of both parties by their duly authorized representatives, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind or attempt to bind Service Provider in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. The parties agree that any material breach of Section 2 or 3 will cause irreparable injury and that injunctive relief in a court of competent jurisdiction will be appropriate to prevent an initial or continuing breach of Section 2 or 3 in additional to any other relief to which the owner of such Proprietary Information may be entitled. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Any action or proceeding arising from or relating to this Agreement must be brought in a federal court in the Northern District of California, or in a state court in San Francisco, California, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

Gem Software, Inc.:		**AppDynamics LLC:**	
Signature:	_Joe Totten_ B03A94EE30644B6	Signature:	_George Karamanos_ EADD3AC1EE6B486
Name:	Joe Totten	Name:	George Karamanos
Title:	VP Sales	Title:	General Counsel
Date:	July 8, 2020	Date:	July 8, 2020

Exhibit A
General Service Level Support Terms

1.   Up-Time and Reliability. Service Provider will use reasonable commercial efforts with the intent that Services will be available and operational to Customer for 99% of all Scheduled Availability Time. "Scheduled Availability Time" shall be defined as twenty-four (24) hours a day, seven (7) days a week, excluding: (i) scheduled maintenance downtime; (ii) maintenance downtime for specific critical Service issues; and (iii) any downtime due to defects caused by Customer, one of its vendors, third party connections, utilities, or caused by other forces beyond the control of Service Provider (such as internet outages or outages with respect to Customer's network or internet access). Service Provider shall use reasonable efforts to provide advance notice in writing or by email of any scheduled service disruption. In the event of any unexcused downtime, Service Provider will credit the prorated amount to the Customer's next monthly invoice as follows:

Services Availability / Credit:
1.   Uptime of 99.9% or above: No Credit
2.   Uptime of 99.5% - 99.98%: 10%
3.   Uptime of 99.0% - 99.49%: 20%
4.   Uptime of 98.0% - 98.9%: 50%
5.   Less than 97.9%: 100%

If Service Provider fails to meet, in any given calendar month, three or more target response times or fix/workaround times related to Category 1 or Category 2 response times set forth in the SLA (a "Response Time"), Service Provider shall credit Customer's account for each occurrence of three such missed Response Times with the prorated equivalent of the value of one day of Services (e.g., Customer will receive three days of credit if Service Provider misses three Response Times in a given calendar month).

If Service Provider is unable to provide the availability objective noted above in any given calendar month, Customer will receive a credit on its next monthly invoice equal to the corresponding percentage noted below of one month's fees for the Services for the month in which the availability objective was not obtained.

If Service Provider's failure to meet the commitments set forth herein or in the SLA results in Customer receiving a 50% credit (or more) twice in any rolling six month period, Customer shall have the right to terminate the Agreement and receive a refund of any pre-paid fees for unused Services.
2.
3.   Maintenance. Service Provider will make available to Customer as part of the Services, all generally available enhancements, updates and bug fixes to the Services.

4.   Customer Responsibility.   In addition to other responsibilities contained herein, Customer will be responsible for ongoing maintenance, management and accuracy of the vendor profile data. Additionally, Customer will be responsible for communicating and managing the vendor registration, vendor training and change management process.

5.   Support. Service Provider is available to receive product support inquiries via email or the Service Provider website 24 hours per day. Service Provider Standard Support Hours are 06:30 to 15:30 Pacific Time Monday through Friday for technical information, technical advice and technical consultation regarding Customer's use of the Services.

6.   Classification of Problems. Service Provider shall classify each problem encountered by Customer according to the following definitions and will use reasonable commercial efforts to address the problem in accordance with such classification according to the table below.

SEVERITY LEVELS AND RESPONSE TIMES

Priority code	Priority description	Action required	Expected response times	Guaranteed Response Times
P1	**Mission Critical**. Data collection services and data reporting services are down, causing critical impact to business operations; no workaround available.	Escalation in accordance with provisions in "Escalation procedures" section below.	Gem Software, Inc. will provide a status update by telephone and/or e-mail within one (1) business hour within the initial occurrence of the P1 issue. Gem Software, Inc. 's goal for resolution of P1 issues is within one (1) calendar day of Customer's receipt of issue notification.	Gem Software, Inc. will provide a status update by telephone and/or e-mail within four (4) business hours within the initial occurrence of the P1 issue.

P2	**High**. Data collection services and data reporting services are significantly degraded and/or impacting significant aspects of business operations.	Escalation in accordance with provisions in "Escalation procedures" section below.	Gem Software, Inc. will provide a status update by telephone, e-mail, or via automated notification within the reporting interface of the Measurement Services as mutually agreed upon by the Parties, as warranted until (i) the problem is resolved, (ii) an acceptable workaround is found or (iii) the problem is determined to be outside of Gem Software, Inc.'s ability to control.	Gem Software, Inc. will provide a status update by eight (8) business hours within the initial occurrence of the P2 issue.

ESCALATION PROCEDURES

Priority code	Contact type	Name of Gem Software, Inc. contact / Role	Contact Email address	Time delay before Escalation to next level
P1	**Primary**	Key Tech Staffer/ First Available	emergency@gem.com	2 hours
	Secondary	Dedicated Account Manager	support@gem.com	4 hours
P2	**Primary**	All Staff / First Available	emergency@gem.com	8 hours
	Secondary	Dedicated Account Manager	support@gem.com	12 hours

Exhibit B
DATA PROCESSING ADDENDUM

1.   BACKGROUND

This Data Processing Addendum ("**DPA**") is supplemental to the Agreement and applies as set out in clause 9 of the Agreement.

In the event of a conflict between any of the provisions of this DPA and the remaining provisions of the Agreement, the provisions of this DPA shall prevail.

2.   DEFINITIONS

Unless otherwise set out below, each capitalised term in this DPA shall have the meaning set out in the Agreement and the following capitalised terms used in this DPA shall be defined as follows:

(a)   "**Customer Personal Data**" means the personal data described in ANNEX 1 and any other personal data that Gem Software processes on behalf of the Customer in connection with Gem Software's provision of the Services;

(b)   "**Data Protection Laws**" means all applicable laws and guidance by relevant supervisory authorities relating to data protection and the processing of personal data including:

(i) the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council ("**GDPR**");

(ii)   any legislation that, in respect of the United Kingdom, replaces or converts into domestic law the GDPR, the proposed Regulation on Privacy and Electronic Communications or other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union; and

(iii)   the California Consumer Privacy Act of 2018 ("**CCPA**")

(iv)   any applicable legislation protecting the fundamental rights and freedoms of persons and their right to privacy with regard to the Processing of Customer Personal Data;

(c)   "**European Economic Area**" or "**EEA**" means the Member States of the European Union together with Iceland, Norway, and Liechtenstein;

(d)   "**Security Incident**" means any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Customer Personal Data;

(e)   "**Standard Contractual Clauses**" means the Standard Contractual Clauses (processors) approved by European Commission Decision C(2010)593 or any subsequent version thereof released by the European Commission;

(f)   "**Subprocessor**" means any Processor engaged by Gem Software who agrees to receive from Gem Software Customer Personal Data; and

(g)   the terms "**personal data**", "**Controller**", "**Processor**", "**Data Subject**", "**Process**" and "**Supervisory Authority**" shall have the same meaning as set out in the applicable Data Protection Laws.

3.   DATA PROCESSING

3.1   **Instructions for Data Processing.** Gem Software will only Process Customer Personal Data in accordance with the Agreement, to the extent necessary to provide the Services to the Customer, and Customer's written instructions. In connection with the provision of the Services and the Processing of Data, Service Provider will comply with: (a) any and all applicable laws, rules, regulations, directives applicable to the Processing of Customer Personal Data, including all Data Protection Laws, and (b) all industry standards concerning data protection, privacy and information security. In addition, Service Provider will not disclose the Customer Personal Data to any third party apart from Sub-processors authorized by Customer under this Addendum, unless required to do so under the Data Protection Laws to which Service Provider is subject. Gem Software shall promptly inform Customer if, in the Gem Software's opinion, any instruction given by Customer to the Gem Software contravenes Data Protection Law. Gem Software shall, and shall ensure that its agents or subcontractors shall, comply with the obligations that apply to Gem Software under Data Protection Law.

3.2   Processing outside the scope of this DPA or the Agreement will require prior written agreement between the Customer and Gem Software on additional instructions for Processing.

3.3   **Required consents.** Where required by applicable Data Protection Laws, the Customer will ensure that it has obtained/will obtain all necessary consents, and has provided/will provide the necessary notifications, for the Processing of Customer Personal Data by Gem Software in accordance with the Agreement.

3.4   **Subcontracting**. Gem Software shall not subcontract any processing of the Data to a third party subcontractor without the prior written consent of Customer. Notwithstanding this, Customer consents to Gem Software engaging third party subcontractors to process the Data provided that (i) the Gem Software provides at least 30 days' prior notice of the addition or removal of any subcontractor (including details of the processing it performs or will perform) to legal@Customer.com; (ii) the Gem Software enters into a written agreement with the subcontractor that imposes data protection terms that protect the Data to at least the same standard provided for by this Exhibit; and (iii) the Gem Software remains fully liable and responsible for any subcontractor's processing of the Data. If Customer refuses to consent to the Gem Software's appointment of a subcontractor on reasonable grounds, then either the Gem Software will not appoint the subcontractor or Customer may terminate this Agreement, without penalty and the Gem Software will promptly provide a pro-rata refund of any fees paid in advance for unused or unprovided goods or services.

4.   SUBPROCESSORS

4.1   **Consent to Subprocessor Engagement**. The Customer generally authorises the engagement of third parties as Subprocessors identified below.

4.2   **Information about Subprocessors**. A list of Gem Software's Subprocessors are: Amazon Web Services, Inc., salesforce.com, inc., FullStory, Inc., Functional Software, Inc. dba Sentry, Google LLC (formerly

known as Google Inc.), Google Ireland Limited, Google Asia Pacific Pte. Ltd., or any other entity that directly or indirectly controls, is controlled by, or is under common control with Google LLC, Segment.io, Inc., Chart.io, Inc., People Data Labs, Inc., Nymeria, LLC, Hunter Web Services, Inc., Heap Analytics, Inc., and BlueSnap, Inc. (as may be updated by Gem Software from time to time in accordance with this DPA).

4.3   **Requirements for Subprocessor Engagement**. When engaging any Subprocessor, Gem Software will:

(a)   ensure via a written agreement that:

(i)   the Subprocessor only accesses and uses Customer Personal Data to the extent required to perform the obligations subcontracted to it and does so in accordance with the Agreement and this DPA; and

(ii)   the same obligations are imposed on the Subprocessor with regard to their Processing of Customer Personal Data, as are imposed on Gem Software under this DPA.

(b)   remain full liable for all obligations subcontracted to, and all acts and omissions of, the Subprocessor.

4.4   **Opportunity to Object to Subprocessor Changes**.

(a)   When any new Subprocessor is engaged during the Agreement, Gem Software will, at least 30 days before the new Subprocessor processes any Customer Personal Data, inform Customer of the engagement (including the name and location of the relevant subprocessor and the activities it will perform).

(b)   Customer may object to the appointment of that Subprocessor by providing documentary evidence that reasonably shows that the Subprocessor does not or cannot comply with the requirements in this DPA ("**Objection**"). If Gem Software does not remedy or provide a reasonable workaround for your Objection within a reasonable time, Customer may object to any new Subprocessor by terminating the Agreement immediately upon written notice to Gem Software, on condition that Customer provides such notice within 90 days of being informed of the engagement of the subprocessor as described in clause 4.4(a). This termination right is Customer's sole and exclusive remedy if Customer objects to any new Subprocessor.

4.4   **Transfers of Personal Data Outside the EEA.** To the extent that the Processing of Customer Personal Data by Gem Software involves the export of such Personal Data to a country or territory outside the EEA, such transfer shall be to a third party:

(a)   in a country subject to an adequacy decision by the European Commission;

(b)   that is a member of a compliance scheme recognised by the European Commission as offering adequate protection for the rights and freedoms of data subjects such as the EU-U.S. Privacy Shield; or

(c)   that has signed Standard Contractual Clauses (processors) approved by European Commission Decision C(2010)593 or any subsequent version thereof released by the European Commission, (with the Customer as data exporter and the third party as data importer). For this purpose, the Customer appoints Gem Software to act as its agent with the authority to complete and enter into the Standard Contractual Clauses as agent for the Customer on its behalf for this purpose.

5.   **DATA SECURITY, AUDITS AND SECURITY NOTIFICATIONS**

5.1   **Gem Software Security Obligations**. Gem Software will maintain SOC-2 certification and develop and maintain a comprehensive security program including without limitation appropriate administrative, technical, organizational and physical security measures to protect the Data against accidental or unlawful destruction, loss, alteration, unauthorized access or disclosure, which measures are described in ANNEX 2. Gem Software will limit access to the Data to personnel whose roles reasonably require such access and who have agreed contractually in writing to maintain the confidentiality and security of the Data in keeping with the terms of this Addendum. Gem Software will maintain written policies including without limitation, an information security policy, security and privacy guidelines, an internal acceptable use policy, and internal procedural documentation, and provide Customer with reasonable evidence of its policies and guidelines upon request. Upon hire and annually thereafter, each of Gem Software's personnel will receive training in the security and handling of Data and will agree in writing to adhere to Gem Software's privacy and security guidelines and policies. Gem Software will remain responsible for and liable for its personnel's compliance with the terms of this Addendum.

5.2   **Service Provider Security Audits**. The Customer may audit (by itself or using independent third party auditors) Gem Software's compliance with the security measures set out in this DPA (including the technical and organisational measures as set out in ANNEX 2), including by conducting audits of Gem Software's (and Subprocessors') data processing facilities and such audits may be performed at least once annually.

5.3   Gem Software shall make available to the Customer on request all information necessary to demonstrate compliance with this DPA. Gem Software shall immediately inform the Customer if, in its opinion, an instruction pursuant to this clause 5.3 infringes applicable Data Protection Laws.

5.4   **Security Incident Notification.** Gem Software will notify Customer as soon as possible to security@appdynamics.com of any actual, suspected or threatened Security Incident (as defined below) involving Customer Personal Data. For clarity, Customer Personal Data is Customer's Confidential Information. The notification provided to Customer shall include, if known, and to Gem Software's knowledge as of the time of notice: (i) the general circumstances and extent of any unauthorized access to Customer Personal Data or intrusion into the computer systems or facilities on or in which Customer Personal Data is maintained; (ii) which categories of Customer Personal Data were involved; (iii) the identities of all individuals whose Company Personal Information was affected; and (iv) steps taken to secure the data and preserve information for any necessary investigation.

The notification required to be delivered to Customer under this Section shall be delivered promptly and in no event later than forty-eight (48) hours after Gem Software learns of any such actual, suspected or threatened Security Incident. Gem Software shall not delay its notification to Customer for any reason, including, without limitation, investigation purposes. Gem Software shall cooperate fully with Customer in investigating and responding to each successful or attempted security breach including allowing access to Gem Software's facility by Customer or Customer's investigator, to investigate, and obtain copies of data as provided herein. "Security Incident" is when Gem Software knows or has reason to know that: (i) Gem Software has experienced an incident resulting in the unauthorized acquisition or unauthorized use of unencrypted Customer Personal Data, or encrypted Customer Personal Data and the confidential process or key that is capable of compromising the security, confidentiality or integrity of Customer Personal Data

that creates a substantial risk of identity theft or fraud; or (ii) Customer Personal Data was acquired or used by an unauthorized person or used for an unauthorized purpose. In the event of any Security Incident, Gem Software will assist Customer to provide notification and take other reasonable actions that Customer, in Customer's reasonable discretion, determines necessary in mitigating the effects of such Security Incident, at Gem Software's sole cost and expense, including but not limited to reimbursement of Customer's reasonable out-of-pocket expenses in providing notification, credit reports and otherwise complying with the law with respect to such Security Incident, and such costs and expenses shall not be subject to the limitation of liability.

5.5 **Gem Software Employees and Personnel.** Gem Software shall treat the Customer Personal Data as the Confidential Information of the Customer, and shall ensure that:

(a) access to Customer Personal Data is limited to those employees or other personnel who have a business need to have access to such Customer Personal Data;

(b) any employees or other personnel have agreed in writing to protect the confidentiality and security of Customer Personal Data.

6. ACCESS REQUESTS AND DATA SUBJECT RIGHTS

6.1 **Data Subject Requests**. Save as required (or where prohibited) under applicable law, Gem Software shall notify the Customer of any request received by Gem Software or any Subprocessor from a Data Subject in respect of their personal data included in the Customer Personal Data, and shall not respond to the Data Subject.

6.2 Gem Software shall, where possible, assist the Customer with ensuring its compliance under applicable Data Protection Laws, and in particular shall:

(a) provide the Customer with the ability to correct, delete, block, access or copy the personal data of a Data Subject, or

(b) promptly correct, delete, block, access or copy Customer Personal Data within the Services at the Customer's request.

6.3 **Government Disclosure.** Gem Software shall notify the Customer of any request for the disclosure of Customer Personal Data by a governmental or regulatory body or law enforcement authority (including any data protection supervisory authority) unless otherwise prohibited by law or a legally binding order of such body or agency.

7. ASSISTANCE

7.1 Gem Software shall provide Customer with any information or assistance reasonably requested by Customer for the purpose of complying with any of Customer's obligations under applicable Data Protection Laws, including:

(a)   assisting Customer by implementing appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to requests for exercising Data Subject rights laid down in the applicable Data Protection Laws;

(b)   providing reasonable assistance to Customer with any data protection impact assessments and with any prior consultations to any Supervisory Authority of Customer, in each case solely in relation to Processing of Customer Personal Data and taking into account the nature of the Processing and information available to Gem Software.

8.   DURATION AND TERMINATION

8.1   **Deletion of data**. Gem Software shall, within 90 (ninety) days of the date of termination of the Agreement:

(a)   upon written request, return a complete copy of all Customer Personal Data by secure file transfer in such a format as notified by the Customer to Gem Software; and

(b)   delete and use all reasonable efforts to procure the deletion of all other copies of Customer Personal Data Processed by Gem Software or any Subprocessors.

8.2   Gem Software and its Subprocessors may retain Customer Personal Data to the extent required by applicable laws and only to the extent and for such period as required by applicable laws and always provided that Gem Software shall ensure the confidentiality of all such Customer Personal Data and shall ensure that such Customer Personal Data is only Processed as necessary for the purpose(s) specified in the applicable laws requiring its storage and for no other purpose.

9.   MISCELLANEOUS

9.1   Except as expressly provided herein, nothing in this DPA will be deemed to waive or modify any of the remaining provisions of the Agreement, which otherwise remains in full force and effect. Specifically, nothing in this DPA will affect any of the terms of the Agreement relating to Gem Software's limitations of liability, which will remain in full force and effect.

9.2   In the event of a conflict or inconsistency between the terms of this DPA and the terms of the Agreement, the terms of this DPA will prevail.

ANNEX 1

DETAILS OF THE PROCESSING OF CUSTOMER PERSONAL DATA

Subject matter and duration of the Processing of Customer Personal Data

The subject matter of the Processing of Customer Personal Data is the use of and access to the Service by the Customer in accordance with the Agreement.

The duration of the Processing of Customer Personal Data is the Term, subject to clauses 8 of this DPA

The nature and purpose of the Processing of Customer Personal Data

The Processing of Customer Personal Data provided by Customer to Gem Software for the purposes of providing the Service to the Customer.

The categories of data subject to whom the Customer Personal Data relates

● Candidates

● Prospective Candidates

● Employees

The types of Customer Personal Data to be processed

● Name

● Profile photo

● Social media profile identifiers

● E-mail address

● Phone number

● Education history

● Employment history

● Resume

● Employment applications

● Home address

- Interview feedback

- Interview decisions

- Offer information

- Any other information in the Customer's Applicant Tracking System

- Employee email content, contacts, and calendar

<u>The obligations and rights of the Customer</u>

The obligations and rights of the Customer are as set out in this DPA and the Agreement.

ANNEX 2

Technical and Organisational Security Measures

1. Access control to premises and facilities

Unauthorized access (in the physical sense) must be prevented.

Technical and organizational measures to control access to premises and facilities, particularly to check authorization. The below measures apply to our cloud provider, which stores data for us.

● Cloud data centers are housed in nondescript facilities.

● Physical access is strictly controlled

● Authorized staff must pass two-factor authentication to access data center floors.

● All visitors and contractors are required to present identification and are signed in and continually escorted by authorized staff.

2. Unauthorized control to systems

Unauthorized access to IT systems must be prevented.

Technical (ID/password security) and organizational (user master data) measures for user identification and authentication:

● Password procedures (incl. minimum length)

● Single Sign On

● 2 Factor Authentication

● Encryption of data media

3. Disclosure control

Aspects of the disclosure of personal data must be controlled: electronic transfer, data transport, transmission control, etc.

Measures to transport, transmit and communicate or store data on data media (manual or electronic) and for subsequent checking:

● Encryption

● Logging

● Transport security

4. Job control

Commissioned data processing must be carried out according to instructions.

Measures (technical/organizational) to segregate the responsibilities between the controller and processor

● Criteria for selecting the processor

● Monitoring of contract performance

5. Availability control

The data must be protected against accidental destruction or loss.

Measures to assure data security (physical/logical):

● Backup procedures allowing for (at least) weekly backups and verification of such procedures at least every six months

● Uninterruptible power supply (UPS)

● Remote storage