QUALIFIED

Conversational Selling Platform

For

AppDynamics LLC

Created by:

Anthony Parolini

AppDynamics

Prepared for:

Jaclyn Rose

AppDynamics

QUALIFIED

Order Form #2

Add-On Subscription

Name	Price	QTY	Subtotal
Qualified Chat User	$1,200.00	10	$12,000.00

Subtotal	**$12,000.00**
Discount	**-$2,400.00**
Total	**$9,600.00**

Additional Notes & Terms

- Signed Order Form by 09/30/2021

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Order Summary

Start Date	September 30, 2021
End Date	July 30, 2022
Subscription Term	10 Months (To Co-Terminate with Order From #1)
Payment Terms	Net 60
Billing Frequency	Full Amount To Be Paid In Advanced
Auto-Renew	No

Add-On Order Subscription Fees (USD)	$9,600.00
Less Prorated Amount Paid (USD)	($1,600.00)
Total to be invoiced September 30, 2021	**$8,000.00**

 QUALIFIED

Customer & Billing Information

Company Legal Name: AppDynamics LLC

Primary Contact   Evelyn Lin

Primary Email   evelyn.lin@appdynamics.com

Billing Contact   Accounts Payable

Billing Email   accountspayable@appdynamics.com

Billing Address

303 second street, North Tower, Eighth Floor   San Francisco

CA   94107

Purchase Order Required? Yes

Purchase Order Number (If required):

Subscription Terms and Conditions

Once this Order Form is executed by both Parties, the following terms (collectively, the

Agreement) govern your use of the Services (a) This Order Form, (b) Terms of Service attached

hereto as Attachment A dated August 3, 2021.

QUALIFIED

Accepted By:

Qualified

AppDynamics LLC

DocuSigned by:

Eric Sikola

E6F7F77204CB462...

DocuSigned by:

Alex Ghita

920A068400C9454...

Eric Sikola

Alex Ghita

President

General Counsel

Qualified.com, Inc. Terms of Service

August 3, 2021

These Qualified.com, Inc. Terms of Service (the "Agreement") shall govern any services provided by Qualified, including those identified in any Order Form (together, or individually, the "Services") operated by Qualified.com, Inc. ("Qualified", "us", "we", or "our") to AppDynamics LLC and its Affiliates (each a "Customer," "you", or "your"). The "Effective Date" of this Agreement is the date the Effective Date of the first Order Form referencing this Agreement.

1. Definitions

"Affiliates" means any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, for so long as such control exists. In the case of companies and corporations, "control" and "controlled" mean beneficial ownership of more than fifty percent (50%) of the voting stock, shares, interest or equity in an entity. In the case of any other legal entity, "control" and "controlled" mean the ability to directly or indirectly control the management and/or business of the legal entity.

"Customer Content" means content, data, and information, including text, graphics, videos, or other material, submitted, uploaded, imported, or otherwise provided to or through the Services by Customer or by a third party on behalf of or for the benefit of Customer, including Customer's customers and prospective customers and users of Customer Properties.

"Customer Properties" means Customer's websites, applications, or other offerings owned and operated by (or for the benefit of) Customer through which Customer uses the App.

"Documentation" means Qualified's then-current generally available documentation, specifications, user manuals, for the Services, which can be located at www.qualified.com/university or such other URL as Qualified may provide from time to time, as well as any documentation included in or attached to any Order Form or such other Services-related documents provided by Qualified to Customer.

"Invite Link" means the link through which Customer may sign up and make payment in order to receive Services.

"Laws" means all applicable local, state, federal and international laws, regulations and conventions, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data.

"Order Form" means the document describing the Services and fees to be paid by Customer and which incorporates this Agreement.

"Subscription Term" means the term for the Services set forth in the applicable Order Form or Invite Link.

"User" means an individual employee, consultant, contractor, or agent of Customer who has been authorized by Customer to use the Services on behalf of Customer and/or its affiliates.

2. General Commercial Terms

2.1 Access. Subject to the terms and conditions of this Agreement, we will provide you and your Affiliates with the right and license to access to the App for the duration of the Subscription Term. Customer may access and use the App solely for its own benefit and in accordance with this Agreement, the Documentation, and any scope of use restrictions designated in the applicable Order Form. Only Users may use and access the App, and Customer agrees that it is responsible for its User(s)'s compliance with this Agreement. Users of the Services must be under Customer's direction and control and use and access the Services only for Customer's internal benefit and subject to all terms and conditions of this Agreement (including but not limited to the restrictions set forth in Section 3.4 below ("Restrictions")). Customer shall be responsible for all known actions of all Users under this Agreement.

2.2 Fees and Payment. You agree to pay all fees for the Services as set forth on the applicable Order Form, unless you provide written notice of a dispute regarding such fees no later than thirty (30) days after the invoice date. The fees set forth in an Order Form are valid for the Subscription Term and thereafter may be subject to an automatic adjustment increase of up to three percent (3%) per year. Customer is responsible for paying all taxes, and all taxes are excluded from any fees set forth in the applicable Order Form. If Customer is required by Laws to withhold any taxes from Customer's payment, the fees payable by Customer will be increased as necessary so that after making any required withholdings, Qualified receives and retains (free from any liability for payment of taxes) an amount equal to the amount it would have received had no such withholdings been made.

2.3 Any and all payments you make to us for the Services are final and non-refundable. If we agree to accept your payment via invoice, full payment must be received within sixty (60) days from the invoice date. We will provide you with notice of non-payment of any undisputed amount due. Unless the full amount not in dispute has been paid, we may suspend your access to the Services thirty (30) days after such notice. We will not suspend the access to the Services

while you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

2.4 Payment of Outstanding Fees. Upon any termination or expiration of the Subscription Term, Qualified will invoice Customer for any outstanding fees for Customer's use of the Services during the Subscription Term and Customer shall pay such fees upon sixty (60) days from receipt of the invoice.

3. Customer Obligations, Limitations of Use, and Rights

3.1 Acceptable Use. You agree to comply with our Acceptable Use Policy.

3.2 Security. You are responsible for maintaining the confidentiality of any password and username you are given or select in connection with the Services, and you are responsible for all activities that occur under your password or account. You shall not share your password and username, or allow others to use them to access the Services. You agree to notify Qualified as soon as possible if you become aware of any unauthorized use of your password or username or any other breach of security.

Qualified represents and warrants that it (1) will maintain SOC 2 certification and a written information security program appropriate for the Services, (2) follows industry-standard policies and provides features and internal practices to protect the security and integrity of Customer's Confidential Information, and to detect and prevent intrusions to the Services, and (3) require obligations consistent with the foregoing of Qualified's providers related to the Services and ensure such providers are subject to appropriate information security diligence reviews. Qualified will notify Customer as soon as possible to security@appdynamics.com of

any actual Security Incident (as defined below) involving Customer data. For clarity, Customer data is Customer's Confidential Information.

The notification provided to Customer shall include, if known, and to Qualified's knowledge as of the time of notice: (i) the general circumstances and extent of any unauthorized access to Customer data or intrusion into the computer systems or facilities on or in which Customer data is maintained; (ii) which categories of Customer 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 Qualified learns of any such actual Security Incident. Qualified shall not delay its notification to Customer beyond forty-eight (48) hours for any reason, including, without limitation, investigation purposes. Qualified shall reasonably cooperate with Customer in investigating and responding to any actual Security Incident. "**Security Incident**" is when Qualified knows or has reason to know that: (i) Qualified has experienced an incident resulting in the unauthorized acquisition or unauthorized use of unencrypted Customer data, or encrypted Customer data and the confidential process or key that is capable of compromising the security, confidentiality or integrity of Customer data that creates a substantial risk of identity theft or fraud; or (ii) Customer data was acquired or used by an unauthorized person or used for an unauthorized purpose. In the event of any Security Incident, Qualified 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 Qualified's sole cost and expense, subject to the limitations in Section 9, 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.

3.4 Restrictions. Customer acknowledges that the Services constitute valuable property and trade secrets of Qualified and its service providers, and Customer and Users agree not to do or allow any of the following, without the express written authorization of Qualified: (1) make the Services available to, or use the Services for the benefit of, anyone other than yourself or the Users using the Services on your behalf; (2) sell, resell, license, sublicense, distribute, rent, lease the Services, or include any Services in a service bureau or outsourcing offering; (3) use the Services to send SPAM or store or transmit infringing, libelous, or otherwise unlawful, or tortious content, material, or data; (4) use the Services to store or transmit material or data on or through the Services in violation of law, including intellectual property laws and applicable privacy laws, or third-party rights including privacy rights, or any contract to which you are a party; (5) use the Services to store or transmit malicious or disruptive code; (6) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein; (7) attempt to gain unauthorized access to the Services or its related systems or networks; (8) permit direct or indirect access to or use of the Services in a way that circumvents a contractual usage limit; (9) frame or mirror any part of any Services, other than framing on your own internal intranets; (11) access or use the Services for benchmarking or similar competitive analysis purposes or in order to build a competitive product or service; (12) modify, translate, or create derivative works based on the Services or any underlying software or results provided through the Services; (13) decompile, disassemble, decipher, reverse-engineer or reverse assemble any portion of the Services, or otherwise attempt to derive any source code or underlying ideas or algorithms of the software of any other part of the Services (except to the extent such restriction is expressly prohibited by applicable statutory law); (14) remove or alter any trademark, logo, copyright or other proprietary notices associated with the Services; or (16) breach Qualified's Acceptable Use Policy. Qualified reserves the right, without limiting any other right or remedy, to suspend Customer's access (and therefore, all Users access) to and

use of the Services if Qualified or its service providers determine that Customer is engaging (or has engaged) in any of the prohibited activities set forth in this Section 3.4.

3.5. Compliance with Laws. Customer agrees to comply with all Laws in its use of the Services. Without limiting the generality of the foregoing, Customer will not engage in any unsolicited advertising, marketing, or other activities using the Services, including without limitation any activities that violate the Telephone Consumer Protection Act of 1991, CAN-SPAM Act of 2003, or any other anti-spam laws and regulations.

3.6 Deployment of Code. Subject to all of the terms and conditions of this Agreement, Qualified grants to Customer a worldwide, limited, non-transferable (except as provided in Section 12 (Assignment)), non-sublicensable, non-exclusive right and license during any applicable Subscription Term to copy JavaScript code provided to Customer by Qualified ("Qualified Code") in the form provided by Qualified on Customer Properties solely to support Customer's use of the App and otherwise in accordance with the Documentation and this Agreement. Customer must implement Qualified Code on the Customer Properties in order to enable features of the App. Customer will implement all Qualified Code in strict accordance with the Documentation and other instructions provided by Qualified. Customer acknowledges that any changes made to the Customer Properties after initial implementation of Qualified Code may cause the App to cease working or function improperly and that Qualified will have no responsibility for the impact of any such Customer changes.

3.7 Customer Content. You are responsible for the Customer Content that you post on or through the Services, including its legality, reliability, and appropriateness. By posting Customer Content on or through the Services, you represent and warrant that: (a) the Customer Content you post on or through the Services is yours (you own it) and/or you have the right to use it and the right to grant us the rights and license as provided in this Agreement; (b) the posting of your

Customer Content on or through the Services does not violate the privacy rights, publicity rights, copyrights, contract rights, or any other rights of any person or entity; (c) the Customer Content will comply with any and all Customer terms of service, privacy policies and other agreement(s) governing the Customer related to Customer Content; and (d) the Customer Content does not violate any Laws, including without limitation those related to data privacy or security.

3.8 Monitoring Customer Content. Qualified has the right but not the obligation to monitor Customer Content and Customer's use of the Services to determine compliance with the terms of this Agreement. Nevertheless, Qualified may monitor or review Customer Content as it chooses. Qualified reserves the right to remove, terminate access to, reject, restrict, or revise content that it deems inappropriate or otherwise objectionable for any reason whatsoever at any time, without prior notice and in Qualified's sole discretion, in the event a User is found or reasonably believed by Qualified to be infringing on a copyright or otherwise in violation of this Agreement. We take no responsibility and assume no liability for Customer Content you or any third-party posts on or through the Services.

3.9 Customer Proprietary Rights. You own and retain all the rights to your Customer Content and you are responsible for protecting those rights. This Agreement does not grant us any ownership rights to Customer Content. You grant us a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of and display the Customer Content as necessary to provide the Services, and as otherwise permitted by this Agreement. If you are using our Services on behalf of another party, then you represent and warrant that you have the sufficient and necessary rights and permissions to do so.

3.10 Feedback. Customer hereby grants to Qualified a royalty-free, worldwide, transferable, sublicensable, fully paid up, royalty free, irrevocable, and perpetual license to use and/or

incorporate into Qualified's products and services and exploit in any manner or media any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to Qualified's products and services. Qualified shall not identify Customer as the source of any such feedback without Customer's prior written consent.

4. Subscription Term and Termination

4.1 Term and Renewal. Your initial Subscription Term will be set forth in the Order Form.

4.2 Termination. If either party materially breaches any of its duties or obligations under this Agreement or an Order Form, and such breach is not cured within thirty (30) calendar days of the non-breaching party providing the breaching party of written notice of the breach, the non-breaching party may terminate this Agreement and/or the applicable Order Form, as applicable.

4.3 Effect of Termination or Expiration. Upon any expiration or termination of this Agreement, Customer will immediately cease any and all use of and access to all Services. Provided this Agreement was not terminated for Customer's breach, (i) Customer may retain and use internally copies of all reports exported from the Services prior to termination, and (ii) . Customer acknowledges that following termination it will have thirty (30) days to access and download any Customer Content input into any Service. After thirty (30) days Qualified will delete any such data as may have been stored by Qualified and will provide Customer with confirmation of such destruction. Except where an exclusive remedy is specified, the exercise by either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

4.4 Survival. All provisions of this Agreement, which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity, and limitations of liability.

5. Qualified Rights and Responsibilities

5.1 Qualified Proprietary Rights. You acknowledge that we retain all right, title, and interest in and to the Services, our name, logo, or other marks (the "Qualified Marks"), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. You agree that you will not use or register any mark, business name, domain name, or social media account name or handle which incorporates in whole or in part the Qualified Marks. In addition, information provided by Qualified as part of provision of the Services is the property of Qualified or used with permission. You may not distribute, modify, transmit, reuse, download, repost, copy, or use such information, whether in whole or in part, for commercial purposes or for personal gain, without express advance written permission from us.

6. Indemnification

6.1 Indemnification. Qualified will indemnify, defend, and hold you harmless against any claim made or brought by a third party against you (and your officers, directors, employees, agents, and Users), and any resulting damages or costs (including reasonable attorneys' fees) awarded by a court or included as part of a final settlement (each a "Claim"), against you alleging that your use of the Services in accordance with this Agreement or any Order Form infringes or misappropriates such third party's intellectual property rights. The foregoing obligations do not apply with respect to any Claim based on or arising from (a) your unauthorized or illegal use of

the Services, (b) your breach of this Agreement or any applicable Order Form or other contract between you and Qualified, or (c) your use of the Services combined with products, services, processes, content, or materials not supplied by Qualified. Qualified further agrees to defend, at its own expense, Customer from any and all claims, demands, suits, or proceedings brought against Customer by a third party to the extent such a claim arises from Qualified's breach of Section 7 (Confidentiality)).

You will indemnify, defend, and hold us harmless, at your expense, against any Claim brought against us (and our officers, directors, and employees) by a third party based upon or arising out of Customer Content, or any of the foregoing clauses (a) – (c). The indemnified party will promptly: notify the indemnifying party in writing of any such Claim; give the indemnifying party sole control of the defense or settlement of such a Claim except that (a) Customer may assist in the defense with counsel of its choice at its own expense; and provide the indemnifying party with any and all information and assistance reasonably requested by it in connection with the defense or settlement of the Claim. The indemnifying party shall not accept any settlement that (i) requires the indemnified party to make an admission of fault or wrongdoing; or (ii) imposes liability not covered by these indemnification provisions without the indemnified party's consent.

7. Confidentiality

7.1 Confidential Information. During the term of this Agreement, each party (the "Disclosing Party") may provide the other party (the "Receiving Party") with certain information regarding the Disclosing Party's business, technology, products, or services or other confidential or proprietary information (collectively, "Confidential Information"). "Confidential Information" means all information of a party ("Disclosing Party") disclosed to the other party ("Receiving

Party") that is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information and the circumstances surrounding the disclosure.

7.2 Protection of Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as agreed to by the Receiving Party or expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to those employees or independent contractors of such party who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, except as prohibited by law or by the order of a court or similar judicial or administrative body, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement.

7.3 Exceptions. The confidentiality obligations set forth in this section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its

rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

8. Limited Warranties

8.1 Limited Warranties. Qualified represents and warrants, for Customer's benefit only, (1) that the Services will be provided in a professional and workmanlike manner in accordance with industry standards and the applicable Documentation, (2) that the Services will not infringe or misappropriate the intellectual property or proprietary rights of any third party, or violate applicable law, (3) that Qualified has full power, right and authority to enter into this Agreement, to carry out its obligations under this Agreement and to grant the rights granted to Customer herein; and (4) that Qualified has not previously or otherwise granted nor will in the future grant any rights to any third party which conflict with the rights herein granted by Qualified. Qualified's sole liability (and Customer's sole and exclusive remedy) for any breach of this limited warranty will be, at no charge to Customer, for Qualified to use commercially reasonable efforts to correct the reported non-conformity, or if Qualified determines such remedy to be impracticable, either party may terminate the applicable Subscription Term, and Customer will receive as its sole remedy a refund of any fees Customer has pre-paid that are applicable to the period after such termination. The limited warranty set forth in this Section will not apply: (a) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity; or (b) if the error was caused by Customer's misuse or modifications to the Services or use of the Services in conjunction with third-party hardware, software, or services.

8.2 Warranty Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICES ARE PROVIDED "AS IS". FURTHER, EXCEPT AS PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. QUALIFIED MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING (A) THE SUITABILITY OR COMPLETENESS OF THE SERVICES, INCLUDING WHETHER THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; (B) THE RESULTS CUSTOMER MAY OBTAIN BY USING THE SERVICES; (C) THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS; OR (D) THE PRESERVATION OR MAINTENANCE OF THE CUSTOMER CONTENT WITHOUT LOSS OR CORRUPTION.

8.3 DATA PARTNER DISCLAIMER OF WARRANTIES. OUR DATA PARTNERS MAKE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, OF ANY KIND RELATED TO THE DATA PROVIDED IN CONNECTION WITH OUR SERVICES.

9. Limitation of Liability

9.1 CAPS. EXCEPT FOR EXCLUDED CLAIMS AND AS REFERENCED IN SECTION 9.4, EACH PARTY'S TOTAL AGGREGATE LIABILITY, WILL BE LIMITED TO THE SUM OF ALL FEES PAID AND PAYABLE BY CUSTOMER TO QUALIFIED IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE APPLICABLE CLAIM.

9.2 DISCLAIMER. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS, REVENUE, DATA,

OR BUSINESS OPPORTUNITIES, FAILURE OF SECURITY MECHANISMS, OR INTERRUPTION OF BUSINESS.

9.3 EXCLUSIONS. "EXCLUDED CLAIMS" MEAN ANY CLAIMS ARISING FROM OR RELATING TO A PARTY'S (A) INDEMNIFICATION OBLIGATIONS, (B) BREACHES OF CONFIDENTIALITY OTHER THAN DUE TO A DATA BREACH, OR (C) A PARTY'S VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

9.4 DATA BREACH CAP. THE CAP REFERENCED IN SECTION 9.1 SHALL NOT APPLY TO ANY CLAIMS ARISING FROM OR RELATING TO ALL QUALIFIED'S ACTUAL OR SUSPECTED DISCLOSURES, AND UNAUTHORIZED ACCESS, ACQUISITIONS OR MISUSES OF, ANY INFORMATION RELATING TO AN IDENTIFIED OR IDENTIFIABLE INDIVIDUAL ("DATA BREACH"). QUALIFIED'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS ARISING FROM OR RELATING TO ALL DATA BREACHES, COMBINED OR ITS BREACH OF SECTION 11.2 (DATA PROTECTION EXHIBIT), SHALL NOT EXCEED $1 MILLION USD.

9.6 Nature of Claims. The parties agree that the waivers and limitations specified in this Section apply regardless of the form of action, whether in contact, tort (including negligence), strict liability, or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed its essential purpose.

10. Dispute Resolution, Arbitration of Claims, and Class Action Waiver

10.1 Dispute Resolution. You may contact us at optout@qualified.com to address any concerns you may have regarding the Services. Qualified is able to resolve most concerns quickly to our Users' satisfaction. You and Qualified agree to use commercially reasonable best efforts through Qualified's internal dispute resolution processes to settle any dispute, claim, question,

or disagreement and engage in good faith negotiations, which shall be a condition to either party initiating a lawsuit or arbitration.

10.3 Venue. You and Qualified agree to submit to the personal and exclusive jurisdiction of and venue in the federal and state courts located in San Francisco County, California. You further agree to accept service of process by mail..

10.4 Injunctive Relief. Notwithstanding the above provisions, Qualified may apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction

11. Privacy Policy. Qualified shall comply with all applicable data privacy laws and its, DPA and privacy policy.

11.1 Privacy Policy. Please review our Privacy Policy, which also governs your use of the Services, to understand our practices regarding the information we collect about you through the Services. By using the Services, you indicate that you have read, understand and agree to the terms and conditions of our Privacy Policy, including its disclosures regarding collection, use, and disclosure of your information in accordance with our Privacy Policy.

11.2 Data Processing Addendum. Customer and Qualified agree to comply with Exhibit A: Data Protection Exhibit ("DPA").

12. General Provisions

12.1 Force Majeure. Neither party will be responsible for failure or delay of performance if caused by: an act of war, hostility or sabotage; act of God; electrical, internet or telecommunication outage that is not caused by the obligated party; government restrictions; epidemic, pandemic or governmental order; or other event outside the reasonable control of the obligated party. Each party will use reasonable efforts to mitigate the effect of a force majeure event.

12.2 Relationship of the Parties. The parties understand and agree that no joint venture, partnership, employment, or agency relationship exists between us.

12.3 Compliance with Laws. We will comply with all applicable laws in our provision of the Services and in our processing of Customer Content.

12.4 No Waiver. No delay in exercising any right or remedy or failure to object will be considered a waiver of such right or remedy, or of any other right or remedy. A waiver on one occasion shall not be a waiver of any right or remedy on any future occasion.

12.5 Severability. If any part of this Agreement or of an Order Form is determined to be invalid or unenforceable by applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement will continue in effect.

12.6 Notices. Notice to Qualified will be sent to the following email address: legal@qualified.com, and will be deemed delivered as of the date the notice is actually received. We will send you notices to legal@appdynamics.com. You must keep all of your account information current.

12.7 Entire Agreement. This Agreement (together with any Order Forms, Invite Links, DPA and Qualfied's Privacy Policy and Acceptable Use Policy) constitute the entire agreement between you and us regarding our Services and supersedes and replaces any prior agreements we might have had between you and us regarding the Services.

12.8 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld or delayed); provided, however, that either party may transfer or assign this Agreement (including all Order Forms and Invite Links), without the other party's consent, to an affiliate or in connection with a merger, acquisition, divestiture, spin off, corporate reorganization, change in control or similar such transaction or sale of all or substantially all of its stock or assets related to this Agreement, provided such party provides the other party of notice of such assignment promptly after the applicable assignment and transaction have been completed.

12.9 No Third-Party Beneficiaries. No person or entity not a party to the Agreement will be a third-party beneficiary.

12.10 Authority. Each party represents and warrants that (a) it has full corporate power and authority, and has obtained all corporate approvals, permissions, and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (b) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (c) the entering into and performance of this Agreement do not and will not conflict with any agreement, instrument, judgment, or understanding, oral or written, to which it is a party or by which it may be bound.

12.11 Precedence. In the event of a conflict of terms between this Agreement and any Order Form, the Order Form will control.

12.12 Governing Law. This Agreement and your relationship with us shall be governed and construed in accordance with the laws of the State of California, United States, without regard to its conflict of law provisions.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date last signed by the parties ("Effective Date") by their duly authorized representatives.

APPDYNAMICS LLC	**QUALIFIED.COM, INC.**
By: *Alex Ghita* (DocuSigned by, 920A068400C9454...)	By: *Eric Sikola* (DocuSigned by, E6F7F77204CB462...)
Name: Alex Ghita	Name: Eric Sikola
Title: Associate General Counsel	Title: President
Date: August 9, 2021	Date: August 9, 2021

EXHIBIT A
DATA PROTECTION EXHIBIT

This Data Protection Exhibit ("**DPE**") outlines the terms and conditions with which the Parties must comply with respect to processing Personal Data and applies to the extent that Qualified processes or has access to Protected Data in the Performance of its obligations to AppDynamics. This DPE is governed by the terms of the applicable agreement entered into by and between the Parties ("the **Agreement**") including, but not limited to any limitations or exclusions of liability set forth in the Agreement, and, together with the Agreement, comprises the complete agreement between the Parties. This DPE, together with the Agreement, is the complete agreement between the Parties and replaces any prior oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties expressed or implied, that are not specified herein. This DPE may only be modified by a written document executed by the Parties hereto.

1. <u>Definitions</u>.

"**APEC**" means the Asia Pacific Economic Cooperation, a regional economic forum established in 1989 to leverage the growing interdependence of the Asia Pacific. See www.apec.org for more information.

"**APEC Member Economy**" means the 21 members of APEC: Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei, Thailand, United States, and Vietnam.

"**Applicable Laws**" means any applicable country, federal, state, and local law, ordinances, statute, bylaw, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), compulsory guidance of a regulatory body with authority over the applicable Party, rule of court or directives, binding court decision or precedent, or delegated or subordinate legislation, each of the above as may be amended from time to time. Parties will comply with all laws, all licenses, permits and approvals required by any government or authority, and shall comply with all applicable laws, rules, policies and procedures. For avoidance of doubt, Applicable Laws includes data protection and privacy laws of each jurisdiction where an AppDynamics entity that is legally responsible for such Personal Data is established and those of each jurisdiction where such Personal Data is collected or otherwise processed.

"**Approved Jurisdiction**" means a member state of the European Economic Area, or other jurisdiction as may be approved as having adequate legal protections for data by the European Commission currently found here: http://ec.europa.eu/justice/dataprotection/internationaltransfers/adequacy/index_en.htm.g.

"**EEA**" or "**European Economic Area**" means those countries that are members of European Free Trade Association ("EFTA"), and the then current, post accession member states of the European Union.

"**Data Subject**" means the individual to whom Personal Data relates.

"**Information Security Incident**" means a successful or imminent threat of unauthorized access, use, disclosure, breach, modification, theft, loss, corruption, or destruction of information; interference with information technology operations; or interference with system operations.

"**Personal Data**" means any information that is about, or can be related to, an identifiable individual. It includes any information that can be linked to an individual or used to directly or indirectly identify an individual, natural person. Personal Data shall be considered confidential information regardless of the source. Personal Data is Protected Data.

"**Protected Data**" means administrative data, confidential information, customer data, financing data, support data, telemetry data, and all Personal Data.

2. <u>Default Standards</u>.

    2.1. The security measures referred to in this DPE shall include, at a minimum (i) SOC 2 certification and a written information security program (ii) routine risk assessments of Service Provider's information security program, (iii) regular testing and monitoring to measure and confirm the effectiveness of the information security program's key controls, systems, and procedures, and (iv) encryption of Special Categories of Data while during transmission, and storage. If encryption is not feasible, Qualified shall not store Personal Data on any unencrypted devices unless compensating controls are implemented. Further, Qualified shall protect all Personal Data stored on electronic databases, servers, or other forms of nonmobile devices against all reasonably anticipated forms of compromise.

    2.2. Qualified agrees that, in the event of a breach of this DPE, whether or not AppDynamics has an adequate remedy in damages, AppDynamics may be entitled to seek injunctive or equitable relief to immediately cease or prevent the use, processing, or disclosure of Personal Data not contemplated by the Service Provider's obligations to AppDynamics and/or this DPE and to enforce the terms of this DPE or enforce compliance with all Applicable Laws.

    2.3. Any ambiguity in this DPE shall be resolved to permit AppDynamics to comply with all Applicable Laws. In the event and to the extent that the Applicable Laws impose stricter obligations on the Qualified than under this DPE, the Applicable Laws shall prevail.

3. <u>Certifications</u>. Qualified must maintain the certifications listed in an applicable agreement between the Parties, if any, and Qualified shall recertify such certifications as reasonably required. If there is a material change in the requirements of a required certification or the nature of the Performance Qualified is providing, such that Qualified no longer wishes to maintain such certifications, the Parties will discuss alternatives and compensating controls in good faith. Qualified will notify AppDynamics if Qualified has failed or no longer intends to adhere to such certifications.

4. <u>Data Protection and Privacy</u>. The Parties agree that, for Personal Data, AppDynamics shall be the Data Controller and Qualified shall be the Data processor.

    4.1. AppDynamics shall in its use of Service Provider's products and/or services ("Products and/or Services"), comply with Applicable Laws, including maintaining all relevant regulatory registrations and notifications as required under Applicable Laws; ensure all instructions given by it to Qualified in respect of Personal Data shall at all times be in accordance with Applicable Laws; have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which AppDynamics acquired Personal Data, including providing any required notices to, and obtaining any necessary consent from, its employees, agents or third parties to whom it extends the benefits of the Products and/or Services; and keep the amount of Personal Data provided to Qualified to the minimum necessary for the performance of the Products and/or Services.

    4.2. If Qualified has access to or otherwise processes Personal Data, then Qualified shall implement and maintain commercially reasonable and appropriate physical, technical, and organizational security measures described in this DPE designed to protect Personal Data against accidental or unlawful destruction; accidental loss, alteration, unauthorized disclosure or access; all other unlawful forms of processing; and any Information Security Incident; take reasonable steps designed to ensure the reliability of its staff and that they are subject to a binding written contractual obligation with Qualified to keep the Personal Data confidential and any other person acting under its supervision who may come into contact with, or otherwise have access to and process Personal Data; and require that such personnel are aware of their responsibilities under this DPE and any Applicable Laws (or Service Provider's own written binding policies that are at least as restrictive as this DPE); appoint data protection lead(s). Upon request, Qualified will provide the contact details of the appointed person and assist AppDynamics as reasonably needed to respond to requests from supervisory authorities, data subjects, customers, or others to provide information (including details of the Services provided by Service Provider) related to Service Provider's processing of

Personal Data. Qualified further agrees to:

a) Not transfer Personal Data from the EEA or Switzerland to a jurisdiction which is not an Approved Jurisdiction, unless it first provides AppDynamics advance notice and an opportunity to object; if AppDynamics reasonably objects to the proposed cross border transfer and the Parties do not mutually achieve an alternative, the applicable Performance that is the subject matter of the objection shall terminate. AppDynamics approves of transfers from the EEA or Switzerland to the United States.

Where Qualified processes Personal Data from the EEA or Switzerland on behalf of AppDynamics, Qualified shall perform such processing in a manner consistent with the Privacy Shield Principles (see www.commerce.gov/privacyshield) or its successor framework(s) (the "Principles") to the extent the Principles are applicable to Service Provider's processing of such data. If Qualified is unable to provide the same level of protection as required by the Principles, Qualified shall promptly notify AppDynamics and cease processing. In such event, AppDynamics may terminate the applicable Performance of such processing by written notice within thirty (30) days.

b) For jurisdictions other than the EEA or Switzerland, not transfer Personal Data outside of the jurisdiction where the Personal Data is obtained unless permitted under Applicable Laws and it first provides AppDynamics advance notice and an opportunity to object; if AppDynamics reasonably objects to the proposed cross border transfer and the Parties do not mutually achieve an alternative, the applicable obligations that is the subject matter of the objection shall terminate. AppDynamics approves of transfers from jurisdictions other than the EEA or Switzerland to the United States.

Where Qualified processes Personal Data from an APEC Member Economy on behalf of AppDynamics, Qualified shall perform such processing in a manner consistent with the APEC Cross Border Privacy Rules Systems requirements ("CBPRs") (see www.cbprs.org) to the extent the requirements are applicable to Service Provider's processing of such data. If Qualified is unable to provide the same level of protection as required by the CBPRs, Qualified shall promptly notify AppDynamics and cease processing. In such event, AppDynamics may terminate the applicable Performance of such processing by written notice within thirty (30) days.

c) If Qualified processes Personal Data in the course of Performance of its obligations to AppDynamics, then Qualified shall also:

- only process the Personal Data in accordance with AppDynamics's documented instructions, Appendix 1 of Attachment A and this DPE, but only to the extent that such instructions are consistent with Applicable Laws. If Qualified reasonably believes that AppDynamics's instructions are inconsistent with Applicable Laws, Qualified will promptly notify AppDynamics of such;
- if required by Applicable Laws, court order, warrant, subpoena, or other legal or judicial process to process Personal Data other than in accordance with AppDynamics's instructions, notify AppDynamics of any such requirement before processing the Personal Data (unless Applicable Laws prohibit such information on important grounds of public interest);
- only Process Personal Data on its systems or facilities to the extent necessary to Perform its obligations solely on behalf of AppDynamics and only for purposes contemplated by the Parties;
- maintain reasonably accurate records of the processing of any Personal Data received from AppDynamics under the Agreement;
- not lease, sell, distribute, or otherwise encumber Personal Data;
- provide reasonable cooperation and assistance to AppDynamics in allowing the persons to whom Personal Data relate to have access to their data and to delete or correct such Personal Data if they are demonstrably incorrect (or, if AppDynamics or AppDynamics's customer does

> not agree that they are incorrect, to have recorded the fact that the relevant person considers the data to be incorrect);
>
> ▪ provide such assistance as AppDynamics reasonably requests (either on its own behalf or on behalf of its customers), and Qualified or a Representative is reasonably able to provide, with a view to meeting any applicable filing or similar requirements in relation to Applicable Laws;
>
> ▪ promptly notify AppDynamics of any investigation, litigation, arbitrated matter, or other dispute relating to Service Provider's information security or privacy practices as it relates to Service Provider's Performance of its obligations to AppDynamics;
>
> ▪ provide such reasonable information and assistance as AppDynamics reasonably requires (taking into account the nature of processing and the information available to Service Provider) to AppDynamics in ensuring compliance with AppDynamics's obligations under Applicable Laws with respect to: security of processing; data protection impact assessments (as such term is defined by Applicable Laws); prior consultation with a supervisory authority regarding high risk processing; and notifications to the supervisory authority and/or communications to Data Subjects by AppDynamics in response to any Information Security Incident; and, on termination of the DPE for whatever reason, or upon written request at any time during the Term, Qualified shall cease to process any Personal Data received from AppDynamics, and within a reasonable period will, at the request of AppDynamics: (1) return all Personal Data; or (2) securely and completely destroy or erase all Personal Data in its possession or control unless such return or destruction is not feasible or continued retention and processing is required by Applicable Laws. At AppDynamics's request, Qualified shall certify to AppDynamics in writing confirming that it has fully complied with this clause.

5. <u>Standard Contractual Clauses for the processing of Personal Data</u>. If, and only with AppDynamics's prior consent, Qualified processes Personal Data from the EEA or Switzerland in a jurisdiction that is not an Approved Jurisdiction, the Parties shall confirm there is a legally approved mechanism in place to allow for the international data transfer. If Qualified intends to rely on Standard Contractual Clauses which is approved (rather than another permissible transfer mechanism), the following additional terms will apply to Qualified and Service Provider's subprocessors and/or Affiliates who may be Performing on behalf of the Service Provider:

   5.1. The Standard Contractual Clauses set forth in Attachment A will apply. If such Standard Contractual Clauses are superseded by new or modified Standard Contractual Clauses, the Parties shall promptly enter into the new or modified Standard Contractual Clauses, as necessary. If Qualified subcontracts any processing of Personal Data (only as expressly allowed by an applicable agreement between the Parties and Applicable Laws), Qualified will:

      a) Notify AppDynamics in advance of such processing and provide AppDynamics an opportunity to object prior to processing and if AppDynamics reasonably objects to the proposed cross border transfer and the Parties do not mutually achieve an alternative, the applicable Performance that is the subject matter of the objection shall terminate; and

      b) Require that Service Provider's subprocessors have entered into written agreements with Qualified in which the subprocessors agree to abide by terms consistent with the applicable portions of the Standard Contractual Clauses with respect to such Personal Data.

      c) If necessary to comply with Applicable Laws, and where requested by AppDynamics on behalf of its customers, Qualified shall enter into the Standard Contractual Clauses directly with AppDynamics's customers.

      d) AppDynamics approves of Qualified's current subprocessors identified at: https://www.qualified.com/legal/subprocessors

6. <u>Subprocessing</u>.

6.1. Qualified shall have a documented security program and policies that provide (i) guidance to its subprocessors with respect to ensuring the security, confidentiality, integrity, and availability of personal data and systems maintained or processed by Service Provider; and (ii) express instructions regarding the steps to take in the event of a compromise or other anomalous event.

6.2. Qualified shall not subcontract its DPE obligations to another person or entity, in whole or in part.

6.3. Qualified will execute a written agreement with such approved subprocessors containing terms at least as protective as this DPE and the applicable Exhibits (provided that Qualified shall not be entitled to permit the subprocessor to further subcontract or otherwise delegate all or any part of the subprocessor's processing without Service Provider's prior notice and opportunity to object) and designating AppDynamics as a third party beneficiary with rights to enforce such terms either by contract or operation of law. Further, if privity of contract is required by Applicable Laws, Qualified shall procure that any such subprocessors cooperates and enters into any necessary additional agreements directly with AppDynamics.

6.4. Qualified shall be liable and accountable for the acts or omissions of Affiliates' officers, directors, employees, agents, contractors, temporary personnel, subrocessors, subcontractors, and consultants to the same extent it is liable and accountable for its own actions or omissions under this DPE.

6.5. AppDynamics acknowledges and expressly agrees that Service Provider's Affiliates may be retained as subprocessors, and (b) Service Provider's Affiliates respectively may engage thirdparty subprocessors in the course of Performance. Qualified shall make available to AppDynamics a current list of subprocessors for the respective Services with the identities of those subprocessors ("Subprocessor List") upon AppDynamics's reasonable request. AppDynamics approves of Qualified's current subprocessors identified at www.qualified.com/legal/subprocessors.

6.6. Notification of Changes. Qualified shall notify AppDynamics in advance of any changes to the list of Subprocessors as set out in that exhibit. Objection. Within 30 days after Qualified's notification of the intended change, AppDynamics can object to the addition of a Subprocessor on the basis that such addition would cause AppDynamics to violate applicable legal requirements. AppDynamics's objection must be in writing and include any specific reasons for its objection and options to mitigate. If AppDynamics does not object within such period, the Subprocessor may be commissioned to Process AppDynamics Personal Data. If AppDynamics legitimately objects to the addition of a Subprocessor and Qualified cannot reasonably accommodate AppDynamics's objection, Qualified shall notify AppDynamics. AppDynamics may, in that case, terminate the affected Services by giving Qualified written notice within one month of Qualified's notice. Qualified shall refund a prorated portion of any pre-paid charges for the period after that termination date. Subprocessor Obligations. Qualified shall impose substantially similar data protection obligations as set out in this agreement on any approved Subprocessor before the Subprocessor begins processing any AppDynamics Personal Data.

7. Rights of Data Subjects.

7.1. Data Subject Requests. Qualified shall, to the extent legally permitted, promptly notify AppDynamics if it receives a request from a Data Subject for access to, correction, portability, or deletion of such Data Subject's Personal Data. Unless required by Applicable Laws, Qualified shall not respond to any such Data Subject request without AppDynamics's prior written consent except to confirm that the request relates to AppDynamics. In addition, Qualified shall provide such information and cooperation and take such action as AppDynamics reasonably requests in relation to a Data Subject request.

7.2. Complaints or Notices related to Personal Data. In the event Qualified receives any official complaint, notice, or communication that relates to Service Provider's processing of Personal Data or either Party's compliance with Applicable Laws in connection with Personal Data, Qualified shall

        promptly notify AppDynamics and, to the extent applicable, Qualified shall provide AppDynamics with reasonable cooperation in relation to any such complaint, notice, or communication. AppDynamics shall be responsible for any reasonable costs arising from Service Provider's provision of such assistance.

8. <u>Choice of Law</u>. The validity, interpretation, and performance of this DPE shall be governed by and construed under the laws of the State of California, United States of America, as if performed wholly within the state and without giving effect to the principles of conflicts of law. The Federal District Court, Northern District of California or the Superior Court of San Francisco County, California shall have exclusive jurisdiction over any claim arising under this DPE, provided that either Party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of such Party's intellectual property or proprietary rights.

9. <u>Attorneys' Fees</u>. In any suit or proceeding relating to this DPE the prevailing Party will have the right to recover from the other its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this DPE and shall survive expiration or termination and shall not be merged into any such judgment.

10. <u>No Waiver</u>. The waiver by either Party of any right provided under this DPE shall not constitute a subsequent or continuing waiver of such right or of any other right under this DPE.

11. <u>Assignment</u>. Unless otherwise expressly provided under this DPE, neither Party may assign this DPE or assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other Party; provided, however, that either Party may transfer or assign this DPE together with the Agreement, without the other Party's consent, to an affiliate or in connection with a merger, acquisition, divestiture, spin off, corporate reorganization, change in control or similar such transaction or sale of all or substantially all of its stock or assets related to this Agreement, provided such Party provides the other Party of notice of such assignment promptly after the applicable assignment and transaction have been completed. Except as provided herein, any attempt at such an assignment or delegation without the other Party's written consent will be void. The rights and liabilities of the Parties under this DPE will bind and inure to the benefit of the Parties' respective successors and permitted assigns.

12. <u>Severability</u>. If one or more terms of this DPE become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, each such part or term shall be null and void and shall be deemed deleted from this DPE. All remaining terms of this DPE shall remain in full force and effect. However, if this paragraph is invoked and, as a result, the value of this DPE is materially impaired for either Party, then the affected Party may terminate this DPE by written notice with immediate effect.

13. <u>Notices</u>. All notices required or permitted under this DPE shall be in writing. Notices will be deemed to have been given (i) one day after deposit with a commercial express courier specifying next day delivery; or (ii) two days for international courier packages specifying two-day delivery, with written verification of receipt. All communications shall be sent to the Parties' addresses below.

ATTACHMENT A
STANDARD CONTRACTUAL CLAUSES

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection (These can be located in their original text on the European Commission website.)

For purposes of this Attachment A: any reference to "data exporter" means AppDynamics, acting as data exporter on behalf of its EEA or Swiss customer(s) where applicable, and any reference to "data importer" means Qualified each a "party"; together "the parties".

The parties have agreed on the following Standard Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1. Definitions. For the Purposes of the Clauses.

"personal data", "**special categories of data**", "**process/processing**", "**controller**", "**processor**", "**data subject**" and "**supervisory authority**" shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

"**the data exporter"** means the controller who transfers the personal data;

"**the data importer**" means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

"**the subprocessor**" means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

"**the applicable data protection law**" means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

"**technical and organisational security measures**" means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2. Details of the Transfer.

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3. Thirdparty Beneficiary Clause.

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as thirdparty beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such thirdparty liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4. Obligations of the Data Exporter. The data exporter agrees and warrants:

1. that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

2. that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

3. that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Attachment A to this contract;

4. that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

5. that it will ensure compliance with the security measures;

6. that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

7. to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

8. to make available to the data subjects upon request a copy of the Clauses, with the exception of Attachment A, and a summary description of the security measures, as well as a copy of any contract

    for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

9.   that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

10. that it will ensure compliance with Clause 4(a) to (i).

Clause 5. Obligations of the Data Importer. The data importer agrees and warrants:

1.   to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

2.   that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

3.   that it has implemented the technical and organisational security measures specified in Attachment A before processing the personal data transferred;

4.   that it will promptly notify the data exporter about:

    4.1 any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,

    4.2 any accidental or unauthorised access, and

    4.3 any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;

5.   to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;

6.   at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;

7.   to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Attachment A which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;

8. that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;

9. that the processing services by the subprocessor will be carried out in accordance with Clause 11;

10. to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6. Liability.

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.

2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract of by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7. Mediation and Jurisdiction.

1. The data importer agrees that if the data subject invokes against it thirdparty beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject: (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority; (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8. Cooperation with Supervisory Authorities.

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

Clause 9. Governing Law.

The Clauses shall be governed by the law of the Member State in which the data controller is established.

Clause 10. Variation of the Contract.

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11. Subprocessing.

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.

2. The prior written contract between the data importer and the subprocessor shall also provide for a thirdparty beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such thirdparty liability of the subprocessor shall be limited to its own processing operations under the Clauses.

3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data controller is established.

4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12. Obligation After the Termination of Personal Data Processing Services.

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

**APPENDIX 1 TO ATTACHMENT A
THE STANDARD CONTRACTUAL CLAUSES**

This Appendix 1 forms part of the Clauses.

Data exporter. The data exporter is AppDynamics, acting as data exporter on behalf of itself or a customer where applicable. Activities relevant to the transfer include the performance of services for AppDynamics and its customer(s).

Data importer. The data importer is Service Provider. Activities relevant to the transfer include the performance of services for AppDynamics and customers.

Data subjects. The personal data transferred may concern the following categories of data subjects: Employees, contractors, business partners, representatives and end customers of customers, and other individuals whose personal data is processed by or on behalf of AppDynamics or AppDynamics's customers and delivered as part of the Services.

Categories of data. The personal data transferred may concern the following categories of data: Personal Data related directly or indirectly to the delivery of services or Performance, including online and offline customer, prospect, partner, and Qualified data, and personal data provided by customers in connection with the resolution of support requests.

Special categories of data. The personal data transferred may concern the following special categories of data: Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union memberships, and data concerning health or sex life, and data relating to offenses, criminal convictions or security measures.

Processing operations. The personal data transferred may be subject to the following basic processing activities, as may be further set forth in contractual agreements entered into from time to time between AppDynamics and customers: (a) customer service activities, such as processing orders, providing technical support and improving offerings, (b) sales and marketing activities as permissible under applicable law, (c) consulting, professional, security, storage, hosting and other services delivered to customers, including services offered by means of the products and solutions described by Service Provider, and (d) internal business processes and management, fraud detection and prevention, and compliance with governmental, legislative, and regulatory requirements.