



QSTAC PLATFORM SUBSCRIPTION AGREEMENT – ORDER FORM

This Order Form (“**Order Form**”) is made and entered into as of the effective date of the first Quote signed by Customer (“**Order Form Effective Date**”), by and between QSTAC, Inc. (“**QSTAC**”), and AppDynamics LLC (“**Customer**”). This Order Form is governed by the QSTAC Platform Subscription Agreement (“**Agreement**”), attached hereto. Unless otherwise defined herein, all capitalized terms will have the same meaning defined in the Agreement. In the event of conflict between the terms of the Agreement and this Order Form, the terms of the Agreement will govern.

1. Customer Name & Contact Information:

Business User Contact:

Name: Randy Guillem

Email: randy.guillem@appdynamics.com

Telephone: 628 263 7464

Account Payable Contact:

Name: Accounts Payable

Email: accountspayable@appdynamics.com

Telephone: _____

2. Subscription:

PO# (if applicable): _____

Product:	QSTAC App
Company Size (Participants):	2,500

3. Fees:

Fee Model: \$1.15 USD per participant, \$2,875 per month.

Fee Discount: \$975.00 USD per month off above price.

Fee Discount (If paid yearly): \$233.00 USD off already discounted quarterly price.

Total Fees (not to exceed): \$20,000 USD paid upfront. Invoices are due net-60 days upon receipt.

4. Term: The term of this Order Form commences on the Order Form Effective Date and ends twelve (12) months thereafter (the “Initial Term”).

QSTAC reserves the right to change the above Fees or applicable charges and to institute new charges and Fees at the end of the Initial Term or then-current Renewal Term, upon sixty (60) days’ prior notice to Customer (which may be sent by email).

AGREED AS OF the Order Form Effective Date.

QSTAC Inc.:

Signature: 

Written Name: Ben Brennan

Title: CEO

Date: June 14, 2021

AppDynamics LLC

Signature: 
 DocuSigned by:
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Written Name: Craig Wickersham

Title: General Counsel

Date: June 14, 2021

“Order Form Effective Date”



QSTAC PLATFORM SUBSCRIPTION AGREEMENT

This Platform Subscription Agreement (this “**Agreement**”), effective as November 25, 2020 (the “**Effective Date**”), is by and between QSTAC, Inc. (“**QSTAC**”) and AppDynamics LLC and its Affiliates who have executed a written Order Form with QSTAC (“**Customer**”). This Agreement includes and incorporates the Order Form attached above, and any additional Order Forms incorporated by reference. QSTAC and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**”. In consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. OVERVIEW.

1.1 General. This Agreement states the terms and conditions by which QSTAC will deliver and Customer or one of its Affiliates, as applicable, will receive any or all of the Subscription Services, as set forth on any applicable Order Form. The specific services to be provided hereunder are identified in the Order Form(s) signed by the Parties. Each Order Form submitted, accepted and executed by both parties is hereby incorporated by reference into this Agreement. If QSTAC and an Affiliate of Customer execute an Order Form, then this Agreement will govern such Affiliate’s use of the Subscription Services and “Customer” as used in this Agreement will refer to such Affiliate, solely with respect to such Order Form. This Agreement is intended to cover any and all Subscription Services ordered by Customer or its Affiliates and provided by QSTAC. Customer Affiliate entity, as named on any additional Order Form(s), will be held solely responsible for their own acts, commissions, and obligations as outlined in this Agreement.

1.2 Definitions.

(a) “**Affiliates**” means, with respect to a party, any entity which directly or indirectly controls, is controlled by, or is under common control with such party (where “control” means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity).

(b) “**Aggregate Data**” means any data that is derived or aggregated in deidentified form from (i) any Customer Materials; or (ii) Customer’s and/or its Authorized Users’ access and/or use of the Subscription Services, including, without limitation, any usage data or trends with respect to the Subscription Services.

(c) “**Authorized User**” means an employee or contractor whom Customer has authorized to access and use the Subscription Services.

(d) “**Customer Materials**” means all information, data, content and other materials, in any form or medium, that is submitted, posted, collected, transmitted or otherwise provided by or on behalf of Customer through

the Subscription Services or to QSTAC in connection with Customer’s access and/or use of the Subscription Services, but excluding, for clarity, Aggregate Data and any other information, data, data models, content or materials owned or controlled by QSTAC and made available through or in connection with the Subscription Services.

(e) “**Documentation**” means the operator and user manuals, training materials, specifications, minimum system configuration requirements, compatible device and hardware list and other similar materials in hard copy or electronic form if and as provided by QSTAC to Customer (including any revised versions thereof) relating to the Subscription Services, which may be updated from time to time upon notice to Customer.

(f) “**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), inventions, copyrights, trade secrets, know-how, data and database rights, mask work rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

(g) “**Order Form**” means a (i) mutually executed order form or other mutually agreed upon ordering document; (ii) purchase order issued by Customer and accepted by QSTAC in writing; or (iii) quote issued by QSTAC and accepted by Customer, in each case which references this Agreement and sets forth the applicable Subscription Services to be provided by QSTAC.

(h) “**Person**” means any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity.

(i) “**QSTAC IP**” means the Subscription Services, the underlying software provided in conjunction with the Subscription Services, algorithms, interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the Subscription Services, the Documentation, and Aggregate Data, all improvements, modifications or enhancements to, or derivative works of, the foregoing (regardless of



inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing.

(j) **“Subscription Services”** means QSTAC’s proprietary software-as-a-service platform, and all associated technology, in object code format only, which is made available by QSTAC to Customer pursuant to an Order Form and is intended to enable Customer to track and analyze the performance of its IT department, staff and services.

2. SUBSCRIPTION SERVICES; ACCESS AND USE.

2.1 Subscription Services. Subject to the terms and conditions of this Agreement, QSTAC hereby grants to Customer a limited, worldwide, non-exclusive, non-transferable (except in compliance with Section 10.6) right to access and use the Subscription Services during the Term of the Order Form, solely for Customer’s internal business purposes.

2.2 Restrictions. Customer will not knowingly permit any Person (including, without limitation, Authorized Users) to, directly or indirectly: (i) access or use the Subscription Services in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the Subscription Services or Documentation, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Subscription Services, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease any access or use of the Subscription Services to any other Person, or otherwise allow any Person to access or use the Subscription Services for any purpose other than for the benefit of Customer in accordance with this Agreement; (v) access or use the Subscription Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law; (vi) interfere with, or disrupt the integrity or performance of, the Subscription Services, or any data or content contained therein or transmitted thereby; (vii) access or search the Subscription Services (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Subscription Services features provided by QSTAC for use expressly for such purposes; or (viii) access or use the Subscription Services, Documentation or any other QSTAC Confidential Information for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or

technology that could, directly or indirectly, compete with the Subscription Services.

2.3 Authorized Users. Customer will not knowingly allow any Person other than Authorized Users to access or use the Subscription Services. Customer may permit Authorized Users to access and/or use the Subscription Services, *provided* that Customer ensures each Authorized User complies with all applicable terms and conditions of this Agreement. Customer will be responsible for all acts, omissions and obligations of Authorized Users in connection with the activities contemplated by this Agreement and/or the Subscription Services, as though such acts, omissions and/or obligations were those of Customer. Customer will, and will require all Authorized Users to, use all reasonable means to secure user names and passwords, hardware and software used to access the Subscription Services in accordance with customary security protocols, and will promptly notify QSTAC if Customer knows or reasonably suspects that any user name and/or password has been compromised.

2.4 Reservation of Rights. Subject to the limited rights expressly granted hereunder, QSTAC reserves and, as between the Parties will solely own, the QSTAC IP and all rights, title and interest in and to the QSTAC IP. No rights are granted to Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein.

2.5 Support. QSTAC will provide reasonable technical support to Customer by electronic mail and/or phone in connection with its use of the Subscription Services on weekdays during the hours of 9:00 a.m. to 5:00 p.m. Pacific Time, with the exception of U.S. federal holidays (“Support Hours”), subject to the following conditions: (i) prior to initiating any support request, Customer (and its own personnel responsible for information technology support) will have first attempted to resolve the issue generating the need for such support; and (ii) Customer will reasonably cooperate with QSTAC support staff as needed to resolve the issue. Customer may initiate a helpdesk ticket during Support Hours by emailing support@qstac.com or contacting Customer’s dedicated account manager.

2.6 Feedback. From time to time Customer or its employees, contractors, or representatives may provide QSTAC with suggestions, comments, feedback or the like with regard to the Subscription Services (collectively, **“Feedback”**). Customer hereby grants QSTAC a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with QSTAC’s business purposes, including, without limitation, the testing, development, maintenance and improvement of the Subscription Services.



3. FEES AND PAYMENT.

3.1 Fees. Customer will pay QSTAC the fees set forth in the relevant Order Form in accordance with the terms therein ("**Fees**"). Except as otherwise provided in the relevant Order Form, QSTAC will issue monthly invoices to Customer during the Term, and Customer will pay all amounts set forth on any such invoice no later than sixty (60) days after the date of such invoice.

3.2 Payments. Payments due to QSTAC under this Agreement must be made in U.S. dollars by check, wire transfer of immediately available funds to an account designated by QSTAC or such other payment method mutually agreed by the Parties. QSTAC reserves the right to suspend the Subscription Services with notice in the event of Customer non-payment of past due invoices.

3.3 Taxes. Customer is responsible for all sales, use, ad valorem and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by Customer to QSTAC hereunder, other than any taxes imposed on QSTAC's income. Without limiting the foregoing, in the event that Customer is required to deduct or withhold any taxes from the amounts payable to QSTAC hereunder, Customer will pay an additional amount, so that QSTAC receives the amounts due to it hereunder in full, as if there were no withholding or deduction.

4. CONFIDENTIAL INFORMATION.

4.1 Definition. As used herein, "**Confidential Information**" means any information that one Party (the "**Disclosing Party**") provides to the other Party (the "**Receiving Party**") in connection with this Agreement, whether orally or in writing, that is designated as confidential or that reasonably should be considered to be confidential given the nature of the information and/or the circumstances of disclosure. For clarity, the QSTAC IP will be deemed Confidential Information of QSTAC. However, Confidential Information will not include any information or materials that: (i) are at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party; (ii) are rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party; (iii) are rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the Disclosing Party; or (iv) are independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party.

4.2 Obligations. The Receiving Party will maintain the Disclosing Party's Confidential Information with the same degree of care used to protect its own Confidential Information, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement; *provided* that QSTAC may use and modify Confidential Information of Customer in deidentified form for purposes of developing and deriving Aggregate Data. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (i) to those employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such Confidential Information to perform under this Agreement and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement, or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.

4.3 Terms of Agreement. The terms and conditions of this Agreement will constitute Confidential Information of each Party but may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

5. CUSTOMER MATERIALS AND DATA.

5.1 Ownership. QSTAC acknowledges that, as between Customer and QSTAC and except as set forth in Section 5.2, Customer owns and retains all right, title and interest in and to all Customer Materials.

5.2 License. Notwithstanding anything in this Agreement to the contrary, Customer hereby grants to QSTAC (a) a non-exclusive, worldwide, royalty-free right and license to use, host, reproduce, display and perform publicly, and modify the Customer Materials solely for the purpose of hosting, operating, improving and providing the Subscription Services, and (b) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable right and license to use, host, reproduce, display and perform publicly, and modify the Customer Materials in the form of Aggregated Data solely for related internal operations and functions such as operational analytics and reporting, internal financial reporting and analysis, audit functions, archival, and other internal business purposes.

5.3 Data Security. Each Party will use commercially reasonable efforts and take no less than industry standard precautions to store, collect, transmit, handle and receive



all data received from the other Party in connection with this Agreement, and will cooperate with one another in good faith with respect to any issue, inquiry or incident involving the security of such data to the extent necessary to comply with applicable laws, rules and regulations including, without limitation, all applicable data protection and privacy laws. QSTAC will employ industry standard measures to test the Subscription Service to detect and remediate viruses, Trojan horses, worms, logic bombs, or other harmful code or programs designed to negatively impact the operation or performance of the Subscription Service.

QSTAC represents and warrants that it (1) will maintain SOC 2 certification and a written information security program appropriate for the Services, and (2) require obligations consistent with the foregoing of QSTAC's providers related to the Subscription Services and ensure such providers are subject to appropriate information security diligence reviews. QSTAC will notify Customer as soon as possible to security@appdynamics.com of any actual, suspected or threatened Security Incident (as defined below) involving Customer Data. For clarity, Customer Data is Customer's Confidential Information. The notification provided to Customer will include, if known, and to QSTAC'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 will be delivered promptly and in no event later than forty-eight (48) hours after QSTAC learns of any such actual, suspected or threatened Security Incident. QSTAC will not delay its notification to Customer for any reason, including, without limitation, investigation purposes. QSTAC will reasonably cooperate with Customer in investigating and responding to each successful or attempted security breach. "Security Incident" is when QSTAC knows or has reason to know that: (i) QSTAC 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 caused by or arising from QSTAC's breach of its obligations hereunder, QSTAC 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 QSTAC'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.

5.4 Authority. Customer represents and warrants that (a) it has obtained and will obtain and continue to have, during the Term, all necessary rights, authority and licenses for the access to and use of the Customer Materials (including any personal data provided or otherwise collected pursuant to Customer's privacy policy) as contemplated by this Agreement and (b) QSTAC's use of the Customer Materials in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligations between Customer and any third party.

6. REPRESENTATIONS AND WARRANTIES.

6.1 Warranties. Each Party hereby represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement and (ii) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party. QSTAC represents and warrants that the Subscription Services do not infringe or misappropriate a third party's Intellectual Property Rights, provided that Customer's sole remedy for the foregoing representation and warranty is set forth in Section 7.

6.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SUBSCRIPTION SERVICES AND OTHER QSTAC IP ARE PROVIDED ON AN "AS IS" BASIS, AND QSTAC MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ITS AUTHORIZED USERS OR TO ANY OTHER PARTY REGARDING THE QSTAC IP, THE SUBSCRIPTION SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, QSTAC HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, QSTAC



HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE SUBSCRIPTION SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

7. INDEMNIFICATION.

7.1 QSTAC Indemnification. Subject to Section 7.2, QSTAC will defend Customer against any claim, suit or proceeding (i) brought by a third party (“**Claims**”) alleging that Customer’s authorized access or use of the Subscription Services infringes or misappropriates such third party’s Intellectual Property Rights; and (ii) caused by QSTAC’s breach of QSTAC’s Section 4 (Confidential Information), and will indemnify and hold harmless Customer against any damages and costs awarded against Customer or agreed in settlement by QSTAC (including reasonable attorneys’ fees) resulting from such Claim.

7.2 Exclusions. QSTAC’s obligations under Section 7.1 will not apply if the underlying third-party Claim arises from or as a result of: (i) Customer’s breach of this Agreement, gross negligence, willful misconduct or fraud; (ii) any Customer Materials; (iii) Customer’s failure to use any enhancements, modifications, or updates to the Subscription Services that have been provided by QSTAC; (iv) modifications to the Subscription Services by anyone other than QSTAC; or (v) combinations of the Subscription Services with software, data or materials not provided by QSTAC.

7.3 IP Remedies. If QSTAC reasonably believes the Subscription Services (or any component thereof) could infringe any third party’s Intellectual Property Rights, QSTAC may, at its sole option and expense use commercially reasonable efforts to: (i) modify or replace the Subscription Services, or any component or part thereof, to make it non-infringing; or (ii) procure the right for Customer to continue using the Subscription Services. If QSTAC determines that neither alternative is commercially practicable, QSTAC may terminate this Agreement, in its entirety or with respect to the affected component, by providing written notice to Customer. In the event of any such termination, QSTAC will refund to Customer a pro-rata portion of the Fees that have been paid for the unexpired portion. The rights and remedies set forth in this Section 7 will constitute Customer’s sole and exclusive remedy for any infringement or misappropriation of Intellectual Property Rights in connection with the Subscription Services.

7.4 Customer Indemnification. Subject to Section 7.5, Customer will defend QSTAC against Claims alleging that any Customer Materials infringe or misappropriate such third party’s Intellectual Property Rights or are otherwise illegal and such illegality causes such third party harm, and

in each case, will indemnify and hold harmless QSTAC against any damages and costs awarded against QSTAC or agreed in settlement by Customer (including reasonable attorneys’ fees) resulting from such Claim.

7.5 Indemnification Procedures. The Party seeking defense and indemnity (the “**Indemnified Party**”) will promptly notify the other Party (the “**Indemnifying Party**”) of the Claim for which indemnity is being sought and will reasonably cooperate with the Indemnifying Party in the defense and/or settlement thereof. The Indemnifying Party will have the sole right to conduct the defense of any Claim for which the Indemnifying Party is responsible hereunder (*provided* that the Indemnifying Party may not settle any Claim that imposes a material obligation on the Indemnified Party without the Indemnified Party’s prior written approval. The Indemnified Party may participate in the defense or settlement of any such Claim at its own expense and with its own choice of counsel or, if the Indemnifying Party refuses to fulfill its obligation of defense, the Indemnified Party may defend itself and seek reimbursement from the Indemnifying Party.

8. LIMITATIONS OF LIABILITY.

8.1 Exclusion of Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE SERVICES OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE QSTAC IP OR THE PROVISION OF THE SUBSCRIPTION SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8.2 Total Liability. THERE IS NO LIMITATION ON DIRECT LOSS, CLAIMS OR DAMAGES ARISING OUT OF EITHER PARTY’S: (A) BREACH OF SECTION 4 (CONFIDENTIALITY) OR (B) OBLIGATIONS OF INDEMNITY UNDER SECTION 7 (INDEMNIFICATION). NOTWITHSTANDING THE ABOVE, QSTAC AND CUSTOMER’S TOTAL LIABILITY WILL NOT EXCEED THE GREATER OF (I) THE AMOUNTS PAID BY CUSTOMER TO QSTAC IN THE 12 MONTHS PRECEDING THE CLAIM, AND (II) FIFTY THOUSAND DOLLARS (\$50,000), REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT THE



OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8.3 Basis of the Bargain. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 8 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN QSTAC AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

9. TERM AND TERMINATION.

9.1 Term. The Term of this Agreement begins on the Effective Date and will continue until the expiration or termination of all Order Forms.

9.2 Termination. Either Party may terminate this Agreement or any Order Form, if the other Party materially breaches this Agreement, and such breach remains uncured fifteen (15) days after the non-breaching Party provides the breaching Party with written notice of such breach. Customer may terminate or reschedule this Agreement or any Order Form at any time, without cause, with thirty (30) days' notice to QSTAC. Upon termination of a relevant Order Form, QSTAC will provide Customer, within 30 days, a refund of any prepaid fees for the balance of any undelivered Services as of the date of termination.

9.3 Survival. This Section 9.3 and Sections 1, 2.2, 2.4, 2.6, 3, 4, 5.2(b), 6.2, 7, 8, 9.4, 10 survive any termination or expiration of this Agreement.

9.4 Effect of Termination. Upon expiration or termination of this Agreement: (a) the rights granted pursuant to Section 2.1 will terminate; and (b) each Party will return or destroy, at the other Party's sole option, all Confidential Information of the other Party in its possession or control, including permanent removal of such Confidential Information (consistent with customary industry practice for data destruction) from any storage devices or other hosting environments that are in such Party's possession or under such Party's control, and at the other Party's request, certify in writing to the other Party that such Confidential Information has been returned, destroyed or, in the case of electronic communications, deleted. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due or otherwise accrued through the effective date of expiration or termination or entitle Customer to any refund.

10. GENERAL.

10.1 Entire Agreement. This Agreement, including its Order Forms and exhibits, is the complete and exclusive agreement between the Parties with respect to

its subject matter and supersedes any and all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to its subject matter. This Agreement may be amended or modified only by a written document executed by duly authorized representatives of the Parties.

10.2 Notices. All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be sent to the address or email address set forth in the Order Form attached above or to such other address as may be specified by the relevant Party to the other Party in accordance with this Section 10.2. Such notices will be deemed given: (a) when delivered personally; (b) one (1) business day after deposit with a nationally recognized express courier, with written confirmation of receipt; (c) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) when sent by email, on the date the email was sent without a bounce back message if sent during normal business hours of the receiving party, and on the next business day if sent after normal business hours of the receiving party.

10.3 Waiver. Either Party's failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party granting the waiver.

10.4 Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the Parties, and the remaining provisions of this Agreement will remain in full force and effect.

10.5 Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of New York without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in New York, New York and the Parties irrevocably consent to the personal jurisdiction and venue therein.

10.6 Assignment. Customer will not assign or transfer this Agreement, by operation of law or otherwise, without QSTAC's prior written consent. Any attempt to assign or transfer this Agreement without such consent will be void. QSTAC may assign or transfer this Agreement



without Customer's consent to any third party. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the Parties and their respective successors and permitted assigns.

10.7 Equitable Relief. Each Party agrees that a breach or threatened breach by such Party of any of its obligations under Section 4 or, in the case of Customer, Section 2.2, would cause the other Party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other Party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

10.8 Force Majeure. Neither Party will be responsible for any failure or delay in the performance of its obligations under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, which may include, without limitation, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics (including but not limited to SARS-CoV-2 (COVID-19) or any mutation thereof), epidemics, public health emergencies, governmental orders and acts (including government-imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God.

10.9 *Intentional left blank, clause removed by mutual agreement*

10.10 Subcontracting. QSTAC may use subcontractors, and other third-party providers ("**Subcontractors**") in connection with the performance of

its own obligations hereunder as it deems appropriate; *provided* that the QSTAC remains fully responsible for the performance of each such Subcontractor.

10.11 Export Regulation. Customer will comply with all applicable federal laws, regulations and rules that prohibit or restrict the export or re-export of the Subscription Services or software, or any Customer Materials, outside the United States ("**Export Rules**"), and will complete all undertakings required by Export Rules, including obtaining any necessary export license or other governmental approval.

10.12 U.S. Government End Users. The Subscription Services, software and Documentation are "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and other relevant government **procurement** regulations. Any use, duplication, or disclosure of the software or its documentation by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement.

10.13 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to establish **any** partnership, joint venture or agency relationship between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other Party's prior written consent.

10.14 No Third-Party Beneficiaries. No provision of this Agreement is intended to confer any rights, benefits, **remedies**, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

10.15 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.



QSTAC Service Level Agreement ("SLA")

QSTAC will use commercially reasonable efforts to make QSTAC available with an Annual Uptime Percentage of at least 99.5% during the course of the Subscription Duration. In the event QSTAC does not meet the commitment, as Customer's sole remedy, Customer will receive a credit for an additional month of service.

"Subscription Duration" is the preceding 365 days from the date of an SLA claim.

"Annual Uptime Percentage" is calculated by subtracting from 100% the percentage of 5 minute periods during the Subscription Duration in which Customer's QSTAC Community was in the state of Unavailable. If Customer has been using QSTAC for less than 365 days, Customer's Subscription Duration is still the preceding 365 days but any days prior to Customer's use of the service will be deemed to have had 100% availability. Any downtime occurring prior to a successful service credit claim cannot be used for future claims. Annual Uptime Percentage measurements exclude downtime resulting directly or indirectly from any QSTAC SLA Exclusion.

"Unavailable" means Customer's QSTAC Community has no external connectivity during a five-minute period.

"QSTAC SLA Exclusions" are defined as the following: (a) downtime caused by factors outside of QSTAC's reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of QSTAC's hosted service; (b) downtime that result from any actions or inactions of Customer or any third party; (c) downtime as a result of regular maintenance/patch builds that are announce by email to Customer Administrators at least 48 hours in advance; (d) downtime as a result of significant upgrades or significant scheduled maintenance to QSTAC's software for which QSTAC has given notice; (e) downtime arising from QSTAC's suspension and termination of Customer's right to use QSTAC in accordance with the Agreement.

QSTAC will make an effort to keep any scheduled maintenance to low-traffic hours of the day and week. Any significant upgrades or significant scheduled maintenance to QSTAC's software will be preceded by email notification to all QSTAC customer Administrators.

QSTAC offers 24-hour email support, at support@qstac.com, for all Customer Administrators. Customer administrator's may also contact their assigned Account Manager by email. Response times on submitted email tickets are between 10 minutes and 24 hours.