



AMENDMENT 1 TERMS AND CONDITIONS DATED JULY 8, 2020

This Amendment No. 1 (this "Amendment") amends the Terms and Conditions dated as of July 8, 2020 (the "Agreement") by and between AppDynamics LLC ("AppDynamics") and Gem Software, Inc. ("Service Provider") (collectively, the parties), and is hereby made and entered into effective as of [DATE] (the "Amendment Effective Date").

Whereas, the parties wish to amend the contracting parties, in order to perform and receive services pursuant to the Agreement, and amend the governing law;

Therefore, the parties agree as follows:

1. Amendment Terms and Conditions.

1.1. Generally. Capitalized terms not otherwise defined herein shall be deemed to have the meanings set forth in the Agreement. The term "this Agreement" shall mean the Agreement as amended by this Amendment.

1.2. Amendment. The Agreement is hereby amended as follows:

a) Section 10 (MISCELLANEOUS) is hereby deleted and replaced in its entirety with:

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

or England, when AppDynamics International Ltd. is the contracting party, and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation.

- b) The term "AppDynamics" throughout the Agreement will be defined as follows: if Service Provider is located in North, South or Central America, AppDynamics will reference AppDynamics LLC, having its principal place of business at 303 Second Street, North Tower, 8th Floor, San Francisco, 94107;

if Service Provider is located outside of North, South or Central America, AppDynamics will reference AppDynamics International Ltd, a company registered in England and Wales under company number 09004916, whose registered address is 150 Aldersgate Street, London, EC1A 4AB, United Kingdom

- 1.3 Service Provider Affiliates (as defined below) will have the right perform services pursuant to this Agreement by submitting an Order Form and agreeing to be bound by this Agreement. Where an Affiliate performs services pursuant to this Agreement, references to each party in the Agreement shall be read as references to the Affiliate of each party stated on the SOW. If a Service Provider Affiliate performs services under this Agreement, then a separate Agreement will be deemed made between AppDynamics (or its Affiliate, as applicable) and such Service Provider Affiliate. "Affiliate" means, in relation to a party, any other entity that directly or indirectly controls, is controlled by, or is under direct or indirect common control with that party, or which is a wholly-owned subsidiary of that party.

2. Conflicts. In the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall govern. Except as expressly modified herein, the terms of the Agreement shall remain in full force and effect.
3. Authority. The person signing this Amendment for each party represents that s/he is duly authorized by all necessary and appropriate corporate action to enter into this Amendment on behalf of such party.
4. Law and Jurisdiction. The parties agree that this Amendment and any dispute arising hereunder shall be governed by the laws as indicated in the Agreement, as amended.

In Witness Whereof, the parties hereto have executed this Amendment as of the Amendment Effective Date.

Gem Software, Inc.:

Signature: _____

Name: _____

Title: _____

Date: _____

Joe Totten

VP Sales

November 23, 2020

DocuSigned by:

Joe Totten

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AppDynamics:

Signature: _____

Name: _____

Title: _____

Date: _____

Craig Wickersham

General Counsel

November 23, 2020

DocuSigned by:

Craig Wickersham

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