

Sofy Testing Service Terms of Service

EFFECTIVE DATE: SEPTEMBER 27, 2022

These SOFY Testing Service Terms of Service (these “Terms”) constitute an agreement between Quantyzd, Inc., a corporation organized and existing under the laws of the State of Washington (“Quantyzd”), and the customer set forth in an applicable Order (as defined below) (“Customer”). These Terms include, and incorporate by this reference, any ordering document between Quantyzd and Customer that specifically reference these Terms (“Order” and together with these Terms, the “Agreement”).

THE AGREEMENT TAKES EFFECT ON THE EFFECTIVE DATE SET FORTH IN AN ORDER, WHEN THE CUSTOMER CLICKS THE “ACCEPTED AND AGREED” BUTTON BELOW OR BY ACCESSING OR USING THE SERVICES (the “Effective Date”). BY ACCESSING AND/OR USING THE SERVICES AFTER THE EFFECTIVE DATE, CUSTOMER (A) ACKNOWLEDGES THAT CUSTOMER HAS READ AND UNDERSTANDS THE AGREEMENT; (B) REPRESENTS AND WARRANTS THAT CUSTOMER HAS THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THE AGREEMENT WITH QUANTYZD AND, IF ENTERING INTO THE AGREEMENT FOR AN ORGANIZATION, THAT CUSTOMER HAS THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (C) ACCEPTS THE AGREEMENT AND AGREES THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS.

IF CUSTOMER DOES NOT ACCEPT THESE TERMS, CUSTOMER MAY NOT ACCESS OR USE THE SERVICES.

1 Definitions

“Account” means a single user electronic account permitting Customer or Authorized Users to access and use the Services.

“Analytical Results” means the analytical results of Customer Data and Customer Software, alone and in combination with other data in the Services, based on Quantyzd’s proprietary modeling and analysis thereof, and other reports or other data analyses relating to same.

“Authorized User” means Customer employee or designee specified in any applicable Order who creates an Account and accesses and uses the Services solely for or on behalf of Customer for Customer’s internal business operations.

“Confidential Information” means any information that is proprietary or confidential to the Discloser or that the Discloser is obligated to keep confidential (e.g., pursuant to a contractual or other obligation owing to a third party). Confidential Information may be of a technical, business or other nature, including, but not limited to, information which relates to the Discloser’s technology, research, development, products, services, pricing of products and services, employees, contractors, marketing plans, finances, contracts, legal affairs, business affairs, or Intellectual Property Rights.

“Customer Data” means, except for Feedback, any data, content or information provided by Customer or any Authorized User to Quantyzd. This includes sensitive, confidential, or personally identifiable information that is transmitted by, processed in some way, or stored in electronic media.

“Customer Software” means the applications or other software owned (or licensed) used in connection with Customer’s access and use of the Services, including any package file submitted in connection with Customer’s use of the Services.

“Documentation” means the documentation relating to the Services furnished or made available by Quantyzd to Customer from time to time.

“Discloser” means a party that discloses any of its Confidential Information to the other party.

“Feedback” means information and feedback (including, without limitation, questions, comments, suggestions, or the like), whether given through the functionality of the Services or otherwise, regarding the performance, accuracy, features, functionality and overall Customer experience of the Services.

“Intellectual Property Rights” means any patent, copyright, trademark, service mark, trade name, trade secret, know-how, moral right or other intellectual property right under the laws of any jurisdiction, whether registered, unregistered, statutory, common law or otherwise.

“Recipient” means a party that receives any Confidential Information of the other party.

“Services” means the Sofy Application Testing Service, the Analytical Results, or any other services (excluding professional services, which are subject to different terms and conditions) to which the parties may agree in an Order.

“Quantyzd Marks” means any trademarks, service marks, service or trade names, logos, and other designations of Quantyzd and its affiliates.

“Quantyzd Parties” means Quantyzd and its affiliates, independent contractors and service providers, and each of their respective members, directors, officers, employees and agents.

“Unauthorized Use” means any use, reproduction, modification, distribution, disposition, possession, examination, inspection, viewing, disclosure or other activity involving the Services or Documentation of Quantyzd that is not expressly authorized under the Agreement or otherwise in writing by Quantyzd.

2 Services

(a) Services.

1. Subject to Customer’s compliance with the Agreement, Quantyzd hereby grants to Customer a limited, nonexclusive, nontransferable, nonsublicensable, revocable right during the Services Term (as defined below) to access and use of the Services specified in an Order solely for Customer’s internal business operations. These rights may not be sublicensed without Quantyzd’s prior written consent. Customer is responsible for all Authorized Users’ compliance with the Agreement.
2. Quantyzd will use commercially reasonable efforts to provide to Customer the Services that are described in each applicable Order agreed upon by the parties during the Services Term.
3. The Quantyzd Acceptable Use Policy, available [insert link] is hereby incorporated in its entirety into this Agreement. In the event of your material breach of the Acceptable Use Policy, Quantyzd may suspend or terminate its rendering of the Service in addition to such other remedies as Quantyzd may have at law.

(b) Paid and Trial Plans.

1. Quantyzd makes available the Services through paid plans (“Paid Plans”) and trial plans (“Trial Plans”). Current plans are described at <http://sofy.ai/pricing/> and Customer’s specific plan will be identified in the Order. Customer’s permitted scope of use (such as features available, permitted number of monthly tracked users and other usage limits) depends on the plan that Customer selects and will be specified on the applicable Order.

2. Paid Plans are provided for the Services Term designated on the applicable Order and, unless otherwise specified on the Order, each Services Term will automatically renew for the same period as the then-current Services Term unless either party gives the other written notice of termination at least 30 days prior to expiration of the then-current Services Term (e.g., monthly Paid Plans will automatically roll over month-to-month and annual Paid Plans will automatically renew for additional 12-month periods).
3. Under Trial Plans, Customer may use the Services solely to determine whether to purchase a Paid Plan, and, in the cases of Trial Plans, the Services Term will be 14 days unless otherwise specified in the Order. If Customer does not upgrade from a Trial Plan to a Paid Plan at the end of the Services Term of that Trial Plan, then Customer's access to the Services may be limited or suspended (to be determined at Quantyzd's sole discretion) until such time as Customer terminates the Agreement or converts to a Paid Plan.
4. Trial Plans may not include all features or functionality offered as part of Paid Plans, and Quantyzd reserves the right to add or subtract any features or functionality at any time for such plans. Quantyzd has the right to suspend or terminate a Trial Plan at any time for any reason.

(c) Restrictions; Limitations.

1. Except to the extent agreed to by the parties in the Order, Customer's access and use of the Services is limited to the sole purpose of testing and using the Customer Software. Customer may not use the Services in any manner or for any purpose other than as expressly permitted by the Agreement. Customer's use of any Services may be subject to any additional terms and conditions or limitations as may be set forth or referenced in the Order.
2. Without limiting the foregoing, the rights granted under this Section 2 do not include or authorize (unless otherwise set forth in an Order): (i) modifying, disassembling, decompiling, reverse engineering or otherwise making any derivative use of the Services or using or accessing Services to build a competitive product or service; (ii) using any data mining, robots or similar data gathering or extraction methods except as provided by the Services; (iii) performing or disclosing any benchmarking or performance testing of the Services; (iv) selling, licensing, renting, leasing, assigning, distributing, displaying, hosting, disclosing, outsourcing or otherwise exploiting the Services; or (v) using the Services other than for their intended use. The rights granted under this Section 2 are conditioned on Customer's continued compliance with the Agreement (including, without limitation, Authorized Users' compliance with the Agreement), and may, at Quantyzd's sole discretion, immediately and automatically terminate if Customer does not comply in all material respects with any term or condition of the Agreement.
3. Customer will treat all Services and Documentation as Confidential Information and will be solely responsible for all authorized and unauthorized use of the Services. Customer will promptly notify Quantyzd if it discovers or otherwise suspects any security breaches related to the Services, including any unauthorized use or disclosure of the Confidential Information or any other access credentials of a third party.

(d) Changes to Services. Quantyzd may change the features, functionality or other aspects of the Services without notice to the Customer, provided that such changes do not materially reduce the functionality of the Services.

(e) Suspension of Services. Notwithstanding Section 9(b)(ii) to the contrary, Quantyzd may, in its sole discretion, immediately suspend access to or use of the Services by Customer or any Authorized User if Customer or any Authorized User violates a material restriction or obligation of Customer or Authorized Users in the Agreement, or if in Quantyzd's reasonable judgment, the Services or Quantyzd's systems are about to suffer a significant threat to security or functionality. Quantyzd may, but is not required to, provide advance notice to Customer of any such suspension based on the nature of the circumstances giving rise to the suspension. Quantyzd will use reasonable efforts to re-establish the affected Services promptly after Quantyzd determines that the situation giving rise to the suspension has been cured. Quantyzd may terminate access to the Services if any of the foregoing causes of suspension are not cured within 30 days after Quantyzd's initial notice thereof. Any suspension or termination by Quantyzd under this Section 2(e) will not excuse Customer from its obligation to make payment(s) under the Agreement. Any suspension under this Section will remain in effect until the applicable breach, if curable, is cured.

(f) No Unauthorized Warranties. Quantyzd's warranty obligations to Customer and Authorized Users are limited to those specified in these Terms. Customer will not make or extend on behalf of Quantyzd any written or oral warranty with respect to the Services.

3 Eligibility; Registration; Data Practices

(a) Eligibility. Customer represents and warrants that it and all Authorized Users are not: (i) a resident of any country subject to a United States embargo or other similar United States export restrictions; (ii) on the United States Treasury Department's list of Specifically Designated Nationals; (iii) on the United States Department of Commerce's Denied Persons List or Entity List; or (iv) on any other United States export control list.

(b) Registration. Customer and, if applicable, each Authorized User, will need to register for an Account with Quantyzd. Each Authorized User Account may only be used by one person. Customer and, if applicable, each Authorized User that is invited to register for an Account will: (i) provide accurate, current and complete information when creating an Account; (ii) maintain and promptly update all Account information; (iii) do not share passwords with others and restrict access to the Account and their computer or mobile device; (iv) promptly notify Quantyzd if Customer or any Authorized User discovers or otherwise suspects any security breaches related to Customer's or such Authorized User's Account; and (v) accept responsibility for all Unauthorized Use and activities that occur under Customer's or such Authorized User's Account. Each Account login password should be chosen carefully and not contain any personal or other information that may be easily guessed by anyone else.

(c) Violations. Customer is responsible for all activity that occurs under its and Authorized Users' Accounts, its and Authorized Users' compliance with the Agreement and any use, misuse or Unauthorized Use (including by third parties) of Accounts, and Quantyzd reserves the right to terminate the Account of Customer or any Authorized User for any such Unauthorized Use. The acts or omissions of any Authorized User or third party under Customer's Account (including any Authorized User's Account) are considered the Customer's acts or omissions, as applicable.

4 Fees, Payments, and Taxes

(a) Fees. Customer will pay the fees for the Services set forth in an Order (collectively, the "Fees").

(b) Invoiced Payment.

1. The invoicing schedule varies based on the type of Service to which Customer is signing up, and is set forth in the applicable Order.
2. Unless otherwise set forth in an Order, Customer will pay invoiced Fees not otherwise subject to good faith dispute at the address or account for Quantyzd set forth on the applicable invoice within 30 days of Customer's receipt of the corresponding invoice. If Customer fails to make any such payment when due, without limiting Quantyzd's other rights and remedies: (A) Quantyzd may charge interest on the past due amount (not otherwise subject to good faith dispute) at the rate of 1.5% per month calculated daily and compounded monthly or,

if lower, the highest rate permitted under applicable law; (B) Customer will reimburse Quantyzd for all reasonable costs incurred by Quantyzd in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (C) if such failure continues for 30 days or more, Quantyzd may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

3. If Customer believes that Quantyzd has invoiced Customer incorrectly, Customer must contact Quantyzd no later than 60 days after the date of the invoice in which the claimed error or problem appeared, in order to receive an adjustment or credit, if any. Inquiries should be directed to info@Quantyzd.com.

(c) Pricing and Availability. All prices are shown in U.S. dollars and applicable taxes and other charges, if any, are additional. Quantyzd reserves the right to change the Fees or applicable charges and to institute new charges and Fees upon 30 days' prior notice to Customer (which may be sent by email).

(d) Taxes. Customer is responsible for any sales, duty or other governmental taxes or fees due with respect to the Services. Quantyzd will collect, and Customer will pay, applicable sales tax if Quantyzd determines that it has a duty to collect sales tax.

5 Warranties and Disclaimer

(a) Quantyzd represents and warrants that:

1. it will provide the Services with commercially reasonable care and skill and in material compliance with applicable laws;
2. there exists no agreement or restriction that would interfere with or prevent Quantyzd from entering into the Agreement or rendering Services described herein; and
3. the Services are regularly scanned for viruses, worms, Trojan horses or similar software, hardware, system, or combinations thereof with the potential to corrupt, interfere, or otherwise affect access to the Services.

(b) Customer represents and warrants that:

1. Customer Software will not cause any "in-application" (or "in-app") purchases to be executed during the rendering of the Service. If any "in-application" purchases are executed during the rendering of the Service, Customer will reimburse the full amount of such purchases to Quantyzd;
2. Customer Software will not cause any data and/or personally identifiable information of any end-users to be transmitted to Quantyzd in the rendering of the Services; and
3. if the Customer Software will cause any data and/or personally identifiable information of any end-users to be transmitted to Quantyzd in the rendering of the Services, Customer has obtained all end-user consents required by applicable law and that Customer uses such data or information only for the limited purposes for which the user has given Customer permission to do so.

(c) Disclaimer. EXCEPT AS SET FORTH IN SECTION 5(a): (i) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND QUANTYZD HEREBY DISCLAIMS, AND CUSTOMER HEREBY WAIVES AND RELEASES QUANTYZD FROM, ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES OR RESULTS OF THE SERVICES INCLUDING ANY WARRANTY THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY MATERIALS OR CUSTOMER DATA PROVIDED BY CUSTOMER OR A THIRD PARTY WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED; AND (ii) EXCEPT TO THE EXTENT PROHIBITED BY LAW, QUANTYZD AND ITS SUPPLIERS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OR TRADE PRACTICE.

6 Limitation of Liability

(a) Force Majeure. Neither party will be liable for, or be considered to be in, breach of or default under the Agreement on account of, any delay or failure to perform as required by the Agreement as a result of any cause or condition beyond such party's reasonable control (including, without limitation, any act or failure to act by the other party). This paragraph will not apply to any payment obligation of either party.

(b) Limitation of Liability. IN NO EVENT WILL ANY OF THE QUANTYZD PARTIES BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, OR ANY OTHER DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF USE, LOSS OF PROFITS OR LOSS OF DATA, WHETHER IN AN ACTION IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH (i) THE USE OF OR INABILITY TO USE THE SERVICES, INCLUDING ANALYTICAL RESULTS AND ANY INFORMATION, CONTENT AND MATERIALS CONTAINED IN OR ACCESSED THROUGH THE SERVICES, (ii) THE CUSTOMER'S USE OF THE ANALYTICAL RESULTS TO TAKE ACTION WITH RESPECT TO ANY CUSTOMER END USER OR (iii) THE PERFORMANCE OF SERVICES. IN NO EVENT WILL THE AGGREGATE LIABILITY OF ANY OF THE QUANTYZD PARTIES, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY, ARISING OUT OF OR RELATING TO THE AGREEMENT EXCEED THE COMPENSATION PAID BY CUSTOMER, IF ANY, TO QUANTYZD IN THE 12 MONTHS PRIOR TO THE DATE OF THE EVENT GIVING RISE TO LIABILITY.

7 Intellectual Property; Customer Data

(a) The Services; Analytical Results; Intellectual Property. As between Quantyzd and Customer, Quantyzd owns all right, title, and interest in and to the Services and the Analytical Results, together with all Intellectual Property Rights therein or thereto. Except as otherwise specified in this Section or in Section 2(a)(i) and Section 9(d)(i), Customer does not obtain any rights under the Agreement from Quantyzd to the Services or Analytical Results, including any related Intellectual Property Rights. Notwithstanding the foregoing, for Customers on any Paid Plans, Customer will own all right, title, and interest in and to the Analytical Results (excluding any of Quantyzd's Intellectual Property Rights or Confidential Information therein) to the extent Customer has generated such Analytical Results using the functionality of the Services.

(b) Feedback. Customer, Authorized Users, or any of their employees, contractors, or agents may voluntarily provide Quantyzd with Feedback. Customer will not provide any such Feedback to any third party without Quantyzd's prior written consent in each instance. Quantyzd will own, and Customer hereby assigns to Quantyzd, on Customer's behalf, and on behalf of Authorized Users or any of their employees, contractors, and agents, all exclusive rights, including, without limitation, all Intellectual Property Rights, in and to Feedback and Quantyzd will be entitled to the unrestricted use and dissemination of Feedback for any purpose without acknowledgment or compensation to Customer.

(c) Trademarks. As between Quantyzd and Customer, Quantyzd owns all right, title and interest in and to the Quantyzd Marks and any goodwill arising out of the use of the Quantyzd Marks will remain with and belong to Quantyzd and its licensors. The Quantyzd Marks may not be copied, imitated or used without the prior written consent of Quantyzd or the applicable trademark holder. Quantyzd may use Customer's name, logo, and marks to identify Customer as Quantyzd's customer on Quantyzd website and in other marketing materials.

(d) Customer Data.

1. As between Quantyzd and Customer, Customer retains all right, title and interest in and to any Customer Data. Except as provided in this Section 7, Quantyzd obtains no rights under the Agreement from Customer to the Customer Data, including any related Intellectual Property Rights. Quantyzd may collect usage data related to Customer's or its Authorized Users' use of the Services (such as, but not limited to, number of users, uptime, functional data, time spent using the Services, among others) (collectively "Usage Data"). Such Usage Data will be the sole property of Quantyzd and not considered Customer Data.
2. Notwithstanding any of the foregoing, Quantyzd reserves the right to: (A) disclose Customer Data and Analytical Results to its service providers and where required by applicable law or court order; (B) process Customer Data and Analytical Results in order to create de-identified or aggregated Customer Data ("Aggregated Data"); (C) copy, use, modify, distribute, display, disclose, and otherwise process Aggregated Data in connection with its business services and offerings; (D) copy, modify and use Customer Data and Analytical Results solely for internal operations and functions, including, but not limited to, operational analytics, machine learning, improvement of the Services (including training the machine learning algorithm to better perform the Services), reporting, internal financial reporting and analysis, audit functions and archival purposes; and (E) store Customer Data in the United States and other countries. Aggregated Data will be the sole property of Quantyzd and not considered Customer Data.

8 Indemnity

(a) By Customer. Customer will defend, indemnify, and hold harmless the Quantyzd Parties from and against all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party or Authorized User claim concerning: (i) Customer's or Authorized Users' Unauthorized Use of the Services, including any use of the Services other than as permitted under the Agreement; (ii) any Customer Software, Customer Data, or other data or content related to Customer or Authorized Users which Customer provides, uploads, or inputs into the Services; or (iii) the combination of the Customer Data with other applications, content or processes.

(b) By Quantyzd. Quantyzd will defend, indemnify, and hold harmless Customer from and against all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim that alleges (a) that Quantyzd has suffered a security breach as a result of its failure to meet its security obligations under the Agreement and such breach resulted in a loss of sensitive, confidential, or personally identifiable Customer Data, or (b) that the Services infringe the intellectual property rights of a third party. Quantyzd's indemnity obligations under this Section 8(b) do not apply to any claim resulting from: (i) Customer or any Authorized User acts or omissions; (ii) use not in accordance with the Agreement; (iii) modifications, damage, misuse or other action of Customer or any third party; (iv) use of the Services in combination with anything not provided by Quantyzd; or (v) any failure of Customer to comply with the Agreement.

(c) Procedure. For any claims under this Section 8, the indemnifying party will: (i) give the indemnified party prompt written notice of the claim; (ii) provide such assistance in connection with the defense and settlement of the claim as the indemnified party may reasonably request; (iii) obtain the indemnified party's written consent prior to (A) selecting and retaining counsel to defend against any claim under this Section 8 and (B) agreeing to any settlement; and (iv) comply with any settlement or court order made in connection with the claim.

9 Term & Termination

(a) Term. The term of the Agreement will commence on the Effective Date and will continue for the subscription term set forth in the applicable Order together with the renewal terms (if any) set forth in Section 2(b), unless and until terminated pursuant to the Agreement (the "Services Term").

(b) Termination.

1. Quantyzd may terminate the Agreement for convenience upon 30 days' prior written notice to Customer.
2. Either party may terminate the Agreement, effective on written notice to the other party, if the other party materially breaches the Agreement, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach.

(c) Updates. These Terms are operational in nature and may be modified at any time by Quantyzd. Quantyzd will take appropriate measures to inform Customer of modifications and will provide Customer the right and a 30-day window of time from the date of Quantyzd's notice of such modifications to review any proposed change, discuss it with Quantyzd, and terminate the Customer relationship without penalty if all parties cannot abide by the revisions. Once such 30-day period has expired, unless otherwise terminated, the modified Terms will apply to Customer's use of and access to the Services.

(d) Effect of Expiration or Termination. In the event of any expiration or earlier termination of the Services Term:

1. all of Customer's and each Authorized User's rights under the Agreement will immediately terminate (including the rights granted in Section 2(a)) and Customer and all Authorized Users will immediately cease any access or use of the Services; provided that Customer may retain a copy of the Analytical Results for its own internal business use in perpetuity after such termination;
2. if Quantyzd terminates the Agreement for material breach by Customer under Section 9(b)(ii), then Customer will remain responsible for the remaining balance of the Fees in Customer's Order and Customer must pay within 30 days all such amounts, as well as all sums remaining unpaid for other Orders under the Agreement plus related taxes and expenses;
3. If Customer terminates the Agreement for material breach by Quantyzd under Section 9(b)(ii), then Quantyzd will refund to Customer within 30 days of the effective date of termination any unused pre-paid Fees on a pro rata basis for the remaining Services Term.
4. Sections 1, 2(c), 3(c), 4, 5(c), 6, 7, 8, 9(d), 10, and 11 of these Terms, together with any other provisions that by their nature are intended to survive, will continue to apply in accordance with their terms.

10 Confidential Information.

Each party reserves any and all right, title and interest (including any Intellectual Property Rights) that it may have in or to any Confidential Information that it may disclose to the other party under the Agreement. The Recipient will protect Confidential Information of the Discloser against any unauthorized use or disclosure to the same extent that the Recipient protects its own Confidential Information of a similar nature

against unauthorized use or disclosure, but in no event will use less than a reasonable standard of care to protect such Confidential Information. The Recipient will use any Confidential Information of the Discloser solely for the purposes for which it is provided by the Discloser. This Section 10 will not be interpreted or construed to prohibit any use or disclosure of information: (a) that was known to Recipient prior to receiving the same from the Discloser in connection with the Agreement; (b) that is independently developed by the Recipient; (c) that is acquired by the Recipient from another source without restriction as to use or disclosure; (d) that is required by applicable law (e.g., pursuant to applicable securities laws or legal process), provided that the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof (e.g., so as to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information from any unauthorized use or disclosure); or (e) that is made with the written consent of the Discloser. In the event of any breach or threatened breach by the Recipient of its obligations under this paragraph, the Discloser will be entitled to injunctive and other equitable relief to enforce such obligations.

Upon expiration of the Services Term or expiration or termination of the Agreement for any reason, the Recipient will, upon request of the Discloser, return to the Discloser, or destroy (with written certification of the same), all copies of the Discloser's Confidential Information, except for archival and back-up copies on back-up tapes and if, and to the extent, the receiving party is required to retain such material under applicable laws or regulations.

11 Miscellaneous

(a) Independent Contractors. Each party is an independent contractor and not a partner or agent of the other. The Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the parties or as imposing any partnership or agency obligations or liability upon either party. Further, neither party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other party.

(b) No Third-Party Beneficiaries. The Agreement does not create any third-party beneficiary rights in any individual or entity that is not a party to the Agreement.

(c) Assignment. Customer may not assign the Agreement or any right, interest or benefit under the Agreement without prior written consent of Quantydzd. Any attempted assignment in violation of the foregoing will be void. Subject to the foregoing, the Agreement will be fully binding upon, inure to the benefit of and be enforceable by any permitted assignee.

(d) Nonwaiver. The failure of either party to insist upon or enforce performance by the other party of any provision of the Agreement, or to exercise any right or remedy under the Agreement or otherwise by law, will not be construed as a waiver or relinquishment of such party's right to assert or rely upon the provision, right, or remedy in that or any other instance; rather the provision, right or remedy will be and remain in full force and effect.

(e) Severability. If any provision of the Agreement is deemed unlawful, void or for any reason unenforceable, then that provision will be deemed severable from the Agreement and will not affect the validity and enforceability of any remaining provisions.

(f) Applicable Law. The Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington without reference to its choice of law principles to the contrary. Customer hereby consents to the jurisdiction and venue of the state and federal courts located in Seattle, Washington with respect to any claim arising under or by reason of the Agreement.

(g) Entire Agreement. The Agreement, together with any agreement, Order, or other policy or guideline referenced in the Agreement or these Terms, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to the subject matter hereof, superseding all prior or contemporaneous proposals, communications and understandings, oral or written.