

AFFINITY MASTER SUBSCRIPTION AGREEMENT



This Affinity Master Subscription Agreement (“MSA”) is a legal contract between the individual or entity listed on the Order as “Customer” (“Customer”), and Project Affinity, Inc., a Delaware corporation with a principal place of business at 170 Columbus Avenue Floor 3, San Francisco, CA 94133 (“Affinity”) for the Products and Services. Affinity and Customer shall herein be referred to individually as a “Party” and collectively as the “Parties”.

By copying, downloading, accessing, or otherwise using the Product(s), Customer agrees to be bound by the terms of this MSA. If Customer is an individual entering into this MSA on behalf of a company or other legal entity, such individual represents that they have the authority to bind that entity and its Affiliates to these terms and conditions; if such individual does not have such authority, or if such individual does not wish to be bound by the terms of this MSA, such individual must not install, access or use the Product(s). If Customer has a separately executed written agreement with Affinity for the Product(s), then that separate agreement will apply and this MSA will be of no force or effect with respect to those Product(s). The Effective Date of this MSA is the date Customer copies, downloads, accesses, or otherwise uses the Product(s). Notwithstanding anything to the contrary, Affinity reserves the right to modify this MSA from time to time for legal and compliance purposes and, should Customer reject such modification, Affinity reserves the right to terminate any outstanding Orders. Customer’s continued use of the Product(s) expressly constitutes acceptance of any such modification.

1. DEFINITIONS.

- 1.1. “Affiliates”: any entity in which a Party has the legal or practicable ability to procure compliance by such applicable entity with the terms and conditions of this MSA.
- 1.2. “DPA”: the Data Processing Addendum found at <https://www.affinity.co/legal/eu-uk-dpa> as of the Effective Date.
 - 1.2.1. “Affinity Data”: all data, records, documents, graphics, information, enrichment data, contact information, and other materials made available by Affinity to Customer through or relating to the Product, excluding Customer Data.
 - 1.2.2. “Aggregated Anonymous Data”: data submitted to, collected by, or generated by Affinity in connection with Customer’s use of the Product, but only in aggregate, anonymized form which can in no way be linked specifically to Customer, an end user, or any other person, and which does not contain identifiable Customer Data.
 - 1.2.3. “Customer Data”: all data and information (including, but not limited to, prospective deals of Customer) uploaded by Customer or its users into the Product, expressly excluding all Affinity Data and Aggregated Anonymous Data.
- 1.3. “Confidential Information”: any business and/or technical information that is received by Recipient from Discloser that a) is in written, recorded, graphical, or other tangible form and is marked "Confidential" or "Trade Secret" or similar designation; b) is in oral form and identified by Discloser as "Confidential" or "Trade Secret" or similar designation at the time of disclosure, with subsequent confirmation in writing within thirty (30) days of such disclosure; or c) is received under circumstances that should reasonably be interpreted as imposing an obligation of confidentiality. Customer Data shall constitute Confidential Information of Customer. Affinity Data shall constitute Confidential Information of Affinity.
 - 1.3.1. “Discloser”: the Party disclosing Confidential Information.
 - 1.3.2. “Recipient”: the Party receiving Confidential Information.
- 1.4. “Documentation”: the technical specification documentation generally made available by Affinity to its customers regarding the Products from time to time.
- 1.5. “Order”: a written order document executed by Customer and Affinity referencing this MSA and specifying the Products or Services purchased by Customer; or alternatively, a method within a Product to order additional Product(s).
 - 1.5.1. “Master Email”: the Customer’s email address listed on the most recent Order, or otherwise designated as an administrator email via the Product.
 - 1.5.2. “Product”: a subscription software-as-a-service (including any associated database content provided with or embedded within the software application, as well as the software to be deployed on physical and/or virtual resources) specified in an applicable Order.
 - 1.5.3. “Services”: any applicable professional, consulting, and training services as further defined in an Order.
 - 1.5.4. “Subscription Level”: the Product(s) usage limits as specified in an Order.
 - 1.5.5. “Subscription Term”: duration of Customer’s subscription to use the Products as specified in an Order.

- 1.6. “Third-Party Applications”: online, web-based applications, software, or services, and offline software products that are provided by third parties, and interoperate with the Product, including, but not limited to: Gmail, Outlook, and others.

2. ACCESS TO PRODUCTS.

- 2.1. Access Grant. During the Subscription Term and at the Subscription Level set forth in an Order, Affinity grants to Customer a non-exclusive, non-transferable right to use the Product in accordance with the Documentation and this MSA. The applicable Product Specific Terms set forth at <https://www.affinity.co/legal> will apply.
- 2.2. Third-Party Websites, Products, and Services. If Customer installs, requests, or enables Third-Party Applications for use with the Products, Customer agrees that Affinity may allow such third-party providers to access Customer Data as required for the interoperation of such Third-Party Applications with the Product, and any exchange of data or other interaction between Customer and a third-party provider is solely between Customer and such third-party provider.
- 2.3. Customer Obligations. Customer is responsible for: (i) all activities conducted under its (and its permitted Affiliates) credentials; (ii) only granting access to appropriate users; and (iii) its users’ compliance with this MSA. Customer will not (and will not permit any third party to):
- 2.3.1. use the Product to send, upload, or otherwise transmit any data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, which violates any third-party right, or is otherwise objectionable;
 - 2.3.2. upload or otherwise transmit, display, or distribute any Customer Data that infringes any trademark, trade secret, copyright, or other proprietary or intellectual property rights of any person;
 - 2.3.3. use the Product to upload or otherwise transmit any material that contains software viruses, or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment;
 - 2.3.4. use the Product to interfere with or disrupt the Product or networks connected to the Product;
 - 2.3.5. use the Product to violate any applicable law or regulation;
 - 2.3.6. attempt to reverse engineer, decompile, disassemble, or otherwise interrogate any libraries, data, or databases incorporated or provided with the Products, or attempt to derive the source code form or structure of the Product, or access (or use) the Product, including in order to build a competitive product or service, or copy any ideas, features, functions or graphics (including, but not limited to, user interfaces and customer flows) of the Product;
 - 2.3.7. access any libraries, data or databases incorporated or provided with the Products via any mechanism other than the Products;
 - 2.3.8. except as expressly permitted in this MSA, copy, license, sell, transfer, make available, lease, time-share, distribute, nor assign the Product to any third party;
 - 2.3.9. conduct vulnerability scanning or penetration testing of Affinity systems or the Product;
 - 2.3.10. publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Products or Documentation; or
 - 2.3.11. use the Product and/or Affinity Data (including any data arising in connection with or derived from Affinity Data, even if it has been de-identified or anonymized) for machine learning, predictive analytics, nature language processing, or other forms of analysis.
- 2.4. Feedback. If Customer provides Affinity with feedback, suggestions, solutions, improvements, corrections, or other contributions regarding any Products, Services, or Documentation, then Affinity may use and exploit that feedback without restriction or obligation to Customer, so long as Affinity does not publicly identify Customer as the source of such feedback. All such feedback is provided “AS IS”.

3. TERM.

- 3.1. MSA Term. This MSA is effective as of the Effective Date and will continue until terminated in accordance with its terms.
- 3.2. Termination for Cause. Either Party may immediately terminate any Order or this MSA if the other Party: (i) fails to cure a material breach of this MSA or an Order within thirty (30) days following receipt of written notice of such breach; (ii) ceases operation without a successor; (iii) seeks protection under any bankruptcy, insolvency, or comparable proceeding, or if any such proceeding is instituted against them (and is not dismissed within sixty (60) days thereafter); or (iv) materially violates the other Party’s intellectual property rights.
- 3.3. Effect of Expiration or Termination.
- 3.3.1. Upon termination or expiration of an Order, Customer will cease all use of Products listed in such Order. If Customer terminates pursuant to Section 3.2, Affinity will refund any pre-paid but unused fees for such Order. If Affinity terminates pursuant to Section 3.2, all fees committed under such Order will become immediately due and payable.
 - 3.3.2. While Customer has access to the Product, Customer may use the data export tools made available to Customer by Affinity via the Product to export Customer Data in a commonly readable format (i.e. CSV). Within forty-five (45) days of termination or expiration of the applicable Order, Affinity will delete Customer’s instance of the Product, including

Customer Data contained therein. Customer acknowledges that Customer will, after such deletion, permanently lose access to any such Customer Data.

4. FEES; PAYMENT TERMS.

- 4.1. Payment. Customer agrees to pay Affinity (in US Dollars) the fees indicated in each applicable Order within the payment period set forth in such Order. Fees are non-refundable (except as expressly set forth in this MSA) and non-cancellable. Any late payments may be subject to: (i) a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less; (ii) suspension of Customer's access to the Product upon email to the Master Email; and (iii) reimbursement of reasonable costs (including, but not limited to, reasonable attorneys' fees) where Affinity is required to take legal action to collect unpaid fees. If Affinity is required by Customer to use any invoicing portal or similar service to issue invoices, receive purchase orders, or otherwise contract with Customer, then any fees incurred by Affinity for Affinity's use of such portal or service will be billed back to Customer. If Customer makes payment using a credit card or direct debit, then Customer hereby consents to Affinity debiting that payment method for any future fees under this MSA.
- 4.2. Renewal. Following the Subscription Term set forth in an Order, such subscription will automatically renew for additional periods of one (1) year at a time (each a "**Renewal Term**"). Unless otherwise stated in an Order, fees for each Renewal Term will be equal to the fees payable during the immediately preceding year plus an uplift of: (i) up to five percent (5%); or (ii) greater than five percent (5%), provided Affinity gives Customer at least sixty (60) days' notice of such increase prior to the end of the then-current Subscription Term. At any point, either Party may give written notice of its election not to renew, provided such notice is provided no later than thirty (30) days prior to the end of the then-current Subscription Term.
- 4.3. Taxes. Fees are exclusive of taxes. Customer is responsible for payment of all sales, use, withholding, and similar taxes arising from or relating to an Order, except for taxes related to the net income of Affinity and any taxes or obligations imposed upon Affinity under federal, state, and local wage laws. Customer represents and agrees that the primary address, notwithstanding Customer's use of the Product elsewhere, where Customer uses the Product is the physical address listed on the Order (or, where not provided, Customer's billing address), and that Affinity may rely on such representation for tax purposes.

If Customer is required to withhold and pay any withholding tax imposed at source on any amount payable to Affinity under this MSA, then Customer will deliver to Affinity the original tax receipt or other proof of payment, and Customer's payment of the balance (after deducting any such withholding) will constitute payment in full of the amount owed by Customer to Affinity, and Customer will assist Affinity in recovering any withholding tax from the relevant tax authority.

5. CONFIDENTIALITY.

- 5.1. Confidential Information. During the term of this MSA and for so long as Confidential Information remains confidential, each Recipient shall not disclose (or permit its personnel to disclose) any Confidential Information of Discloser to any person or entity *except* to a director, officer, employee, outside consultant, or advisor (collectively "**Representatives**") who has a need to know such Confidential Information in the course of the performance of their duties for Recipient and who are bound by a duty of confidentiality no less protective of Discloser's Confidential Information than this MSA. Recipient and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of Discloser. Each Party will be responsible for the actions and omissions of its Representatives and shall protect the other Party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. Recipient shall promptly notify Discloser upon becoming aware of any unauthorized access or disclosure of Discloser's Confidential Information.
- 5.2. Exclusions. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from Discloser without any obligation of confidentiality; (ii) becomes known to Recipient directly or indirectly from a source other than one having an obligation of confidentiality to Discloser; (iii) becomes publicly known or otherwise publicly available, except through Recipient's (or its Representatives') breach of this MSA; or (iv) is independently developed by Recipient without use of Discloser's Confidential Information. Recipient may disclose Confidential Information pursuant to the requirements of applicable law, legal process, or government regulation, provided that it gives Discloser reasonable prior written notice (if legally permitted) to permit Discloser to contest such disclosure, and such disclosure is otherwise limited to the required disclosure. Any information, data, records, or other such materials made available by Affinity as part of the Product remain the exclusive property of Affinity.
- 5.3. Injunctive Relief. Notwithstanding any other provision of this MSA, both Parties acknowledge that any use of Discloser's Confidential Information in a manner inconsistent with the provisions of this MSA may cause Discloser irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, in addition to any other remedy to which Discloser may be entitled hereunder, at law or equity, Discloser shall be entitled to seek an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

6. WARRANTIES.

- 6.1. **Mutual Warranties.** Each Party expressly agrees, represents, and warrants that: (a) it is a duly organized entity in good standing or, as applicable, an individual authorized to operate in its applicable jurisdiction; (b) the individual signing on behalf of it is duly authorized to bind such Party; (c) it can grant the rights and perform the obligations contemplated herein; (d) it will comply with applicable laws that apply to its performance under this MSA; and (e) it will use industry standard measures intended to avoid introducing viruses, malicious code, or similar harmful materials into the Product.
- 6.2. **Performance Warranty.** Affinity represents and warrants to Customer that during the applicable Subscription Term, when used in accordance with this MSA and the Documentation, the Products will operate in substantial conformity with the Documentation. In response to a performance warranty claim, Affinity will either (a) use commercially reasonable efforts to provide Customer with an error-correction or work-around that corrects the reported non-conformity or (b) replace the non-conforming Products with conforming Products. If the parties determine such remedies to be impracticable within a reasonable period of time, either Party may terminate the part of the Order applicable to the non-conforming Products, and Affinity will refund any prepaid and unused fees for the non-conforming Products.
- 6.3. **Disclaimer.** AFFINITY DOES NOT REPRESENT OR WARRANT THAT PRODUCTS WILL BE ERROR-FREE, OR THAT ERRORS IN PRODUCTS WILL BE CORRECTED, OR THAT THE OVERALL SYSTEM THAT MAKES PRODUCTS AVAILABLE (INCLUDING BUT NOT LIMITED TO: THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. PRODUCTS ARE PROVIDED AS-IS, AND THERE ARE NO OTHER REPRESENTATIONS OR WARRANTIES (EXCEPT THOSE EXPRESSLY PROVIDED HEREIN) OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. AFFINITY HEREBY DISCLAIMS ALL OTHER WARRANTIES (EXPRESS OR IMPLIED).

7. LIMITATION OF LIABILITY.

- 7.1. **MUTUAL CONSEQUENTIAL DAMAGE EXCLUSION.** NEITHER PARTY WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOSS OF PROFITS OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND/OR DATA) IN CONNECTION WITH THE PRODUCT, OR THE PERFORMANCE OF ANY OBLIGATIONS UNDER THIS MSA, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THERE IS SUBSTANTIAL UNCERTAINTY AS TO WHETHER ANY OF CUSTOMER'S PARTICULAR OPPORTUNITIES THAT IT MAY UPLOAD TO THE PRODUCT WILL OR WILL NOT CLOSE, OR OTHERWISE PROVIDE A BENEFIT TO CUSTOMER. AS SUCH, AT NO TIME WILL AFFINITY BE LIABLE FOR LOST PROFITS OR LOST OPPORTUNITIES OF CUSTOMER.
- 7.2. **LIABILITY CAP.** EXCEPT FOR WILLFUL MISCONDUCT, FRAUD, GROSS NEGLIGENCE OR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 (INDEMNIFICATION) THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THIS MSA, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO AFFINITY UNDER THE ORDER FOR THE PRODUCT THAT FORMS THE SUBJECT OF THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE PROVISIONS OF THIS MSA ALLOCATE RISKS BETWEEN THE PARTIES. THE PRICING SET FORTH IN EACH ORDER REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN, AND THIS LIMITATION REPRESENTS A MATERIAL TERM UPON WHICH AFFINITY RELIED IN ENTERING INTO THIS MSA.

8. DATA.

- 8.1. **Affinity Data.** Customer acknowledges and agrees that as between Affinity and Customer, all right, title and interest in and to the Product, Services, and, in each case, including all modifications and configurations thereto, all Affinity Data and all of Affinity's proprietary technology, including, without limitation, all software, products, processes, algorithms, user interfaces, know-how, aggregate data, data warehouses, source code, plug-ins, integrations, data, techniques, designs and other tangible or intangible technical material or information made available to Customer by Affinity in providing or in connection with the Product and all derivatives thereof are and shall remain exclusively owned by Affinity or its licensors (as applicable). Notwithstanding anything to the contrary, Customer acknowledges and agrees that Affinity may (i) internally use and modify (but not disclose) Customer Data for the purposes of generating Aggregated Anonymous Data and providing the Product to Customer; and (ii) freely use and make available Aggregated Anonymous Data for Affinity's business purposes (including, without limitation, for purposes of improving, testing, operating, promoting, and marketing Affinity's products and services) so long as the same does not include Customer Data. Customer is expressly prohibited from using the Affinity Data for any purpose except those expressly permitted in this MSA.
- 8.2. **Customer Data.** Customer retains ownership of all right, title, and interest in and to all Customer Data during the term of this MSA, except that Customer hereby grants to Affinity a limited right to use Customer Data solely in connection with Affinity providing the Product to Customer. Affinity may not sell or otherwise improperly share Customer Data from the Product.

- 8.3. **Data Protection.** In the event and to the extent that Affinity is a Processor of Personal Data (as defined in the DPA) and such processing is subject to the certain Data Protection Laws (as defined in the DPA), the DPA is hereby incorporated into this MSA. Affinity will process Customer Data in accordance with the DPA, this MSA, and applicable law.
- 8.4. **Security.** Affinity maintains and deploys security and privacy processes and practices which take into account the nature and type of data that Customer is reasonably contemplated by this MSA to upload (such as contact information, prospects, and others) and will protect Customer Data using such processes and practices. Further, Affinity maintains its Trust Center (located at trust.affinity.co or such other URL or address as provided from time to time) where Customer may request further information or documentation on Affinity's security and data privacy practices, and Affinity shall comply with such practices set forth in the Trust Center.
- 8.5. **Improper Data.** Customer acknowledges and agrees that Affinity may, if Affinity believes or knows that any Customer Data is unlawful or violative of this MSA, delete, restrict, or otherwise modify Customer Data (such as deleting stolen data or de-syncing information which was obtained unlawfully). Affinity further reserves the right to suspend access to any particular user or account, delete any account generated by a user, and otherwise prevent the syncing of data for a particular user that Affinity knows or reasonably believes to be in violation of this MSA. Affinity reserves the sole discretion to permit or deny syncing from any particular email, domain, or user.
- 8.6. **Particular Types of Information.** The Product does not require, nor does Affinity request or permit: (i) any protected health information ("PHI") governed by the Health Insurance Portability and Accountability Act and its implementing regulations ("HIPAA"); (ii) any non-public consumer personally identifiable information or financial information governed by the Gramm-Leach-Bliley Act ("GLBA"); (iii) sensitive special categories of personal data as contemplated by Article 9 of GDPR; or (iv) payment card information covered by the Payment Card Industry Data Security Standards ("PCI DSS"). Customer should never disclose, nor allow to be disclosed, PHI or information protected by GLBA, PCI DSS, or other sensitive information to Affinity and, in the event of such disclosure, should promptly delete such sensitive information from the Product, and Affinity expressly reserves the right to remove such information should Affinity become aware of its inclusion in the Product. Customer acknowledges that Affinity does not take separate steps to ensure the Products are specifically compliant with HIPAA, GLBA, PCI DSS, or equivalent laws and regulations. All obligations of the aforementioned regulations remain solely with Customer. The Products are not intended for use with minors (as defined by applicable law), nor are minors permitted to use the Products.

9. INDEMNIFICATION.

- 9.1. **Affinity Indemnification.** Affinity will defend Customer, its Affiliates (which are subject to this MSA) and their respective officers, directors, and employees (collectively, the "**Customer Indemnitees**"), against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the Product infringes upon such third party's intellectual property rights (a "**Claim Against Customer**"), and will indemnify Customer Indemnitees from any damages (including reasonable attorney fees and costs) finally awarded against any of Customer Indemnitees as a result of, or for, amounts paid by under a court-approved settlement of a Claim Against Customer. If a Claim Against Customer is brought or, in Affinity's sole opinion, is likely to be brought, then Affinity will, at its sole option and expense: (A) obtain the right for Customer to continue using the Product; (B) replace or modify the affected Product so that it becomes non-infringing; or (C) upon notice to Customer, terminate the respective Order or Customer's use of the affected Product, provided that Affinity promptly refunds to Customer the prorated portion of any pre-paid but unused fees paid hereunder for the affected Product. Affinity's obligations in this Section do not cover Claims Against Customer to the extent such claims arise from: (i) any products, services, technology, materials, or data not created or provided by Affinity (including without limitation any Customer Data); (ii) any part of the Product made in whole or in part in accordance to Customer specifications; (iii) any modifications made after delivery by Affinity; (iv) any combination with other products, processes, or materials not provided by Affinity (where the alleged damages, costs or expenses arise from or relate to such combination); (v) Customer continuing the allegedly infringing activity after being informed of modifications that would avoid the alleged infringement; or (vi) Customer's use of the Product is not strictly in accordance with this MSA or any Documentation.
- 9.2. **Customer Indemnification.** Customer will defend Affinity, its Affiliates and their respective officers, directors, employees, and agents (collectively, the "**Affinity Indemnitees**") against any claim, demand, suit or proceeding made or brought against any or all of the Affinity Indemnitees by a third party that: (i) alleges that Customer Data, or any use thereof, infringes the intellectual property rights or other rights of any third party, or has caused harm to a third party; (ii) arises out of Customer's breach of Section 8 (Data); or (iii) Customer's misuse of the Product (each, a "**Claim Against Affinity**"), and will indemnify the Affinity Indemnitees from any damages, reasonable attorney fees, and costs finally awarded against the Affinity Indemnitees as a result of, or for any amounts paid under a court-approved settlement of a Claim Against Affinity.
- 9.3. **Indemnification Procedure.** Each Party's obligation to indemnify the other Party under this Section 9 (Indemnification) is conditioned on the indemnified Party: (i) promptly notifying the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed; (ii) allowing the indemnifying Party to solely control the defense of any claim, suit, or proceeding, and all negotiations for settlement; provided that the indemnifying Party shall not settle any claim that requires the indemnified Party to admit fault or that otherwise binds the indemnified Party without the indemnified Party's prior

written consent (such consent not to be unreasonably withheld or delayed); and (iii) giving the indemnifying Party reasonable assistance in the defense and settlement of any claim, suit, or proceeding for which indemnity is claimed, at the indemnifying Party's expense.

9.4. **Sole Remedy.** This Section states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of indemnity or defense claim described in this Section. For further clarity, if a claim is indemnified or defended hereunder it cannot then be claimed as damages separately (including, but not limited to, damages to a Customer's Affiliate).

10. EVALUATION. If Affinity provides a Product as a trial, evaluation, beta version, or proof of concept, or otherwise at no charge, then the following terms shall apply to such Product and take precedence in the event of any inconsistency between this Section 10 (Evaluation) and any other term or condition in this MSA: (a) Affinity grants Customer a worldwide, non-exclusive, revocable, non-transferable, non-sublicensable right to use the Product during the term and within the usage limits identified by Affinity solely for Customer's internal evaluation purposes; (b) the following Sections of this MSA shall not apply: (i) Section 9.1 (Affinity Indemnification); and (ii) Affinity's warranties in Section 6 (Warranties); (c) to the maximum extent permitted by applicable law, the Products are provided "as is" and Affinity disclaims all obligations or liability, including any statutory or implied warranty obligations, and in any event, Affinity's aggregate liability shall not exceed US \$100.00; and (d) in addition to (a) to (c) above, for any Product or feature made available as a beta version: (i) the beta Product is not an official product and has not been commercially released for sale by Affinity; (ii) the beta Product may not operate properly, be in final form, or fully functional; (iii) the beta Product may contain errors, design flaws, or other problems; (iv) Affinity is under no obligation to release a commercial version of the beta Product; (v) Customer's use of the beta Product shall be for evaluation and feedback purposes only.

11. MISCELLANEOUS.

11.1. **Entire Agreement.** This MSA is the complete and exclusive statement of the mutual understanding of the Parties, and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this MSA. The Parties agree that any additional or conflicting terms and conditions included in a Customer portal or purchase order shall have no force and effect and are hereby rejected. In the event of a conflict between the terms of this MSA and an Order, the terms of the Order will take precedence with respect to the subject matter of such Order.

11.2. **Assignment.** This MSA will bind and inure to the benefit of each Party's permitted successors and assigns. Neither Party may assign this MSA (or any part thereof) without the advance written consent of the other Party, except that either Party may assign this MSA in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such Party's assets or voting securities. No assignment will be effective until the assigning Party provides written notice of such assignment, including the assignee's written agreement to the terms of this MSA. Any attempt to transfer or assign this MSA except as expressly authorized under this Section will be null and void. Notwithstanding the foregoing, where Customer assigns this MSA to a surviving entity or purchaser, Customer must provide notice to legal@affinity.co and if, in Affinity's reasonable judgment such assignee is: a) of such a nature that it would be in immediate violation of this MSA; b) a party sanctioned by a government entity; or c) engaged in unlawful or competitive behavior, then Affinity may terminate this MSA within thirty (30) days of receipt of such notice.

11.3. **Governing Law.** This MSA shall be governed by and construed in accordance with the laws of the State of California, USA without regard to its conflict of law provisions.

11.4. **Disputes.** Any disputes between the Parties arising out of this MSA shall be resolved as follows: Members of the senior management of both Parties shall meet to attempt to resolve such disputes. If a dispute cannot be resolved within fifteen (15) days of such meeting, either Party may make a written demand for mediation. Within fifteen (15) days after such written demand, the Parties shall meet for one (1) day with an impartial mediator mutually selected by the Parties. If the Parties cannot come to a resolution, the Parties shall each select a mediator and those mediators shall select a third mediator who will mediate the dispute. The costs and expenses of the mediator shall be shared equally by the Parties. If the dispute is not resolved by mediation, the dispute shall be settled in the federal and state courts sitting in San Mateo County, California, U.S.A., which the Parties hereby agree will have proper and exclusive jurisdiction and venue with respect to any disputes arising from or related to the subject matter of this MSA and the Parties expressly consent to personal jurisdiction in such venue, provided that either Party may seek injunctive relief in any court of competent jurisdiction.

11.5. **Relationship of the Parties.** Affinity and Customer are independent contractors, and nothing in this MSA shall be construed as creating a partnership, joint venture, employment, franchise, or agency between the parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent. Customer acknowledges and agrees that the Products may provide results and conclusions based on facts, assumptions, data, material, and other information that Affinity has not independently investigated or verified. Inaccuracy or incompleteness of such facts, assumptions, data, material, and other information could have a material effect on conclusions reached by the Products; all actions taken or not taken by Customer based on the output of the Products are the responsibility of Customer.

11.6. **Master Email Address.** Affinity may expressly rely on the representations, requests, and instructions from the Master Email as being sent on behalf of Customer and its Affiliates.

- 11.7. Notices. Any notice, approval, request, authorization, direction or other communication under this MSA shall be given in writing to the following contacts for each Party:
- 11.7.1. If to Affinity: the contact information listed on the Order as “Notice Address and Email” and, in any event, with an electronic copy to legal@affinity.co.
- 11.7.2. If to Customer: the Master Email, the contact information listed on the Order as “Service Address and Email”, or the contact information provided via the Product.
- All notices shall be deemed effective when: (a) successfully delivered to the applicable physical address, if sent via certified physical mail; or (b) successfully delivered to a Party’s designated email address. Any notice must be sent via one of the foregoing methods. Each Party may change their address for notices via proper notice to the other Party. Affinity may provide notice via the Product.
- 11.8. Modifications to Products. Affinity may make upgrades, improvements, alterations, and other such modifications to the Product and, in particular, components of the Product, from time to time provided that such modifications do not materially degrade the cumulative functionality of the Product. The impediment, removal, or alteration of a particular individual feature or integration shall not, in and of itself, constitute a material degradation of the cumulative functionality.
- 11.9. Force Majeure. Except for Customer’s payment obligations, nonperformance by either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.
- 11.10. Publicity. Unless otherwise set forth in an Order, Customer hereby grants Affinity the right, during the Subscription Term, to list Customer’s name and display Customer’s logo in the customer section of Affinity’s website, and other marketing materials where Affinity lists its customers. Any other use in marketing or publicity by Affinity of Customer’s logo or trademark requires Customer’s prior written consent (such consent not to be unreasonably withheld).
- 11.11. Anti-Bribery. Each party represents and warrants that (i) in connection with this MSA, it has not and will not make any payments or gifts or any offers or promises of payments or gifts of any kind, directly or indirectly, to any official of any government or any agency or instrumentality thereof and (ii) it will comply in all respects with the Foreign Corrupt Practices Act, UK Bribery Act 2010, or any similar local laws.
- 11.12. Export. Each Party will comply with all applicable export laws and regulations of the United States and any other country with jurisdiction over the Products and/or either Party.
- 11.13. No Third-Party Beneficiaries; Survival. Nothing contained in this MSA is intended or shall be construed to confer upon any third person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a Party to any such person. Only the Parties hereto may enforce this MSA against the other Party including, without limitation, indemnitees. All rights and obligations of the Parties that by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of each Order, including, without limitation, restrictions, accrued rights to and obligations of payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability.
- 11.14. Waiver; Severability; Changes. Performance of any obligation required by a Party hereunder may be waived only by a written waiver signed by an authorized representative of the other Party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either Party to exercise any of its rights under this MSA will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this MSA will not affect the validity or enforceability of any of the other provisions hereof, and any invalid or unenforceable provision will be limited or eliminated to the minimum extent necessary so that this MSA will otherwise remain in full force and effect and enforceable. Affinity may update this MSA by providing reasonable notice, including by posting the update on Affinity’s website. If, in Affinity’s sole judgment, an update materially impacts Customer’s rights or obligations, Affinity will provide at least thirty (30) days’ notice before the update goes into effect, unless the update is necessary for Affinity to comply with applicable law, in which case Affinity will provide Customer with as much notice as reasonably possible. Any other updates will be effective on the date Affinity posts the updated MSA on its website. Customer’s continued use of, or access to, the Product after an update goes into effect will constitute acceptance of the update.