

ProjectMark

Platform Subscription Terms and Conditions

BACKGROUND

Brady Deane Group, Inc. (“ProjectMark”) has developed and makes available to the customer named on the Order Form (defined below) (“Customer”) on a subscription basis a proprietary software-as-a-service platform (together with applicable related services, interfaces and access provided by ProjectMark, the “Platform”) providing architecture, engineering and construction industry solutions to Customer including, as applicable, ProjectMark’s proposal management, digital asset management, project map portfolio management and customer relationship management solutions on the terms set forth in these Platform Subscription Terms and Conditions (“Platform Terms”). The Platform Terms are hereby incorporated into and a part of the Agreement between ProjectMark and Customer.

1 ACCESS TO PLATFORM; USE AND RESTRICTIONS

1.1 Platform Subscription; Related Services. During the Term (as defined below) ProjectMark will permit Customer to access the Platform for purposes of using the functionality subscribed to by Customer as identified in the applicable Order Form, solely for Customer’s internal business use and, where applicable, subject to the maximum number of Authorized Users set forth the applicable Order Form. Subject to these Platform Terms and the Agreement, ProjectMark hereby grants Customer a limited, nonexclusive, nontransferable, non-sublicensable right, during the Term, to access and use the portions of the Platform subscribed to by Customer solely for Customer’s internal business purposes, in accordance with the user documentation that ProjectMark makes generally available to users of the Platform (the “Documentation”). Customer is solely responsible for ensuring Customer’s own functional internet access and related technological functionality to access the Platform consistent with the Documentation. The provision of access to the Platform as described herein and in any Order Form, including a description of the aspects of the Platform Customer subscribes to and the fees payable for such services, along with any related services provided by ProjectMark, are referred to as the “Services.” If ProjectMark will perform implementation, customization, or other services in connection with this Agreement, they will be specified in the applicable Order Form. Such services and any associated deliverables shall be deemed included in the Services for purposes of ProjectMark’s representations and warranties, and the indemnification obligations set forth in this Agreement.

1.2 Order Forms. ProjectMark and Customer have entered into the Order Form in which these Platform

Terms are incorporated (the “Initial Order Form”) describing the Services subscribed to as of the execution of this Agreement. From time to time hereafter, Customer and ProjectMark may enter into additional Order Forms that expressly reference, and are governed by, this Agreement (“Future Order Forms”, and together with the Initial Order Form, each an “Order Form”) pursuant to which Customer will purchase rights to access and use certain features of the Platform and/or agree to additional services to be provided by ProjectMark. Such Future Order Forms are and will be incorporated by reference into this Agreement to create with respect to the rights and Services described in the applicable Future Order Form(s), in each case to the exclusion of any other terms or conditions that are implied by course of dealing. To the extent of any conflict between a term of these Platform Terms and an Order Form, the terms of the applicable Order Form shall control to the extent of such conflict.

1.3 Use Restrictions. Customer will not permit access to the Platform or other use of the Services via Customer’s account by anyone other than Authorized Users. Customer will be responsible and liable for compliance by all Authorized Users with these Platform Terms and the Agreement. Except as expressly permitted hereunder, neither Customer nor any Authorized User will, or will permit or authorize any third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Platform; (b) modify, translate or create derivative works based on, the Platform; (c) copy, rent, lease, distribute, pledge, assign or otherwise transfer or allow any lien, security interest or other encumbrance to be created or maintained with respect to the Platform; (d) use the Platform for the benefit of a third party, except as otherwise expressly authorized under this Agreement; (e) hack, manipulate or disrupt the integrity or performance of or otherwise attempt to gain unauthorized access to the Platform or its related systems, hardware or networks or any content or technology incorporated in any of the foregoing; or (f) remove or obscure any proprietary notices or labels of ProjectMark or its suppliers on the Platform, (g) access or use any areas or features of the Platform for which ProjectMark has not granted Customer access, or (h) encourage, authorize or enable anyone to do any of the foregoing. Without limiting the foregoing, Customer will comply with all restrictions set forth in Section 3 (Prohibitions and Use Policies) of ProjectMark’s Terms and Conditions ([see here](#)) (the “General Terms”). For avoidance of doubt, as stated in the General Terms, only provisions of the General Terms that are expressly referenced in this Agreement will apply to Customer in relation to the Services.

1.4 Accounts. In order to access and use the Platform, Customer will need to register and create an account (“Account”). Customer agrees to provide accurate, current and complete information about the Account, which includes all individual sub-accounts (each an “Authorized User Account”) established for each Authorized User. ProjectMark reserves the right to suspend or terminate the Account or any individual Authorized User Account if any information provided during the registration process or thereafter is or becomes inaccurate, false or misleading. Customer is responsible for maintaining the confidentiality of Customer’s passwords and Customer’s Account, including all usernames and passwords information assigned to its Authorized Users with respect to each Authorized User Account, and agrees to notify ProjectMark if any of the passwords are lost, stolen, or disclosed to an unauthorized third-party, or otherwise may have been compromised. Customer is responsible for all activities that occur under the Account, including the activities carried out by individual employees, contractors or others.

1.5 Modifications and Updates. ProjectMark reserves the right, at any time and from time to time, to modify or discontinue, temporarily or permanently, the Platform or any feature or functionality thereof, subject to an obligation to refund to Customer any fees paid by Customer for functionality that is discontinued or materially decreased during the Term. ProjectMark will use its best efforts to notify Customer of any upcoming system maintenance and/or service disruptions that may affect Customer’s ability to use the features of the Platform to which Customer has been granted access pursuant to this Agreement.

1.6 Third-Party Service Providers. Customer acknowledges that ProjectMark may engage agents, companies, subprocessors, subcontractors, and the like (“Third-Party Service Providers”) to perform services related to providing the Services set forth herein and the Platform described in an Order Form and otherwise. ProjectMark shall be responsible for the fulfillment of its obligations hereunder, notwithstanding the performance of any of its obligations by or the utilization of any Third-Party Service Providers. To facilitate and provide the Services, ProjectMark also may engage and employ Third-Party Service Providers including, without limitation, AI services/platforms thereof that may receive access to Customer Data (as defined below) in order to perform specific tasks on ProjectMark’s behalf and are obligated not to disclose or use Customer Data for any other purpose. For avoidance of doubt, the permitted use of Customer Data by such Third-Party Service Providers shall be limited to the purposes of performing the applicable services under such Third-Party Service Providers’ agreement with ProjectMark and related uses that shall in no event be broader than ProjectMark’s corresponding rights under this Agreement and shall

comply with ProjectMark’s Privacy and Security Policy ([see here](#)).

1.7 Contact Enrichment Information. ProjectMark hereby advises, and Customer acknowledges, that ProjectMark may obtain and include as part of the Services, whether integrated therein or added thereto, certain contact enrichment information via lead-generation services, related offerings, or otherwise (“CEI”) from one or more third-party providers (each, a “CEI Provider”) pursuant to separate agreement between ProjectMark and said CEI Provider(s). To the extent that Customer is or deemed to be an end user (or substantially similar term) of the products and services received by ProjectMark from any CEI Provider as a result of ProjectMark’s provision of the Services to Customer or this Agreement, including any license granted to Customer by a CEI Provider because of Customer’s receipt of the CEI through the Services under this Agreement, Customer hereby agrees to be bound by and comply with all CEI Provider terms and conditions which ProjectMark is subject to and that are applicable to Customer’s receipt and use of said CEI including, without limitation, all prohibitions on Customer’s resale or sublicensing of CEI or any CEI Provider product or service or on the Customer’s use thereof that competes with the CEI Provider. Customer shall be responsible for any and all liability of ProjectMark to any CEI Provider arising from or connected to Customer’s acts and omissions related to Customer’s receipt or use of such CEI. Notwithstanding or limiting the foregoing, the parties acknowledge and agree that ProjectMark so obtains, and may include in the Services, CEI from a CEI Provider doing business as Apollo.io (“Apollo”). Customer expressly agrees to be subject to and comply with Apollo’s Order Form and Reseller Addendum with ProjectMark along with all applicable Apollo terms of services ([see here](#)) as may be updated from time to time (“Apollo Terms”), which are hereby incorporated herein, including, but not limited to, Apollo Terms Sections 3 (Authorized Use / License Restrictions), 6 (Representations and Warranties), 8 (Indemnification), 9 (Limitation of Liability), and 10 (Confidentiality). Upon request, ProjectMark will provide Customer with a copy of any applicable CEI Provider terms and conditions.

2 OWNERSHIP; POSTED CONTENT; RESERVATION OF RIGHTS

2.1 Customer Data. Customer or its applicable licensors own the raw data, files, text, graphics, images, software, works of authorship, and information or other materials that Customer transmits to, uploads to, transfers to, processes on, stores in, or causes to interface with, the Platform (“Customer Data”). Customer hereby grants ProjectMark a nonexclusive, worldwide, royalty-free, fully paid up, sublicensable, nontransferable (except as set forth in Section 9) right and license to (a) copy, use, modify, distribute and

display Customer Data solely to the extent necessary to perform its obligations under this Agreement, (b) copy, modify and use Customer Data solely in aggregate and/or anonymized form in connection with internal operations and functions, including, but not limited to, operational analytics and reporting, internal financial reporting and analysis, audit functions, archival purposes and improving ProjectMark's products and services, and (c) copy, use, modify, distribute and display Customer Data solely in aggregate and/or anonymized form, solely to the extent that the aggregate data does not include information that identifies or would reasonably be expected to identify Customer or any of Customer's customers. Notwithstanding any contrary statement herein, ProjectMark's rights to use Customer Data pursuant to clauses (b) and (c) of the foregoing sentence shall apply solely to the extent that all Customer Data so used either (1) does not constitute Customer Personal Information, (2) constitutes "aggregate consumer information" and/or "deidentified" information (each as defined in California Civil Code Section 1798.140) or (3) meets all applicable requirements for anonymization and/or aggregation to permit such use under applicable law. As between the parties, Customer reserves any and all right, title and interest in and to the Customer Data other than the licenses therein expressly granted to ProjectMark under this Agreement.

2.2 Customer Personal Information. ProjectMark will not retain, use, or disclose Customer Personal Information for any purpose other than for performing its obligations hereunder or as required by law or otherwise expressly stated herein. "Customer Personal Information" means Customer Data that constitutes personal information of a consumer that is subject to the California Consumer Privacy Act of 2018, California Civil Code Section 1798.100 *et seq.* ProjectMark may aggregate, deidentify, or anonymize Customer Personal Information, and may use resulting aggregated, deidentified, or anonymized data as set forth in Section 2.1(b) and (c) to the extent such data constitutes either "aggregate consumer information" and/or "deidentified" information (each as defined in California Civil Code Section 1798.140). ProjectMark will neither attempt to nor actually re-identify any previously aggregated, deidentified, or anonymized data. ProjectMark may use Customer Personal Information to detect data security incidents or protect against fraudulent or illegal activity, or for internal use by ProjectMark to improve its services provided that such use does not include building or modifying household or consumer profiles to use in providing services to another business, or correcting or augmenting data acquired from another source. Subject to the foregoing, Customer Personal Information will be treated in accordance with ProjectMark's Privacy and Security Policy ([see here](#)).

2.3 Postings. Aspects of the Platform may permit Customer to post, upload, store, share, send, or display images, video, data, text ("Posted Content"). Customer represents and warrants that Customer or Customer's licensors own all right, title, and interest in and to any Posted Content and Customer has all rights in the Posted Content necessary and sufficient to transmit to, upload to, transfer to, process on, store in, or cause to interface with, Customer's Account or the Services and to grant the rights contemplated by these Platform Terms and the Agreement to ProjectMark.

2.4 Ownership; Reservation of Rights. Customer acknowledges and agrees that, as between the parties, ProjectMark retains all rights, title, and interest in and to the Platform, all copies or parts thereof (by whomever produced), all improvements, updates, modifications or enhancements thereto, and all intellectual property rights therein. ProjectMark does not grant any, and reserves any and all, rights related to the Platform other than the rights expressly granted to Customer under this Agreement with respect to the Platform. Customer may not remove, alter, or obscure any copyright, trademark, or other proprietary rights notices appearing on the Platform or otherwise through use of the Services.

2.5 Feedback. Customer may from time to time provide suggestions, comments for enhancements or functionality or other feedback ("Feedback") to ProjectMark with respect to the Platform or other aspects of ProjectMark's products, services and/or business. ProjectMark will have full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality included in any Feedback. Customer hereby grants ProjectMark a royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback; and (b) use the Feedback and/or any subject matter thereof, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody, or are configured for use in practicing, the Feedback and/or any subject matter of the Feedback.

2.6 Customer Responsibilities. Only Customer's Authorized Users are entitled to access and use the Platform under this Agreement. Customer will (a) use commercially reasonable efforts to prevent unauthorized access to or use of the Platform and notify ProjectMark promptly of any such unauthorized access or use, and (b) use the Platform only in accordance with the Documentation, provided that if any provision of the Documentation conflicts with this Agreement, compliance with this Agreement shall be sufficient to comply with this Section 2.6 with respect to the subject

matter of such provision, this Agreement and any applicable laws and regulations.

2.7 Privacy; Data Security. ProjectMark will comply with its Privacy and Security Policy in connection with the treatment of Customer Data received in connection with this Agreement. Without limiting the foregoing, ProjectMark will implement and maintain reasonable administrative, physical and technical safeguards which attempt to prevent any collection, use or disclosure of, or access to, Customer Data that this Agreement does not expressly authorize, including, without limitation, an information security program that meets commercially reasonable industry practice to safeguard Customer Data. Such information security program shall include: (i) physical security of all premises in which Customer Data will be processed and/or stored; and (ii) reasonable precautions taken with respect to the employment of, access given to, and education and training of any and all personnel furnished or engaged by ProjectMark to perform any part of the services hereunder.

3 FEES; PAYMENT TERMS

3.1 Fees; Payment Terms. By executing this Agreement, Customer agrees to pay ProjectMark the fees set forth in the Order Form in accordance with the payment terms set forth in the Order Form. If payment of any fees is not made when due and payable, a late fee will accrue at the rate of the lesser of one percent (1%) per month or the highest legal rate permitted by applicable law, and Customer will pay all reasonable expenses of collection associated with ProjectMark's efforts to collect any unpaid amounts due. In addition, if any past due payment has not been received by ProjectMark within ten (10) days from the time such payment is due, ProjectMark may suspend Customer's access to the Platform until such payment is made.

3.2 Taxes. All amounts payable by Customer to ProjectMark hereunder are exclusive of any sales, use and other taxes or duties, however designated, including without limitation, withholding taxes, royalties, know-how payments, customs, privilege, excise, sales, use, value-added and property taxes (collectively "Taxes"). Customer will be solely responsible for payment of any Taxes, except for those taxes based on the income of ProjectMark. Customer will not withhold any Taxes from any amounts due ProjectMark.

4 TERM; TERMINATION

4.1 Term; Renewal. Except to the extent stated otherwise in the applicable Order Form, the initial term of this Agreement will commence on the Effective Date and continue for the initial term set forth in the Order Form, unless earlier terminated as set forth herein (the "Initial Term"). Thereafter, this Agreement and the subscription period will automatically renew for additional periods of the same duration (each, a "Renewal Term", and together with the Initial Term, the

"Term"), unless either party provides the other party with written notice of non-renewal at least thirty (30) days' prior to the end of the then-current Term. Subscription fees for any renewed subscription shall be equivalent to fees for the period unless ProjectMark provides notice to Customer of any changes to the applicable Fees at least forty-five (45) days prior to expiration, in which case the updated Fees shall take effect upon renewal unless Customer provides notice of non-renewal as provided herein. An Order Form may provide for different subscription periods for Customer's access to different platforms available via the Platform; where applicable, each subscription period shall be subject to renewal as provided herein, and this Agreement, including the provisions of this Section 4.1 shall continue to apply so long as the last-expiring subscription period remains in effect pursuant to the applicable Order Form(s).

4.2 Termination; Effect of Termination. Either party may terminate this Agreement if the other party breaches any of the terms or conditions of these Platform Terms or the Agreement and fails to cure such breach within thirty (30) days (or ten (10) days in the case of non-payment) of receiving notice thereof. Upon any termination or expiration of this Agreement for any reason, Customer may request an export of the Customer Data then in ProjectMark's possession in a mutually agreed upon format within thirty (30) days of the effective date of such termination or expiration. Thereafter, ProjectMark may, but is not obligated to, in its sole discretion and without delivery of any notice to Customer, delete any Customer Data stored or otherwise archived on the Platform or otherwise on ProjectMark's network. Upon any expiration or termination of the Agreement, all rights granted hereunder and all obligations of ProjectMark to provide access to the Platform will immediately terminate and (a) Customer will cease use of the Platform; and (b) each party will return or destroy all copies or other embodiments of the other party's Confidential Information (subject to ProjectMark's rights under Section 2.1(b) and (c)). Except with respect to a termination of this Agreement based on ProjectMark's uncured breach of this Agreement or a termination by ProjectMark pursuant to Section 8.1, Customer shall not be entitled to any refund of previously paid subscription fees upon expiration or termination of this Agreement, and any fees due but unpaid at the time of such expiration or termination shall be paid within ten (10) days thereof.

4.3 Survival. Upon expiration or termination of this Agreement, all obligations in this Agreement will terminate, provided that Sections 1.7, 2.1(b), 2.1(c), 2.2, 2.3, 3, 4.2, 4.3, 5, 6.4, 7, 8 and 9 will survive.

5 CONFIDENTIALITY

As used herein, "Confidential Information" means, subject to the exceptions set forth in the following

sentence, any information or data, regardless of whether it is in tangible form, disclosed by either party (the “Disclosing Party”) that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party (the “Receiving Party”); *provided, however*, that a Disclosing Party’s business plans, strategies, technology, research and development, current and prospective customers, billing records, pricing, product usage data, and products or services will be deemed Confidential Information of the Disclosing Party even if not so marked or identified. ProjectMark’s Confidential Information includes, without limitation, the Platform, these Platform Terms, and the Agreement. Information will not be deemed Confidential Information if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; or (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party. Each party agrees that it will use the Confidential Information of the other party solely to perform its obligations or exercise its rights under this Agreement. Neither party will disclose, or permit to be disclosed, the other party’s Confidential Information directly or indirectly, to any third party without the other party’s prior written consent, except as otherwise permitted hereunder. Each party will use reasonable measures to protect the confidentiality and value of the other party’s Confidential Information. Notwithstanding any provision of this Agreement, either party may disclose the other party’s Confidential Information, in whole or in part (i) to its employees, officers, directors, consultants and professional advisers (e.g., attorneys, auditors, financial advisors, accountants and other professional representatives) who have a need to know and are legally bound to keep such Confidential Information confidential by confidentiality obligations and/or, in the case of professional advisors, are bound by ethical duties to keep such Confidential Information confidential consistent with these Platform Terms and the Agreement; and (ii) as required by law (in which case each party will provide the other with prior written notification thereof, will provide such party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law). Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section, the non-breaching party will be entitled to seek immediate injunctive and other

equitable relief, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.

6 REPRESENTATIONS, WARRANTIES AND DISCLAIMER

6.1 Representations and Warranties. Each party represents and warrants to the other party (a) such party has the required power and authority to enter into this Agreement and to perform its obligations hereunder; (b) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party; and (c) this Agreement constitutes a legal, valid and binding obligation when signed by both parties.

6.2 Customer Representations and Warranties. Customer represents and warrants that Customer has the legal authority and all rights necessary to provide the Customer Data to ProjectMark hereunder, and Customer’s provision of the Customer Data to ProjectMark hereunder does not and will not violate or conflict with or result in a breach of any terms, conditions, duties or obligations Customer has to any third party or any other rights of any third party or any applicable law, rule or regulation.

6.3 Availability. ProjectMark will use reasonable efforts consistent with prevailing industry standards to provide the Platform and any related services provided in connection therewith in a manner that minimizes errors and interruptions in accessing and using the Platform and consistent with the Documentation. The Platform may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by ProjectMark or by Third-Party Service Providers, or because of other causes beyond ProjectMark’s reasonable control, but ProjectMark will use reasonable efforts to provide advance notice in writing or by email of any scheduled service disruption within ProjectMark’s control.

6.4 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PLATFORM AND ANY SERVICES PROVIDED IN CONNECTION THEREWITH ARE PROVIDED ON AN “AS-IS” BASIS AND PROJECTMARK DISCLAIMS ANY AND ALL WARRANTIES. PROJECTMARK DOES NOT WARRANT THAT THE PLATFORM OR ITS OUTPUT WILL BE ERROR-FREE OR THAT OPERATION OF THE PLATFORM WILL BE UNINTERRUPTED. PROJECTMARK DOES NOT WARRANT THAT THE RESULTS GENERATED BY THE PLATFORM OR THE SERVICES PROVIDED IN CONNECTION THEREWITH ARE ACCURATE OR WILL LEAD TO ANY PARTICULAR OUTCOME, AND PROJECTMARK EXPRESSLY DISCLAIMS ALL LIABILITY WITH RESPECT TO SUCH RESULTS.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ALL OTHER EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT.

7 LIMITATIONS OF LIABILITY

7.1 Disclaimer of Consequential Damages. THE PARTIES HERETO AGREE THAT, NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, EXCEPT FOR (A) CUSTOMER'S BREACH OF SECTION 1, (B) EITHER PARTY'S BREACH OF SECTION 5, AND (C) LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 8.1 AND 8.2 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST OR DAMAGED DATA, LOST PROFITS OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF.

7.2 General Cap on Liability. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, TO THE FULL EXTENT PERMITTED UNDER APPLICABLE LAW, EXCEPT FOR (A) CUSTOMER'S BREACH OF SECTION 1, (B) EITHER PARTY'S BREACH OF SECTION 5, (C) LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 8.1 AND 8.2 BELOW AND (D) PAYMENT OBLIGATIONS WITH RESPECT TO FEES UNDER ANY ORDER FORM, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED AN AGGREGATE AMOUNT EQUAL TO THE TOTAL FEES PAID BY CUSTOMER TO PROJECTMARK UNDER THIS AGREEMENT DURING THE TWELVE-MONTH (12-MONTH) PERIOD IMMEDIATELY PRECEDING THE EVENT OR CIRCUMSTANCES GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

7.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

8 INDEMNIFICATION

8.1 Indemnification for Infringement. ProjectMark will defend Customer and the officers, directors, agents, and employees of Customer ("Customer Indemnified Parties") against any third-party claim, allegation or legal action (a "Third-Party Claim") arising from an allegation that Customer's authorized use of the Platform or the Services infringes any intellectual property right of a third party, and ProjectMark will indemnify the Customer Indemnified Parties against any damages actually awarded or paid in connection therewith, including any reasonable attorneys' fees. Notwithstanding the foregoing, ProjectMark's indemnification obligation will not apply to Third-Party Claims to the extent arising from (a) modification of the Platform by Customer or any party acting on Customer's behalf without ProjectMark's express written consent; (b) the combination, operation, or use of the Platform or Services with other product(s), data or services without ProjectMark's written authorization where the Platform or Services would not by itself be infringing; or (c) unauthorized or improper use of the Platform. If the use of the Platform or Services by Customer has become, or in ProjectMark's opinion is likely to become, the subject of any claim of infringement, ProjectMark may, at its option and expense, (i) procure for Customer the right to continue using the Platform or Services as set forth hereunder, (ii) replace or modify the relevant components of the Platform or Services to make it non-infringing so long as the Platform has at least equivalent functionality, (iii) substitute an equivalent for the Services or (iv) if options (i)-(iii) are not reasonably practicable, terminate this Agreement. This Section 8.1 states ProjectMark's entire obligation and Customer's sole remedies in connection with any claim regarding the intellectual property rights of any third party.

8.2 Indemnification by Customer. Customer will defend ProjectMark and the officers, directors, agents, and employees of ProjectMark ("ProjectMark Indemnified Parties") against any Third-Party Claims arising from (a) any use or disclosure by Customer of the Platform in violation of this Agreement, (b) any assertion that the Customer Data as provided to ProjectMark and/or the provision of such Customer Data to ProjectMark violates any third party intellectual property or privacy

rights, (c) Customer's receipt or use of any CEI in violation of the CEI Provider's terms and conditions as provided herein, and (d) Customer's violation of this Agreement or applicable law. Further, Customer will indemnify the ProjectMark Indemnified Parties against any damages actually awarded or paid in connection therewith, including any reasonable attorneys' fees.

8.3 Indemnification Procedure. If a Customer Indemnified Party or a ProjectMark Indemnified Party (each, an "Indemnified Party") becomes aware of any matter it believes it should be indemnified for under Section 8.1 or Section 8.2, as applicable, involving any claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each, an "Action"), the Indemnified Party will give the other party (the "Indemnifying Party") prompt written notice of such Action. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both parties hereunder, such consent not to be unreasonably conditioned, withheld or delayed.

9 GENERAL

9.1 Marketing. Customer agrees that ProjectMark may list and/or identify Customer's name (including by displaying any Customer trademark) to identify the business relationship between the parties on ProjectMark's website and in other marketing and advertising content.

9.2 No Export. Customer may not remove or export from the United States or allow the export or re-export of the Platform or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

9.3 Severability. 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.

9.4 Assignment. Neither party may assign this Agreement or assign or delegate its rights or obligations under the Agreement without the other party's prior written consent; *provided, however*, that either party may assign this Agreement to an acquirer of or successor to all or substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any assignment or attempted assignment

by either party other than in accordance with this Section will be null and void.

9.5 Entire Agreement; Waivers. 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 must be in a writing signed by both parties with respect to that specific waiver which shall not be construed as a waiver of any other or future breach of this Agreement, except as otherwise provided herein.

9.6 Amendment; Right to Modify. The terms of the Initial Order Form and all Future Order Forms may be modified only in a written amendment or subsequent Order Form duly authorized and signed by the parties. Notwithstanding the foregoing, ProjectMark reserves the right, in its sole discretion, to change, modify, add, or delete portions of these Platform Terms ("Changes"), at any time and from time to time, in order to clarify ProjectMark's practices, to reflect corresponding changes to the Privacy and Security Policy or General Terms, to comply with applicable law, and/or for any other reason deemed reasonably necessary by ProjectMark. If ProjectMark makes any such Changes to these Platform Terms, ProjectMark will notify Customer using reasonably prominent means such as, without limitation or requirement, by email notice sent to the email address specified in Customer's Order Form or otherwise on file, by posting a notice through the Platform, and/or by requiring Customer to acknowledge any such Changes to these Platform Terms upon Customer's next applicable use of the Services. All Changes to these Platform Terms shall become effective upon ProjectMark's notification thereof to Customer as provided herein unless stated otherwise. Customer's continued use of the Services in any manner after such Changes to these Platform Terms become effective (whether or not Customer has actual knowledge of the Changes) shall be deemed and constitute Customer's acceptance of and consent thereto without any further action required of either party.

9.7 Relationship. No agency, partnership, joint venture, or employment is created as a result of this Agreement and a party does not have any authority of any kind to bind the other party in any respect whatsoever.

9.8 Attorney's Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

9.9 Notices. All notices under this Agreement will be in writing and sent to the addresses (including, as applicable, email address) set forth in the Order Form

and will be deemed to have been duly given when received, if personally delivered; the first business day immediately following receipt if transmitted by email; 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.

9.10 Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, as a result of a cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of war, epidemics, pandemics, fire, communication line failures, power failures, earthquakes, floods, blizzard, or other natural disasters (but excluding failure caused by a party's financial condition or any internal labor problems (including strikes, lockouts, work stoppages or slowdowns, or the threat thereof)) (a "Force Majeure Event"). Delays in performing obligations due to a Force Majeure Event will automatically extend the deadline for performing such obligations for a period equal to the duration of such Force Majeure Event. Except as otherwise agreed upon by the parties in writing, in the event such non-performance continues for a period of thirty (30) days

or more, either party may terminate this Agreement by giving written notice thereof to the other party. Upon the occurrence of any Force Majeure Event, the affected party will give the other party written notice thereof as soon as reasonably practicable of its failure of performance describing the cause and effect of such failure and the anticipated duration of its inability to perform.

9.11 Governing Law. This Agreement will be governed by the laws of the State of California without regard to its conflict of laws provisions. For all disputes relating to this Agreement, each party submits to the exclusive jurisdiction of the state and federal courts located in San Francisco, California and waives any jurisdictional, venue, or inconvenient forum objections to such courts.

9.12 Remedy. Customer acknowledges that any unauthorized use of the Platform may cause irreparable harm and injury to ProjectMark for which there is no adequate remedy at law. In addition to all other remedies available under this Agreement, at law or in equity, Customer agrees that ProjectMark may be entitled to injunctive relief in the event Customer uses the Platform in violation of this Agreement.