

# Terms & Conditions

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## END USER LICENSE AGREEMENT

This End User License Agreement (this "**Agreement**") sets forth the terms and conditions upon which Scaled Cognition, Inc. (referred to herein as "**Scaled Cognition**," "**Company**," "**we**," "**us**" or "**our**") offer third parties (referred to herein as "**you**" or "**your**") access to and use of APT – 1, powered by LLama, the Scaled Cognition website and other services provided by or made available by us to you, including software applications, other websites, along with any updates, additions or expansions thereto made available to you (collectively referred to herein as the "**Services**").

**THIS IS A LEGALLY ENFORCEABLE CONTRACT.** Before you, click on the "I AGREE" button, carefully read the terms and conditions of this Agreement. By clicking on the "I AGREE" button, you are consenting to be bound by and are becoming a party to this Agreement. This Agreement is effective as of the date you click "I AGREE." If you do not agree to the terms of this Agreement, do not use or access the Services.

### 1. ACCOUNT REQUIREMENTS; TERMINATION; SUSPENSION

1.1. **Minimum Age.** In order to use the Services, you must be at least 13 years or older. If you are under the age of 18, you must have your parent or legal guardian's permission to create an account and use the Services.

1.2. **Account Creation.** In order to use the Services you must create an account. To create an account you must provide complete and correct information when registering for an account. If you create an account or use the Services on behalf of another person or entity, you must have the authority to accept this Agreement on their behalf. If you create an account on behalf of an entity, such as your employer, that account may be added to the entity's business account with us as an User (such entity may have the ability to track or monitor your use of the Services or discontinue your access or use under the entity's account and your username).

1.3. **Account Security.** You may not share your account credentials or make your account available to anyone else and are responsible for all activities that occur under your account. You will promptly notify us if you become aware of any unauthorized access to or use of your account.

1.4. **Account Suspension and Termination.** You are free to stop using the Services and delete your account at any time. By deleting your account, you are terminating this Agreement and all access to the Services will be terminated as well. We reserve the right to suspend or terminate your access to the Services or delete your account if we, in our good faith determination, determine that: (i) you have or are in breach of this Agreement or any other policies provided to you regarding your use of the Services, (ii) your use of the Services may cause harm or risk to the Services, other users, or third parties, or (iii) such termination is required to comply with applicable law. We may also suspend or termination inactive accounts. If you believe we have suspended or terminated your account in error, you can notify us and file an appeal with us by contacting us in accordance with the Section 7.4 (Notice).

### 2. USE OF THE SERVICES

2.1. **Permitted Use.** Subject to your compliance with this Agreement, you may access and use the Services. You agree to comply with this Agreement, all applicable laws, as well as any other documentation, guidelines, or policies we make available to you.

2.2. **Use Restrictions.** You agree not to and not to assist or cause any third party to: (i) modify, sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a

service bureau or outsourcing offering, (ii) use a Service to store or transmit infringing, libelous, abusive, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights or intellectual property rights, (iii) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (iv) attempt to gain unauthorized access to any Service or its related systems or networks, (v) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, or use any Services to access or use any of Company intellectual property, including any models, algorithms, source code, except as permitted under this Agreement, (vi) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (vii) copy Content except as permitted herein or in an Order Form or the Documentation, (viii) use or access the Services with any robot, spider, or other automatic device, process, or means to access the Services for any purpose, including monitoring or copying any of the content on the Services, (ix) make any publicly posted disparaging marks or comments regarding the Services or us; (x) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or access it to (a) build a product or service, (b) build a product or service using similar ideas, features, functions or graphics of the Service, (c) copy any ideas, features, functions or graphics of the Service, or (d) determine whether the Services are within the scope of any patent.

**2.3. Privacy.** You agree that all information you provide to Scaled Cognition to register with the Services, or otherwise provide to Scaled Cognition through your use of the Services, including, but not limited to, through the use of any interactive features on the Services, are subject to Scaled Cognition's Privacy Policy available at [[www.landing.dev.scaledcognition.com/privacy-policy](http://www.landing.dev.scaledcognition.com/privacy-policy)] ("**Privacy Policy**"), which is hereby incorporated by reference. You consent to all actions we take with respect to your information consistent with our Privacy Policy.

**2.4. Discontinuation of Services.** Scaled Cognition may decide to discontinue any versions of or feature of the Services in whole or in part. Scaled Cognition will give you notice of any such discontinuation that would have a material impact on the use of the Services and, to the extent applicable, give you advance notice and upon receipt of your request within 90 days of notice of such discontinuation, issue a refund for any prepaid, unused fees paid for such discontinued Services that cannot be used for any other Services provided by the Company.

**2.5. Third-Party Services.** The Services may link to or use content from sites or applications operated by third parties. Your access to or use of third party sites, applications and content is at your own risk and subject to your compliance with any applicable third-party terms governing your access to and use of such third party materials. Additionally, the Services may include open source software that is governed by its own licenses that we've made available to you. We are not responsible for, and do not endorse, any third party sites, software or applications.

### **3. INTELLECTUAL PROPERTY RIGHTS AND CONTENT**

**3.1. User Content.** You may provide inputs into the Services ("**Input**"), and receive output from the Services based on the Input ("**Output**") (Input and Output, together the "**User Content**"). You are fully responsible for User Content. All User Content must comply with this Agreement and applicable laws. User Content must not contain any material that is defamatory, obscene, indecent, abusive, offensive, harassing, violent, hateful, inflammatory, or otherwise objectionable, and it must not violate or infringe upon the rights of any third party. You represent and warrant to us that you either own the User Content or have all necessary rights, licenses and permissions needed to provide Input into the Services. As between you and

Scaled Cognition, you own all User Content and we hereby assign to you all our right, title, and interest, if any, in and to Output.

**3.2. Our Use of User Content.** You hereby agree that and grant Scaled Cognition, our affiliates, licensors, service providers, licensees and assigns have an irrevocable, non-exclusive, perpetual right and license to use, reproduce, modify, perform, display, distribute, create derivative works of, and otherwise disclose to third parties any User Content for the purpose of providing, developing and enhancing the Services, including training models, and to comply with applicable law.

**3.3. Scaled Cognition Intellectual Property.** The Services are owned by us. All right, title and interest, including all copyrights, patents and other intellectual property rights in and to the Services and any accompanying printed materials, and any copies of all or any portion of such, are owned by us. All rights not expressly granted to you through this Agreement are reserved by us.

**3.4. Output Disclaimer and Restrictions.** You hereby understand, agree and acknowledge that: the Services may, in some situations, result in Output that does not accurately reflect real people, events, places, or facts and that Output may not be accurate. The Services may provide Output that is incomplete, inaccurate, offensive or otherwise not as intended by your use of the Services. You agree to review and evaluate Output for its accuracy, including using human review, as necessary, prior to using, publishing, sharing or displaying such Output. You agree not to use any Output in violation of applicable law or in a manner that could cause harm or could have a material impact on any third parties or to create any competitive product or services. You agree that the Output should not be used for any high risk decisions or implications, such as to make or provide medical or legal recommendations, decisions or determinations. You agree that you will not represent that any Output was human generated (if it was not) or use any Output in violation of this Agreement, including the restrictions in Section 2.2 (Use Restrictions). Output may not be unique and other users of the Services may receive similar or substantially the same output from the Services. The assignment to Output in Section 3.1 (User Content) above does not extend or assign any rights to you to other users' output or any output created through the use of third party software or applications.

**3.5. Feedback.** All comments, suggestions, ideas, or other feedback communicated to Scaled Cognition through or in connection with your use of the Services ("**Feedback**") and any modifications of derivatives thereof, and all rights, including without limitation intellectual property rights, in or related to such Feedback shall forever be the exclusive property of Scaled Cognition. Scaled Cognition may use Feedback for any lawful purpose without any compensation, attribution, or other obligation to you.

#### **4. DISCLAIMER OF WARRANTIES**

THE SERVICES, INCLUDING ANY CONTENT THEREIN, ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY AND EXCEPT TO THE EXTENT PROHIBITED BY LAW, SCALED COGNITION, ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS MAKE NO WARRANTIES (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE), AND DISCLAIM ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR TRADE USAGE. WE DO NOT WARRANT AND MAKE NO COMMITMENT THAT THE SERVICES WILL BE UNINTERRUPTED, ACCURATE, AVAILABLE OR ERROR FREE, OR THAT ANY CONTENT WILL BE SECURE OR NOT LOST OR ALTERED.

YOU ACCEPT AND AGREE THAT ANY USE OF OUTPUTS FROM THE SERVICE IS AT YOUR SOLE RISK AND YOU WILL NOT RELY ON OUTPUT AS A SOLE SOURCE OF TRUTH OR

FACTUAL INFORMATION, OR AS A SUBSTITUTE FOR YOUR REVIEW OF SUCH OUTPUT OR OBTAINING PROFESSIONAL ADVICE.

## **5. LIMITATION OF LIABILITY; INDEMNITY**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SCALED COGNITION, ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA OR OTHER LOSSES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF SCALED COGNITION, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF THE SERVICES, AND REGARDLESS OF THE BASIS OR THEORY OF THE CLAIM, EXCEED THE GREATER OF AMOUNT YOU PAID FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE OR ONE HUNDRED DOLLARS (\$100.00). Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions our liability shall be limited to the fullest extent permitted by law.

You agree to indemnify and hold the Company harmless from any liabilities, costs, claims, demands, or damages, including reasonable attorneys' fees, asserted by any third party due to or arising out of: (i) any breach by you of this Agreement, (ii) Input and use of Outputs or (iii) your use or access of the Services.

## **6. BETA SERVICES**

If you are provided access to or are using any Services being made on an early release, early access, alpha or beta basis ("**Beta Services**"), the following provisions shall apply: (i) notwithstanding any warranties generally made regarding the Services, BETA SERVICES ARE OFFERED "AS IS" WITHOUT WARRANTY OF ANY KIND. COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. NO ORAL OR WRITTEN ADVICE BY AGENTS OR EMPLOYEES OF COMPANY MAY GIVE RISE TO A WARRANTY. YOU ACCEPTS ALL RISKS ARISING OUT OF THE ACCESS AND USE OF THE BETA SERVICES, (ii) in no event shall we be obligated to provide you with access to or use of any other Services, including any commercial release version of the Services in connection with your participation in the testing or use of Beta Services, (iii) your sole and exclusive remedy for any dispute with us related to beta Services is to cancel your account, and (iv) Beta Services may be terminated or otherwise discontinued, in whole or in part, at any time, with or without notice.

## 7. GENERAL TERMS

**7.1. Service Fees.** All fees associated with the use of the Services will be set forth in the Master Subscription Agreement entered into by you or your organization if you are a User under such Master Subscription Agreement

**7.2. Governing Law; Dispute Resolution.** This Agreement is governed by the laws of the Commonwealth of Massachusetts . You hereby irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts sitting in the Commonwealth of Massachusetts, for all disputes arising out of or relating to the Services. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE PARTIES HEREBY IRREVOCABLY WAIVE ANY RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY CLAIM OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES. Notwithstanding anything to the contrary in this Agreement, Scaled Cognition may (at any time and in any court of competent jurisdiction) seek equitable relief (or bring any other claim or action) in connection with any actual or threatened violation of Scaled Cognition's intellectual property rights.

**7.3. Informal Dispute Resolution.** Either party asserting a dispute shall first try in good faith to resolve it by providing written notice as specified below to the other party describing the facts and circumstances (including any relevant documentation) and allowing the receiving party 30 days in which to respond. Except with respect to any actual or threatened violation of Scaled Cognition's intellectual property rights, both you and Scaled Cognition agree that this dispute resolution procedure is a condition precedent that must be satisfied before initiating any legal action against the other party.

**7.4. Changes.** We may update the Services, and any content on the Services at any time without notice to you. Any of the content or material on the Services may be out of date at any given time, and we are under no obligation to update such content or material. We may revise and update this Agreement from time to time in our sole discretion upon notice to you. All changes are effective immediately as of the "Last Updated" date of the then-current End User License Agreement and apply to all access to and use of the Services thereafter. Your continued use of the Services following your receipt (through email or the Services) of the revised End User License Agreement, means that you accept and agree to such changes.

**7.5. Assignment.** We may assign this Agreement, in whole or in part, at any time. You may not assign or transfer this Agreement or any rights or obligations hereunder without our prior written approval and any attempt to assign or transfer without our written approval will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**7.6. Notice.** All notices given by you or required under this Agreement shall be in writing and addressed to Scaled Cognition [INSERT ADDRESS] with a copy to (which shall not constitute notice) [INSERT EMAIL].

**7.7. Survival.** The provisions of this Agreement relating to the following rights or obligations shall survive the termination, cancellation, or expiration of this Agreement: Articles 3, 4, 5, 6, 7, 8 and Sections 2.2 and 2.5.

**7.8. Severability; Waiver.** If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of this Agreement shall continue in effect. Our failure to enforce at any time any of the provisions of this

Agreement shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the right of any party to enforce each and every such provision thereafter. The express waiver by us of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition or requirement.

**7.9. Third Party Beneficiaries; Entire Agreement.** Our affiliates, supplier's and licensors are intended third party beneficiaries of this Agreement solely with respect to Section 5 (Limitation of Liability; Indemnification). This Agreement shall constitute the complete agreement between the parties and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

## **8. COPYRIGHT**

Scaled Cognition respects the intellectual property of others. If you believe in good faith that your intellectual property rights have been infringed, you (or your agent) may send us a notice to [copyright@scaledcognition.com](mailto:copyright@scaledcognition.com), requesting that the material be removed, or access to it blocked. The notice must include the following information:

- (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single website are covered by a single notification, a representative list of such works at that site;
- (iii) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
- (iv) information reasonably sufficient to permit us to contact you, such as an address, telephone number and email address;
- (v) a statement that you have a good faith belief that use of the material in the manner complained of is not authorized by you, your agent, or the law; and
- (vi) a statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

## MASTER SUBSCRIPTION AGREEMENT

PLEASE READ THIS MASTER SUBSCRIPTION (this "**Agreement**") CAREFULLY. This Agreement sets forth the terms and conditions upon which Scaled Cognition, Inc. (referred to herein as "**Company**") offer, delivery, make available or provide access to the Services (as defined below) to you ("**Customer**" or "**you**").

THIS MASTER SUBSCRIPTION AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF COMPANY SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN. **THIS IS A LEGALLY ENFORCEABLE CONTRACT.** Before you, click on the "I AGREE" button, carefully read the terms and conditions of this Agreement. By clicking on the "I AGREE" button, you are consenting to be bound by and are becoming a party to this Agreement. This Agreement is effective as of the date you click "I AGREE." If you do not agree to the terms of this Agreement, do not use or access the Services.

IF CUSTOMER REGISTERS OR PARTICIPATES IN A BETA TRIAL OF COMPANY SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT BETA TRIAL OR THOSE FREE SERVICES.

IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Company's direct competitors are prohibited from accessing the Services, except with Company's prior written consent.

This Agreement was last updated on January 8, 2025. It is effective between Customer and Company as of the date of Customer's accepting this Agreement.

### 1. DEFINITIONS

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Agreement**" means this Master Subscription Agreement.

"**Content**" means information obtained by Company from publicly available sources or its third-party content providers and made available to Customer through the Services, as more fully described in the Documentation.

"**Customer**" means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this

Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which purchased products, credits or services through the Company's website or Services.

**"Customer Data"** means electronic data and information submitted by or for Customer to the Services, including any User Content (as defined in the EULA) but excluding Content, Performance and Use Data and Non-Company Applications.

**"Documentation"** means the applicable Service's documentation and descriptions that are available upon request and its usage guides and policies, as updated from time to time.

**"EULA"** means the end user license agreement required to be accepted in order for a User to set up an account.

**"Malicious Code"** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

**"Non-Company Application"** means a Web-based, mobile, offline, or other software application functionality that interoperates with a Service, that is provided by Customer or a third party. Non-Company Applications, other than those obtained or provided by Customer, will be identifiable as such.

**"Performance and Use Data"** means the following data relating to Customer's use of the Services and Content: operating system metrics (e.g., CPU utilization, file system usage, disk read performance), operating environment metrics (e.g., database accesses per second, available licenses, database free space), Services and Content activity metrics (e.g., number of functions utilized, average length of time spent using a function), configuration selections (e.g., workflows, item selections) and other performance metrics and usage data.

**"Services"** means the products and services that are made available online by Company, including associated Company offline or mobile components, as described in the Documentation. "Services" exclude Content and Non-Company Applications.

**"User"** means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription or has been provided the ability to purchase Use Credits or use Use Credits purchased by Customer (or in the case of any Services provided by Company without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, Company at Customer's request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business. Each User will be required to create an account and accept the EULA.

## 2. COMPANY RESPONSIBILITIES

2.1 **Provision of Services.** Company will (a) make the Services and Content available to Customer pursuant to this Agreement, and Documentation, (b) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Company shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Company's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil

unrest, act of terror, strike or other labor problem (other than one involving Company employees), Internet service provider failure or delay, Non-Company Application, or denial of service attack, and (c) provide the Services in accordance with laws and government regulations applicable to Company's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services), and subject to Customer's use of the Services in accordance with this Agreement, and the Documentation.

- 2.2 **Protection of Customer Data.** Company will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). Company shall have no obligation to maintain any Customer Data, unless legally required.
- 2.3 **Company Personnel.** Company will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Company's obligations under this Agreement, except as otherwise specified in this Agreement.

### 3. USE OF SERVICES AND CONTENT

- 3.1 **Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement, Documentation and any additional online terms and conditions provided by Company, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-Company Applications with which Customer uses Services or Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Company promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with this Agreement, the EULA, Documentation, and applicable laws and government regulations, and (e) comply with terms of service of any Non-Company Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in Company's judgment threatens the security, integrity or availability of Company's services, may result in Company's immediate suspension of the Services, however Company will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
- 3.2 **Usage Restrictions.** Customer will not and will not assist or cause any third party to (a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service or Non-Company Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-Company Application to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access

or use any of Company intellectual property except as permitted under this Agreement or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.

3.3 **Removal of Content and Non-Company Applications.** If Customer receives notice that Content or a Non-Company Application must be removed, modified and/or disabled to avoid violating applicable law, third-party rights, or any other acceptable use policy or the EULA, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in Company's judgment continued violation is likely to reoccur, Company may disable the applicable Content, Service and/or Non-Company Application. If requested by Company, Customer shall confirm such deletion and discontinuance of use in writing and Company shall be authorized to provide a copy of such confirmation to any such third party claimant or governmental authority, as applicable. In addition, if Company is required by any third party rights holder to remove Content, or receives information that Content provided to Customer may violate applicable law or third-party rights, Company may discontinue Customer's access to Content through the Services.

3.4 **Use of Services.** Customer hereby agrees and acknowledge that: the Services may, in some situations may provide result that do not accurately reflect real people, events, places, or facts and that may not be accurate. The Services may provide is incomplete, inaccurate, offensive content or content otherwise not as intended by your use of the Services. You agree to review and evaluate all Content and Output (as defined in the EULA) for its accuracy, including using human review, as necessary, prior to using, publishing, sharing or displaying such content. Customer hereby agrees not to (a) use the Services (i) in violation of applicable law or in a manner that could cause harm or could have a material impact on any third parties or to create any competitive product or services, and (ii) in any high risk decisions or implications, such as to make or provide medical or legal recommendations, decisions or determinations, and (b) represent that any content generated by the Services were human generated (if it was not). Content generated by the Services may not be unique and other users of the Services may receive similar or substantially the same output and content from the Services.

#### 4. NON-COMPANY PRODUCTS AND SERVICES

4.1 **Non-Company Products and Services.** Company or third parties may make available third-party products or services, including, for example, Non-Company Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-Company provider, product or service is solely between Customer and the applicable Non-Company provider. Company does not warrant or support Non-Company Applications or other Non-Company products or services, whether or not they are designated by Company as "certified" or otherwise. Company is not responsible for any disclosure, modification or

deletion of Customer Data resulting from access by such Non-Company Application or its provider.

- 4.2 **Integration with Non-Company Applications.** The Services may contain features designed to interoperate with Non-Company Applications. Company cannot guarantee the continued availability of such Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Company Application ceases to make the Non-Company Application available for interoperation with the corresponding Service features in a manner acceptable to Company.

## 5. FEES AND PAYMENT

- 5.1 **Fees.** Pricing and fees shall be set forth on the Company's website or within the Services, unless otherwise agreed in writing between the parties. All fees are subject to change.
- 5.2 **Payments and Use Credits.** Customer may be able to pay for certain Services in advance by purchasing service credits to be used within the Services ("Use Credits"), as indicated. Use Credits and the associated payments may be subject to additional terms, as set forth on the Company's website or within the Services. Payments and Use Credits are non-refundable, except where required by law and Use Credits will expire 1 year after purchase unless otherwise agreed.
- 5.3 **Promotional Credits.** Company may, from time to time, offer promotional use credits ("Promotional Credits") free of charge. Promotional Credits will not be applied against any sales, use, gross receipts, or similar transaction based taxes that may be applicable to Customer and may not be sold, returned or refunded. Promotional Credits have no monetary value outside of the Services. Customer may be required to enter a valid payment method in order to receive Promotional Credits.
- 5.4 **Invoicing and Payment.** Customer will provide Company with valid and updated credit card information, or upon agreement by Company (in its sole discretion) a valid purchase order or alternative document reasonably acceptable to Company. If Customer provides credit card information to Company, Customer authorizes Company to charge such credit card for all Services and Use Credits purchased or subscribed to through the Services, including by Users. Such charges shall be made in advance or in accordance with any different billing frequency stated on the Company website or agreed to by the Parties. If the Company agreed to a payment method other than a credit card, Company will invoice Customer in advance and otherwise in accordance with the parties written agreement. Invoiced fees are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Company and notifying Company of any changes to such information.
- 5.5 **Overdue Charges.** If any invoiced amount is not received by Company by the due date, then without limiting Company's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) Company may condition future subscription renewals or service credit purchases on payment terms shorter than those specified in the "Invoicing and Payment" section above.

- 5.6 **Suspension of Service and Acceleration.** If any charge owing by Customer under this or any other agreement for services is 30 days or more overdue, (or a credit card or direct debit whose payment has been declined in the case of amounts Customer has authorized Company to charge to Customer's credit or debit card), Company may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, Company will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending services to Customer.
- 5.7 **Payment Disputes.** Company will not exercise its rights under the "Overdue Charges" or "Suspension of Service and Acceleration" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 5.8 **Taxes.** Company's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Company has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Company will invoice Customer and Customer will pay that amount unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Company is solely responsible for taxes assessable against it based on its income, property and employees.

## 6. PROPRIETARY RIGHTS AND LICENSES

- 6.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Company, its Affiliates, its licensors and Content Providers reserve all of their right, title and interest in and to the Services, Content and Performance and Use Data, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. To the extent that any such rights vest in Customer, Customer hereby assigns to Company all of its right, title and interest in and to the Services, Content and Performance and Use Data, including all related intellectual property rights therein and thereto.
- 6.2 **Access to and Use of Content.** Customer has the right to access and use applicable Content subject to the terms of this Agreement, the EULA and the Documentation.
- 6.3 **License by Customer to Company.** Customer grants Company, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-Company Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for Company to provide, develop, enhance and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-Company Application with a Service, Customer grants Company permission to allow the Non-Company Application and its provider to access Customer Data and information about Customer's usage of the Non-Company Application as appropriate for the interoperation of that Non-Company Application with the Service. Subject to the

limited licenses granted herein, Company acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-Company Application or such program code.

- 6.4 **Feedback.** All comments, suggestions, ideas, or other feedback communicated to Company through or in connection with your use of the Services (“**Feedback**”) and any modifications of derivatives thereof, and all rights, including without limitation intellectual property rights, in or related to such Feedback shall forever be the exclusive property of Company. Company may use Feedback for any lawful purpose without any compensation, attribution, or other obligation to Customer..

## 7. CONFIDENTIALITY

- 7.1 **Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Company includes the Services, Content, Performance and Use Data, and the terms and conditions of this Agreement(including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Company services.

- 7.2 **Protection of Confidential Information.** As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, Company may disclose the terms of this Agreement to a subcontractor or Non-Company Application Provider to the extent necessary to perform Company’s obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

- 7.3 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

## 8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

- 8.1 **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 8.2 **Company Warranties.** Company warrants that during an applicable subscription term (a) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) Company will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Integration with Non-Company Applications" section above, Company will not materially decrease the overall functionality of the Services without notice to Customer. For any breach of a warranty above, Customer's sole and exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.
- 8.3 **Customer Warranties.** Customer represent and warrant that Customer either owns or has all necessary rights, licenses and permissions needed to provide Customer Data to Company and into the Services.
- 8.4 **Disclaimers.**

THE SERVICES, INCLUDING ANY CONTENT THEREIN, ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY AND EXCEPT TO THE EXTENT PROHIBITED BY LAW, SCALED COGNITION, ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS MAKE NO WARRANTIES (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE), AND DISCLAIM ALL WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR TRADE USAGE. COMPANY DOES NOT WARRANT AND MAKES NO COMMITMENT THAT THE SERVICES WILL BE UNINTERRUPTED, ACCURATE, AVAILABLE OR ERROR FREE, OR THAT ANY CONTENT WILL BE SECURE OR NOT LOST OR ALTERED.

CUSTOMER ACCEPT AND AGREE THAT ANY USE OF THE SERVICES, CONTENT OR OUTPUT (AS DEFINED IN THE EULA) IS AT CUSTOMER'S SOLE RISK AND CUSTOMER WILL NOT RELY ON OUTPUT (AS DEFINED IN THE EULA) AS A SOLE SOURCE OF TRUTH OR FACTUAL INFORMATION, OR AS A SUBSTITUTE FOR CUSTOMER'S REVIEW OF SUCH OUTPUT (AS DEFINED IN THE EULA) OR OBTAINING PROFESSIONAL ADVICE.

## 9. MUTUAL INDEMNIFICATION

- 9.1 **Indemnification by Company.** Company will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Service (excluding any Customer Data, content provided by third-party content providers directly to Customer and Non-Company Application) infringes or misappropriates such third party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any damages, attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Company in writing of, a Claim Against Customer, provided Customer (a) promptly gives Company written notice of the Claim Against Customer, (b) gives Company sole control of the defense and settlement of the Claim Against Customer (except that Company may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Company all reasonable assistance, at Company's expense. If Company receives information about an infringement or misappropriation claim related to a Service, Company may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Company's warranties under "Company Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (2) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Company, if the Services or use thereof would not infringe without such combination; (3) a Claim Against Customer arises from Services for which there is no charge, including any beta services; or (4) a Claim against Customer arises from Content, a Non-Company Application, Customer Data, content provided by third-party content providers directly to Customer or Customer's breach of this Agreement or the Documentation.
- 9.2 **Indemnification by Customer.** Customer will defend Company and its Affiliates against any claim, demand, suit or proceeding made or brought against Company by a third party (i) alleging (a) that any Customer Data or Customer's use of Customer Data, (b) a Non-Company Application, or (c) the Company's use of Customer Data, infringes or misappropriates such third party's intellectual property rights, (ii) arising from (a) Customer's use of the Services or Content or (b) Customer's violation of the Agreement, the EULA, applicable law or the Documentation or (iii) arising out of any use of Customer Data (each a "**Claim Against Company**"), and will indemnify Company from any damages, attorney fees and costs finally awarded against Company as a result of, or for any amounts paid by Company under a settlement approved by Customer in writing of, a Claim Against Company, provided Company (a) promptly gives Customer written notice of the Claim Against Company, (b) gives Customer sole control of the defense and settlement of the Claim Against Company (except that Customer may not settle any Claim Against Company unless it unconditionally releases Company of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against Company arises from Company's breach of this Agreement or the Documentation.

- 9.3 **Exclusive Remedy.** Section 9.1 states Company's sole liability to Customer, and Customer's sole and exclusive remedy against Company for any third party claim described in Section 9.1.

## 10. LIMITATION OF LIABILITY

- 10.1 **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE TOTAL AGGREGATE LIABILITY OF COMPANY, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF THE SERVICES, AND REGARDLESS OF THE BASIS OR THEORY OF THE CLAIM, EXCEED THE GREATER OF AMOUNT YOU PAID FOR THE SERVICE THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS BEFORE THE LIABILITY AROSE.
- 10.2 **Exclusion of Consequential and Related Damages.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY, ITS AFFILIATES OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF SERVICES FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA OR OTHER LOSSES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 11. TERM AND TERMINATION

- 11.1 **Term of Agreement.** This Agreement commences on the date Customer first accepts it and continues until all subscriptions hereunder have expired or have been terminated.
- 11.2 **Term of Purchased Subscriptions and Use Credits.** Any ongoing or reoccurring Use Credits or subscriptions elected through the Services will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Renewal of promotional or one-time priced subscriptions or additional Use Credits will be at Company's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume, Use Credit volume or length of term for any Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.
- 11.3 **Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, (iii) or in case of Customer, breach of the EULA or any other agreement agreed to by the parties. Any breach by Customer of the EULA or other agreement shall be a material breach of this Agreement. Each User may terminate their account pursuant to the terms of the EULA; provided that such termination shall not cancel or terminate any payment obligations under this Agreement.

- 11.4 **Payment upon Termination.** If this Agreement is terminated by Company in accordance with the “Termination” section above, Customer will pay any unpaid fees covering the remainder of the term agreed to to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Company for the period prior to the effective date of termination.
- 11.5 **Surviving Provisions.** The sections titled “Fees and Payment,” “Proprietary Rights and Licenses,” “Confidentiality,” “Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Removal of Content and Non-Company Applications,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement, and the section titled “Protection of Customer Data” will survive any termination or expiration of this Agreement for so long as Company retains possession of Customer Data.

## 12. GENERAL PROVISIONS

- 12.1 **Export Compliance.** The Services, Content, other Company technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Company and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.
- 12.2 **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
- 12.3 **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Company and Customer regarding Customer’s use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) this Agreement, (2) the EULA and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
- 12.4 **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- 12.5 **Attribution.** Each party hereby grants to the other party a royalty free, non-exclusive license during the term of this Agreement to use its trademarks, service marks and other proprietary indicia of the other party (its “Marks”) to establish a client or vendor (as applicable) list on its website and in its marketing materials. Each party will comply with the other party’s reasonable written requests as to the usage, display and presentation of such trademarks, service marks or other proprietary indicia. Upon request from a party, the other party shall promptly remove any use of such requesting party’s trademarks, service marks or other proprietary indicia from its website and its marketing materials.

- 12.6 **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 12.7 **Waiver.** No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 12.8 **Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 12.9 **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, Company may assign this Agreement in its entirety, without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 12.10 **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the Commonwealth of Massachusetts. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Massachusetts, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.
- 12.11 **Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to Company at [INSERT ADDRESS] with a copy to (which shall not constitute notice) [INSERT EMAIL] and to Customer at the addresses provided to Company at the time of registration, unless otherwise updated by providing notice of such change to Company in accordance with this Section.

12.12 **Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.