



## PROVIDER'S TERMS OF SERVICE

Provider's Terms of Service (this "Terms of Service"), effective as of the date (the "Effective Date") of the applicable Order Form (as defined below), is by and between Carbon Lighthouse, Inc., a Delaware corporation with offices located at 405 Lexington Avenue, Floor 9, New York, New York 10174 ("Provider"), and the legal entity ("Client") completing the applicable Order Form for Software Services under these Terms of Service. These Terms of Service govern Client's use of the Software Services (as defined below) made available to Client on Provider's website.

By accessing or using the Software Services, Client agrees to be bound by the terms and conditions of this Terms of Service.

Provider reserves the right, from time to time, in its sole discretion, to revise, modify, or update this Terms of Service. When changes are made, Provider will provide Client with notice either by email or through the website. Client will also update the "Last Modified" date at the top of this Terms of Service. Provider may require Client to provide consent to the updated Agreements in a specified manner before further use of the Software Services. If Client does not agree to any change(s) after receiving notice of such change(s), Client agrees to stop using the Software Services. Otherwise, Client's continued use of the Software Services constitutes Client's acceptance of such changes. Customer should regularly check the Software Services to view the current terms.

### **1. DEFINITIONS. The following terms shall have the meanings ascribed to them.**

"Access Credentials" means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the Software Services.

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" has the meaning set forth in the preamble.

"Authorized Users" means Client's employees, consultants, contractors, and agents (a) who are authorized by Client to access and use the Software Services under the rights granted to Client pursuant to this Terms of Service; and (b) for whom access to the Software Services has been purchased hereunder.

"Confidential Information" has the meaning set forth in 9.1.

"Client" has the meaning set forth in the preamble.

"Client Data" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Client or an Authorized User by or through the Software Services or that incorporates or is derived from the Processing of such information, data, or content by or through the Software Services. For the avoidance of doubt, Client Data does not include

Resultant Data or any other information reflecting the access or use of the Software Services by or on behalf of Client or any Authorized User.

“Client Failure” has the meaning set forth in 5.2.

“Client Systems” means the Client’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services.

“Data Collectors” means certain equipment and sensors that facilitate collection of relevant data to facilitate delivery of the Software Services.

“Disclosing Party” has the meaning set forth in 9.1.

“Documentation” means any manuals, instructions, or other documents or materials that the Provider provides or makes available to Client in any form or medium and which describe the functionality, components, features, or requirements of the Software Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“Effective Date” has the meaning set forth in the preamble.

“Fees” has the meaning set forth in 8.1.

“Force Majeure Event” has the meaning set forth in 15.9(a).

“Harmful Code” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Client or any Authorized User from accessing or using the Software Services or Provider Systems as intended by this Terms of Service. Harmful Code does not include any Provider Disabling Device.

“Indemnatee” has the meaning set forth in 12.3.

“Indemnitor” has the meaning set forth in 12.3.

“Initial Term” has the meaning set forth in 14.1.

“Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“Losses” means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Order Form” means Client’s written request for services submitted by Client to Provider, using Provider’s form, either electronically through Provider’s Website or separately via email or otherwise.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“Projects” means a change to building equipment or operations to reduce energy, maintenance, or carbon costs, or otherwise improve the building.

“Process” means to take any action or perform any operation or set of operations that the Software Services are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. “Processing” and “Processed” have correlative meanings.

“Professional Services” means the services to be provided by Provider for the benefit of Client, as defined in the applicable Order Form.

“Property” means Client’s real property at the location identified in the applicable Order Form.

“Provider” has the meaning set forth in the preamble.

“Provider Disabling Device” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Provider or its designee to disable Client’s or any Authorized User’s access to or use of the Software Services automatically with the passage of time or under the positive control of Provider or its designee.

“Provider Indemnitee” has the meaning set forth in 12.2.

“Provider Materials” means the Software Services, Documentation, and Provider Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Provider or any Subcontractor in connection with the Software Services or otherwise comprise or relate to the Software Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data, or other content derived from Provider’s monitoring of Client’s access to or use of the Software Services, but do not include Client Data.

“Provider Personnel” means all individuals involved in the performance of Software Services as employees, agents, or independent contractors of Provider or any Subcontractor.

“Provider Systems” means the information technology infrastructure used by or on behalf of Provider in performing the Software Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Provider or through the use of third-party services.

“Receiving Party” has the meaning set forth in 9.1.

“Renewal Term” has the meaning set forth in 14.2.

“Representatives” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

“Resultant Data” means data and information related to Client’s use of the Software Services that is used by Provider in an aggregate or anonymized manner, including to compile statistical and performance information related to the provision and operation of the Software Services.

“Service Allocation” has the meaning set forth in 4.2.

“Software Services” means the software-as-a-service offering signed up for by Client through an Order Form, that may include any or all of the following services: (i) streaming data related to utility consumption and HVAC systems from Client’s Property to the CLUES® platform, including one-time delivery of a customized hardware solution consisting of gateways, devices, and/or sensors, installation instructions and phone support; (ii) identification of recommended Projects; (iii) quantification of the financial and operational benefits of recommended Projects; (iv) on-demand access to a secure web application for viewing performance data, including financials, energy savings, and carbon emissions reductions at the building and portfolio levels; automated bill collection, contingent on utility login credentials being provided; ability to create custom reports and automate report generation; ability to export data and reports.

“Subcontractor” has the meaning set forth in 15.8.

“Term” has the meaning set forth in 14.2.

“Third-Party Materials” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Software Services that are not proprietary to Provider.

## **2. SERVICES.**

**2.1 Access and Use.** Subject to and conditioned on Client’s and its Authorized Users’ compliance with the terms and conditions of this Terms of Service, Provider hereby grants Client a non-exclusive, non-transferable (except in compliance with 15.8) right to access and use the Software Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Client’s internal use. Provider shall provide to Client the Access Credentials within a reasonable time following the Effective Date.

**2.2 Utility Disclosures and BMS Access.** For each Property, Client shall provide Provider with, or authorize and consent to Provider obtaining and/or being granted, physical, remote or electronic access to any available building management systems, Data Collectors and available historic load usage and consumption history, utility bills (both historical and on an ongoing basis), information about how Client and/or the Property is billed by utilities, and interval meter data (e.g., via Urjanet or UtilityAPI), to enable the Software Services. Provider shall retain all rights, title, and interest in and to the Data Collectors provided by Provider to Client.

**2.3 Documentation License.** Provider hereby grants to Client a non-exclusive, non-sublicensable, non-transferable (except in compliance with 15.8) license to use the Documentation during the Term solely for Client’s internal business purposes in connection with its use of the Software Services.

**2.4 Service and System Control.** Except as otherwise expressly provided in this Terms of Service, as between the parties:

(a) Provider has and will retain sole control over the operation, provision, maintenance, and management of the Provider Materials; and

(b) Client has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Client Systems, and sole responsibility for all access to and use of the Provider Materials by any Person by or through the Client Systems or any other means controlled by Client or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Software Services or Provider; (ii) results obtained from any use of the Software Services or Provider Materials; and (iii) conclusions, decisions, or actions based on such use.

2.5 **Reservation of Rights.** Nothing in this Terms of Service grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Software Services, Provider Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Software Services, the Provider Materials, and the Third-Party Materials are and will remain with Provider and the respective rights holders in the Third-Party Materials.

2.6 **Changes.** Provider reserves the right, in its sole discretion, to make any changes to the Software Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's services; or (iii) the Software Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Software Services. The parties shall evaluate all such requested changes, and, if agreed, implement all such requested changes in accordance with the change procedure set forth below. No requested changes will be effective unless and until memorialized in a written change order or amendment signed by both parties.

2.7 **Suspension or Termination of Software Services.** Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Client's, any Authorized User's, or any other Person's access to or use of all or any part of the Software Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its sole discretion, that: (i) Client or any Authorized User has failed to comply with any term of this Terms of Service, or accessed or used the Software Services beyond the scope of the rights granted or for a purpose not authorized under this Terms of Service; (ii) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this Terms of Service expires or is terminated. This Section 2.9 does not limit any of Provider's other rights or remedies, whether at law, in equity, or under this Terms of Service.

### **3. USE RESTRICTIONS, SERVICE USAGE AND DATA STORAGE.**

3.1 **Use Restrictions.** Client shall not, and shall not permit any other Person to, access or use the Software Services or Provider Materials except as expressly permitted by this Terms of Service and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Client shall not, except as this Terms of Service expressly permits:

(a) copy, modify, or create derivative works or improvements of the Software Services or Provider Materials;

(b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Software Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

(c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software Services or Provider Materials, in whole or in part;

(d) bypass or breach any security device or protection used by the Software Services or Provider Materials or access or use the Software Services or Provider Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;

(e) input, upload, transmit, or otherwise provide to or through the Software Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

(f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Software Services, Provider Systems, or Provider's provision of services to any third party, in whole or in part;

(g) remove, delete, alter, or obscure any trademarks, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Software Services or Provider Materials, including any copy thereof;

(h) access or use the Software Services or Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Provider customer), or that violates any applicable Law;

(i) access or use the Software Services or Provider Materials for purposes of competitive analysis of the Software Services or Provider Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage;

(j) access or use the Software Services or Provider Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Software Services could lead to personal injury or severe physical or property damage; or

(k) otherwise access or use the Software Services or Provider Materials beyond the scope of the authorization granted under this Section 3.1.

**3.2 Service Usage and Data Storage.** Provider reserves the right to limit the levels of usage and data storage available to Client, and to charge Fees payable by Client based on the levels of usage and data storage enjoyed by Client. Any changes to this Terms of Service to impose such limits and fees shall be implemented only in compliance with the terms of this Terms of Service, including advance notice to Client.

#### **4. CLIENT OBLIGATIONS.**

**4.1 Client Systems and Cooperation.** Client shall at all times during the Term: (a) set up, maintain, and operate in good repair all Client Systems on or through which the Software Services are accessed or used; (b) provide Provider Personnel with such access to Client's premises and Client Systems as is necessary for Provider to deliver the Software Services; and (c) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Terms of Service.

4.2 **Effect of Client Failure or Delay.** Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Terms of Service (each, a "Client Failure").

4.3 **Corrective Action and Notice.** If Client becomes aware of any actual or threatened activity prohibited by 4.1, Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Software Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

5. **DATA BACKUP.** The Software Services do not replace the need for Client to maintain regular data backups or redundant data archives. Provider has no obligation or liability for any loss, alteration, destruction, damage, corruption, or recovery of customer data

## 6. **SECURITY.**

6.1 **Client Control and Responsibility.** Client has and will retain sole responsibility for: (a) all Client Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Client or any Authorized User in connection with the Software Services; (c) Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services ("Client Systems"); (d) the security and use of Client's and its Authorized Users' Access Credentials; and (e) all access to and use of the Software Services and Provider Materials directly or indirectly by or through the Client Systems or its or its Authorized Users' Access Credentials, with or without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

6.2 **Access and Security.** Client shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Software Services; and (b) control the content and use of Client Data, including the uploading or other provision of Client Data for Processing by the Software Services.

6.3 **IT Support.** Client shall authorize any and all Provider's Data Collectors such that they can send and receive data across the client buildings' IT network. This includes such requirements as prompt provision of IP addresses for Data Collectors, and other action necessary to ensure data can be sent to and from Data Collectors to Provider's software and databases.

## 7. **PROFESSIONAL SERVICES.**

7.1 **Order Forms.** Upon execution by the parties of an Order Form for Professional Services, Provider will provide the Professional Services set forth in the applicable Order Form for the benefit of Client. If Client submits a proposed Order Form for Professional Services, such Order Form shall not be binding upon Provider until accepted by Provider. After an Order Form has been accepted by Provider, it shall be subject to the terms and conditions of this Terms of Service.

## 8. **FEES AND PAYMENT.**

8.1 **Fees.** Client shall pay Provider the fees for Software Services and, if applicable, Professional Services, as set forth in the applicable Order Form ("Fees") in accordance with this 8.

8.2 **Taxes.** All Fees and other amounts payable by Client under this Terms of Service are exclusive of taxes and similar assessments. Without limiting the foregoing, Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on Provider's income.

8.3 **Payment.** Client shall pay all Fees within thirty (30) days after the date of the invoice therefor. Client shall make all payments hereunder in US dollars by ACH or wire transfer to the account set forth below or such other address or account as Provider may specify in writing from time to time.

Silicon Valley Bank  
3003 Tasman Drive, Santa Clara, CA 95054  
Routing and Transit #: 121140399  
Account Name: Carbon Lighthouse, Inc.  
Account Number: 3303268405

8.4 **Late Payment.** If Client fails to make any payment when due then, in addition to all other remedies that may be available:

(a) Provider may charge interest on the past due amount at the rate of 1.5% per month/ calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b) Client shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and

(c) if such failure continues for thirty (30) days following written notice thereof, Provider may suspend performance of the Software Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Client or any other Person by reason of such suspension.

8.5 **No Deductions or Setoffs.** All amounts payable to Provider under this Terms of Service shall be paid by Client to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

8.6 **Fee Increases.** Provider may increase Fees for Software Services after the Initial Term by providing written notice to Client at least thirty (30) calendar days prior to the commencement of the Renewal Term, and the applicable Order Form will be deemed amended accordingly.

## **9. CONFIDENTIALITY.**

9.1 **Confidential Information.** In connection with this Terms of Service, each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). Subject to 9.2, "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential". Without limiting the foregoing: all Provider Materials are the Confidential Information of Provider

9.2 **Exclusions.** Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without



restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Terms of Service; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Terms of Service; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

**9.3 Protection of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for two (2) years after expiration or termination of this Terms of Service:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Terms of Service;

(b) except as may be permitted by and subject to its compliance with 9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Terms of Service; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this 9.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this 9;

(c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this 9.

(e) Notwithstanding any other provisions of this Terms of Service, the Receiving Party's obligations under this 9 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

**9.4 Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under 9.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this 9.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

**9.5 Case Studies.** Notwithstanding anything to the contrary in this Terms of Service, Provider may use Client's name and logo on sales and marketing collateral and channels. Provider may also develop white-labeled case studies based on the work with Client for use in confidential sales presentations and discussions. Provider will develop Client-branded content including but not limited to press releases, case studies, testimonials, and quotes in collaboration with Client and with Client's approval.

## **10. INTELLECTUAL PROPERTY RIGHTS.**

10.1 **Provider Materials.** All right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Client has no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in 2.1 or the applicable third-party license, in each case subject to 4.1. All other rights in and to the Provider Materials are expressly reserved by Provider. In furtherance of the foregoing, Client hereby unconditionally and irrevocably grants to Provider an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

10.2 **Client Data.** As between Client and Provider, Client is and will remain the sole and exclusive owner of all right, title, and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in 10.3.

10.3 **Consent to Use Client Data.** Client hereby irrevocably grants all such rights and permissions in or relating to Client Data as are necessary or useful to Provider, its Subcontractors, and the Provider Personnel to enforce this Terms of Service and exercise Provider's, its Subcontractors', and the Provider Personnel's rights and perform Provider's, its Subcontractors', and the Provider Personnel's obligations hereunder. Without limiting the foregoing, Client hereby grants to Provider a perpetual, irrevocable, transferrable, worldwide, fully paid-up and royalty-free license, with the right to sublicense through multiple tiers, to: (i) use, distribute, modify, reproduce and create derivative works from Client Data in order to provide the Software Services and prepare the Provider Materials; (ii) use Client Data for Provider's internal business purposes and for improving the Software Services and Provider Materials for other customers; and (iii) prepare, use and disclose aggregated or de-identified Client Data for any business purpose.

## **11. REPRESENTATIONS AND WARRANTIES.**

11.1 **Mutual Representations and Warranties.** Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Terms of Service;
- (c) the execution of the Order Form by its representative whose signature is set forth at the end of the Order Form has been duly authorized by all necessary corporate or organizational action of such party; and
- (d) when executed and delivered by both parties, each of the Order Form, this Terms of Service will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

11.2 **Additional Client Representations, Warranties, and Covenants.** Client represents, warrants, and covenants to Provider that Client owns or otherwise has and will have the necessary rights and consents in and relating to the Client Data so that, as received by Provider and Processed in accordance with this Terms of Service, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

11.3 **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN 11.1 AND 11.2, ALL SERVICES AND PROFESSIONAL AND PROVIDER MATERIALS ARE PROVIDED “AS IS.” PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, PROFESSIONAL SERVICES, OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. PROVIDER DOES NOT REPRESENT OR WARRANT IN ANY WAY THAT THE SERVICES OR PROFESSIONAL SERVICES WILL REDUCE OR PREVENT THE CONTRACTION OR SPREAD OF ANY INFECTIOUS DISEASES IN A PROPERTY, AND CUSTOMER UNDERSTANDS THAT IT IS FULLY AND SOLELY RESPONSIBLE FOR ALL ACTIONS TAKEN BY IT OR ITS REPRESENTATIVES PURSUANT TO OR AS A RESULT OF THE SERVICES OR PROVIDER’S DELIVERABLES.

11.4 **Futher Disclaimers.** Provider shall not be deemed in breach of its obligations under this Terms of Service with respect to or in connection with any Client’s or its Authorized Users’ impaired ability or inability to access or use the Software Services or, if applicable, the Professional Services that is due, in whole or in part, to any: (a) act or omission by Client or any Authorized User; (b) Client Failure; (c) Client’s or its Authorized User’s Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Provider pursuant to this Terms of Service; or (f) disabling, suspension, or termination of the Software Services pursuant to 2.9. Client acknowledges that Client’s delay in or failure to take any of the actions recommended to be taken by Client may reduce or eliminate Client’s ability to achieve the recommended Projects and projected savings. Client acknowledges that Provider does not guarantee Client’s achievement of any projected savings, and that the projected savings are Provider’s estimate only. Client assumes full responsibility for its acts or omissions that might or might not result in achievement of projected savings.

## **12. INDEMNIFICATION.**

12.1 **Client Indemnification.** Client shall indemnify, defend, and hold harmless Provider and its Representatives (each, a “Provider Indemnitee”) from and against any and all Losses incurred by such Provider Indemnitee resulting from any Action by a third party (other than an Affiliate of a Provider Indemnitee) that arise out of or result from, or are alleged to arise out of or result from:

- (a) Client Data, including any Processing of Client Data by or on behalf of Provider in accordance with this Terms of Service;
- (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client or any Authorized User, including Provider’s compliance with any specifications or directions provided by or on behalf of Client or any Authorized User to the extent prepared without any contribution by Provider;
- (c) allegation of facts that, if true, would constitute Client’s breach of any of its representations, warranties, covenants, or obligations under this Terms of Service; or
- (d) gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Client, any Authorized User, or any third party on behalf of Client or any Authorized User, in connection with this Terms of Service.

**12.2 Indemnification Procedure.** Client (the “Indemnitor”) shall promptly notify Provider (the “Indemnatee”) in writing of any Action for which the Indemnitor believes the Indemnatee may be entitled to be indemnified pursuant to 12.1 or 12.2. The Indemnatee shall cooperate with the Indemnitor at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel reasonably acceptable to the Indemnatee to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnatee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnatee’s prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnatee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnatee may deem appropriate. The Indemnatee’s failure to perform any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this 12, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

**12.3 Mitigation.** If any of the Software Services or Provider Materials or, if applicable Professional Services or Deliverables are, or in Provider’s opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Client’s or any Authorized User’s use of the Software Services or Provider Materials or, if applicable, Professional Services or Deliverables is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

- (a) obtain the right for Client to continue to use the Software Services and Provider Materials or, if applicable, Professional Services and Deliverables materially as contemplated by this Terms of Service;
- (b) modify or replace the Software Services and Provider Materials or, if applicable, the Professional Services or Deliverables, in whole or in part, to seek to make the Software Services and Provider Materials or, if applicable, Professional Services and Deliverables (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Software Services and Provider Materials or Professional Services and Deliverables, as applicable, under this Terms of Service; or
- (c) by written notice to Client, terminate this Terms of Service with respect to all or part of the Software Services and Provider Materials with respect to all or part of the Professional Services and Deliverables, and require Client to immediately cease any use of the Software Services and Provider Materials or, if applicable, the Professional Services and Deliverables, or any specified part or feature thereof, provided that, subject to Client’s compliance with its post-termination obligations set forth in 14.4, Client will be entitled to a refund of the prorated Fees prepaid for Software Services or, if applicable, Professional Services scheduled after the effective date of such termination.

**12.4 Sole Remedy.** THIS SECTION 12 SETS FORTH CUSTOMER’S SOLE REMEDIES AND PROVIDER’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND PROVIDER MATERIALS OR, IF APPLICABLE, PROFESSIONAL SERVICES OR DELIVERABLES, OR ANY SUBJECT MATTER OF THIS SAAS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

### **13. LIMITATIONS OF LIABILITY.**

**13.1 EXCLUSION OF DAMAGES.** EXCEPT AS OTHERWISE PROVIDED IN 13.3, IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE UNDER OR IN CONNECTION WITH THIS SAAS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN

VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**13.2 CAP ON MONETARY LIABILITY.** EXCEPT AS OTHERWISE PROVIDED IN 13.3, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PROVIDER AND ITS LICENSORS AND THEIR RESPECTIVE REPRESENTATIVES ARISING OUT OF OR RELATED TO THIS SAAS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID AND AMOUNTS ACCRUED BUT NOT YET PAID TO PROVIDER UNDER THIS SAAS AGREEMENT, IN THE TWELVE (12)-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**13.3 Exceptions.** The exclusions and limitations in 13.1 and 13.2 do not apply to Provider's obligations under 12 or liability for Provider's gross negligence or willful misconduct.

#### **14. Term and Termination.**

**14.1 Initial Term.** The initial term of this Terms of Service commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect until expiration date set forth in the Order Form (the "Initial Term").

**14.2 Renewal Term.** This Terms of Service will automatically renew for up to ten (10) additional successive one (1)-year terms unless earlier terminated pursuant to this Terms of Service's express provisions or either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

**14.3 Termination.** In addition to any other express termination right set forth elsewhere in this Terms of Service:

(a) Provider may terminate this Terms of Service, effective on written notice to Client, if Client: (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Provider's delivery of written notice thereof; or (ii) breaches any of its obligations under 4.1, 7.1, or 9; and

(b) either party may terminate this Terms of Service, effective on written notice to the other party, if the other party materially breaches this Terms of Service, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

**14.4 Effect of Termination or Expiration.** Upon any expiration or termination of this Terms of Service, except as expressly otherwise provided in this Terms of Service:

(a) Client shall immediately cease all use of any Software Services or Provider Materials and (i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Provider Materials or Provider's Confidential Information; (ii) permanently erase all Provider Materials and Provider's Confidential

Information from all systems Client directly or indirectly controls; and (iii) certify to Provider in a signed and notarized written instrument that it has complied with the requirements of this Section 14.4(c);

(b) notwithstanding anything to the contrary in this Terms of Service, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information in its then current state and solely to the extent and for so long as required by applicable Law; (ii) Provider may retain Client Data in accordance with Section 10.3; (iii) Provider may also retain Client Data in its backups, archives, and disaster recovery systems until such Client Data is deleted in the ordinary course; and (iv) all information and materials described in this Section 14.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Terms of Service;

(c) Provider may disable all Client and Authorized User access to the Provider Materials;

(d) if Client terminates this Terms of Service, pursuant to 14.3(b), Client will continue to pay any Fees specified in the Order Form for the rest of the Term. After the term is over, the Software Services will not renew, and no further Fees will accrue subject to the terminated Order Form.

(e) if Provider terminates this Terms of Service pursuant to 14.3(a) or 14.3(b), all Fees that would have become payable had this Terms of Service remained in effect until expiration of the Term will become immediately due and payable, and Client shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Provider's invoice therefor; and

(f) if Client requests in writing at least ten (10) days prior to the effective date of expiration or termination, subject to 14.4(d), Provider shall, within ninety (90) days following such expiration or termination, deliver to Client the then most recent version of Client Data maintained by Provider, provided that Client has at that time paid all Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Provider's services in transferring such Client Data.

**14.5 Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the parties in this Terms of Service that, by its nature, should survive termination or expiration of this Terms of Service, will survive any expiration or termination of this Terms of Service: 4.1 (Use Restrictions), 9 (Confidentiality), Section 10 (Intellectual Property Rights), 11.4 (Disclaimer of Warranties), Section 11.5 (Further Disclaimers), 12 (Indemnification), 13 (Limitations of Liability), 14.4 (Effect of Termination or Expiration), this 14.5 (Surviving Terms), and 15 (Miscellaneous).

## **15. MISCELLANEOUS.**

**15.1 Further Assurances.** On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Terms of Service.

**15.2 Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Terms of Service shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**15.3 Public Announcements.** Unless expressly permitted under this Terms of Service neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Terms of Service or otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written

consent of the other party, which consent shall not be unreasonably withheld, provided, however, that Provider may, without Client's consent, include Client's name and other indicia in its lists of Provider's current or former customers of Provider in promotional and marketing materials.

**15.4 Notices.** Except as otherwise expressly set forth in this Terms of Service, any notice, request, consent, claim, demand, waiver, or other communications under this Terms of Service have legal effect only if in writing and addressed to a party as set forth in the Order Form (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.4):

Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the seventh (7<sup>th</sup>) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

**15.5 Interpretation.** For purposes of this Terms of Service: (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Terms of Service as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Terms of Service: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Terms of Service; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Terms of Service to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Terms of Service to the same extent as if they were set forth verbatim herein.

**15.6 Headings.** The headings in this Terms of Service are for reference only and do not affect the interpretation of this Terms of Service.

**15.7 Entire Agreement.** This Terms of Service, together with the Order Form, and any other documents incorporated herein or therein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Terms of Service and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Terms of Service, the related exhibits, schedules, attachments, and appendices (other than an exception expressly set forth as such therein) and the Order Form and any other documents incorporated herein or therein by reference], the following order of precedence governs: (a) first, this Terms of Service, excluding the Order form and this Terms of Service's exhibits, schedules, attachments, and appendices; (b) second, the Order Form and this Terms of Service's exhibits, schedules, attachments, and appendices as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

**15.8 Assignment.** Client shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Terms of Service, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Provider's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Client (regardless of whether Client is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Terms of Service for which Provider's prior written consent is

required. No assignment, delegation, or transfer will relieve Client of any of its obligations or performance under this Terms of Service. Provider may from time to time in its discretion engage third parties to perform Software Services (each, a “Subcontractor”). Any purported assignment, delegation, or transfer in violation of this Section 15.8 is null and void. This Terms of Service is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

**15.9 Force Majeure.**

(a) **No Breach or Default.** In no event will Provider be liable or responsible to Client, or be deemed to have defaulted under or breached this Terms of Service, for any failure or delay in fulfilling or performing any term of this Terms of Service, when and to the extent such failure or delay is caused by any circumstances beyond Provider’s reasonable control (a “Force Majeure Event”), including (i) acts of God; (ii) flood, fire, earthquake, pandemic, epidemic, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Terms of Service; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortage of adequate power or transportation facilities. Provider may terminate this Terms of Service if a Force Majeure Event continues substantially uninterrupted for a period of six (6) months or more.

**15.10 No Third-Party Beneficiaries.** This Terms of Service is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Terms of Service.

**15.11 Amendment and Modification; Waiver.** No amendment to or modification of or rescission, termination, or discharge of this Terms of Service is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Terms of Service and signed by each party. 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. Except as otherwise set forth in this Terms of Service, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Terms of Service will 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.

**15.12 Severability.** If any term or provision of this Terms of Service is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Terms of Service or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Terms of Service so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**15.13 Governing Law; Submission to Jurisdiction.** These Terms of Service are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Except for each party’s right to seek injunctive or equitable relief, all claims or disputes relating to this Terms of Service will be resolved by final and binding arbitration conducted by a single arbitrator (“Arbitrator”) selected by Provider Client and administered by JAMS (“JAMS”) in accordance with its then existing rules and procedures. Provider and Client will each bear their own attorneys’ fees and pay an equal share of the associated fees and costs; however, the Arbitrator will be authorized to award reimbursement for reasonable attorneys’ fees, costs and disbursements, and arbitration fees and costs.



The Arbitrator will issue a written award and statement of decision describing material factual findings and conclusions, and Provider and Client will each fully perform and satisfy the arbitration award within fifteen (15) days of service of such decision. Judgment on the award may be entered by any court of competent jurisdiction. Provider and Client hereby waive certain rights and protections which may otherwise be available if a dispute were determined by litigation in court. Subject to the foregoing, any legal suit, action, or proceeding arising out of or related to this Terms of Service or the licenses granted hereunder or thereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the city of San Francisco and County of San Francisco, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

15.14        **Waiver of Jury Trial.** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Terms of Service or the transactions contemplated hereby and thereby.

15.15        **Equitable Relief.** Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under 9 or, in the case of Client, 4.1, 5.3, or 7.1, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15.16        **Counterparts.** This Terms of Service and the Order Form may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of the Order Form delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of the Order Form. The parties agree that the Order Form may be electronically signed. The parties agree that the electronic signatures appearing on the Order Form are the same as handwritten signatures for all purposes, including validity, enforceability and admissibility.