



## MAIN SERVICES AGREEMENT

### FOR THE LICENSING OF SOFTWARE, PROVISION OF SUBSCRIPTION (SaaS) SERVICES, AND PROFESSIONAL SERVICES

This Main Services Agreement ("Agreement") is entered into as of the date of last signature ("Agreement Effective Date") on an Order Form between Provider and its Affiliates and Customer and its Affiliates, each identified in the Order Form signature block. Provider and Customer may be referred to collectively herein as the "Parties" or individually as a "Party."

For and in consideration of the representations and promises of the parties set forth herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. DEFINITIONS.

**"Account"** means any accounts or instances created by or on behalf of Customer within the Services.

**"Affiliate(s)"** means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, whereby "control" (including, with correlative meaning, the terms "controlled by" and "under common control") means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

**"API"** means the application programming interfaces developed, made available, and enabled by Provider that permit Customers to access certain functionality provided by the Services, including without limitation, any interface that enables the interaction with the Service(s) automatically through HTTP requests and the Provider application development API that enables the integration of the Service(s) with other web applications.

**"Applicable Data Protection Law(s)"** means the laws and regulations of the United States (including the California Privacy Rights Act (the "CPRA"), the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom (including the General Data Protection Regulation or GDPR and any applicable national laws made under it where Customer is established in the European Economic Area), the Swiss Federal Act of 19 June 1992 on Data Protection, and the Brazilian General Data Protection Law (LGPD), all as may be amended or superseded.

**"Applicable Law(s)"** means all applicable local, state, federal, and international laws, rules, and regulations, including, without limitation, those related to data privacy and data transfer.

**"Authorized User"** means Customer's employees, consultants, Contractors, and agents (i) who are authorized by Customer to access the Services on behalf of Customer under the rights granted to Customer pursuant to this Agreement and (ii) in the case of SaaS Services, for whom a unique user name and password to access to the Services has been provisioned per the terms and conditions of this Agreement. Where Customer has purchased the right to white label the Licensed Software or SaaS Services and allow Customer's customer(s) to access the same, "Authorized User" shall include Customer's customer(s) for whom Customer has purchased Users as specified on the Order Form.

**"Confidential Information"** means all information disclosed by one Party to the other Party that is marked confidential or which a reasonable person would understand to be confidential or proprietary given the nature of the information and circumstances of disclosure and includes, without limitation: any non-public information regarding Provider's or Customer's business, products and services (including, without limitation, the discovery, invention, research, improvement, development, marketing or sale thereof as well as templates, scorecards, modules, coaching cards, rubrics and the like), pricing, financial data, models and information, business and marketing plans, customer information, business opportunities, plans for development of future products, unreleased versions of products, know-how, technology, the Services, the Software, and the API. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) was already known to the receiving Party at the time of disclosure by the disclosing Party without an obligation of confidentiality; (b) was or is obtained by the receiving Party from a third party not known by the receiving Party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other



than by violation of this Agreement or another valid agreement between the Parties; or (d) was or is independently developed by the receiving Party without use of the disclosing Party's Confidential Information.

**"Contractor"** means an independent contractor or consultant of a Party.

**"Customer Data"** means all content and data, including without limitation any Personal Data, technical material, customer records, or other materials submitted by or on behalf of Customer and which remains in Provider's possession and control for further processing. "Customer Data" does not include Feedback.

**"Customer Environment"** means the computing environment (excluding any software provided by Provider) separately procured, prepared or maintained by Customer for the access and use of the products and Services.

**"Defect"** means a material non-conformance within the Warranty period that Provider can replicate or Customer can duplicate to Provider.

**"Derivative Works"** means a revision, enhancement, modification, translation, abridgment, condensation or expansion of any Provider IP.

**"Documentation"** means any written or electronic documentation, images, video, text, or sounds specifying the functionalities of the Services provided or made available by Provider to Customer or Users through the Site.

**"DPA"** means the Data Processing Agreement incorporated at Section 7(c) of this Agreement.

**"Effective Date"** means the effective date designated on the relevant Order referencing this Agreement.

**"Error"** means a failure of the products or services provided by Provider to substantially conform to the Documentation that Provider can replicate or Customer can duplicate.

**"Error Correction"** means revisions, modifications, alterations, and additions to the products or services provided by Provider to Customer as bug fixes or workarounds, each to resolve Errors.

**"Fees"** means each of the License Fees, Professional Services Fees, Subscription Fees, support fees, hosting fees, and any other fees specified in the Order Form.

**"Hosted Environment"** means Provider or its third party's technical environment required to operate and provide access to the relevant Provider service.

**"Hosting Services"** means the services that the Provider provides to Customer to allow Authorized Users to access and use the Software, including hosting set-up and ongoing services, as described in the Documentation.

**"Intellectual Property Rights"** means any and all respective patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights.

**"License Fees"** means the fees payable to license the Licensed Software.

**"License Metrics"** means the permitted volume of use of each of the software, maintenance and/or support services as designated, as defined in the applicable Order.

**"Licensed Software"** means the software product(s) licensed to the Customer and installed either on the Customer's premises or equipment or in a hosted environment, in each case as specified in the applicable Order.

**"License Term"** means the duration of the license use granted by the Provider to the Customer commencing on the date specified in the Order Form and, in the case of non-perpetual licenses, continuing thereafter in accordance with Section 12(a).

**"Order Form"** or **"Order"** means the order form incorporating this Agreement specifying the products and services to be provided by Provider to Customer and the Fees to be paid.

**"Personal Data"** means any information relating to an identified or identifiable natural person ('data subject'), where such data subject is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity



of that natural person and any other data which any Applicable Data Protection Law(s) identify as being personal data.

**"Professional Services"** means installation, configuration, implementation, training, consulting, project management, and/or other services that the Provider may provide to the Customer.

**"Professional Services Fees"** means the fees payable for the Professional Services.

**"Provider IP"** means the Services, the catalog, the catalog data, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, including any use by Customer of the catalog data, but does not include Customer Data.

**"SaaS"** means Software-as-a-Service offerings, as generally known in the industry.

**"Security Breach"** means the unlawful destruction, loss, alteration, disclosure of, or access to Confidential Information caused by Provider's breach of its confidentiality obligations set forth in Section 7(a).

**"Service(s)"** means any products, subscriptions, licenses, and/or services, that Customer orders via an Order referencing this Agreement, including, as applicable, the API, SaaS, Software, Documentation, and Professional Services but specifically excludes Third-Party Services.

**"Software"** means software provided by the Provider either by download or access through the internet that allows a User to use any functionality in connection with the Services.

**"Statement of Work"** means any statement of work executed or approved by each Party identifying those Professional Services to be provided by the Provider.

**"Subscription Fees"** means the fees charged on a per-User basis for the Service(s).

**"Subscription Services"** means the SaaS or subscription services provided by Provider to Customer under this Agreement via the website specified in the Order Form or any other website notified to Customer by Provider from time to time, as more particularly described in the Documentation.

**"Subscription Term"** means the period during which Customer has agreed to subscribe to a Service with respect to any individual User starting on the Effective Date and continuing thereafter in accordance with Section 12.

**"Support Services"** means the maintenance and/or support services (a) provided for Licensed Software offered by the Provider as set out in Section 5 and purchased by the Customer as specified in an Order Form or (b) included with the Subscription Services as more particularly detailed in section 5(c).

**"Term"** means the License Term and/or the Subscription Term, as the context requires.

**"Third-Party Services"** means third party products, applications, services, software, networks, systems, directories, websites, databases and information to which a Service links, or which Customer may connect to or enable in conjunction with a Service, including, without limitation, Third-Party Services which may be integrated directly into Customer's Account by Customer or at Customer's direction.

**"Updates"** means periodic improvements or additions to the Licensed Software or Services provided by Provider, including Error Corrections, but excluding any new features or substantial additional functionality.

**"User"** means an individual authorized to use the Licensed Software and/or the Service(s) through the Customer's Account as an agent, manager, team leader, administrator or any other role as identified through a unique login.

**"Version"** means the software configuration identified by a numeric representation, whether left or right of a decimal place.

**"Website"** means [www.revalizesoftware.com](http://www.revalizesoftware.com) or such other URL, mobile or localized versions thereof owned or operated by Provider as provided in the Order Form. **"White Label"** means to present the Licensed Software or Services under the Customer's own brand, conditional on prominently displaying the phrase **"powered by Revalize"** on each page of the Licensed Software.



## 2. SOFTWARE LICENSES AND SUBSCRIPTIONS.

(a) Licensed Software. In consideration of the License Fees paid by Customer to Provider, Provider grants to the Customer a non-exclusive, non-transferable, revocable, non-assignable personal license to use the then current version of Licensed Software for the License Term. The License is limited to License Metrics specified in the Order Form. The Licensed Software shall be used solely for Customer's internal business purposes except where the right to White Label the Licensed Software has been purchased, in which case the Customer may grant access to Authorized Users employed by customers of the Customer provided that the number of Users does not exceed that specified on the Order Form. Licensed Software may be installed either in Customer's own on-premise environment or may be hosted by or on behalf of Provider, as specified in the Order Form. Where Customer chooses the Licensed Software to be delivered in a Hosted Environment, Customer will purchase Hosting Services from Provider.

(b) Subscription Services. In consideration of the Subscription Fees paid by Customer to Provider, Provider grants to Customer a non-exclusive, non-transferable, revocable, non-assignable, personal right to access and use the Subscription Services specified in the Order Form through internet access, up to the number of Users specified on the Order Form. The Subscription Services shall be used solely for Customer's internal business purposes, except where the right to White Label the Services has been purchased, in which case the Customer may include employees of Customer's customers as Authorized Users of the Services, provided that the number of Users accessing the Subscription Services does not exceed the number specified on the Order Form.

(c) Authorized Users. Provider will issue Authorized Users with passwords and network links or connections to allow access to the Licensed Software and/or Subscription Services. The total number of Authorized Users will not exceed the number set forth in the Order Form, except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder. Customer acknowledges that Authorized User credentials cannot be shared or used by more than one Authorized User and that no User credential sharing is allowed, but may be reassigned to new Authorized Users replacing former Authorized Users who no longer require use of or access to the Licensed Software or Subscription Services.

(d) Modifications. Provider reserves the right, at its discretion, to modify, add, or discontinue any Licensed Software or Subscription Services or any portion thereof, at any time, for any reason and without liability to Customer except as provided in this Section 2(d). Further, Customer acknowledges that Provider may modify the features and functionality of the Licensed Software and Subscription Services during the Term. Provider shall use reasonable efforts to provide Customer with advance notice of any deprecation of any material feature or functionality. In the event any such modification materially impairs Customer's ability to use the Licensed Software or Subscription Services in the manner contemplated by this Agreement, Customer may terminate the Agreement upon written notice to Provider and Provider shall refund Customer, on a pro-rated basis, any pre-paid Fees corresponding to the unused portion of the applicable Services after such termination.

(e) Monitoring. Customer acknowledges that Provider reserves the right, at any time and without notice, to monitor compliance with the terms of this Agreement and to otherwise protect its rights in and to the Licensed Software and Subscription Services by incorporating license management technology into the Licensed Software and Subscription Services and monitoring usage, including, without limitation, time, date, internet protocol address, access or other controls, counters, serial numbers and/or other security devices.

(f) Use Restrictions. Customer shall require that its Authorized Users comply with all relevant terms of this Agreement and any failure or failures to comply with this Agreement by any Authorized User will constitute a breach by Customer. Customer shall not use the Licensed Software or Subscription Services for any purposes beyond the scope of the license or access right granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users or third party to: (i) copy, modify, or create derivative works of the Licensed Software or Subscription Services, in whole or in part in any manner or allow the Customer or any third party the ability to reverse engineer or utilize the Licensed Software or Subscription Services; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Licensed Software or



Subscription Services; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Licensed Software or Subscription Services, in whole or in part; (iv) remove any proprietary notices from the Licensed Software or Subscription Services (except in compliance with Customer's right (if such has been purchased from Provider) to White Label the Licensed Software or Subscription Services); (v) permit any third party to access or use the Licensed Software or Subscription Services other than an Authorized User; (vi) use the Licensed Software or Subscription Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any Applicable Law; or (vii) use any Licensed Software or Subscription Services, or allow the transfer, transmission, export, or re-export of the Licensed Software or Subscription Services or portion thereof, in violation of any Applicable Law or regulation, including any export control laws or regulations administered by the U.S. Commerce Department or any other national or international government or government agency.

(g) Reservation of Rights. Provider reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP. Without limiting the foregoing, Provider and its licensors retain all right, title, and interest in the Licensed Software and Subscription Services, all copies and derivatives, modifications, and improvements thereof, and all proprietary rights in the Licensed Software and Subscription Services, including copyrights, patents, trademarks, and trade secret rights.

(h) Suspension. Notwithstanding anything to the contrary in this Agreement, Provider may, in its sole discretion, suspend Customer's and any Authorized User's access to any portion or all of the Licensed Software and/or Subscription Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to Applicable Law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; (E) Provider's provision of the Licensed Software and/or Services to Customer or any Authorized User is prohibited by Applicable Law or such suspension is necessary to comply with any law, regulation, court order, or other governmental request or to otherwise protect Provider from potential legal liability; or (F) a user of the Provider IP is suspected to not be an Authorized User or if an Authorized User has shared credentials or allowed access to the system by a non-Authorized User; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any Third-Party Services or products required to enable Customer to access the Licensed Software and/or Subscription Services; or (iii) in accordance with Section 5(c)(iii) (any such suspension described in Subsection (i), (ii), or (iii), a **"Service Suspension"**). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Licensed Software and/or Subscription Services (as applicable) following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Licensed Software and/or Subscription Services (as applicable) as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(i) Use of Non-Identifiable Aggregated Data. Provider has the right to collect and use anonymized generic information derived from Customer Data (not to include Personal Data) processed by the Licensed Software and/or Services or to aggregate it with anonymized generic information from other customers (**"Non-Identifiable Aggregated Data"**) for Provider's reasonable business purposes, including without limitation for analyzing customer needs and improving the Licensed Software and Subscription Services. Customer agrees that Provider may (i) make Non-Identifiable Aggregated Data publicly available in compliance with Applicable Law, and (ii) use Non-Identifiable Aggregated Data to the extent and in the manner permitted under Applicable Law.

(j) Third-Party Services. Customer acknowledges that the Services may contain software licensed to Provider from third parties (**"Third Party Software"**) and that the Third-Party Software is not



owned by Provider, and may be subject to additional restrictions imposed by the Third-Party Software licensor. Customer agrees to abide by such additional restrictions.

### **3. PROFESSIONAL SERVICES.**

Customer may order any Professional Services from Provider for an additional fee determined by the applicable Order and/or Statement of Work. Subject to the payment of all applicable fees for such Professional Services, Provider will deliver such Services in accordance with the terms and conditions of this Agreement as well as the applicable Order and/or Statement of Work. With respect to any installation, configuration, integration, project management, and other services by and between a Customer Environment and the products and services provided by Provider hereunder, Provider agrees to perform those services to the extent specified in an Order and/or Statement of Work. Customer must provide all necessary information, access, workspace, computing resources, and other services and support materials as reasonably required by the Provider to perform its duties in a timely manner. Customer-specific delays which prevent the Provider from fulfilling its obligations under a Statement of Work will impact the delivery timeline. Examples of typical sources or Customer-specific delays include but are not limited to: unavailability (for any reason) of Customer personnel scheduled to work with Provider; changes in priorities for Customer projects; delays in content delivery; delays in making available the appropriate environments (such as development, staging, or production environments needed by the project; or unavailability of required software resources. Delays in receiving information, resources, or decisions from the Customer could impact Provider's ability to deliver per the project schedule and timelines may need to be adjusted. All Professional Services provided on a time and material basis are per person unless otherwise specified, and charged hourly or daily as indicated in the applicable Order and/or Statement of Work. Customer may request changes or additions to the Professional Services being provided hereunder by making a written request to the Provider. If the Provider deems the changes feasible, Provider will provide a quote for any increase or decrease in the cost or time required for the performance of the Professional Services, as amended. Once the parties agree to the modified scope and related Professional Services Fees, the parties will enter into an Order and/or Statement of Work reflecting the changes. Provider shall not be obligated to perform any revised or additional Professional Services unless and until an Order and/or Statement of Work is executed by both parties.

### **4. CUSTOMER RESPONSIBILITIES.**

(a) System and Equipment. Customer and Authorized Users are solely responsible for (i) obtaining, deploying, and maintaining all hardware, software, modems, routers, telecommunication or Internet connections, and other communications equipment required for Customer and its Authorized Users to access and use the Licensed Software and Subscription Services; and (ii) paying all third-party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in this Agreement, an Order Form, or Statement of Work, Provider shall not be responsible for supplying any hardware, software, or other equipment to Customer or Authorized Users under this Agreement. Customer will be responsible for all timely payments despite any delays caused by its failure to timely obtain any necessary Customer equipment.

(b) Access and Use. Customer is responsible and liable for all uses of the Licensed Software and Subscription Services resulting from access provided by Customer or provided to parties at Customer's direction, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Licensed Software and Subscription Services (as applicable) and shall cause Authorized Users to comply with such provisions.

(c) General. Customer represents and warrants that Customer has all necessary rights, title, and permissions for Customer and Provider to access, collect, share, and use Customer Data as contemplated by this Agreement and that Customer Data will not violate or infringe (i) any intellectual property, publicity, privacy or other rights, or (ii) any Applicable Laws. Customer acknowledges and agrees that Customer shall not submit to or process via the Services any sensitive Personal Data as





defined by Applicable Data Protection Law. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. Customer shall comply with all Applicable Laws, rules, and regulations in using the Licensed Software and Subscription Services (as applicable).

## 5. SUPPORT AND MAINTENANCE.

(a) Licensed Software: To the extent specified and during the current Term of the Order (the “**Support Period**”), Provider will provide Support Services for the then-current Version of the Licensed Software for one (1) year after Provider has released a new Version (“**End of Service**” or “**EOS**”) (not including add-on licenses for existing installations of the previous Versions) and in accordance with Provider’s Support Services policy located at <https://revalizesoftware.com/customer-support-policy/> as may be updated from time to time without notice to the Customer. The EOS period commences when Provider announces that the next Version of the Licensed Software is generally available. Support Services may include, but are not limited to basic technical support, bug fixes, and Updates to Licensed Software as delivered to the Customer at the time of provisioning, without modification. Following the initial Support Period, the Support Services will automatically renew annually for successive one-year terms unless Customer gives Provider written notice at least ninety (90) days prior to the end of the then-current Support Period. If Customer terminates Support Services for Licensed Software, Customer acknowledges and agrees that in addition to not receiving Support Services, Customer shall no longer have access to the support portal, communications, customer support team, or the self-service knowledge base. If Customer terminates Support Services, but later desires to reinstate Support Services, Customer and Provider will mutually agree upon the cost of those reinstated Support Services, which may include, in Provider’s sole discretion, a reinstatement fee or the purchase and installation of the then-current Version of the Licensed Software. Provider may terminate Support Services on no less than thirty (30) days prior written notice to Customer. If Provider terminates Support Services, Provider will provide Customer with a refund of any fees prepaid for Support Services that are terminated. Notwithstanding Provider’s support obligations hereunder, Provider will have not responsibility or liability of any kind arising or resulting from Customer’s failure to (i) correctly install Updates or other modifications to the Licensed Software; or (ii) prepare a computing environment that meets the specified Customer Environment prior to the Licensed Software installation or to maintain such Customer Environment and Licensed Software thereafter.

(b) Updates and Upgrades. Provider may update or enhance the Licensed Software and/or Subscription Services from time to time. Unless otherwise specified in an applicable Order Form, Provider will include in the Licensed Software or Subscription Services (as applicable) any such Updates or enhancements that Provider generally makes available in the ordinary course to all of its customers of such Licensed Software or Subscription Services (as applicable); provided, however, that nothing in this Agreement will obligate Provider to provide Licensed Software or Subscription Services that include any upgrades (i.e., revisions to the Licensed Software or Subscription Services that include new features or substantial increases in functionality) at no additional cost. All Updates, upgrades, or other modified or updated versions of the Licensed Software and Subscription Services provided to Customer are subject to the terms of this Agreement.

(c) Subscription Services: During the Subscription Term and subject to payment of all applicable Fees hereunder, Provider shall provide support for the Subscription Services in accordance with the terms and conditions of this Section and Provider’s Support Services policy located at <https://revalizesoftware.com/customer-support-policy/> as may be updated from time to time without notice to Customer.

- i. Maintaining the components of the Hosted Environment that the Provider deems necessary for the Services. Provider will use commercially reasonable efforts to implement any Error Corrections. Customer’s Authorized Users will have access to Provider’s support personnel through Provider’s support portal and responses to support requests will be provided during the support hours applicable to the specified Services purchased by Customer.



- ii. With respect to any on-premise components, the Customer shall be responsible for the installation and configuration in the Customer Environment. Provider shall provide technical support for on-premise components through Provider's support portal and responses to support requests will be provided during the support hours applicable to the specified Services purchased by Customer.
- iii. Management of Services: In addition to any other rights Provider has under this Agreement, Provider reserves the right, in Provider's sole discretion, to temporarily suspend Customer's access to and use of any of the Services: (a) during planned downtime for upgrades and maintenance to such Service(s) (of which Provider will notify Customer as soon as reasonably practicable through our forum page and/or through a notice to Customer's Account owner and Users) ("**Planned Downtime**"); or (b) during any unavailability caused by Force Majeure Events. The Provider will use commercially reasonable efforts to schedule Planned Downtime for weekends and other off-peak hours.

(d) Additional Services. If Customer desires Provider to install any Updates or upgrades, configure any Updates or upgrades, or configure any Updates or upgrades to any integrations or Licensed Software that were specifically configured by the Customer or at the Customer's request, or exceeds the scope of Support Services specified in the Support Services policy, Provider may charge Customer for such services at Provider's then-current hourly rates. Additionally, requests for changes to the Support Services by Customer that do not fall under Support Services, will be forwarded to the Professional Services team. Customer and Provider will agree, in writing (either, via an Order, Statement of Work, email, or through the approved ticketing system), to the estimated level of effort and fees required for Customer's requests. All work will be completed on a time and materials basis at Provider's current hourly rates unless stated otherwise in a Statement of Work.

## 6. FEES AND PAYMENT.

(a) Payment and Billing. Unless otherwise indicated on an Order referencing these terms, all Fees will be invoiced in full up front at the time of commencement of the applicable Service(s) and are non-refundable. Unless otherwise indicated in the Order, Customer shall pay all undisputed invoices within 30 days of Customer's receipt of each invoice without set-off, counterclaim or deduction. Customer is responsible for providing valid and current payment information and Customer agrees to promptly update Customer's Account information, including payment information, with any changes that may occur (for example, a change in Customer's billing address or credit card expiration date).

(b) Additional Users. If Customer chooses to increase or exceeds the number of Users authorized to access and use the Licensed Software during the License Term or Subscription Services during Customer's Subscription Term, Customer shall pay Provider the applicable Fees for each such additional User at Provider's then-current list prices.

(c) No Refunds or Credits. Except as otherwise expressly set forth herein, no refunds or credits for Fees or other charges or payments will be provided to Customer if Customer terminates its License subscription to the Services or cancels Customer's Account in accordance with this Agreement prior to the end of Customer's then-effective License Term or Subscription Term.

(d) Payments. Customer shall make all payments hereunder in US dollars, unless stated otherwise in the Order Form, on or before the due date. If Customer fails to make any payment when due, without limiting Provider's other rights and remedies: (i) 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; (ii) Customer shall reimburse Provider for all reasonable costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for seven (7) days or more Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Licensed Software and/or Subscription Services until such amounts are paid in full.

(e) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer 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 Customer hereunder, other than any taxes imposed on Provider's income. If Customer is a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code of the United States, as amended, and under the applicable laws of their state of incorporation, Customer shall not be responsible for any sales, use, property, gross receipts or similar taxes levied against either party. Customer shall provide Provider with a certificate evidencing its tax-exempt status upon execution of the Agreement and at each subsequent Renewal Term thereafter.

(f) Auditing Rights and Required Records. Customer agrees to maintain complete and accurate records of Customer's use during the Term of this Agreement and for a period of one year after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Provider may, at its own expense, on reasonable prior notice, annually inspect and audit Customer's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveal that Customer has underpaid Provider with respect to any amounts due and payable during the License Term or Subscription Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 6. Customer shall pay for the costs of the audit if the audit determines that the Customer's underpayment equals or exceeds ten percent (10%) for any year. Such inspection and auditing rights will extend throughout the Term of this Agreement and for a period of one year after the termination or expiration of this Agreement.

## **7. CONFIDENTIAL INFORMATION AND PERSONAL DATA.**

(a) Protection of Confidential Information. With respect to any Confidential Information disclosed under this Agreement by the disclosing Party, the receiving Party will treat such Confidential Information as confidential and will handle it using at least the same procedures and degree of care which it uses to prevent the misuse and disclosure of its own confidential information of like importance, but in no event less than reasonable care. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder and subject to confidentiality and nonuse obligations at least as protective of the disclosing Party as those set forth in this Agreement (in which case the receiving Party will remain responsible for any noncompliance by such employees or other individuals or entities). Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of this Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(b) Protection of Customer Data. Without limiting the foregoing and subject to the provisions of Schedule 1 in relation to Personal Data, to the extent Provider is in possession of Customer Data, Provider will use commercially reasonable efforts to protect Customer Data through use of administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data consistent with prevailing industry practices. Provider will not (i) modify Customer Data, (ii) disclose Customer Data except as compelled by law in accordance with Section 7(a) or as expressly permitted in writing by Customer or otherwise under this Agreement, or (iii) access Customer Data except to provide the Services under or in connection with the prevention of or to



address service or technical problems, improve the functionality of Services, to generate Non-Identifiable Aggregated Data, or at Customer request in connection with customer support matters.

(c) Personal Data. To the extent Customer is Controller and Provider is Processor (as those terms are defined the Data Processing Agreement (the “**DPA**”) located at <https://revalizesoftware.com/wp-content/uploads/2023/09/Customer-Data-Processing-Agreement-US.pdf> and hereby incorporated into this Agreement, the provisions of the DPA shall govern the Parties’ respective rights and obligations relating to Personal Data.

## **8. INTELLECTUAL PROPERTY OWNERSHIP; FEEDBACK.**

(a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP, Non-Identifiable Aggregated Data and Provider’s Confidential Information. For purposes of this Agreement, all Provider IP shall be deemed to be Confidential Information of Provider. Provider shall be the owner of any and all right, title, and interest (including without limitation, all Provider IP) in, of and to any Derivative Works.

(b) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data and Customer’s Confidential Information. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Non-Identifiable Aggregated Data for any purpose, including benchmarking.

(c) Feedback. If Customer, its Authorized Users, or any of its other employees or Contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features, corrections, modifications or functionality relating thereto, or any comments, questions, suggestions, or the like (collectively, “**Feedback**”), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider, on Customer’s behalf, and on behalf of its Authorized Users and its other employees, Contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

(d) Further Assurances. To the extent any of the rights, title, and interest in and to Feedback or intellectual property rights therein cannot be assigned by Customer to Provider, Customer hereby grants to Provider an exclusive, royalty-free, transferable, irrevocable, worldwide, fully paid-up license (with rights to sublicense through multiple tiers of sublicensees) to fully use, practice and exploit those non-assignable rights, title, and interest. If the foregoing assignment and license are not enforceable, Customer agrees to waive and never assert against Provider those non-assignable and non-licensable rights, title, and interest. Customer agrees to execute any documents or take any actions as may reasonably be necessary, or as Provider may reasonably request, to perfect ownership of the Feedback. If Customer is unable or unwilling to execute any such document or take any such action, Provider may execute such document and take such action on Customer’s behalf as Customer’s agent and attorney-in-fact. The foregoing appointment is deemed a power coupled with an interest and is irrevocable.

(e) Customer Trademark License. Customer hereby grants to Provider a non-exclusive, worldwide, non-transferable, royalty-free license to use, reproduce and display Customer’s name, logo and trademarks (collectively, the “**Customer Marks**”) as necessary for Provider to fulfill its obligations under this Agreement. Provider will comply with Customer’s trademark usage guidelines as Customer provides to Provider in writing from time to time.



## 9. WARRANTY; DISCLAIMER.

### (a) Limited Performance Warranty.

- i. Licensed Software. Provider warrants to Customer that during the Warranty Period of ninety (90) days after its initial delivery, the Licensed Software shall operate substantially in accordance with the Documentation. Customer's exclusive remedy for a breach of the foregoing shall be for Provider to use commercially reasonable efforts to either correct any verifiable material non-conformity or to replace the materially non-conforming Licensed Software; provided, however, if Provider cannot provide either remedy, upon receipt of the materially non-conforming Licensed Software, Provider shall refund Customer the License Fee paid to Provider for same. Customer's remedy is conditional on Customer providing Provider with written notice that includes a reasonably detailed explanation of the Defect within the Warranty Period. THE FOREGOING SETS FORTH THE PROVIDER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE LICENSED SOFTWARE
- ii. Subscription Services. Provider warrants to Customer that during any Subscription Term, the Subscription Services will perform substantially in accordance with the Documentation. Customer's exclusive remedy for a breach of the foregoing shall be for Provider to use commercially reasonable efforts to either correct any verifiable Errors; provided, in the event Provider is unable to correct that non-conformity, Customer shall have the right to terminate the remaining Subscription Term and receive a pro-rata refund of any remaining pre-paid Subscription Fees paid to Provider for those defective Services. Customer's remedy is conditional on Customer providing Provider with written notice that includes a reasonably detailed explanation of the Defect within the Subscription Term. THE FOREGOING SETS FORTH THE PROVIDER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DEFECTIVE SUBSCRIPTION SERVICES.

(b) Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Provider regarding any future functionality or features.

(c) Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 9, THE LICENSED SOFTWARE, SUBSCRIPTION SERVICES, PROVIDER IP, PROFESSIONAL SERVICES AND SUPPORT SERVICES ARE PROVIDED "AS IS". CUSTOMER'S USE OF THE LICENSED SOFTWARE, SUBSCRIPTION SERVICES, PROVIDER IP, PROFESSIONAL SERVICES, AND SUPPORT SERVICES IS AT ITS OWN RISK. PROVIDER DOES NOT MAKE, AND PROVIDER HEREBY DISCLAIMS, ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUALITY, SUITABILITY, OPERABILITY, CONDITION, SYSTEM INTEGRATION, NON-INTERFERENCE, WORKMANSHIP, TRUTH, ACCURACY (OF DATA OR ANY OTHER INFORMATION OR CONTENT), ABSENCE OF DEFECTS, WHETHER LATENT OR PATENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE LICENSED SOFTWARE, SUBSCRIPTION SERVICES, PROVIDER IP, PROFESSIONAL SERVICES 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. THE EXPRESS WARRANTIES MADE BY PROVIDER IN SECTION 9 ARE FOR THE BENEFIT OF THE CUSTOMER ONLY AND NOT FOR THE BENEFIT OF ANY THIRD PARTY. TO THE EXTENT APPLICABLE, REVALIZE DOES NOT WARRANT THAT THE OPERATION OF THE WEBSITE PROJECT AND SERVICES WILL BE COMPLIANT WITH THE AMERICAN WITH DISABILITIES ACT ("ADA") OR OTHER SUCH REGULATIONS. CUSTOMER ASSUMES FULL RESPONSIBILITY FOR ADA COMPLIANCE OF THE WEBSITE PROJECT AND SERVICES. THE TERMS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.



(d) NO AGENT OF PROVIDER IS AUTHORIZED TO ALTER OR EXPAND THE WARRANTIES OF PROVIDER AS SET FORTH HEREIN. PROVIDER DOES NOT WARRANT THAT: (I) THE USE OF THE LICENSED SOFTWARE, SUBSCRIPTION SERVICES, PROVIDER IP, OR PROFESSIONAL SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (II) THE LICENSED SOFTWARE, SUBSCRIPTION SERVICES, PROVIDER IP, PROFESSIONAL SERVICES OR SUPPORT SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; OR (III) LICENSED SOFTWARE, SUBSCRIPTION SERVICES, THE PROVIDER IP OR PROFESSIONAL SERVICES WILL BE ERROR-FREE OR THAT ERRORS OR DEFECTS IN THE PROVIDER IP WILL BE CORRECTED.

## 10. INDEMNIFICATION.

(a) Provider Indemnification.

- i. Provider shall indemnify, defend, and hold harmless Customer, Customer's officers, directors, employees and agents (each, a "**Customer Indemnitee**") from and against direct damages ordered by a court of competent jurisdiction to the extent they result from any third party claim, suit, action, or proceeding that Customer's use of the Licensed Software or Subscription Services in accordance with this Agreement, infringes or misappropriates such third party's copyright, patent or trade secret rights in the United States.
- ii. If such a claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Licensed Software or Subscription Services (as applicable), or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.
- iii. This Section 10 will not apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with any data, software, hardware, equipment, network, system, or technology not provided by Provider or authorized by Provider in writing; (B) modifications or alterations to the Licensed Software or Subscription Services (as applicable) not made by Provider; (C) Customer's continued use of the Licensed Software or Subscription Services (as applicable) after Provider notifies Customer to discontinue use because of an infringement claim; or (D) Customer Data.
- iv. THE FOREGOING STATES THE ENTIRE LIABILITY OF PROVIDER WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE LICENSED SOFTWARE, SUBSCRIPTION SERVICES OR OTHERWISE, AND CUSTOMER HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF PROVIDER WITH RESPECT THERETO.

(b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider, Provider's officers, directors, employees and agents (each, a "**Provider Indemnitee**") from and against all claims, losses, expenses, costs (including legal fees), damages, losses arising from any breach by Customer or any User of Sections 2, 4, 13(j) or the DPA.

(c) Indemnification Procedures. Each party's indemnification obligations in this Section 10 are subject in each instance to the indemnified party: (i) promptly notifying the indemnifying party in writing of the threat or notice of the claim; (ii) giving the indemnifying party sole and exclusive control and authority to select defense attorneys, defend, and/or settle any such claim (however, the indemnifying party shall not settle or compromise any claim that results in liability or admission of any liability without the indemnified party's prior written consent); and (iii) the indemnified party fully cooperating with the indemnifying party in connection with the defense or settlement of any claim.

## 11. LIMITATIONS OF LIABILITY.



(a) IN NO EVENT WILL PROVIDER OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, SUPPLIERS, OR LICENSORS BE LIABLE TO THE CUSTOMER OR ITS AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS OR LICENSORS UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (ii) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (iii) LOSS OF GOODWILL OR REPUTATION; (iv) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (v) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER PROVIDER WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

(b) IN NO EVENT WILL PROVIDER'S OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS, SUPPLIERS, OR LICENSORS' TOTAL AGGREGATE LIABILITY FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES, THE WORK PRODUCT, DELIVERABLES OR ANY OTHER MATERIALS PROVIDED TO CUSTOMER HEREUNDER, REGARDLESS OF THE FORM OF ACTION GIVING RISE TO SUCH LIABILITY (UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING INDEMNIFICATION OBLIGATIONS, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE) EXCEED AT ANY POINT IN TIME THE AMOUNT PAID BY CUSTOMER TO PROVIDER IN THE PRIOR TWELVE (12) MONTH PERIOD UNDER THE APPLICABLE ORDER FORM GIVING RISE TO THE CLAIM.

(c) CUSTOMER ACKNOWLEDGES THAT THE TERMS IN THIS SECTION 11 (LIMITATIONS OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. THE ESSENTIAL PURPOSE OF THIS SECTION 11 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF PROVIDER WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. PROVIDER HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE CUSTOMER WITH THE RIGHTS TO ACCESS AND USE THE SERVICES IN THIS AGREEMENT. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN WILL APPLY IN AGGREGATE AND SHALL NOT BE CUMULATIVE.

(d) Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or for personal injury or death, which means that some of the above limitations may not apply. IN THESE JURISDICTIONS, THE PARTIES' LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW. Any claims or damages that Customer may have against Provider shall only be enforceable against Provider and not any other entity or its officers, directors, representatives or agents.

## 12. TERM AND TERMINATION.

(a) Initial Term and Renewal. The initial Term of each License or Subscription shall be twelve (12) months from the Effective Date, unless otherwise stated on the applicable Order Form ("**Initial Term**"). At the end of the initial Term, the License or Subscription shall automatically renew for periods (each a "**Renewal Term**") equal to the Initial Term, unless either Customer or Provider has served written notice on the other not less than thirty (30) days prior to the end of the then-current Term. Unless otherwise provided for in any Order, Provider has the right to automatically increase the Fees applicable to Customer's License or Subscription for any such Renewal Term at Provider's then-current rates. If Provider determines, in its reasonable discretion, that material product or feature enhancements to the Licensed Software or Services require an increase in Fees for a Renewal Term, Provider will first obtain Customer's prior written consent before applying such increase before such Renewal Term.

(b) Termination. In addition to any other express termination right set forth in this Agreement:



- i. Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(b) or Section 6;
- ii. either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach;
- iii. either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (B) makes or seeks to make a general assignment for the benefit of its creditors; or (C) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

(c) Effect of Expiration or Termination. Unless the Parties agree otherwise, termination of this Agreement will terminate each of the Order Forms and other Service Addenda, even if the Order Form or other Service Addenda specifies an expiration date after the effective termination date of this Agreement. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund except as expressly provided herein. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed.

(d) Exporting Customer Data. During the Term and up to expiration or termination of this Agreement, Customer will have the ability to export or download Customer's Data. After such expiration or termination, Provider will have no obligation to maintain or provide any of Customer's Data, and Provider will, unless prohibited by law or legal order, delete Customer's Data in the Services in accordance with Provider's then-current deletion policy without notice or liability to Customer.

(e) Survival. Provisions herein which by their context and content are intended to survive termination or expiration shall so survive including Sections 1, 2, 4, 5, 6, 7, 8, 10, 11, 12, and 13 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement. Termination of this Agreement shall not limit either Party's liability for obligations accrued as of or prior to such termination for breach of this Agreement.

### **13. MISCELLANEOUS.**

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related schedules and exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. If there is a conflict between the terms of this Main Services Agreement and the terms of any of its attachments, then this Main Services Agreement will prevail unless the conflicting attachment explicitly specifies the attachment to prevail in case of such a conflict.

(b) By placing an Order with Provider, Customer agrees that the terms and conditions of this Agreement shall apply to and govern that Order. Except with respect to product, services and pricing applicable to an Order, additional or conflicting terms in any Order shall have no force or effect on either party, unless that Order is signed in hardcopy form by each party, and then those terms shall apply to the parties solely for that Order. Except as otherwise specified herein, any additional or conflicting terms contained in any other document (including, without limitation, any preprinted, additional or conflicting terms on any Customer purchase order, or acknowledgement from either





party) shall be null, void and of no effect on either party. If there is a conflict between the terms of this Agreement and the Order Form, the terms of the Order Form shall take precedence. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a **"Notice"**) must be in writing and delivered by personal delivery, via a internationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section. All notices to be provided by Provider to Customer under this Agreement may be delivered in writing by electronic mail to the electronic mail address provided by Customer on the applicable Order and/or Statement of Work. All notices shall be deemed to have been given immediately upon delivery by electronic mail, or if otherwise delivered upon the earlier of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

(c) Force Majeure. In no event shall Provider be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, epidemic or pandemic, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo. Provider shall notify Customer of such force majeure within ten (10) days after such occurrence by giving written notice to Customer stating the nature of the event, its anticipated duration, and any action being taken to avoid or minimize its effect. The suspension of performance shall be of no greater scope and no longer duration than is necessary and Provider shall use commercially reasonable efforts to remedy its inability to perform.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement 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 shall negotiate in good faith to modify this Agreement so as to effect their original intent 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.

(f) Limitation of Claims. No claim or action, regardless of the form, which in any way arises out of or in connection with this Agreement may be made or brought by or on behalf of Customer or its Affiliates more than one (1) year following the earlier of (a) the expiration or sooner termination of this Agreement and (b) the date that Customer first has knowledge of the events giving rise to such claim or action.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware, without regard to its conflicts of law principles, and shall be subject to the exclusive jurisdiction of the courts of Delaware. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties.

(h) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by merger, sale of assets, operation of law or otherwise, without the prior written consent of Provider, which consent may be conditioned on



Customer paying any remaining payments due hereunder in full. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns. In the event that Customer or its business using the Subscription Services or Licensed Software is acquired by a third party that is also a customer of Provider, Customer shall continue to pay the Fees in accordance with this Agreement and any applicable Order Form and other Service Addenda unless the Parties mutually agree in writing otherwise, even if the other customer may have more favorable terms than those offered to Customer hereunder.

(i) 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. Nothing herein shall prevent either Party from entering into any further agreements or business relationships, nor prevent either Party from conducting similar business with others as long as such Party observes its obligations under this Agreement.

(j) Export Regulation. The Services utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release or make accessible the Licensed Software or Subscription Services from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Licensed Software or Subscription Services or the underlying software or technology available outside the US. Customer represents, warrants and covenants that (i) Customer is not named on any U.S. government list of persons or entities prohibited or restricted from receiving U.S. exports, or transacting with any U.S. person, (ii) Customer is not a national of, or a company registered in, any Prohibited Jurisdiction, (iii) Customer shall not permit its Users to access or use the Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions, and (iv) Customer shall comply with all Applicable Laws regarding the transmission of technical data exported from the United States and the country in which Customer and its Users are located.

(k) Equitable Relief. Customer acknowledges and agrees that a breach or threatened breach of any of its obligations under this Agreement would cause Provider irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, Provider 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.

(l) Counterparts. This Agreement 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.

(m) Expenses. All costs and expenses incurred in connection with this Agreement and each other agreement, document and instrument contemplated by this Agreement and the transactions contemplated hereby and thereby shall be paid by the Party incurring such costs and expenses.

(n) Attorneys' Fees and Costs. In the event of a dispute arising under this Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of recoverable attorneys' fees and costs. The reasonable costs to which the prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs, including, but not limited to, costs of investigation, copying costs, electronic discovery costs, telephone charges, mailing and delivery charges, information technology support charges, consultant and expert witness fees, travel expenses, court reporter fees, and mediator fees, regardless of whether such costs are otherwise taxable.



(o) Publicity. Provider may, with Customer's consent, which shall not be unreasonably withheld, conditioned or delayed, (i) issue a press release announcing the relationship between the parties within thirty (30) days after the Effective Date and (ii) use Customer's name or logo in Provider's advertising, promotion, and similar public disclosures with respect to the Services. Provider may disclose the terms of this Agreement to prospective investors and prospective acquirors of Provider's business, assets or stock solely for such purposes provided that any such investor or acquirer is subject to a written confidentiality agreement.

(p) Non-Solicitation of Employees. Customer agrees that, during the Term of this Agreement, and for a period of one (1) year following the Term, it will not employ, solicit for or offer employment, or enter into any contract for services with the employees, agents or representatives of Provider without Provider's prior written consent; provided, however, that the foregoing prohibition shall not preclude the hiring by Customer of any individual who responds to a general solicitation or advertisement, whether in print or electronic form, on job postings and social networking sites. In the event that any of Provider's employees, agents or representatives are employed by or enter into a contract for services (whether as an employee or a Contractor) with Customer or any Affiliate of Customer in breach of the foregoing sentence, Customer shall, upon demand, pay to Provider a sum equal to six months' basic salary or the fee that was payable by Provider to that employee, agent or representative plus the recruitment costs incurred by Provider in replacing such person by way of compensation for the cost and inconvenience incurred by Provider. The above payment shall not be in lieu of Provider's other remedies at law and in equity.

(q) Legal Provisions. The official language of this Agreement is, and all attachments or amendments to this Agreement, contract interpretations, notices and dispute resolutions shall be in English. Translations of this Agreement shall not be construed as official or original versions. No exclusive rights are granted by Provider under this Agreement. All rights or licenses not expressly granted to Customer herein are reserved to Provider, including the right to license the use of the Subscription Services and any Software to other parties. Any reference to a law or statute in this Agreement shall be deemed to include any amendment, replacement, re-enactment thereof for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, or permissions (together with any conditions attaching to any of the foregoing) made in respect thereof.