

MASTER SUBSCRIPTION AGREEMENT

Last Updated: September 20, 2021

1. DEFINITIONS

1.1 Defined Terms. Defined terms have the meanings set forth in this Section 1 (Definitions) and elsewhere in this Agreement when capitalized, and may be read in singular, plural or an alternative tense as the context requires.

1.2 “Affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means direct or indirect ownership or control of more than 50% of the outstanding voting interests of the subject entity.

1.3 “Agreement” means this Master Subscription Agreement and applicable Statements of Work and Order Forms executed between Customer and Company.

1.4 “Beta Services” means products, data cuts, services, integrations, or other features that Company makes available to Customer to try at Customer’s option, at no additional charge, and are designated as beta, limited release, preview, non-production, or other similar description.

1.5 “Company” means RFPIO, Inc. a Delaware corporation with an office located a 4145 SW Watson Ave. Suite 450, Beaverton, OR 97005 and its Affiliates.

1.6 “Confidential Information” means information which is proprietary to or confidential to the Disclosing Party (as defined in Section 5.1) or its Affiliates, including, without limitation, information relating to the Disclosing Party’s business, marketing plans, financial affairs and product development efforts, patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements with third parties, services, strategy, trade secrets, know-how, technical information, specifications, past, present and future operations, partner, client, and supplier identities, and other non-public information, whether tangible, intangible, visual, electronic or otherwise, together with notes, analysis, compilations, projections, and/or other documents prepared by either party, their directors, officers, employees, agents and representatives, based upon, containing or otherwise reflecting such information.

1.7 “Customer” means the entity identified on the Order Form or SOW (by its legal name or its other assumed, trade, or ‘doing business as’ name) that purchased Company’s Software or Services pursuant to an Order Form or SOW, or such company’s permitted Affiliates, successors or assigns.

1.8 “Customer Data” means all information Customer or its Users loads into the Software or otherwise provides to Company to enable the provision of the Software and Services (or provides to Company for loading or inputting into the Software on Customer’s behalf), and any information provided by Customer relating to its use of Professional Services.

1.9 “Customer Input” means any information Customer may have provided to Company as an idea, feature request, enhancement or bug-fix in respect to the Software, Services, or other product offerings of Company.

1.10 “Documentation” means the applicable training materials, user guides, and other similar information pertaining to the Software or Services provided by Company, which may be updated by Company to include information about new features and incorporate feedback to help Company’s customers understand how to use the Software and Services.

1.11 “Effective Date” has the meaning set out in the Order Form.

1.12 “Fee(s)” means any and all charges due and owing pursuant to this Agreement including any applicable Order Form or SOW, and any charges due and owing pursuant to Software, Services or Professional Services.

1.13 “Initial Term” has the meaning set out in the Order Form

1.14 “Intellectual Property Rights” or “IP” means all intellectual and industrial property rights, whether now existing or existing in the future, including without limitation, (i) all patent rights, including any rights in pending patent applications and any related rights; (ii) all copyrights and other related rights throughout the world in works of authorship, including all registrations and applications therefor; (iii) all trademarks, service marks, trade dress or other proprietary trade designations, including all registrations and applications therefor (iv) all rights throughout the world to proprietary know-how, trade secrets and other confidential information, whether arising by law or pursuant to any contractual obligation of non-disclosure; and (v) all other rights covering industrial or intellectual property recognized in any jurisdiction.

1.15 “Order Form” means Company’s standard ordering document that identifies the Software and Services purchased by Customer and incorporates this Agreement by reference.

1.16 “Party or Parties” means Customer and Company, collectively.

1.17 “Professional Services” means non-standard onboarding, customized training, best practices review, professional services hours, development support and other services related to the Software or Services and identified in an SOW, but not otherwise provided as part of the standard Software or Services.

1.18 “Renewal Term” has meaning set out in Section 7.1

1.19 “Service Data” means aggregated data and other information about Customer’s use of the Software and Services (e.g., the number of projects, the frequency of logins, and User behavioral data), but does not include identifiable Customer Data loaded into the Software.

1.20 “Services” means standard onboarding, implementation services, technical support services and other services provided by Company and as described in an Order Form or this Agreement but shall exclude all Professional Services.

1.21 “Statement of Work” or “SOW” means Company’s standard ordering document that identifies the Professional Services purchased by Customer and references this Agreement.

1.22 “Software” means the proprietary web-based products provided by Company or its licensors identified on an Order Form and subsequently made available to Customer by Company in accordance with an Order Form or this Agreement.

1.23 “Subscription Term” means the duration of Customer’s subscription to the Software or Services as set forth in each applicable Order Form or SOW and all Renewal Terms.

1.24 “Updates” means any error correction, bug fix, patch, enhancement, improvement, update, upgrade, new version, release, revision or other modification to the Software or Services provided or made available by Company pursuant to this Agreement, including without limitation, any update designed, intended or necessary to make the Software, Services or Customer’s use thereof comply with applicable law.

1.25 “User” means Customer’s and its Affiliates’ employees, representatives, partners and contractors and consultants that are authorized by Customer to use and access the Software and Services through Customer’s Account (defined in Section 2.2 below).

2. SOFTWARE AND SUPPORT

2.1 Subject to the terms of this Agreement, Company will provide Customer with a non-exclusive, non-transferable, revocable license (which may only be revoked in the case of material breach of this Agreement) to use the Software and Services in accordance with the Documentation. Company shall exclusively own and retain all rights, title and interest in and to the Software, Services, and Documentation, including all related Company Intellectual Property Rights or other similar rights, which shall not include Customer Data. Company’s Intellectual Property Rights shall extend to

all Updates, customizations or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of Software and Services developed by Company at any time.

2.2 During the Subscription Term, Company will provide Customer access to, and use of, the Software, Services, and Documentation by enabling an account for Customer to access through a web browser (herein "Account"). Customer will designate individuals authorized by Customer to manage, use, and support the Account, including, the creation of usernames and passwords for Users. Customer is solely responsible for maintaining the status of its Users and the confidentiality of all usernames, passwords, and other Account access information under its control. Customer will contact Company promptly if Account information is lost, stolen, or disclosed to an unauthorized person or any other breach of security in relation to its passwords, usernames, or other Account access information that may have occurred or is likely to occur.

2.3 Company may make Beta Services available to Customer. Customer may choose to try such Beta Services in its sole discretion. Beta Services are intended for evaluation purposes only and not for production use, are not fully supported by this Agreement, and may be subject to additional terms. Beta Services are not considered Software or Services under this Agreement, but all restrictions, reservation of rights, Customer's obligations concerning the Software and Services, and rights granted by Customer to Company regarding Customer Data will apply equally to Customer's use of Beta Services. Company may discontinue Beta Services at any time in its sole discretion and may never make them generally available. Unless otherwise agreed by the Parties, Customer's use of Beta Services shall expire on either (a) the date a version of such Beta Services becomes generally available as Software and Services without the applicable Beta Services designation; or (b) the date that the Company discontinues such Beta Services. Beta Services are provided "AS IS" and Company will have no liability for any harm or damage arising out of Beta Services.

2.4 Company shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate any Customer Input into the Software or Services. Company shall have no obligation to use or incorporate Customer Input into the Software or Services. Customer shall have no obligation to provide Customer Input. In the event that Company utilizes any Customer Input in the creation of any product feature, enhancement or otherwise, at no time shall such product contain or reference any Customer Data or Customer Confidential Information.

2.5 Company will provide technical support to Customer via telephone and electronic mail on weekdays 24/5, with the exclusion of Company and Federal Holidays ("Support Hours"). Customer may initiate a helpdesk ticket during Support Hours by calling 971-470-3112 or any time by emailing support@rfpio.com.

2.6 All Order Forms are subject to the terms and conditions of this Agreement. The terms of an Order Form, including the terms of this Agreement, and any exhibits hereto, supersede any and all pre-printed or standard terms that may appear on any other documents.

2.7 From time to time, Customer may request that Company provide Professional Services in connection with the Software or Services in accordance with terms mutually agreed upon in the applicable SOW and as otherwise set forth in this Agreement. Unless otherwise agreed, Company shall provide such Professional Services on an hourly basis at the hourly rate specified in the applicable SOW. Company shall provide an estimate of the charges for any Professional Services. With respect to any deliverables (which shall be defined in the applicable SOW) associated with the Professional Services, Customer shall have a license to access and use such deliverables concurrently with the access and use of the Software and Services during the Subscription Term. All title, ownership rights and world-wide Intellectual Property Rights in and to any scripts, software, documentation, materials, methodologies, knowhow or other such information or materials that are developed or provided by Company in the course of delivering the Professional Services, is and will remain the exclusive property of Company (or its Affiliates and/or licensors as applicable). Customer may, subject to payment of all Fees due under this Agreement, retain any deliverables provided to it under a SOW and may use such deliverables for its own internal purposes to the extent that such retention and use does not violate the terms of this Agreement. This Agreement does not contemplate any customized products, services, work-for-hire, or code developed exclusively for Customer. In the event the Parties agree that Company shall provide such non-standard Professional Services, the description of the services and applicable ownership rights with

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Page 3 of 9

respect to such Professional Services will be set forth in a separately executed Professional Services Agreement (“Professional Services Agreement”). This Agreement does not contemplate any IP rights beyond the terms provided herein.

3. CUSTOMER RESPONSIBILITIES AND RESTRICTIONS

3.1 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Software and Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, and web servers (collectively, “Equipment”). Customer shall also be responsible for maintaining the security of the Equipment, Customer Accounts, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer Accounts or the Equipment.

3.2 Except as expressly authorized in this Agreement, Customer and its Users shall not, directly or indirectly: (i) sublicense, rent, lease, sell, loan, transfer, distribute, translate, reverse engineer, decompile, or disassemble or otherwise obtain or attempt to create, derive, or obtain the source code of the Software or Services; (ii) modify, enhance or otherwise change the Software or Services or prepare derivative works based on the Software or Services; (iii) copy or otherwise reproduce any features, functions, integrations, interfaces or graphics of the Software, Services or Documentation; (iv) remove, obscure, or alter any notice of copyright, trademark or other proprietary right appearing in or on any item included with the Software, Services or Documentation; (v) circumvent or attempt to circumvent any methods employed by Company to control access to the components, features or functions of the Software or Services, or to prevent unauthorized use of the Software or Services; (vi) use or otherwise exploit the Software or Services for any purpose, commercial or otherwise, other than the intended purpose; or (vii) use the Software or Services for purposes of competitive analysis or the development of a competing software product.

3.3 Customer shall: (a) have sole responsibility for the accuracy, quality, and legality of all Customer Data; and (b) prevent unauthorized access to, or use of, the Software and Services, and notify Company promptly of any such unauthorized access or use. Customer shall not: (i) use the Service in violation of applicable laws; (ii) in connection with the Software and Services, send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (iii) send or store malicious code in connection with the Software and Services; (iv) interfere with or disrupt performance of the Software and Services or the data contained therein; or (v) attempt to gain access to the Software or Services or its related systems or networks in a manner not set forth in the Documentation. Customer shall be liable for the acts and omissions of all Users and Customer Affiliates relating to this Agreement.

4. COMPANY OBLIGATIONS

4.1 Company will at all times comply with all applicable laws and industry standards in the performance of its obligations under this Agreement and shall obtain all rights and licenses required from third parties to operate, use, license and provide the Software and Services, and otherwise perform its obligations under this Agreement.

4.2 Company will provide the Software and Services using technology at a level current with the technology that Company implements for all of its customers and at least comparable to the level of technology generally adopted in the applicable industry for provision of similar services.

4.3 Company shall implement and maintain an information security program appropriate for development or provisioning of the Software or Services (“Information Security Program”). The Information Security Program will provide for effective administrative, physical, and/or technical safeguards sufficient to protect Customer’s Confidential Information and Customer Data from unauthorized access, acquisition, or disclosure, destruction, alteration, misuse, or damage, and include as applicable, corresponding policies, procedures, and risk assessments that are reviewed at least annually. The Information Security Program shall be consistent with applicable best practices in the industry. The Information Security Program shall, at a minimum: (i) limit access to Customer Confidential Information and Customer Data to personnel who have a need to know or otherwise access it in order to fulfill Company’s obligations under this Agreement; (ii) secure business facilities, data centers, paper files, servers, backup systems, and computing equipment

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with information storage capability; (iii) implement network, system, application, and database security; (iv) secure information transmission, storage, and disposal; (v) implement authentication and access controls within media, applications, operating systems, and equipment; (vi) logically segregate Customer Confidential Information and Customer Data from information of Customer or its other client so that it is not commingled with any other types of information; (vii) conduct risk assessments, penetration testing, and vulnerability scans and implementing, on a risk-based approach, corrective action plans to correct any issues identified as a result of any of the foregoing; (viii) implement appropriate personnel security and integrity procedures and practices, including conducting background checks consistent with applicable law; and (ix) provide appropriate privacy and information security training to Company's employees. Company shall maintain a disciplinary process to address any unauthorized access, use, or disclosure of Customer Confidential Information or Customer Data by any of its officers, partners, principals, employees, agents, subcontractors, or Users.

5. CONFIDENTIALITY

5.1 Each Party (the "Receiving Party") understands that the other Party (the "Disclosing Party") has disclosed or may disclose Confidential Information. Confidential Information of Company includes non-public information relating to the Software, Services, Professional Services and Documentation. Confidential Information of Customer includes all Customer Data. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Confidential Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public through no fault of the Receiving Party, (b) was in its possession or known by it prior to receipt from the Disclosing Party provided that the source of the information as not known to be bound by confidentiality obligations, (c) was rightfully disclosed to it without restriction by a third party, (d) was independently developed without use of any Confidential Information of the Disclosing Party or (e) is required to be disclosed by law or a governmental authority. If the Receiving Party is required by law or court order to disclose Confidential Information, then the Receiving Party shall, to the extent legally permitted, provide the Disclosing Party with advance written notification and cooperate in any effort to obtain confidential treatment of the Confidential Information.

5.2 Customer shall own all right, title and interest in and to the Customer Data and Customer Confidential Information. Company shall own and retain all right, title and interest, including Intellectual Property Rights, in and to the Software, Services, Professional Services, Documentation and all Updates, inventions, or other technology developed related thereto and Company Confidential Information. No rights or licenses are granted to Customer except as expressly set forth herein.

5.3 Company has exclusive rights to use the Service Data. Nothing herein shall be construed as prohibiting Company from utilizing the Service Data for purposes of operating Company's business. In no event shall Company obtain any right, title or interest in or to any personally identifiable information contained in the Service Data.

6. PAYMENT OF FEES

6.1 Customer will pay Company the applicable Fees described in the Order Form or SOW in accordance with the terms therein. Except as otherwise stated in an Order Form or SOW, all Fees are quoted and payable in USD and are based on Software and Service rights acquired, not actual usage. Following the Initial Term, Company reserves the right to change the Fees or applicable charges up to and including new charges and Fees upon thirty (30) days prior notice to Customer.

6.2 Fees for all Software and Services will be invoiced in full and in advance annually. Unless otherwise stated in the Order Form or SOW, invoiced charges are due thirty (30) days after the invoice date. Customer will provide Company complete and accurate billing and contact information and will notify Company of any changes to such information. If any invoiced amount is not received by Company by the due date, then without limiting Company's rights or remedies, then (i) those charges may accrue late interest at the rate of one percent (1%) of the outstanding balance per month, or the maximum rate permitted by applicable law, whichever is lower, and (ii) Company may suspend Customer's access to the Software and Services with notice and shall cease providing any Professional Services.

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Company will not exercise its rights under this section if Customer is disputing applicable Fees reasonably and in good faith and is cooperating with Company to diligently resolve the dispute.

6.3 Except as otherwise stated in an Order Form or SOW, Fees do not include any direct or indirect local, federal, state, central or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, excise, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its acquisitions under this Agreement, and the Software and Service, excluding Company income taxes. If Customer has an obligation to withhold any amounts under any law, Customer shall provide a proof of payment of such amount within 90 days from the day of such payment.

7. TERM AND TERMINATION

7.1 This Agreement is valid and binding on the date the Parties fully execute the applicable Order Form and/or SOW. The Initial Term begins on the Effective Date and will continue throughout the number of months stated on the Order Forms and/or SOWs and will automatically renew for the same period agreed upon in the applicable Order Form ("Renewal Term") at Company's then-current list price unless: (i) Customer provides written notice of non-renewal to Company at least fifteen (15) days before the start of a Renewal Term; or (ii) Company provides written notice of non-renewal to Customer at least thirty (30) days before the start of a Renewal Term. Except as otherwise specified, a SOW shall terminate upon completion of the listed Professional Services. Customer must contact Company no later than thirty (30) days after the initial billing statement in which any pricing error occurred, in order to receive an adjustment or credit

7.2 A party may terminate this Agreement for cause (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

7.3 Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Software, and Customer shall delete, destroy, or return all copies of the Software or Documentation provided during the term of this Agreement. Except for Customer's termination for cause as a result of Company's material breach of this Agreement, all payment obligations under any and all Order Forms or SOWs are non-cancelable, and all payments made are non-refundable.

7.4 Upon request by Customer made within one-hundred eighty (180) days after any expiration or termination of this Agreement, Company shall provide Customer a file of all Customer Data in a mutually agreeable format. After such one-hundred eighty (180) day period, Company will have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete, wipe or otherwise purge all Customer Data. Additionally, during the term of this Agreement, Customers can extract Customer Data using Company's standard web services. If Customer requires any other Company assistance, Customer may acquire Company's Professional Services at Company's then-current billing rates pursuant to a separately executed Professional Services Agreement and SOW.

7.5 The following Sections, together with any other provision of the Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of the Agreement, will survive expiration or termination of the Agreement for any reason: Section 1 (Definitions), Section 5 (Confidentiality), Section 6 (Fees and Payment Terms), this Section 7.5 (Survival), Section 9 (Warranties; Disclaimers; Limitation of Liabilities), Section 10 (Indemnification), and Section 12 (General Terms).

8. CUSTOMER NAME AND LOGOS

8.1 Customers grants Company the right to use Customer name, logo, trademark and tradenames ("Customer Brand") on Company's website during the term of this Agreement for sales and marketing purposes to reference as a customer, in accordance with guidelines provided by Customer. Upon Customer's written request, Company will promptly remove Customer's name or any Customer marks from Company's website, and to the extent feasible, Company's marketing materials. For the avoidance of doubt, Company will not use your Customer Brand for any other purpose without prior written consent from Customer.

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9. WARRANTY AND DISCLAIMER

9.1 Each Party represents and warrants that (i) it has full power and authority to grant the rights granted by this Agreement, to perform its obligations under this Agreement without the consent of any other person or entity, and the authority to carry on its business; (ii) the execution, delivery and performance of this Agreement have been duly authorized and this Agreement constitutes a valid and binding agreement, enforceable against each Party in accordance with its terms; (iii) neither party is under any obligation of a contractual or other nature to any person or entity which is inconsistent or in conflict with this Agreement or which would prevent, limit or impair in any way the performance of its obligations under this Agreement.

9.2 Consistent with prevailing industry standards, Company shall maintain the Software in a manner which minimizes errors and interruptions and shall perform the Services in a professional and workmanlike manner. Software may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

9.3 Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Company to provide the Software and Services to Customer without violating the rights of any third party or otherwise obligating Company to Customer or to any third party. Company does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Software and Services other than as expressly set forth in this Agreement or as required by applicable law.

9.4 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. COMPANY DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR FREE OR UNINTERRUPTED OR MAKE ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE AND SERVICES. THE LIMITED WARRANTIES PROVIDED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO CUSTOMER IN CONNECTION WITH THE PROVISION OF THE SOFTWARE AND SERVICES.

9.5. LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, AND ANY BREACH OF ITS CONFIDENTIALITY, INFORMATION SECURITY OR INDEMNIFICATION OBLIGATIONS, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE SOFTWARE, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; (D) CUSTOMER DATA INPUT INTO THE SOFTWARE OR PROVIDED BY CUSTOMER OR ANY AUTHORIZED AFFILIATE OF CUSTOMER THAT VIOLATES THE RIGHTS OF ANY THIRD PARTY; OR (E) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO COMPANY FOR THE SOFTWARE AND SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR BREACH OF CONTRACT, NEGLIGENCE OR MISCONDUCT, IN NO EVENT SHALL CUSTOMER BE LIABLE FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. INDEMNIFICATION

10.1 Company will indemnify, defend, save and hold harmless Customer, its Affiliates and the respective officers, directors, employees, agents, successors, and assigns of Customer or any affiliate ("Customer Parties"), against all claims, suits and actions asserted by an unaffiliated third party ("Third Party Claim") against any of the Customer Parties for liabilities, damages and costs, including reasonable attorneys' fees, incurred in the defense of any claim brought against Customer alleging that any Software or Services infringes or misappropriates a third-party's U.S. registered patent right, trademark, or copyright (an "Infringement Claim"). Company's indemnity obligation under this Section 10.1 shall not extend to claims that arise from: (a) an unauthorized modification of the Software or Services by Customer where the Software or Services would not be infringing without such modifications; (b) customized portions of the Services designed in accordance with written specifications provided by Customer where the Software or Services would not be infringing but for Company's compliance with such written specifications; (c) the failure of Customer to install an Update to the Software or Services provided by Company that would have avoided the actual or alleged Infringement Claim; (d) the combined use by Customer of the Software or Services with other components, products, or services not provided by Company where the Software or Services would not be infringing but for such combination; or (e) workflows, analytic applications, algorithms or other applications or programming built by Customer or created by or on behalf of Customer without Company's approval.

10.2 If an Infringement Claim is brought or threatened relating to Company's infringement of third-party rights, Company may, at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will protect Customer against such Infringement Claim without cost to Customer; (b) to modify or replace all or portions of the Software or Services as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate this Agreement and provide to Customer a pro-rata refund of the Fees paid for the Software and Services under this Agreement based on the terminated portion of the current year of this Agreement.

10.3 To the extent permitted by law, Customer shall defend, indemnify and hold Company harmless from any Third Party Claim made by a third party alleging that the Customer Data infringes the IP rights of a third party, Customer's misuse of the Software or Service, Customer's breach of the terms of this Agreement or Customer's violation of any applicable law

10.4 A party seeking indemnification will: (a) promptly notify the Indemnifying Party of the Third Party Claim; (b) grant the Indemnifying Party sole and absolute control of the defense and settlement of the Third Party Claim; and (c) provide the Indemnifying Party with all reasonable assistance, information and authority for the defense and settlement of the Third Party Claim. The Indemnifying Party will not stipulate, acknowledge, or admit fault or liability on the Indemnified Party's behalf without the Indemnified Party's prior written consent.

10.5 THE FOREGOING ARE THE PARTIES' SOLE AND EXCLUSIVE OBLIGATIONS, AND THE PARTIES SOLE AND EXCLUSIVE REMEDIES, FOR INDEMNIFICATION.

11. DISPUTE RESOLUTION

11.1 THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT.

11.2 In the event of any dispute arising out of or relating to this Agreement, the Parties shall seek to settle the dispute via direct discussions. If a dispute cannot be settled through direct discussions, the Parties agree to first endeavor to settle the dispute via voluntary non-binding mediation, before resorting to arbitration. A mediator will be selected by voluntary agreement of both Parties, or in the event both Parties cannot agree on a mediator, a mediator will be selected in accordance with the rules of the American Arbitration Association. The mediation shall be held at a location mutually agreed to by the Parties. Each Party shall bear its own costs and expenses and an equal share of the administrative and other fees associated with the mediation.

12. GENERAL TERMS

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12.1 This Agreement, including all exhibits and amendments hereto and all Order Forms or SOWs, constitutes the entire agreement between the Parties with respect to the subject matter hereof. In the event of a conflict, the provisions of an Order Form or SOW shall take precedence over provisions of the body of this Agreement and over any other Exhibit or Attachment. This Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

12.2 Company may use the services of subcontractors and permit them to exercise the rights granted to Company under this Agreement if Company remains responsible for (a) compliance of any such subcontractor with the terms of this Agreement, and (b) the overall performance of the Software and Services as required under this Agreement. Except as otherwise provided in this Agreement, there are no third-party beneficiaries under this Agreement. Any claims against Company or its Affiliates under this Agreement may only be brought by the Customer entity that is a party to this Agreement.

12.3 The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement. Neither party has any authority of any kind to bind the other party in any respect whatsoever.

12.4 This Agreement is not assignable, transferable or sub licensable by either Party without the other Parties prior written consent, except as such assignment, transfer or sub license relates to an Affiliate or is in connection with a merger, acquisition or similar change of control event.

12.5 This Agreement is the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Lists of examples, such as lists following "including," or "e.g.," are interpreted to include "without limitation," unless qualified by words such as "only" or "solely."

12.6 If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of this Agreement shall be interpreted as if such provision were so excluded and (c) the balance of this Agreement shall be enforceable in accordance with its terms

12.7 All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or electronic mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service at the addresses listed on the current Order Form or SOW; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the State of Delaware without regard to its conflict of laws provision.