

ANAPHORA CLIENT SUBSCRIPTION TERMS

Version: 1.2

Last updated: 22 / 08 / 2023

- 1.0 DEFINITIONS.** The following capitalized terms used in this Agreement will have the meanings given below.
- 1.1 **"Authorized Users":** end users authorized to use or receive the benefit of the SaaS Solution, and account status, as set forth in the Order.
- 1.2 **"Confidential Information":** any tangible or intangible information or materials, if conspicuously marked or designated verbally as "confidential" (or with words of similar meaning) and, if only orally disclosed, summarized by the disclosing party hereunder within thirty days after the disclosure, made available by or otherwise received from a party hereto, or by such party's affiliates (collectively "disclosing party", to be either Service Provider and its affiliates, or Client and its affiliates, as applicable), except to the extent that such information or materials: (a) through no act or failure to act on the part of the party receiving such information or its affiliates ("receiving party"), and through no violation of this Agreement, is now or hereafter becomes publicly known; (b) was rightfully known or lawfully in the possession of the receiving party prior to disclosure; (c) is independently developed by employees, contractors or agents of the receiving party; or (d) is hereafter rightfully furnished to receiving party by a third party without restriction on disclosure. The SaaS Solution will be deemed Service Provider's Confidential Information.
- 1.3 **"Content":** all content, text, data, video, audio, graphics, files, applications, and other information and materials made available on or used with the SaaS Solution.
- 1.4 **"Client Content":** any Content originating from or introduced by Client or an Authorized User.
- 1.5 **"Data Processing Addendum" or "DPA":** the data processing addendum set forth at <https://anaphora.tech/data-processing-addendum>.
- 1.6 **"Evaluation Trial":** provision of the SaaS Solution free of charge, including provision of the free account level of service.
- 1.7 **"Order" or "Order Form":** the ordering document referencing or attached to these Terms, setting forth the applicable SaaS Solution subscriptions Client has purchased, fees, subscription terms, Authorized Users, and any other associated or supplementary terms.
- 1.8 **"Other Applications":** online or offline software, products, websites, services, information, platforms, data, functionality, hardware, networks and Content, not developed by Service Provider, and any of the foregoing that is owned or licensed by Client or other party, or that is processed, made available, or enabled for use and display via the SaaS Solution.
- 1.9 **"Privacy Policy":** the privacy policy available at <https://anaphora.tech/privacy>, as may be amended on one or more occasions.
- 1.10 **"SaaS Solution":** Service Provider's cloud-based network-delivered service(s), made available by Service Provider as part of its Service Provider offering, as described in the Order, including (a) related Content, features, functionality, websites, data, tools, and analytics, and (b) any new updates, versions, and changes to any of the foregoing as Service Provider may develop.
- 1.11 **"Service Deliverables":** deliverables, materials, data, information or works Service Provider (or an affiliate of Service Provider) provides to Client in connection with Client's use of the SaaS Solution, including templates, samples, formats, designs, themes, plugins, and layouts.

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- 1.12 "Service Level Agreement" or "SLA": the service level agreement set forth in the Order.
- 1.13 "Services": professional, support, training, SLA, and/or consulting services if and as set forth in the Order and/or any SOW.
- 1.14 "Statement of Work" or "SOW": a separate document referencing these Terms and mutually agreed by the parties (or their affiliates) for establishing the terms and details of a Services engagement. If applicable, the first SOW will be attached as an annex to, referenced, or otherwise made a part of the Order Form.

2.0 SAAS SOLUTION

- 2.1 Provision. Access to the SaaS Solution, pursuant to this Agreement and in accordance with the applicable Order(s), is subject to Client's compliance with this Agreement. Except as specifically set forth in an Order, Client will have sole responsibility for the costs, expenses and deployment of (a) any interconnection, installation and testing required to use the SaaS Solution and Other Applications; and (b) licenses for Other Applications and as may be required for the creation and distribution of Client Content that Client or any Authorized User introduces.
- 2.2 Availability. Although it is Service Provider's intention for the SaaS Solution to be continuously available, Client acknowledges there will be occasions when the SaaS Solution may be interrupted or incur delays, including without limitation due to scheduled maintenance or upgrades, for emergency reasons, suspension as required by law or governmental authority, in order to prevent harm to or infringements of the rights of others, or due to failure of platforms, networks, forces, links or equipment that are not under Service Provider's control.
- 2.3 Evaluation Trial. Evaluation Trial. Any data, personalizations, integrations, adaptations, customizations or other materials generated during the Evaluation Trial will be permanently lost at the end of the Evaluation Trial unless you purchase a subscription to the applicable SaaS Solution. Except as the parties may otherwise agree in the Order, we are under no obligation to provide Services during or in support of the Evaluation Trial. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS, THE EVALUATION TRIAL IS PROVIDED "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED, and the SLA does not apply to any Evaluation Trial. You must cancel the Evaluation Trial by the end of the stated number of days in the Evaluation Trial offer to avoid incurring charges, unless we notify you otherwise. If you do not cancel at the end of the Evaluation Trial period, we may charge you for the subscription.
- 2.4 Client Content. As between the parties, Client retains all right, title and interest in and to Client Content and all associated intellectual property rights, subject to this section. Client hereby grants to Service Provider, on behalf of itself and Authorized Users, a non-exclusive, worldwide, fully paid, royalty-free, sublicensable and transferable license to use, reproduce, distribute, modify, display, perform, prepare derivative works of, and process Client Content for the purposes of and in conjunction with providing and maintaining the SaaS Solution for the benefit of Client, Authorized Users, and the users of Client's site(s) and services. All Client Content is Client's sole responsibility. Under no circumstances will Service Provider be liable in any way for any Client Content. Service Provider may preserve and disclose any Client Content if required to do so by law or judicial or governmental mandate.
- 2.5 Feedback. Service Provider may freely use and exploit in perpetuity any feedback, requirements, recommendations, ideas, bug fixes, comments, suggestions, or improvements, that Client, or any Client employee or agent, or any Authorized User, may at any time disclose or submit to Service Provider relating to the SaaS Solution, for Service Provider's business purposes, including for product licensing, support and development, without any obligation or payment.
- 2.6 Information. Client acknowledges and agrees to the collection, storage, generation, processing and use by or for Service Provider of anonymized or non-personally identifying data (including meta-data, testing, analytical, diagnostic and technical data, predictive analytics models, machine learning, and

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- usage statistics) concerning or arising from use of, or generated by, the SaaS Solution, in whole or in part, including without limitation: (a) in order to provide the functionality of, improve, and maintain the SaaS Solution, (b) for processing transactions and payments, (c) for solution development, and (d) for verifying compliance. Client consents to the terms of the Privacy Policy. Client represents and warrants that all information Client submits to Service Provider in connection with the SaaS Solution, including account and billing information, is accurate, complete and truthful. Client will promptly update any information provided by Client that subsequently becomes inaccurate, incomplete, misleading or false.
- 2.7 Unauthorized Use. Client will not use, or enable or permit the use of the SaaS Solution to store, process or transmit malicious code, viruses, time bombs, Trojan horses, or similar mechanisms, scripts, agents, bots or programs. Client shall not use or access the SaaS Solution: (a) if Client is a direct competitor of Service Provider or operating on behalf of such a direct competitor; or (b) for purposes of monitoring availability, performance or functionality, or for any other benchmarking or competitive purposes. Client hereby acknowledges and agrees to the Acceptable Use Policy located at <https://anaphora.tech/acceptable-use-policy>.
- 2.8 Access Information. Client is wholly responsible for maintaining the confidentiality of user name, password, and other log-in information provided to Client for access to the SaaS Solution ("Access Information") and wholly liable for all activities occurring under such Access Information. Client will not transfer to any party Access Information, or use access information of another, without Service Provider's prior written consent. Client will immediately notify Service Provider of any unauthorized use of Access Information or any other breach of security. Service Provider will not be liable for any loss or damage arising from lost or forgotten Access Information (including associated loss of Content), for failure to comply with this section, or from unauthorized use of the Access Information.
- 2.9 Reservation of Rights. Service Provider retains all right, title and interest in and to, and as between the parties, is the exclusive owner of, the SaaS Solution, and all associated intellectual property rights, know-how, algorithms and data. The SaaS Solution is for use solely by Client and its Authorized Users. The user interface, user experience, icons, presentation layer and elements, reports, templates, layouts, and screen displays of or generated by the SaaS Solution constitute Service Provider's copyrightable content, trade dress, and trademarks and servicemarks, as applicable. Client shall not directly or indirectly disclose to any third party (other than Authorized Users and Client's employees and contractors with a need to know in support of Client's internal business operations) all or any part of the SaaS Solution or Service Deliverables, in whole or in part, excluding Client Content.
- 2.10 Notices; Consent to Emails. For purposes of service messages and notices about the SaaS Solution or Services to Client, Service Provider may place a banner notice across Client's dedicated dashboard pages and send notices via email to an email address associated with Client's account. Client consents to receiving emails from Service Provider, which may be transactional, for account management purposes, or for communications relating to or provided as part of the Services and/or the SaaS Solution, including administrative notices and service announcements or changes. If Client believes that Client is entitled or obligated to act contrary to these Terms under any mandatory or applicable law, Client agrees to provide Service Provider with detailed and substantiated explanation of Client's reasons in writing at least thirty days before acting, to allow Service Provider to assess alternatives. Notice to Service Provider must be sent to legal@anaphora.tech.
- 2.11 Service Deliverables. Service Provider (or Service Provider affiliate, as applicable) hereby grants to Client a non-exclusive and non-transferable license: (a) to use Service Deliverables for Client's internal operations in connection with authorized use of the SaaS Solution; and (b) to incorporate into Client Content the Content that Service Provider delivers to Client explicitly for use with Client Content, and to reproduce, display, and distribute such Service Provider-delivered Content solely as incorporated in Client Content. The license set forth in this section is the only license granted to Client with respect to such Content and Service Deliverables. Subject to the foregoing license, Service Provider (or Service Provider affiliate, as applicable) retains all right, title and interest in and to any such Content and Service Deliverables, and associated intellectual property rights.

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- 2.12 Client Use Only. Client shall use the SaaS Solution exclusively for the benefit of Client, Authorized Users, and the users of Client's and Authorized Users' site(s), applications and services. Except pursuant to authorized reseller terms as set forth in the Order, Client shall not directly or indirectly sublicense, frame or white-label, or provide access to, the SaaS Solution, in whole or in part, on a service bureau basis, or other basis in which Client impairs or diminishes the available market for the SaaS Solution or the need for dealing with Service Provider directly.
- 2.13 Propriety of Content. Client shall not, and shall ensure that no Authorized Users, transmit Content or otherwise conduct or participate in any activities on or via the SaaS Solution which is likely to be prohibited by law, or is violative or in breach of third party rights in any applicable jurisdiction, including without limitation laws governing libel and defamation, encryption of software, the export of technology, the transmission of obscenity or the permissible uses of intellectual property. Client shall not and shall ensure that Authorized Users do not upload, download, display, perform, transmit, or otherwise distribute any Content, or otherwise engage in any activity in connection with the SaaS Solution, that (a) is hateful, offensive, racist, bigoted, libelous, defamatory, obscene, abusive, pornographic, lewd, erroneous, stalking, or threatening; (b) advocates or encourages conduct that could constitute a criminal offense, give rise to civil liability, or otherwise violate applicable law; (c) constitutes infringement of the intellectual property or other rights of any party, including rights to the use of name and likeness, or violation of a right of privacy; (d) creates an impression that is incorrect, misleading, or deceptive, including without limitation by impersonating others or by otherwise misrepresenting identity or affiliation with a person or entity; or (e) divulges other people's private or personally identifiable information without their express authorization and permission. Service Provider may remove any Content that is in violation of these Terms. Client's use of the SaaS Solution shall be in full compliance with applicable law. Client represents and warrants that Client has sufficient authority, and all necessary rights and licenses, to enter into this Agreement and to provide and license the Client Content to Service Provider as set forth in this section.
- 2.14 Use of Content. Use of the SaaS Solution may expose Content that is offensive, indecent, objectionable, illegal, infringing, false or erroneous. Service Provider does not guarantee the accuracy, integrity or quality of any Content. Under no circumstances will Service Provider be liable in any way for any Content, including, but not limited to, liability for any errors, inaccuracies, or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content. Service Provider will have no obligation to maintain, store, or license Content, protect and maintain Content owners' intellectual property rights, or to enforce these Terms. Client hereby waives and releases any claims arising or resulting from use or misuse of Content or inability to effectively use Content, Client's or any Authorized User's failure to comply with these Terms, or for any act, omission, or conduct of any Authorized User.
- 2.15 Data Protection. Client will take all necessary and reasonable steps to ensure that Client has full legal right and authority to disclose and process all personal and personally identifying data, and that the processing of such data will not violate any applicable data protection or data privacy laws. If Service Provider is required to adhere to instructions or requirements in respect of the processing of such data on behalf of Client, or to adhere to changes in applicable law, and such compliance would prevent or limit Service Provider's ability to provide the SaaS Solution as intended (in whole or in part) without, in the reasonable discretion of Service Provider, material or costly changes to its system or administration, Service Provider may limit or cancel the SaaS Solution, in whole or in part, without any liability or obligation to Client. Client acknowledges that Service Provider is a data processor to the extent Service Provider processes personal data on Client's behalf as part of the SaaS Solution, and that Client is the data controller in such context. The parties hereby agree to the terms of the DPA.
- 2.16 Authorized Users. Except as may be set forth in the Order, Client will ensure that the maximum number of Authorized Users will not exceed the number of user licenses purchased from Service Provider as set forth in the Order, and that no user license may be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User must no longer have any right to access or use the SaaS Solution.

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Authorized Users may be required to consent to end user terms of use as a condition of use of the SaaS Solution. Client is responsible for all Authorized Users' compliance with such terms and these Terms.

3.0 CONFIDENTIAL INFORMATION. Receiving party shall not disclose or cause to be disclosed, in whole or in part, disclosing party's Confidential Information to any third party other than to receiving party's employees and contractors, or use disclosing party's Confidential Information except in furtherance of performance of this Agreement. Receiving party shall ensure that all employees and contractors to whom receiving party discloses Confidential Information have a strict need to know and are bound by written confidentiality agreements consistent with the requirements of this section. Receiving party will protect the confidentiality of the Confidential Information of the disclosing party with the same degree of care, but no less than reasonable care, as such party uses to protect its own confidential information. Notwithstanding any other confidentiality or non-disclosure provisions to which the parties have agreed, this section exclusively controls with respect to confidentiality obligations relating to Confidential Information.

4.0 PAYMENT

- 4.1 Payments. Client will pay to Service Provider the fees listed in the Order. All payments are non-refundable notwithstanding subscription termination (except as may otherwise be specified in this Agreement). Payments will be made via the method designated in the Order. Client represents and warrants that Client: (a) is authorized to use the billing account provided to Service Provider and that any payment information provided is true, complete and accurate; and (b) has full authorization to allow Service Provider to charge Client using Client's billing account.
- 4.2 Failure to Pay. If Client is delinquent in the payment of any invoice, Service Provider may at its option, suspend access to the SaaS Solution and cease Services until such payments are made in full. Payments to Service Provider must be made without deduction, counterclaim or set-off of any kind. Except as otherwise set forth in the Order, payments are due within 30 days of Service Provider's invoice. Any payments that are not timely paid as provided hereunder will, at Service Provider's option, bear compound interest at one percent per month. Service Provider may invoice Client at the same time for more than one prior billing period for amounts that have not previously been processed. Client will not adopt multiple accounts to simulate or act as a single account, or otherwise access or use the SaaS Solution in a manner intended to avoid incurring fees.
- 4.3 Response to Process. If Service Provider is required to respond to a subpoena or other formal request from a third party or a governmental agency for records, Content or other information relating to the SaaS Solution or services Service Provider has performed for Client or on Client's behalf, or to testify by deposition or otherwise, Client will reimburse Service Provider's reasonable time and expenses incurred in accordance with Service Provider's then-current time and expense rates, if the time required by Service Provider exceeds three person-hours, except as otherwise stated in the Order.
- 4.4 Taxes. Client will bear and be responsible for the payment of all taxes, including all sales, use, value-added, rental receipt, personal property or other taxes and their equivalents which may be levied or assessed in connection with this Agreement or provision of the SaaS Solution and/or Services (excluding only taxes based on Service Provider's net income). If Service Provider is required to pay or collect any such taxes or other charges for which Client is responsible under this section, Client will pay the appropriate amount as invoiced. If Client is required by local law to withhold or deduct taxes based upon Service Provider's income from any payment(s) owed hereunder, such payment(s) will be increased (grossed up) in such amounts as would have been received by Service Provider as if no such withholding or deduction were required.

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5.0 SAAS SOLUTION INTEGRITY. Client is prohibited from breaching or attempting to breach any security features of the SaaS Solution and from taking any action that would otherwise adversely impact the availability, reliability, security, or stability of the SaaS Solution. Such prohibitions include, without limitation: (a) accessing content or materials not intended for Client, or logging onto a server or account that Client is not authorized to access; (b) attempting to probe, scan, or test the vulnerability of the SaaS Solution; (c) testing the SaaS Solution in order to find limitations, vulnerabilities or evade filtering capabilities; (d) accessing or tampering with non-public areas of the SaaS Solution, Service Provider computer systems, or the technical delivery systems of Service Provider or Service Provider's providers; (e) accessing or attempting to access the SaaS Solution by any means (automated or otherwise) other than through the currently available, published and enabled interfaces provided by Service Provider; or (f) reverse engineer, disassemble, decompile, translate or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the SaaS Solution, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Service Provider). Client acknowledges that Service Provider has sole discretion over the maintenance, development, and disposition of the SaaS Solution.

6.0 OTHER APPLICATIONS. Client is solely responsible for the Other Applications. Service Provider will not be responsible or liable for Other Applications, including, but not limited to, liability for any errors or omissions in Other Applications, or for any loss or damage of any kind incurred as a result of the use of the Other Applications. Client hereby waives and releases any claims against Service Provider arising or resulting from use, misuse, alteration or loss of Other Applications. If the providers of Other Applications cease to make the Other Applications available for inter-operation with the corresponding features of the SaaS Solution on reasonable terms or otherwise, Service Provider may cease providing such features or the SaaS Solution without entitling you to any refund, credit or other compensation. If Client installs or enables Other Applications for use with the SaaS Solution, Client acknowledge that providers of the Other Applications may access Client Content as required for the inter-operation of such Other Applications with the SaaS Solution. Service Provider will not be responsible or liable for any disclosure, modification or deletion of Content resulting from any such access by Other Applications or from enabling Other Applications to interoperate with the SaaS Solution. Client may be subject to additional terms and conditions that may apply concerning Other Applications, or affiliate or third-party content or services.

7.0 DISCLAIMER OF WARRANTIES & LIMITATION OF LIABILITY

7.1 Disclaimer. TO THE MAXIMUM EXTENT POSSIBLE UNDER APPLICABLE LAW, except as set forth in the SLA, **SERVICE PROVIDER DISCLAIMS ALL WARRANTIES OF ANY KIND WITH RESPECT TO THE SAAS SOLUTION OR THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.** Client acknowledges that use of the SaaS Solution is not reliant or dependent on the availability of any future functionality or features or on any oral or written public or private comments or representations made by Service Provider. Neither Service Provider nor any Service Provider affiliate makes any warranty that (a) the SaaS Solution or Services will meet Client's requirements, goals or needs, (b) SaaS Solution access will be uninterrupted, timely, secure or error-free, or (c) any delays, errors or deficiencies in the SaaS Solution or the Services will be corrected.

7.2 Exclusion. **Notwithstanding any other provision of this Agreement, Service Provider's and any Service Provider affiliate's maximum cumulative aggregate liability for all claims, liabilities or obligations arising under or relating to the "Subject Matter" (defined as the Agreement, its performance or non-performance, Content, the DPA, the Privacy Policy, the Services, Service Deliverables, SaaS Solution and its availability, quality and performance, and any training, support, maintenance or services Service Provider provides), regardless of the number of claims or the theory of liability, whether for breach of this Agreement, including breach of warranty, or**

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in tort or otherwise, will in no event exceed all net amounts paid by Client to Service Provider under this Agreement, if any, during the 12-month period preceding the occurrence of the event giving rise to a claim of liability. Neither Service Provider nor any Service Provider affiliate will be liable for any indirect, punitive, special, incidental or consequential damages, or liable for interruption of business, loss of profits, revenue, use, Content, data, or other economic advantage, or cost of cover or replacement, in connection with, related to or arising out of the Subject Matter, regardless of the theory of liability, whether for breach of this Agreement, including breach of warranty, or in tort or otherwise, even if Service Provider or any Service Provider affiliate has been previously advised of the possibility of such damages. Liability for damages will be so limited and excluded, regardless of the validity or efficacy of any remedy provided herein and even if any remedy fails of its essential purpose. Each party expressly disclaims that such party is owed any duties or are entitled to any remedies not expressly set forth in this Agreement. The foregoing limitations and exclusions apply to the maximum extent permitted by applicable law. Nothing in this Agreement limits or excludes any liability which cannot legally be limited or excluded, including but not limited to liability for: (a) death or personal injury caused by negligence; (b) gross negligence; and (c) fraud or fraudulent misrepresentation.

- 7.3 Service Provider Indemnity. For as long as a subscription term under this Agreement is in effect, Service Provider will defend "Client Parties" (defined as Client, its affiliates, and officers, directors, employees and agents of Client and its affiliates), at its expense, from and against any third party demand, claim, action, suit or legal proceeding alleging that Service Provider's provision of the SaaS Solution (excluding Content and Other Applications) infringes a third party intellectual property right. Service Provider will indemnify and hold Client Parties harmless against all costs, damages, losses, liabilities, and expenses (including, without limitation, costs and reasonable attorneys' fees) finally awarded by a court of competent jurisdiction, or such settlement amount negotiated by Service Provider, attributable to such claim. This section will not apply to (a) patent infringement claims arising from (i) combinations of the SaaS Solution with products, services, hardware or software provided by a party other than Service Provider; or (ii) compliance with industry, technical or commercial standards or consortia such as HTML, the ISO, the W3C, or any other industry standard or practice; (b) any use, distribution, or display of the SaaS Solution in breach of this Agreement; (c) claims arising from compliance with Client Content or requirements; or (d) any claim in which Client or any Client affiliate has an interest. This section sets forth Client's sole remedy and Service Provider's sole obligation with respect to any claim of intellectual property infringement.
- 7.4 Client Indemnity. Client hereby agrees to fully indemnify, defend and hold harmless Service Provider, its affiliates, and officers, directors, employees and agents of Service Provider and its affiliates, from and against any and all claims, losses, damages, judgments, awards, costs, liabilities, expenses, sanctions, and fees (including reasonable in-house and external lawyers fees and costs) directly or indirectly caused by or incurred by reason of (a) a claim brought by Authorized Users, or (b) breach or alleged breach of sections 2.7, 2.11, 2.12, 2.13 or 5.0, or (c) any other third party allegation, lawsuit, claim or proceeding, arising out of or related to: (i) Client Content; or (ii) any conduct or activity of Client or Authorized Users. Service Provider may assume the exclusive defense and control of any matter for which Client is required to indemnify Service Provider under this section, at Client's expense. Client will cooperate with Service Provider's defense and settlement of such claims.

8.0 TERM & TERMINATION

- 8.1 Term. Access to the SaaS Solution and the Services commence on the date set forth in the Order and will continue in effect, for the period(s) set forth in the Order. These Terms will remain in effect for as long as any Evaluation Trials or subscriptions are in effect. Service Provider provides instructions on how to cancel the subscription. Client must cancel the subscription before the renewal date to avoid being billed for the renewal. Client is solely responsible for retrieval of Client's Content, data and feeds

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prior to termination of the subscription. After termination, Client's ability to retrieve such data may be subject to charges imposed by Service Provider.

- 8.2 **Termination.** A subscription will be terminable for cause as follows: (a) by either party in the event of a material remediable breach of this Agreement; in such case, the non-defaulting party will give notice of such default and opportunity to cure if the breach is remediable or reasonably capable of cure, and if the remediable breach is not substantially cured within thirty days from receipt of such written notice, the non-defaulting party may notify the defaulting party in writing of the immediate termination of all applicable subscriptions; or (b) immediately upon written notice by either party in the event of material irremediable breach of this Agreement; or (c) immediately upon Service Provider's written notice if the Content, Other Applications or the SaaS Solution becomes the subject of a claim of intellectual property or other rights infringement, or of a claim of privacy or data breach. Service Provider may additionally terminate a subscription upon written notice to Client if either party: (d) becomes the subject of a legal proceeding under a law relating to insolvency or bankruptcy; (e) has property that becomes under the control of a custodian or equivalent under applicable law, or is assigned for the benefit of creditors; (f) generally ceases relevant business operations; or (g) generally fails to pay debts as they become due or acknowledges in writing its inability to do so. Additionally, Service Provider may suspend or terminate a subscription due to violation or breach of the terms of sections 2.0 or 5.0 by Client or any Authorized User: (h) upon three business days written notice to Client ("Violation Notice"), unless within such three business day period the offending activity has ceased; and (i) immediately upon written notice to Client for violations that were the subject of a previous Violation Notice.
- 8.3 **Effect.** Upon expiration or termination, all access and licensed rights under this Agreement terminate, Services will cease, and Client will cease all use of the SaaS Solution, and pay any outstanding fees owed to Service Provider and all remaining fees applicable to the remaining term of the subscription. Termination will not relieve Client of the obligation to pay fees payable to Service Provider for the period prior to the effective date of termination. Rightful and lawful termination by either party, or expiration under the terms hereof, will not give rise to the right for the non-terminating party, or to either party in the case of expiration, to recover damages or to indemnification of any nature. The rights of either party under this section 8.0 are in addition to any other rights and remedies permitted by law or under this Agreement.

9.0 GENERAL PROVISIONS

- 9.1 **Account Termination.** Service Provider may terminate any Authorized User account for cause, including without limitation for: (a) violation of these Terms; (b) abuse of Service Provider resources or any attempt to gain unauthorized entry to the SaaS Solution; (c) use of the SaaS Solution in a manner inconsistent with its purpose; or (d) requirements of or for failure to comply with applicable law, regulation, court or governing agency order, or ethical requirements. Service Provider will not be liable for any termination of access to the SaaS Solution or Content. After account termination, Client will not attempt to register a new account for such Authorized User without Service Provider's permission. Service Provider reserves the right to and may at any time refuse SaaS Solution access to anyone that, in Service Provider's sole discretion, would damage or impair Service Provider's brand or reputation.
- 9.2 **Trademarks; Media.** Client is granted no right, title or license to any third party or Service Provider trademarks or servicemarks. Service Provider reserves all right, title and interest in and to Service Provider trademarks, servicemarks, trade names, domain names, and similar identifiers. Client hereby authorizes Service Provider to disclose in Service Provider websites, marketing collateral, and corporate presentations that Client has selected Service Provider and purchased the use of Service Provider's solutions and services, using Client logos and marks. Client may revoke such authorization at any time upon five business days' written notice.

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- 9.3 Force Majeure. Except for obligations to pay money hereunder, no delay, failure or omission by either party to carry out or observe any of its obligations hereunder will give rise to any claim against such party or be deemed to be a breach of this Agreement if and for as long as such failure or omission arises from any cause beyond the reasonable control of that party.
- 9.4 Governing Law; Limitations. The Subject Matter (as defined in section 7.2), and any disputes between the parties related to or concerning the Subject Matter (including tort as well as contract claims, and whether pre-contractual or extra-contractual), will be governed by the procedural and substantive laws of Delaware. Any claim or cause of action arising out of or related to the Subject Matter must be filed within one year after such claim or cause of action arose, or be forever barred.
- 9.5 Dispute Resolution. Except for actions or claims described in section 9.8, the parties will first try to resolve dispute(s) between them informally, and neither party may start a formal arbitration or court proceeding for at least thirty days after one party notifies the other party of a dispute in writing. Notice of the dispute will include a brief written statement that sets forth the name, address, and contact information of the party giving it, the facts giving rise to the dispute, and the relief requested.
- 9.6 Arbitration. **Any disputes between or claims brought by either party or affiliate against the other party or its affiliate arising out of or related to the Subject Matter (as defined in section 7.2), including tort as well as contract claims, and whether pre-contractual or extra-contractual, as well as the arbitrability of any disputes must be referred to and finally settled by binding arbitration before JAMS (jamsadr.com), and the venue for arbitration will be New York City, NY. The Rules for Expedited Arbitrations will apply. The arbitration will be conducted remotely and/or based solely upon submissions where no in-person appearance is required. The arbitrator will apply the law specified in section 9.4 above. All awards may if necessary be enforced by any court having jurisdiction.** The existence of any dispute, the existence or details of the arbitration proceeding, and all related documents, materials, evidence, judgments and awards therein, must be kept confidential. Except as required by law, no party will make any public announcements with respect to the proceeding or the award, except as required to enforce same. The parties hereby waive the right to a trial by jury and agree to only bring claims in an individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. All disputes will be arbitrated only on an individual basis and not in a class, consolidated or representative action. The arbitrator does not have the power to vary these provisions. All claims between the parties must be resolved using arbitration in accordance with this section. Should either party file an action contrary to this section, the other party may recover lawyers' fees and costs associated with enforcing this section, provided that the party seeking the award has notified the other party in writing of the improperly filed claim, and the other party has failed to withdraw the claim in a timely fashion.
- 9.7 Assignment. Neither party may assign or transfer, in whole or in part, this Agreement or any subscription, except that either party may assign this Agreement in its entirety in connection with a merger, acquisition, or sale of business or assets, without the need for prior written consent. Notwithstanding the foregoing, Service Provider's written consent will be required for any assignment to a Service Provider competitor or a Service Provider customer. The party assigning this Agreement in compliance with this section shall notify the non-assigning party no later than five business days following such assignment. Any purported assignment or transfer in violation of this section will be void. This Agreement will be binding on, and inure to the benefit of, the parties and their respective and permitted successors and assigns.
- 9.8 Injunctive Relief; Prevailing Party. Client acknowledges that breach of this Agreement, or any unauthorized use, disclosure or distribution of the SaaS Solution (or its functionality) may cause irreparable harm to Service Provider, the extent of which would be difficult to ascertain, and that Service Provider will be entitled to seek immediate injunctive relief (in addition to any other available remedies, including remedies under intellectual property rights, the availability of which Client acknowledges), in any court of competent jurisdiction under the applicable laws thereto (notwithstanding section 9.6, and Service Provider's right to pursue such relief and remedies is not

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arbitrable). A party prevailing in any litigation or arbitration related to this Agreement or the Subject Matter will be entitled, in addition to such other relief as may be granted, to an award of reasonable attorneys' fees.

- 9.9 Miscellaneous. Except as may otherwise be set forth in the Order, this Agreement and the Order constitute the entire agreement between the parties regarding the SaaS Solution and the Services, superseding any prior agreements, understandings, communications or proposals; additional online terms of either party will not apply. The terms of any click-wrap, on-line or similar terms or agreement, and the terms of any purchase order, presented by Client will be of no force or effect unless separately agreed to in an independent writing signed by an officer of Service Provider, who is the only person with authority to agree to such terms or agreement. This Agreement is a contract for the provision of services and not a contract for the sale of goods. Software is delivered as a service; Service Provider will provide no copies of software except as may be set forth in the Order. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect. No waiver of any provision of this Agreement will be deemed a further waiver or continuing waiver or such provision or any other provision, and Service Provider's failure to assert any right or provision under this Agreement will not constitute a waiver of such right or provision. Service Provider may subcontract Services and provision of the SaaS Solution, including to an Service Provider affiliate or other subcontractor/subprocessor. Nothing herein will be deemed to create an agency, partnership, joint venture, employee-employer or franchisor-franchisee relationship of any kind between the parties and any user or other person or entity. Nothing in this Agreement, express or implied, is intended to or will confer upon any third party any right, benefit or remedy under or by reason of this Agreement, except that any Service Provider affiliate performing Services for Client or any Client affiliate is an intended third party beneficiary with respect to sections 2.11, 3.0, 7.0, and 9.0. The parties have expressly required that the present Agreement and any other contract, document or notice relating thereto be drafted in the English language.

(end of Terms)