Subscription and services agreement

This Subscription and Services Agreement ("**Agreement**") is entered into as of the date of last signature below (the **"Effective Date"**) by and between Appfire Technologies, LLC, a Delaware limited liability company, whose principal address is 1500 District Ave, Burlington, MA 01803 ("**Appfire**"), and _____ ("**Customer**"). Where specified on an Order Form, the contracting entity may be an Appfire Affiliate instead of Appfire Technologies, LLC, in which case references to "Appfire" in this Agreement shall refer to such Appfire Affiliate for purposes of that Order Form only. Appfire and Customer are jointly referred to as the "**Party**" or "**Parties**," as applicable. By clicking a box indicating acceptance, executing an Order Form that references this Agreement, or using free Products or Services, Customer agrees to the terms of this agreement. if the individual accepting this agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its affiliates to these terms and conditions, in which case the term "Customer" shall refer to

such individual must not accept this agreement and may not use the services.

1. Definitions

"**Affiliate**" means any corporation, partnership, joint venture, or other entity: (i) as to which a Party owns or controls, directly or indirectly, stock or other interest representing more than 50% of the aggregate stock, or other interest entitled to vote on general decisions reserved to the stockholders, partners, or other owners of such entity; (ii) if a partnership, as to which a Party or another Affiliate is a general partner; or (iii) that a Party otherwise is in common control with, controlled by, or controls in matters of management and operations.

"**Agreement**" means this Subscription and Services Agreement, together with any exhibits and addendums attached hereto and all applicable Order Forms or SOWs.

"**Authorized Contractors**" means independent contractors, licensors, or subcontractors.

"**Confidential Information**" means all information which is disclosed to or obtained by one Party (whether directly or indirectly) from the other (whether before or after the signing of this Agreement), including the Proprietary Materials and all information relating to that other's business, operations, systems, processes, products, trade secrets, know-how, contracts, finances, plans, strategies or current, former or prospective clients, customers, partners or suppliers (together with copies made of any of the above) whether or not such information is marked as being confidential, but excluding information which: (i) is available to the public other than because of any breach of this Agreement; (ii) is, when it is supplied, already known to whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; (iii) is independently obtained by

and without reference to any Confidential Information provided.

"**Customer**" means the customer named above and its Affiliates.

"**Customer Data**" means all content and information uploaded, posted, submitted, published or transmitted by Customer in connection with use of the Products.

"**Deliverable**" means any work product, deliverables, programs, interfaces, modifications, configurations, reports, or documentation developed or delivered in the performance of Professional Services.

"**Documentation**" means Appfire's online published documentation as updated from time to time, accessible via https://appfire.atlassian.net/wiki/spaces/APPFIRE/overview ↗ or such successor site.

"**Feedback**" means suggestions, enhancement requests, recommendations or other feedback provided by Customer or its Users relating to the operation or functionality of the services provided by Appfire hereunder.

"**Intellectual Property Rights**" means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.

"**Non-Appfire Products**" means online applications and offline software products that are provided by or used by Customer or a third party on Customer's behalf to interoperate with the Products.

"**Order Form**" means Appfire's ordering document signed, or clicked through, by Customer specifying the Products and/or Services to be provided by Appfire hereunder. Order Form's include Appfire's or a Partner Marketplace's,

"**Plan**" means the specific scope and features of the plan purchased by Customer as set forth on an applicable Order Form.

"**Plan Manager**" one or more employees designated by Customer to act as plan manager(s).

"**Appfire Flow**" means Appfire's engineering analytics platform, with the features and options of the Plan purchased as described in the applicable Order Form(s). An Appfire Flow plan User can be an Active Contributor or an Authorized User. "**Active Contributor,**" means a User with the capability to commit code to the Customer's source code management systems, measured during a rolling thirty-day period. "**Authorized User**" means a User who has access to Flow solely to view insights within the Flow delivery module report. Flow includes unlimited Authorized Users.

"**Partner Marketplace**" means an online marketplace operated by a third party that provides downloadable, accessible, and/or cloud-based app Products.

"**Products**" means the software and/or software as a service offerings provided by Appfire, as more fully described on one or more Order Form(s), as applicable.

"**Professional Services**" or "**Services**" means Professional Services offered by Appfire pursuant to Section 2.7 below and as described on an applicable Order Form or Statement of Work.

"**Proprietary Materials**" means the copyrighted materials, trademarks, proprietary and Confidential Information, and intellectual property of Appfire and its licensors.

Customer.

"**Term**," "**Initial Term**" and "**Renewal Term**" are defined in Section 5 (Term and Termination).

"**User**" means an individual who is authorized to use the Products under Customer's account. Users may include Customer's employees, consultants, contractors and agents.

2. Provision and Use of the Products

2.1. Appfire's Responsibilities. Appfire's Products and Services are described on one or more Order Form(s) or SOW executed by the Parties, as applicable. Appfire will provide the Products and/or Services indicated in the applicable Order Form(s) for the duration of the term indicated in such Order Form(s). The Parties may agree to add or modify the Products and/or Services provided by Appfire under this Agreement by executing a new Order Form. Appfire's Affiliates and its Authorized Contractors may perform certain aspects of the Services and access Customer Data provided that Appfire remains fully liable for same and responsible for ensuring that any of Appfire's obligations under this Agreement performed by its Affiliates and its Authorized Contractors are carried out in accordance with this Agreement. For Products purchased via a Partner Marketplace, any applicable license keys for the Products set forth in the Order Form will be delivered to your account before or promptly following receipt of payment of applicable Fees. Customer is responsible for accessing your account to determine that we have received payment and that the Order Form has been processed. All deliveries for Products through a Partner Marketplace are electronic, Customer responsible for Product installation, and you acknowledge that Appfire has no further delivery obligation concerning the Product after delivery of the license keys.

the confidentiality of its logins and passwords; (c) obtain any permissions required for Plan Managers to have the right to access information entered by Users; (d) be responsible for Users' compliance with this Agreement; (e) use commercially reasonable efforts to prevent unauthorized access to or use of the Products; and (f) use the Products only in accordance with applicable laws and government regulations. Customer's Plan Managers may enable access of the Products to be used only by Users solely for the internal business purposes of Customer in accordance with the Documentation and not for the benefit of any third parties.

2.3. Changes. Appfire regularly updates the Products, and Services to reflect changes in technology, industry practices, or patterns of system use, and reserves the right to discontinue, add and/or substitute functionally equivalent features at any time with or without notice. Notwithstanding the foregoing, Appfire will notify Customer of any modification that will materially diminish the features or functionality of the Products and Services, or in the event of the discontinuation of a Product. Nothing in this Agreement will prevent Appfire from updating or removing from time-to-time content that Appfire, at its sole discretion, deems outdated. Updates, upgrades, and enhancements made generally available to all subscribing customers will be provided at no additional charge, but the purchase of Products is not contingent on the delivery of future functionality or features. New features, functionality, or enhancements may be marketed separately and may require additional fees, as determined by Appfire in its sole discretion.

2.4. Usage Limits. Entitlements and/or limitations purchased by Customer may be contained in the Order Form, the Documentation, or this Agreement. Appfire may audit Customer's usage on a quarterly basis and Customer agrees to provide reasonable cooperation in determining such usage. Unless otherwise set forth in the applicable Order Form, Customer, or any User, exceeds such entitlements or limitations, ("**Excess Use**"), Appfire may, in its sole discretion, invoice Customer for the Excess Use, at then-current list

2.5. Usage Restrictions. Customer may not, and shall ensure Users do not, (a) sublicense, reproduce, redistribute, broadcast, resell, time share or similarly exploit the Products; (b) make the Products available to, or use the Products for the benefit of, anyone other than Customer, including to share or transfer access credentials to the Products; (c) reverse engineer, modify, adapt, or hack the Products, or otherwise attempt to gain unauthorized access to the Products or its related systems or networks; (f) use the Products in violation of applicable laws or Appfire's Acceptable Use Policy, available at https://appfire.com/acceptable-use-policy; (g) access the Products or the Documentation to build a competitive product or Products; (h) engage in Excess Use, including through the use of AI or other machine automation techniques; (i) input, upload, transmit, access, or otherwise provide to or through the Products, any information or materials that are unlawful or injurious, or contain, transmit or activate any material that is technically harmful (including computer viruses, logic bombs, Trojan horses, worms, harmful components, or other malicious software) (collectively, "Malware"); or (j) impersonate any person or entity, including Appfire or any Appfire employee, or falsely state or otherwise misrepresent an affiliation with any person or entity. Appfire may, in its sole discretion, revoke or deny access to any User violating the terms of this Section 2.5. Customer acknowledges and agrees that any breach of these terms and conditions by any of its Users will be deemed a breach by Customer.

2.6. Evaluation. Appfire may, at its sole discretion, offer Customer limited access to products for evaluation or proof of concept purposes, including any products provided as no-charge, free, trial, pilot, beta, limited access or similar ("Evaluation Products"). ("Evaluation Products"). Use of Evaluation Products will be subject to this Agreement but may require acceptance of additional terms and conditions prior to Customer's permitted use. Access to Evaluation Products will be provided for the Evaluation Period designated on the applicable Order Form, if applicable. Evaluation Products may not be

governing use of Evaluation Products at any time, without prior notice and without liability. At the end of the Evaluation Period, Customer will cease use of Evaluation Products. If Customer desires to continue using the Evaluation Products), Customer will be required to subscribe to the Product(s) at Appfire's then-current prices. Appfire reserves the right to bill and Customer will pay for any Fees attributable for use of the Evaluation Products in excess of the scope set forth herein. CUSTOMER ACKNOWLEDGES THAT EVALUATION PRODUCTS MAY BE FEATURE-INCOMPLETE OR CONTAIN BUGS AND ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED. APPFIRE MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND CONCERNING THE EVALUATION PRODUCTS, ITS FEATURES, OR ANY CONTENT THEREIN. CUSTOMER'S RELIANCE AND USE OF THE BETA SERVICE IS AT CUSTOMER'S OWN RISK. APPFIRE, ITS AFFILIATES, PARTNERS, AND EMPLOYEES SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES IN CONNECTION WITH EVALUATION PRODUCTS. NOTWITHSTANDING THAT REDUCED OR NO FEES MAY BE PAYABLE DURING AN EVALUATION PERIOD, THE FULL PRICE OF THE FEES THAT WOULD OTHERWISE BE DUE FOR THE APPLICABLE NUMBER OF LICENSES WILL BE DEEMED "FEES PAYABLE" FOR THE PURPOSE OF THE LIMITATIONS OF LIABILITY PROVISIONS OF THIS AGREEMENT.

2.7. Professional Services.

i. Customer and Appfire may enter into an Order Form or SOW ("**SOW**") that describe specific Professional Services to be performed by Appfire. The scope and features of the Services may be determined by the subscription Plan Customer has purchased under the Agreement or by way of the description of Services set forth on an Order Form or SOW.

associated fees paid or payable are non-refundable and cannot be used as a credit towards any other amounts due to Appfire.

iii. Services provided by Appfire hereunder are for use by Customer only and for the purposes described herein. Customer shall have a revocable, non-transferable, limited term license to use the copy of the materials provided by Appfire in connection with the Services for its internal use only. All other rights in the materials remain in and/or are assigned to Appfire. In no event will Customer allow third parties to access or use the materials provided by Appfire in connection with the Services.

iv. Customer acknowledges that Appfire may develop for itself, or for others, content similar to the materials and processes developed in performing the Services, and nothing contained herein precludes Appfire from developing or disclosing such materials and information, provided that the same does not contain or reflect Customer Confidential Information.

3. Proprietary Rights

3.1. Reservation of Rights in Products. Subject to the limited rights expressly granted to Customer hereunder, Appfire reserves all rights, title and interest in and to the Products, including all related Intellectual Property Rights. No rights are granted to Customer hereunder other than as expressly set forth herein.

3.2. Grant of Rights. Appfire hereby grants a non-exclusive, non-transferable, right to use the Products, solely for the internal business purposes of Customer and solely during the Term, subject to the terms and conditions of this Agreement and within the scope of use defined in the relevant Order Form.

3.3. Ownership of Customer Data. As between Appfire and Customer, Customer retains ownership of all Customer Data. However, Customer

the Product or Services, and (b) distribute and display Customer Data as directed by Customer when sharing or interacting with others through the Product or Services.

3.4. Customer Feedback. Appfire shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use for any purpose or incorporate into the Products any Customer Feedback received in connection with Customer's use of the Products.

3.5. Deliverables. Excluding any property that constitutes Outside Property, any Deliverables shall be the sole property of Customer upon Customer's payment in full of all associated Professional Services fees. Appfire shall execute and, at Customer's written request, require its personnel to execute any document that may be necessary or desirable to establish or perfect Customer's rights to the ownership of such Deliverables. For purposes of this Agreement, "Outside Property" means any and all technology and information, methodologies, data, designs, ideas, concepts, know-how, techniques, user-interfaces, templates, documentation, software, hardware, modules, development tools and other tangible or intangible technical material or information that Appfire possesses or owns prior to the commencement of Professional Services or which it develops independent of any activities governed by this Agreement, and any derivatives, modifications or enhancements made to any such property. Outside Property shall also include any enhancements, modifications or derivatives made by Appfire to the Outside Property while performing Professional Services hereunder, and any software, modules, routines or algorithms which are developed by Appfire during the term in providing the Professional Services to Customer, provided such software, modules, routines or algorithms have general application to work performed by Appfire for its other customers and do not include any content that is specific to Customer or which, directly or indirectly, incorporate or disclose Customer's Confidential Information.

a limited, royalty-free, non-exclusive, non-transferable (subject to Section 11.8 Severability), without right to sublicense, license to use such Outside Property delivered to Customer solely as necessary for and in conjunction with Customer's use of the Deliverables.

3.7. Product Analyses. Appfire may (i) compile statistical and other information related to the performance, operation, and use of the Products, and (ii) use, and share data from the Products environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Product Analyses"). Product Analysis will not incorporate any information, in a form that could serve to identify Customer or an individual. Notwithstanding the foregoing, if Customer elects to input Customer Data into any Product field that, by its nature, cannot be anonymized, such data may remain visible and unmasked. Customer acknowledges and agrees that it bears sole responsibility for refraining from entering Customer Data into fields not designed for or incapable of anonymization. Except for the Customer Data, Appfire retains all intellectual property rights in Product Analyses.

4. Fees, Invoicing and Taxes

4.1. Fees and Invoicing. Customer will pay all fees specified in all Order Forms hereunder. Customer shall pay any applicable additional fees for Excess Use or overages. Fees are payable in the currency set forth in the Order or SOW. Payment obligations are non-cancelable and, except as expressly set forth in Sections 5.3, 6.3 and 8.1 below, fees paid are non-refundable. Fees will be billed on or around Customer's execution of an Order Form or up to thirty (30) days in advance of a renewal thereof, as applicable. Appfire will bill Customer through invoices sent via email to the address designated by Customer, unless an alternative payment method is requested by Customer in writing. Notwithstanding anything to the contrary

corresponding to such Marketplace. Full payment for invoices issued must be received within thirty (30) days from the invoice date. If payment is not received within such time period, Appfire may restrict Customer's and its Users' access to the Products until payment is received. In the event Appfire suspends Customer's plan because of nonpayment, no additional time will be added to the then-applicable Term. Unless otherwise set forth in an Order Form, all payments must be made in U.S. Dollars. Late payments hereunder will accrue interest at a rate of 1½% per month, or the highest rate allowed by applicable law, whichever is lower. Customer shall be responsible for all costs of collection, including reasonable attorney's fees. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding.

4.2. Taxes. Fees are exclusive of taxes. Customer is responsible for any applicable sales, use, value-added, or excise taxes, and any other similar taxes, duties or charges of any kind (excluding taxes on Appfire's income), imposed by any federal, state, or local governmental entity on any amounts payable by Customer under this Agreement or any Order Form whether or not such taxes are collected by Appfire. Appfire may have the legal obligation to collect taxes that the Customer is responsible for under this section. Appfire may include on the invoice a separate charge for such taxes and will remit taxes collected, if any, to the appropriate taxing authority unless Customer provides valid a tax exemption certificate authorized by the appropriate taxing authority. Appfire will calculate applicable taxes based on the Customer address specified on the relevant Order Form. Customer will be responsible for self-assessing and paying any additional Taxes arising from Customer's use of Products and/or support at a different address and will provide Appfire with proof of payment of such additional Taxes on request. Customer will promptly notify Appfire of any changes to any of addresses specified in an Order Form. Should payment for Products be subject to withholding tax, Customer will pay, or reimburse as applicable, Appfire the

5. Term and Termination

5.1. Term. This Agreement will be effective as of the Effective Date and will continue until terminated by either Party by giving at least thirty (30) days prior written notice. Notwithstanding the foregoing, with respect to any Order Form or SOW in effect as of the date of such termination, the terms and conditions of this Agreement will continue in effect and will govern such Order Form or SOW until its expiration or earlier termination for cause.

5.2. Term of Order Form. The term of each Order Form will be set forth therein (each an "**Initial Term**"). Unless either Party gives written notice to the other at least ninety (90) days prior to the expiration of the Initial Term or any Renewal Term, each Order Form, including any additional Users added thereto pursuant to Section 2.4, will automatically renew for an additional period of the same length as the then current Order Form (each, a "**Renewal Term**"). Appfire may increase fees for a Renewal Term by the greater of 5% or CPI. Appfire shall invoice for the applicable Renewal Term and Customer shall pay such invoice in accordance with the terms contained in Section 4.1 of this Agreement. For purposes of the Order Form, "**Term**" means the Initial Term or any Renewal Term, as applicable.

5.3. Termination for Cause. Either Party may terminate this Agreement or any Order Form or SOW prior to its expiration if the other Party materially breaches this Agreement, the Order Form, or SOW, as applicable, and fails to cure said breach within thirty (30) days after receipt of written notice thereof, specifying the breach in reasonable detail. In the event Appfire terminates this Agreement, any Order Form, or SOW due to Customer's uncured breach, all unpaid fees are due and payable immediately. In the event Customer terminates this Agreement, any Order Form, or SOW due to Appfire's uncured breach, Appfire shall refund to Customer fees paid for any unused portion of the Term.

warrants that (i) Appfire has the legal authority to enter into this Agreement, (ii) the Products will materially conform with the relevant Documentation, (iii) the functionality and security of the Products will not be materially decreased during the current Term, and (iv) Professional Services will be performed in a competent and workmanlike manner consistent with generally accepted industry standards.

6.2. Customer Representations & Warranties. Customer represents and warrants that (i) it has the legal authority to enter into this Agreement, and (ii) it will use the Products and Services in accordance with the terms and conditions set forth in this Agreement and in compliance with all applicable laws, rules and regulations.

6.3. Remedies. For any failure of any Products or Professional Services, as applicable, to conform to their respective warranties, Appfire's liability and Customer's sole and exclusive remedy shall be for Appfire, in the case of a breach of the warranty set forth in Section 6.1 (ii), (iii), and/or (iv), to use commercially reasonable efforts to correct such failure; or, in the case of a breach of the warranty set forth in Section 6.1 (iv) to re-perform the affected Professional Services. If the foregoing remedies are not commercially practicable, Appfire may, in its sole discretion, terminate the applicable Order or SOW upon providing Customer with written notice thereof, and, as Customer's sole and exclusive remedy, refund to Customer (a) in the case of breach of the warranty set forth in Section 6.1(ii) or (iii), any Products fees paid by Customer with respect to the unexpired portion of the current Subscription Term for the non-conforming Products; or (b) in the case of breach of the warranty set forth in Section 6.1(iv), any fees paid by Customer for the portion of Professional Services giving rise to the breach.

6.4. DISCLAIMER. Except as otherwise stated herein, Appfire is not liable for any loss or injury of Customer or its Users arising out of or caused, in whole or in part, by (i) Customer's or its Users' use of the Products or the Services,

EXPRESSLY PROVIDED HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED "AS IS" APPFIRE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND APPFIRE HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY WITH RESPECT TO THE QUALITY, PERFORMANCE, ACCURACY OR FUNCTIONALITY OF THE PRODUCTS OR SERVICES OR THAT THE PRODUCTS OR SERVICES ARE OR WILL BE ERROR FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT. THE VALIDITY OF ANY INFORMATION, SOFTWARE, MATERIAL OR CONTENT PROVIDED BY OR THROUGH THE PRODUCTS AND SERVICES RESTS WITH THE CUSTOMER.

7. Data Security and Privacy.

7.1. Security and Internal Controls. In accordance with Appfire's Security Annex, available at Appfire's Trust Center, trust.appfire.com ↗, incorporated herein by reference, Appfire shall (i) maintain a security framework of policies, procedures, and controls that includes administrative, physical, and technical safeguards for the protection of the security and integrity of the Products, and of the Customer Data contained within the Products, using the capabilities of currently available technologies and in accordance with prevailing industry practices and standards, (ii) access and use the Customer Data solely to perform its obligations in accordance with the terms of this Agreement, and (iii) perform periodic testing by independent third-party audit organizations, which can include with Service Organization Controls (SOC 2) audits and ISO 27001 certification or surveillance audits performed annually. In no event during the Term shall Appfire materially diminish the protections provided by the controls set forth in Appfire's then- current Security Annex.

the meaning of applicable data protection laws, including the Regulation (EU) 2016/679 ("GDPR"). While processing such information in relation to providing the Products, Appfire processes personal data as a data processor, i.e., on Customer's behalf and based on Customer's instructions deriving from the Appfire Data Processing Addendum ("DPA"). To provide the Products, however, Appfire may also process some categories of personal data as a data controller, i.e., for Appfire's purposes, including legal obligation - in such cases, the processing is governed by Appfire's Privacy Policy. The terms of the DPA and Appfire's Privacy Policy are hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data, as defined in the DPA.

7.3. Customer Data. Customer order data is encrypted and stored on secure servers or services with physical and logical safeguards, and application data is stored redundantly to prevent data loss. However, Appfire cannot guarantee data recovery in all cases; therefore, Customer is responsible for backing up and reconstructing Customer Data.By providing Customer Data, Customer agrees to comply with applicable law and represent and warrant that (i) it has the necessary rights and permissions to provide Customer Data as intended under this Agreement and (ii) Customer Data's transfer and use by Appfire as intended herein does not violate any laws or third party rights. Customer agrees not to store personally identifiable information or other protected information in non-designated fields and acknowledges that Appfire may disclose personally identifiable information as required by law.

8. Indemnification

8.1. By Appfire. Appfire will indemnify, defend, and hold harmless Customer, its directors, officers, employees, agents, and Affiliates (each, a **"Customer Indemnitee"**) from and against any and all third-party liabilities, claims, damages and losses, including all reasonable attorney's fees, costs, and expenses (collectively, **"Claims"**), arising out of any Claims that the Product

misappropriation, or violation that arises out of any act or omission by Customer, its Users, or any agent, or Affiliate of Customer in violation of the terms and conditions of this Agreement or any Order Form, In the event of any such Infringement Claim, Appfire may, at its option: (i) obtain the right to permit Customer to continue using the Products, (ii) modify or replace the relevant portion(s) of the Products with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, or (iii) terminate this Agreement as to the infringing portion of the Products and refund to Customer any prepaid, unused fees for such infringing portion of the Products hereunder. Notwithstanding the foregoing, Appfire will have no liability for any Infringement Claim of any kind to the extent that it results from: (1) modifications to the Products made by a party other than Appfire, (2) Customer Data or the combination of the Platform with Non-Appfire Products, or (3) Customer's use of the Products other than in accordance with this Agreement. THE INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 8.1 ARE APPFIRE'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

8.2. By Customer. Customer will indemnify, defend, and hold harmless Appfire and its directors, officers, employees, agents, and Affiliates (each, a "**Appfire Indemnitee**") from and against any and all third-party Claims arising out of (i) Customer's, including its Users, employees, agents and contractors, use of the Products in violation of; or (ii) Customer Data.

8.3. Indemnification Procedure. A party (whether a Customer Indemnitee, or a Appfire Indemnitee, each an "**Indemnitee**") that believes it is entitled to be indemnified pursuant to this Agreement will (i) promptly notify the applicable Party (the "**Indemnitor**") in writing of any Claims for which such Party owes an indemnification obligation hereunder, and (ii) cooperate with the Indemnitor at the Indemnitor's sole cost and expense. The Indemnitor will

cost and expense. The Indemnitee's failure to perform any obligations under this Section 8.3 will not relieve the Indemnitor of its obligations under this Section 8 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. In no event will Indemnitor settle any Claim without the consent of the Indemnitee, which Indemnitee will not unreasonably withhold, condition, or delay, unless such settlement includes an unconditional release of Indemnitee from all liability and does not contain any admission of liability on behalf of Indemnitee.

9. Limitation of Liability

9.1. No Consequential or Indirect Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. Limitation of Liability. EXCEPT FOR INSTANCES ARISING FROM (I) A PARTY'S INDEMNIFICATION (SECTION 8) OBLIGATIONS UNDER THIS AGREEMENT, OR (II) A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH LIABILITY AROSE.

10. Confidentiality

10.1. Non-Disclosure. Each Party undertakes that it will not at any time during this Agreement, and for a period of three (3) years after termination of this

10.2. Permitted Disclosure. Each Party may disclose the other Party's Confidential Information: to its employees, officers, representatives, or advisers for the purposes of carrying out the Party's obligations under this Agreement on a need-to-know basis. Each Party will ensure that each of its employees, officers, representatives, or advisers to whom it discloses the other Party's Confidential Information complies with this Section; and as may be required by law, a court of competent jurisdiction, any governmental or regulatory authority or stock exchange, provided that the disclosing Party notifies the other Party in advance of the disclosure if permitted.

10.3. Use of Confidential Information. Each Party agrees to use the other Party's Confidential Information only for the purpose of performing its obligations under this Agreement.

11. General Provisions

11.1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between them, whether written or oral, relating to the subject matter herein.

11.2. Governing Law; Disputes. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware, excluding its conflicts of law rules and any civil action or legal proceeding arising out of or relating to this EULA shall be brought in the courts of record of the State of Delaware. Should any dispute arise with regard to this Agreement, the Parties agree to first work in good faith to resolve such dispute, and neither Party may commence any action with regard to such dispute until thirty (30) days have passed from the time such Party has provided written notice to the other Party of the nature of such dispute.

Appfire marketing materials or on the Products in order to identify Customer as a customer. The foregoing shall be deemed a worldwide, non-exclusive, revocable license to use Customer's name, trademarks, service marks, and logos for this purpose during the Term of this Agreement. Customer also agrees to be referenced in press releases and case studies prepared by Appfire. Such license and consent will terminate at the end of the Term of this Agreement. Customer may revoke this right at any time by submitting a request through the following form: https://wkf.ms/4dKGmCf ↗ to be excluded from future promotional materials.

11.4. Notice. Any notice which may be required to be given under this Agreement by Appfire, may be given to Customer via email to the Plan Manager(s) identified in Customer's account or by notifying Customer electronically by displaying the notice in the Products. All other notices required by this Agreement will be in writing and sent in any commercially reasonable manner, including certified mail, return receipt requested, email with confirmation of receipt, or any other customary means of communication to the other Party. Each party shall send all notices to the other party at the address set forth in the applicable Order or SOW, as such party may update such information from time to time, with, in the case of notices sent by Customer, a copy sent to the Appfire Legal Department at the address first set forth above and a cc to: legal@appfire.com. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer on the applicable Order or SOW.

11.5. Non-Waiver. Failure by either Party to enforce any provision(s) of this Agreement will not be construed as a waiver of any provision or right.

11.6. Severability. If any provision of this Agreement, Order Form or SOW is found to be illegal, void, or unenforceable, then that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions of this Agreement.

contractor, or employee of the other. Neither Appfire nor any other Party to this Agreement has, or may hold itself out to any third party as having, anyauthority to make any statements, representations, or commitments of any kind, or to take any action that is binding on the other, except as provided for in this Agreement or authorized in writing by the Party to be bound.

11.8. Force Majeure. Neither Party shall be liable for any failure or delay in performance under this Agreement for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, war, strikes or other labor problems (other than those involving Appfire or Customer employees, respectively). Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

11.9. Assignment. Neither Party may assign or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the other Party, in its sole discretion, which consent shall not be unreasonably withheld; provided, however, that either Party may, assign its rights under this Agreement if such assignment is to a successor of the assigning Party by consolidation, merger, or operation of law, or to a purchaser of all or substantially all of the assigning Party's assets. Any attempted transfer or assignment of this Agreement without the prior written consent of the other Party will be null and void ab initio. This Agreement will be binding upon and will inure to the benefit of the permitted successors and assigns of each Party to this Agreement.

11.10. Export Controls and Trade Rules. Use of the Products is subject to trade control laws and regulations, including United States export controls. No Products content or materials may be downloaded or exported (i) into (or to a resident of) Cuba, North Korea, Iran, Syria, Belarus, Russia, the Crimea region of the Ukraine or any other country subject to an applicable embargo or other trade restriction by any government regulatory agency having

States Commerce Department's Consolidated Screening List (CSL). By accessing or using the Products, Customer represents and warrants that it will comply with all applicable export controls and that it is not located in, under the control of, or a national or resident of any such country or on any such list. Although the Products may be accessible worldwide, Appfire makes no representation that the Products is appropriate or available for use in locations outside the United States and accessing the Products from territories where its contents or materials are illegal, is prohibited. Those who choose to access the Products from other locations do so at their own initiative and are responsible for compliance with local laws. Any offer for any product, service, and/or information made in connection with the Products is void where prohibited.

11.11. Federal Government End Use Provisions (only applicable for the U.S.). If the Product or Services are being or have been acquired with U.S. Federal Government funds, or Customer is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of the Products or Services, or any related documentation of any kind, including technical data, manuals or Appfire Property is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995), as applicable. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Products and Services with only those rights set forth in this Agreement and any amendment hereto.

11.12. Miscellaneous. This Agreement and any Order Form may be executed in any number of counterparts, all of which will constitute a single agreement. Facsimile or electronic signatures will have the same force and effect as original signatures. Except as specifically allowed for herein, any modification of or amendment to any provision contained in this Agreement

Customer purchase order number on any Order Form or Invoice is for reference purposes only and is not an acceptance by Appfire of Customer's terms or conditions contained therein or elsewhere. The terms on any such purchase order or similar document submitted by Customer to Appfire will have no effect and are hereby rejected. In the event of any inconsistency between this Agreement and an Order Form, the terms and conditions of the Order Form with respect to such conflicting provision will control over this Agreement with respect to the services provided under that Order Form only, if (but only if) such conflicting provisions expressly reference the specific Section in this Agreement that the Parties intend to amend or supersede; otherwise, this Agreement will control.

Solutions

IT Service Management

Workflow & Automation

Migrate & Manage

Agile Work Management

Knowledge Management

All solutions →

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IT Service Management

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About us

Open positions

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