

GATHR SUBSCRIPTION SERVICES AGREEMENT

IMPORTANT – PLEASE READ THIS GATHR SUBSCRIPTION SERVICES AGREEMENT (THIS “AGREEMENT”) CAREFULLY. THIS AGREEMENT IS A BINDING LEGAL AGREEMENT BETWEEN GATHR DATA INC., A CALIFORNIA CORPORATION (“**GATHR**”) AND THE ORGANIZATION, ENTITY OR PERSON, SPECIFIED IN THE ELECTRONIC AND/OR WRITTEN ORDER FORM(S) (THE “**CUSTOMER**”) ENTERED INTO BY GATHR AND SUCH CUSTOMER (EACH SUCH ORDER FORM, AN “**ORDER FORM**”) FOR SUCH CUSTOMER’S ACCESS AND USE OF THE GATHR SOFTWARE-AS-A-SERVICE PLATFORM (THE “**GATHR PLATFORM**”). BY AGREEING TO AN ORDER FORM INCORPORATING THIS AGREEMENT, CLICKING “I ACCEPT”, OR ACCESSING AND/OR USING THE GATHR PLATFORM AS AN AUTHORIZED REPRESENTATIVE OF THE CUSTOMER, YOU: (1) ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND ACCEPT THIS AGREEMENT, AND THAT YOU AGREE TO BE BOUND BY ITS TERMS, AND (2) REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND TO USE THE GATHR PLATFORM ON BEHALF OF THE CUSTOMER AND TO BIND CUSTOMER TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT OR DO NOT HAVE SUCH AUTHORITY, DO NOT CLICK “I ACCEPT” OR ACCESS OR USE THE GATHR PLATFORM. THE “**EFFECTIVE DATE**” OF THIS AGREEMENT SHALL BE THE DATE THAT THIS AGREEMENT IS ACCEPTED BY OR ON BEHALF OF THE CUSTOMER AS SET FORTH ABOVE.

1. SCOPE OF AGREEMENT. This Agreement sets forth the terms and conditions under which Customer may purchase from Gathr: (a) subscription licenses to access and use the Gathr Platform and to receive for support for Customer’s use of the Gathr Platform (“**Technical Support**”) during the subscription term specified on the applicable Order Form (the “**Subscription Term**”). Each Order Form and Statement of Work shall be incorporated into and made a part of this Agreement upon execution by the parties. In the event of any conflict between the terms of this Agreement and any Order Form and/or any Statement of Work: (i) the terms in the Order Form shall control, but solely with respect to the subject matter of that Order Form, and (ii) this Agreement shall control with respect to any conflicting terms in a Statement of Work, unless the Statement of Work specifically cites the section of this Agreement it is modifying or deleting. The terms on any other purchase order, confirmation, or similar document submitted by Customer to Gathr will have no effect and are hereby rejected.

2. ACCESS AND USE OF THE GATHR PLATFORM

- 2.1. Access to the Gathr Platform. Subject to Customer’s compliance with the terms and conditions of this Agreement, Gathr hereby grants Customer a limited, personal, revocable, non-transferable, non-sublicensable, non-exclusive right during the applicable Subscription Term, to use and access and to permit its employees and contractors (“**Authorized Users**”) to access and use the Gathr Platform specified in the applicable Order Form solely over the internet, solely to enable Customer’s systems, tools and databases to connect to the Gathr Platform; and (c) reproduce and use a reasonable number of copies of the applicable the user manuals and/or documentation for the Gathr Platform made available by Gathr to Customer hereunder (the “**Documentation**”) in support of the exercise of the licenses granted above. The licenses granted to Customer under this Section 2.1 are limited to Customer’s use of the Gathr Platform solely for Customer’s internal business purposes, in accordance with this Agreement and subject to the limitations on the number of users and/or any other parameters specified in the Order Form, Documentation, or otherwise in writing by Gathr regarding the scope of use of the Gathr Platform by Customer and/or its Authorized Users (collectively, the “**Usage Parameters**”).
- 2.2. Trial Version. Notwithstanding Section 2.1, if Customer has obtained the Gathr Platform (or any component thereof) on a trial basis as specified on the applicable Order Form (the “**Trial Version**”), Customer understands and agrees that the applicable licenses and rights set forth in Section 2.1 are granted by Gathr to Customer for the Trial Version solely for the trial period set forth in the applicable Order Form (“**Trial Period**”) for Customer’s own internal evaluation purposes, and subject to any and all technical limitations implemented by Gathr in the Trial Version. Customer acknowledges and agrees that, unless otherwise specified in the applicable Order Form, if Customer has not purchased a subscription license prior to the expiration of the Trial Period, this Agreement will automatically terminate (without the requirement of providing any termination notice) and the Trial Version may cease functioning. In addition to the restrictions set forth in Section 2.3, Customer shall not attempt to circumvent, dismantle or otherwise interfere with any time-control disabling functionality in the Trial Version that causes the Trial Version to cease functioning upon the expiration of the Trial Period. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE TRIAL VERSION IS PROVIDED “AS-IS” AND WITHOUT ANY WARRANTY WHATSOEVER OR ANY SUPPORT OR OTHER SERVICES (INCLUDING ANY UPDATES OR UPGRADES).
- 2.3. Restrictions. Customer may not, and will not permit or induce any third party (including, without limitation, any Authorized User) to: (a) use the Gathr Platform or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds any applicable Usage Parameters or use any aspect of the Gathr Platform components other than those specifically identified in the applicable Order Form, even if technically possible; (b) reverse engineer, decompile, disassemble, copy, or otherwise attempt to derive source code or other trade secrets from or about the Gathr Platform, or any underlying ideas, algorithms and/or technology of the Gathr Platform; (c) alter, modify, translate, adapt in any way, or prepare any derivative work based upon the Gathr Platform; (d) rent, lease, network, loan, pledge, encumber, sublicense, sell, distribute, disclose, assign or otherwise transfer the Gathr Platform or any copy thereof; (e) use the Gathr Platform in commercial timesharing, rental or other sharing arrangements or otherwise make any portion of the Gathr Platform available for access by third parties except as otherwise expressly provided in this Agreement; (f) access or use the Gathr Platform for the purpose of developing

competitive products or services; (g) use the Gathr Platform, or transmit Customer Data, in a way that violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity, or in any manner that violates in any law, rule, regulation or any other legal or regulatory requirement imposed by any regulatory or government agency, including, without limitation, export laws and regulations; or (g) remove any proprietary notices from the Gathr Platform or any related Documentation or other materials furnished or made available hereunder. Customer agrees that it shall not permit any person other than Authorized Users to access and use the Gathr Platform, and shall ensure that Authorized Users use the Gathr Platform solely in accordance with this Agreement and the applicable Usage Parameters. Customer is solely responsible for the use of the Gathr Platform by Authorized Users, and any breach of this Agreement by any Authorized Users will be deemed a breach by Customer.

- 2.4. Third Party Software and Integrations. Gathr may in its sole discretion, make available third-party software and/or open source software components (collectively, “**Third Party Software**”), which may be, embedded in, or otherwise provided with, the Gathr Platform. Third Party Software is expressly excluded from the defined terms “Gathr Platform” as used throughout this Agreement. Customer’s use of the Third Party Software is subject to the applicable third party license terms which can be viewed at <https://www.gathr.one/third-party-licenses>, and such Third Party Software is not licensed to Customer under the terms of this Agreement. If Customer does not agree to abide by the applicable license terms for the Third Party Software, then Customer may not access or use the Gathr Platform or the Third Party Software. Additionally, Customer acknowledges and agrees that Customer may be required to separately acquire and download certain Third Party Software to use with the Gathr Platform and/or the Gathr Platform may enable Customer to integrate and/or connect with certain third party products, services, and/or applications (“**Third-Party Applications**”). If Customers decides to access and use such Third Party Applications, Customer’s use of such Third Party Applications is at Customer’s own risk and is governed solely by the terms and conditions of such Third Party Applications entered into between Customer and the applicable provider of the Third Party Application.
- 2.5. Responsibility for Telecommunications and Internet. Customer acknowledges and agrees that Customer’s and its Authorized Users’ use of the Gathr Platform is dependent upon access to telecommunications and Internet services. Customer shall be solely responsible for acquiring and maintaining all network and Internet services and other hardware and software required to access and use the Gathr Platform, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. Gathr shall not be responsible for any loss or corruption and/or loss of any content and/or data, or any other loss or damage of any kind arising from any such network and Internet services and/or any other hardware and software required to access and use the Gathr Platform.

3. SERVICES

- 3.1. Consulting Services. Should Customer request and Gathr agree to provide any consulting services related to the use of the Gathr Platform, such consulting services will be provided pursuant to a separate agreement entered into between Customer and Gathr.
- 3.2. Technical Support. Subject to the terms and conditions of this Agreement (including the payment of applicable fees), Gathr or its affiliates will use reasonable efforts to provide Gathr’ then-current Customer Technical Support during the applicable Subscription Term set forth in each Order Form.
- 3.3. Customer Assistance. Customer will provide reasonable assistance and support to Gathr in the performance of the any Technical Support under this Agreement (including, if applicable, remote access) to Customer systems and premises as reasonably requested by Gathr to provide the Technical Support and/or any other services hereunder.

4. CUSTOMER DATA

- 4.1. Customer Data. As between the parties, Customer shall retain all right, title and interest in and to any data and other information transmitted, uploaded and/or submitted by Customer and/or its Authorized Users through the Gathr Platform , or otherwise provided or made available to Gathr in connection with the use of the Gathr Platform, and/or any services provided by Gathr hereunder (collectively, “**Customer Data**”). For the avoidance of doubt, “Customer Data” does not include Operational Metrics. Customer hereby grants to Gathr during the term a worldwide, royalty-free, non-exclusive license to use (including through the use of subcontractors) the Customer Data solely to the extent reasonably necessary to provide Customer the Gathr Platform and other services hereunder. Customer represents and warrants that it has all the rights necessary to grant the licenses granted herein to Gathr in and to such Customer Data. Customer represents and warrants that, with respect to any Customer Data (including, without limitation, any Personal Data (as defined in Section 4.2 below), transmitted, hosted, stored or processed in connection with the use of the Gathr Platform and/or otherwise provided or made available to Gathr in connection with the use of the Gathr Platform and/or any services provided by Gathr hereunder (a) Customer is in compliance with all Data Protection Laws (as defined in Section 4.2 below), and (b) Customer has obtained all permissions and/or approvals from each applicable data source as may be necessary or required to transmit such data through the Gathr Platform, and/or provide or make available such data to Gathr hereunder.
- 4.2. Personal Data. To the extent any Customer Data includes any personally identifiable information (“**Personal Data**”), which is subject to any applicable data protection laws and/or regulations (“**Data Protection Laws**”), Customer acknowledges and agrees that as between Customer and Gathr, Customer is the data controller and/or business and Gathr is merely a data

processor and/or service provider as such terms are defined pursuant to Data Protection Laws. At Gathr's request Customer agrees to execute and/or enter into any documents, agreements, statements, or policies deemed necessary or appropriate by Gathr in its discretion to comply with any Data Protection Laws with respect to any Personal Data. Personal Data provided to, or collected by, Gathr in connection with the Gathr Platform and/or any services provided hereunder shall only be used in accordance with this Agreement and Gathr's Privacy Policy available at <https://www.gathr.one/privacy-policy-v2/>

5. GATHR PROPRIETARY RIGHTS

- 5.1. Proprietary Rights. Gathr or its licensors retain all right, title and interest in and to the Gathr Platform and Documentation, and any and all modifications, updates, improvements, and/or enhancements thereto, including, without limitation, all patent, copyright, trademark, and trade secret rights, embodied in, or otherwise applicable to the Gathr Platform and/or Documentation, whether such rights are registered or unregistered, and wherever in the world those rights may exist. Customer shall not commit any act or omission, or permit or induce any third party to commit any act or omission inconsistent with Gathr's or its licensors' rights, title and interest in and to the Gathr Platform and/or Documentation and the intellectual property rights embodied therein or applicable thereto. All materials embodied in, or comprising the Gathr Platform and/or Documentation, including, but not limited to, graphics, user and visual interfaces, images, code, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel", and arrangement of the Gathr Platform and/or Documentation, and its content, and the trademarks, service marks, proprietary logos and other distinctive brand features found therein ("**Gathr Marks**"), are all owned by Gathr or its licensors; Customer is expressly prohibited from using the Gathr Marks. Gathr reserves all rights and licenses not expressly granted to Customer in Section 2.1 and no implied license or right is granted by Gathr.
- 5.2. Operational Metrics. Gathr monitors and collects anonymized statistics, metrics, analytics, and data regarding the performance and operation of the Gathr Platform in connection with Customer's and/or its Authorized Users' use of the Gathr Platform and other operational and technical metrics necessary to manage and perform Gathr Platform (collectively, "**Operational Metrics**") for Gathr's own business purposes, such as improving, testing, and maintaining the Gathr Platform and developing additional products and services. Customer grants to Gathr a non-exclusive, irrevocable, transferable, worldwide, and royalty-free license to collect, analyze and use Operational Metrics relating to its delivery of the Gathr Platform that are derived from, or related to, Customer Data, including the generation of reports for internal, external, and public use, and to use Operational Metrics for Gathr's internal business purposes. Gathr may only publicly distribute Operational Metrics in aggregate, non-personally identifiable form that cannot be used to identify Customer or any individual Authorized User.
- 5.3. Feedback. To the extent Customer and/or any Authorized User provides any suggestions and feedback to Gathr regarding the functioning, features, and other characteristics of the Gathr Platform (or any part thereof) and/or other materials or services provided or made available by Gathr hereunder ("**Feedback**"), Customer hereby grants Gathr a perpetual, irrevocable, non-exclusive, royalty-free, fully-paid-up, fully-transferable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) under Customer's and its licensors' Intellectual Property Rights to use and exploit such Feedback in any manner and for any purpose.

6. FEES & PAYMENT TERMS

- 6.1. Subscription Fees. The subscription fees payable by Customer for access to the Gathr Platform and to receive Technical will be set forth in the applicable Order Form (the "**Subscription Fees**"). If the Order Form provides for the grant of any monthly usage credit, then any such usage credits will be applied to the applicable months. Fees and usage credit apply to the designated usage time period regardless of the results of the use of the Gathr Platform. There are no refunds. Unless otherwise set forth on the Order Form, the Subscription Fees will remain fixed during each Subscription Term unless Customer at any time during the applicable Subscription Term (a) exceeds the applicable Usage Parameters, or (b) Customer increases the Usage Parameters or the Technical Support level, or subscribes to additional features, services or products. Upon any increase in fees pursuant to clause (a) or (b) above, Customer shall pay the Subscription Fees for such increase, pro-rated for the remainder of Customer's then-current Subscription Term.
- 6.2. Payment Terms. All payments under this Agreement shall be made in currently available funds and payments may be made by check, wire transfer, or by such other means as Gathr may specify from time-to-time. Unless otherwise expressly agreed by Gathr and specified in the applicable Order Form, all fees are payable in the currency of the United States of America. All fees specifically exclude (and Customer is responsible for) any and all applicable sales, use and other taxes, other than taxes based on Gathr's income. Any undisputed amounts due under this Agreement which are not paid within thirty (30) calendar days of their due date shall be subject to a late payment charge of the lower of: (a) one and one half percent (1.5%) per month (and shall thereafter bear interest at a rate of eighteen percent (18%) per annum until paid); and (b) the highest interest rate permitted by applicable law. In addition, Gathr reserves the right to suspend any or all services (including access to the Gathr Platform) hereunder if payments are more than thirty (30) days past due. Each party is responsible for its own expenses under this Agreement. All fees payable under this Agreement are non-refundable. Gathr will not issue any invoices for the fees due hereunder unless expressly requested by Customer; provided however, that all fees are automatically due as set forth in this Section 6 irrespective of the date of issue of any invoice.

- 6.3. Changes to Fees. Gathr may change its fees and payment terms at its discretion; provided however, that such changes will not take effect for Customer until the start of the next Subscription Term or Technical Support term. Gathr will provide prior written notice to Customer of any changes to the fees that affect the Gathr Platform and Technical Support Customer has purchased, including as sent to Customer's e-mail address.

7. TERM & TERMINATION

- 7.1. Term. Unless earlier terminated in accordance with the terms of this Agreement, the term of this Agreement will commence on the Effective Date and will continue shall continue as long as any Order Form and/or any Statement of Work is in effect.
- 7.2. Order Forms. Each Order Form shall commence on the effective date and continue for the Subscription Term, each as set forth therein, and will automatically renew for additional successive terms equal in duration to the initial Subscription Term, unless at least thirty (30) days before the end of the then-current Subscription Term either party provides written notice of non-renewal to the other party. The subscription licenses and (subject to Section 6.5) the corresponding periodic Subscription Fees set forth in an Order Form shall automatically renew for successive terms equal in duration to the initial Subscription Term, unless the Order Form is terminated as set forth above.
- 7.3. Termination. Either party may terminate this Agreement immediately without further notice if the other party breaches its obligations, including but not limited to past due payments, under this Agreement and does not remedy such breach within thirty (30) calendar days of the date on which the breaching party receives written notice of such breach from the non-breaching party.
- 7.4. Suspension. Gathr may, in its reasonable discretion, suspend access to the Gathr Platform at any time if Gathr believes that (a) Customer is in breach of any obligations under this Agreement; (b) Customer's use of the Gathr Platform poses a security risk; (c) Customer's use of the Gathr Platform violates, misappropriates, or infringes the rights of Gathr or a third party; or (d) Customer's use of the Gathr Platform poses a security risk or renders the Gathr Platform unavailable, for instance, through a distributed denial of service (DDoS) attack. Gathr may inform Customer about the reasons for any such suspension in advance, but has no obligation to provide prior notice to the extent an issue causes or is likely to cause immediate, material and ongoing harm to the Gathr Platform or other Gathr customers.
- 7.5. Effects of Termination. If this Agreement expires or is terminated for any reason: (a) Customer will pay to Gathr any amounts that have accrued before, and remain unpaid as of, the Effective Date for the Gathr Platform and services provided hereunder; (b) any and all liabilities of either party to the other party that have accrued before the effective date of the expiration or termination will survive; (c) all licenses granted to Customer under this Agreement shall immediately terminate and Customer shall immediately cease any and all use of the Gathr Platform; (d) Gathr's obligations to perform Technical Support and/or any other services hereunder shall immediately terminate; and (e) within ten (10) calendar days of such termination, each party shall destroy or return all Confidential Information of the other party in its possession or control, and will not make or retain any copies of such information in any form, except that the receiving party may retain one (1) archival copy of such information solely for purposes of ensuring compliance with this Agreement. Following termination, Gathr will delete any Customer data in the Gathr Platform in accordance with its then-current data retention and data deletion policies.
- 7.6. Survival. The following Sections will survive any termination or expiration of this Agreement: 1, 2.3, 2.4, 2.5, 4, 5, 6, 7.5, 7.6, 8.1, 9.2, and 10 through 18.

8. CONFIDENTIALITY & PUBLICITY

- 8.1. Confidentiality. "**Confidential Information**" means any proprietary information received by the other party during, or prior to entering into, this Agreement that is marked as confidential or proprietary. The Gathr Platform, Documentation, Feedback, and any non-public technical and business information of a party shall be deemed Confidential Information, whether or not marked. Confidential Information does not include information that (a) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (d) the receiving party rightfully obtains from a third party without restriction on use or disclosure. Customer and Gathr will maintain the confidentiality of Confidential Information. The receiving party of any Confidential Information of the other party agrees not to use such Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under this Agreement. The receiving party shall protect the secrecy of and prevent disclosure and unauthorized use of the disclosing party's Confidential Information using the same degree of care that it takes to protect its own confidential information and in no event shall use less than reasonable care. The receiving party may disclose the Confidential Information of the disclosing party if required by judicial or administrative process, provided that the receiving party first provides to the disclosing party prompt notice of such required disclosure to enable the disclosing party to seek a protective order. Upon termination or expiration of this Agreement, the receiving party will, at the disclosing party's option, promptly return or destroy (and provide written certification of such destruction) the disclosing party's Confidential Information.
- 8.2. Publicity. Upon Customer's prior written consent, and during the term of this Agreement, Gathr may include Customer's name and logo as a customer of the Gathr Platform in marketing materials promoting the Gathr Platform, provided that Gathr shall remove such material upon Customer's request to do so or termination of the Agreement, whichever happens first.

9. WARRANTIES & DISCLAIMERS

- 9.1. Representations and Warranties. Each party represents and warrants to the other party that: (a) it has the full power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and (b) it has complied, and will in the future comply, with all applicable laws, rules and regulations in connection with the performance of this Agreement. Customer represents and warrants that it will use the Gathr Platform in compliance with all applicable laws and regulations and rights of third parties.
- 9.2. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH ABOVE IN THIS SECTION 9: (A) THE GATHR PLATFORM, DOCUMENTATION, AND TECHNICAL SUPPORT ARE PROVIDED TO CUSTOMER ON AN “AS IS” BASIS, WITH ANY AND ALL FAULTS, AND WITHOUT ANY WARRANTY OF ANY KIND; AND (B) GATHR EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. GATHR DOES NOT WARRANT THAT THE GATHR PLATFORM, DOCUMENTATION, AND/OR TECHNICAL SUPPORT WILL MEET CUSTOMER’S REQUIREMENTS, OR THAT THE OPERATION OF THE GATHR PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE GATHR PLATFORM, DOCUMENTATION AND/OR TECHNICAL SUPPORT WILL BE CORRECTED. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE USE OF THE GATHR PLATFORM, GATHR DOES NOT WARRANT THE RESULTS OF RUNNING A DATA CONVERSION JOB THROUGH THE GATHR PLATFORM. DOCUMENTATION AND OR TECHNICAL SUPPORT AND ALL RESULTS OF SUCH USE IS SOLELY AT CUSTOMER’S OWN RISK. GATHR DOES NOT ENDORSE, IS NOT RESPONSIBLE FOR, AND MAKES NO REPRESENTATIONS AS TO ANY THIRD PARTY APPLICATIONS, THEIR CONTENT OR THE MANNER IN WHICH THEY HANDLE CUSTOMER’S DATA, AND GATHR IS NOT LIABLE FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH CUSTOMER’S ACCESS OR USE OF ANY THIRD PARTY APPLICATIONS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY GATHR OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF IMPLIED WARRANTIES OR CONDITIONS, OR ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CUSTOMER. IN SUCH EVENT, GATHR’S WARRANTIES AND CONDITIONS WITH RESPECT TO THE GATHR PLATFORM, DOCUMENTATION, TECHNICAL SUPPORT WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW IN SUCH JURISDICTION.

10. INDEMNIFICATION

- 10.1. Indemnification by Customer. Customer shall indemnify, defend, and hold harmless Gathr, and its officers, directors, employees, subsidiaries, and affiliates (each, an “**Gathr Party**”), from and against all suits, proceedings, claims, damages, liabilities, costs, payments, and expenses (including reasonable attorneys’ fees) asserted against Gathr or incurred by Gathr, in connection with any actual or alleged claim arising out of, or relating to: (a) Customer’s breach of this Agreement and/or any terms and conditions or other agreement applicable to any Third Party Applications; (b) Customer Data or a violation of any Data Protection Laws or any other applicable laws, rules or regulations; (c) Customer’s use of the Gathr Platform, and/or Technical Support, (except to the extent Gathr is responsible for the event giving rise to Customer’s liability under this Section 10.1(c); and (d) Customer’s gross negligence, fraudulent misrepresentation or willful misconduct.
- 10.2. Indemnification by Gathr. Gathr will indemnify, defend and hold harmless Customer, and its officers, directors, employees, subsidiaries, and affiliates (each a “**Customer Party**”), from and against all suits, proceedings, claims, damages, liabilities, costs, payments, and expenses (including reasonable attorneys’ fees) asserted against any Customer Party by a third party or incurred by any Customer Party in connection with any actual or alleged claim made by a third party, arising out of or relating to: (a) Customer’s use of the Gathr Platform as authorized herein infringing or misappropriating a third party’s copyright, trade secret or patent issued as of the Effective Date (except to the extent Customer is responsible for the event giving rise to Gathr’s liability under this Section 10.2; (b) any claims that any Gathr personnel are employees of Customer for any purpose whatsoever, including, without limitation, the withholding or payment of any federal, state, or local income or employment taxes; Gathr’s breach of its confidentiality obligations under this Agreement; (c) Gathr’s breach of its representations and warranties set forth in this Agreement; and (d) Gathr’s gross negligence, fraudulent misrepresentation or willful misconduct. Gathr shall have no indemnity obligation to the extent that the infringement arises out of: (i) use of other than the then-current, unaltered version of the Gathr Platform, unless the infringing portion is also in the then-current, unaltered release; (ii) any Third Party Gathr Platform or any Third Party Applications; (iii) based on Customer’s use of the Gathr Platform, and/or Services other than in accordance with this Agreement or the applicable Documentation; (iv) Customer’s combination of the Gathr Platform with software or hardware not provided and/or expressly approved by Gathr in writing (but excluding any software integrations developed by Gathr for Customer under this Agreement that may be combined with the Gathr Platform); (v) Customer’s modifications of the Gathr Platform not approved in writing by Gathr; or (vi) any Trial Version. If Customer’s use of the Gathr Platform is enjoined or Gathr believes Customer’s use of the Gathr Platform may be enjoined, Gathr may elect to obtain a license for Customer to continue using the Gathr Platform or modify the Gathr Platform so that it no longer infringes. THE FOREGOING SHALL BE CUSTOMER’S SOLE AND EXCLUSIVE REMEDY AND

GATHR'S SOLE AND EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

- 10.3. Procedure. The indemnifying party shall have the control of the defense and related settlement of any claims. The indemnified party shall provide the indemnifying party with prompt written notice of the claim. The indemnified party and its counsel will cooperate as fully as reasonably required, and provide such information as reasonably requested, by the indemnifying party in the defense or settlement of any claim. The indemnifying party shall not in any event, consent to any judgment, settlement, attachment, or lien, or any other act adverse to the interests of any indemnified party without the prior written consent of each relevant indemnified party (such consent not to be unreasonably withheld or delayed). Any indemnified party may participate and retain its own counsel at its own expense.

11. LIMITATION OF LIABILITY

- 11.1. Consequential Damages Waiver. EXCEPT WITH RESPECT A PARTY'S BREACH OF CONFIDENTIALITY OR CUSTOMER'S MISUSE OF GATHR'S INTELLECTUAL PROPERTY, OR A PARTY'S GROSS NEGLIGENCE, FRAUDULENT MISREPRESENTATION OR WILLFUL MISCONDUCT, UNDER NO CIRCUMSTANCES, SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, RELIANCE, OR CONSEQUENTIAL DAMAGES, OR FOR ANY DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED AND EVEN IF AN INDEMNIFIED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 11.2. Limitation of Damages. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL THE GATHR PARTIES' TOTAL CUMULATIVE LIABILITY TO LICENSEE OR ANY THIRD PARTY FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, OR OTHERWISE) EXCEED ONE HUNDRED DOLLARS (\$100).
- 11.3. Failure of Essential Purpose. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY EVEN IF THIS AGREEMENT OR ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CUSTOMER. IN SUCH EVENT, THE LIABILITY OF THE GATHR PARTIES FOR SUCH DAMAGES UNDER THIS AGREEMENT WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW IN SUCH JURISDICTION. The sections of this Agreement that address indemnification, limitation of liability and the disclaimer of warranties allocate the risk between the parties. This allocation of risk is an essential element of the basis of the bargain between the parties.

- 12. GOVERNMENT RIGHTS**. The Gathr Platform licensed to Customer under this Agreement is "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.
- 13. EXPORT**. Customer acknowledges that the laws and regulations of the United States of America and foreign jurisdictions may restrict the export and re-export of certain commodities and technical data of United States of America origin, including the Gathr Platform. Customer agrees that it will not export or re-export the Gathr Platform without the appropriate United States or foreign government licenses or permits and without explicit written permission of Gathr.
- 14. NOTICES**. All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, e-mail, or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) business days after deposit in the U.S. mail, or upon confirmation of transmission if sent by e-mail. Notices shall be sent to (a) Gathr at: [notices@gathr.one]; and (b) Customer at the address as set forth in the applicable Order Form. Each party may update its contact information from time-to-time pursuant to this Section 14.
- 15. ELECTRONIC COMMUNICATIONS**. Customer consents to receiving electronic communications from Gathr, which may include notices about applicable fees and charges, transactional information and other information concerning or related to Customer's use of the Gathr Platform. These electronic communications are part of Customer's relationship with Gathr and Customer receive them as part of Customer's access and use of the Gathr Platform. Customer agrees that any notices, agreements, disclosures or other communications that Gathr sends Customer electronically will satisfy any legal communication requirements, including that such communications be in writing, to the extent permitted by applicable law.
- 16. GOVERNING LAW; DISPUTE RESOLUTION**. This Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of California, without reference to its choice of law rules to the contrary. The United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Computer Information Transactions Act as enacted shall not

apply to this Agreement. Any dispute, controversy, or claim between the parties arising out of or relating to this Agreement or the breach, termination, or invalidity of this Agreement (a “**Dispute**”) shall be resolved by final, binding and confidential arbitration, by a single arbitrator mutually agreed upon by the parties in writing, in accordance with the Rules of Arbitration of the International Chamber of Commerce in force as of the date such Dispute is referred for arbitration (the “**Rules**”). The location of arbitration shall be Santa Clara County, California, unless otherwise mutually agreed upon by the parties in writing. Notwithstanding the foregoing, to the extent feasible, the parties agree the arbitration may be conducted by video conference, telephone, or other telecommunication means. To the extent there is any conflict between the provisions set forth in this Section 16 and the Rules or any procedural or other rules issued by the arbitrator, this Section 16 will control. Each party shall bear its own attorney's fees, costs, and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the arbitrator. The arbitral proceedings, and all pleadings and written evidence will be in the English language. Any written evidence originally in a language other than English will be submitted in English translation accompanied by the original or true copy thereof. The English language version will control. The arbitrator shall issue a written award and statement of decision describing the essential findings and conclusions on which the award is based. The arbitration award shall be final and binding upon the parties without appeal or review, and the award may be entered by any court of competent jurisdiction, and each of the parties irrevocably submits to the jurisdiction of such court for confirmation or recognition or enforcement of any award rendered by the arbitral tribunal in accordance with, inter alia, the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The parties agree that no party shall have any right to commence or maintain any suit or legal proceedings (other than for interim or conservatory measures, or as otherwise stated herein) until the dispute has been determined in accordance with the arbitration procedure provided in this paragraph and then only for enforcement of the award rendered in the arbitration. Notwithstanding anything to the contrary herein, either party may seek injunctive or other appropriate relief in any court with competent jurisdiction in any country, without first referring such claim to arbitration, in the event of any actual or alleged violation of such party's intellectual property rights or Confidential Information by the other party.

- 17. FORCE MAJEURE.** Neither party shall be responsible for any delay in its performance due to labor disputes, shortage of materials, fire, earthquake, flood, telecommunications failure, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, or any other cause beyond its reasonable control, except payments by Customer to Gathr that are due pursuant to the terms of the Agreement.
- 18. GENERAL.** This Agreement, including any and all Order Forms and/or Statements of Work entered into hereunder, shall constitute the entire agreement between Gathr and Customer relating to the subject matter hereof and shall supersede all prior negotiations, agreements, and understandings between the parties. No waiver of any provision of this Agreement shall be effective unless made in writing. In addition, no waiver by either party of any breach of any provision of this Agreement shall be construed as a waiver of any subsequent breach or as a continuing waiver of such breach of this Agreement. In addition, no failure to enforce any contract term shall be deemed a waiver of future enforcement of that or any other term. This Agreement may be executed in two (2) counterparts, both of which taken together shall constitute one (1) single Agreement between the parties. Except as otherwise set forth in this Agreement, no modifications or additions to this Agreement shall be binding on either party unless in writing and signed by the party against whom enforcement is sought. The provisions of this Agreement shall be severable. If any provision of this Agreement is held invalid or unenforceable in any relevant jurisdiction, then such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, the application of such provision in any other circumstances shall not be affected, and the application of the remaining provisions of this Agreement shall not be affected by such application. This Agreement may not be assigned by either party without the express prior written consent of the other party, except that, upon written notice to the other party, either party may assign all or portions of this Agreement to a subsidiary or successor to its business (whether by merger, a sale of all or substantially all of its assets relating to this Agreement, a sale of a controlling interest of its capital stock, or otherwise). In addition, notwithstanding the foregoing, Gathr may delegate the performance of any services hereunder to its affiliates and contractors. Any attempted assignment without such consent will be null and void and of no effect. No remedy or election of remedy under this Agreement shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or equity.
- 19. QUESTIONS AND ADDITIONAL INFORMATION.** Please feel free to contact Gathr at [support@gathr.one] if you have any questions about this Agreement.