

Terms & Conditions

BY COMPLETING AN ONLINE ORDER FORM (THE “ORDER FORM”) AND ACKNOWLEDGING YOUR ACCEPTANCE OF THESE TERMS AND CONDITIONS (THESE “TERMS AND CONDITIONS”, AND TOGETHER WITH THE ORDER FORM, THIS “AGREEMENT”), FOR EXAMPLE, SIGNING ELECTRONICALLY, YOU (AS AN INDIVIDUAL, COMPANY, BUSINESS, CORPORATION OR OTHER ENTITY, “CUSTOMER”) ACCEPT AND AGREE TO THIS AGREEMENT. THIS AGREEMENT CONSTITUTES A LEGAL AGREEMENT BETWEEN CUSTOMER AND JIMINNY, INC. (“COMPANY”) CUSTOMER’S USE OF THE CUSTOMER PLATFORM (AS DEFINED BELOW) IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH BELOW, SO CUSTOMER SHOULD TAKE THE TIME TO FULLY UNDERSTAND HOW THESE TERMS AND CONDITIONS GOVERN CUSTOMER’S RELATIONSHIP WITH COMPANY AND CUSTOMER’S USE OF THE COMPANY PLATFORM. CUSTOMER’S RIGHT TO USE THE COMPANY PROPERTY IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF THESE TERMS AND CONDITIONS. IF YOU ARE ACCEPTING THIS AGREEMENT ON BEHALF OF A COMPANY, BUSINESS, CORPORATION OR OTHER ENTITY, YOU AND THE APPLICABLE COMPANY, BUSINESS, CORPORATION OR OTHER ENTITY EACH REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU”, “YOUR” AND “CUSTOMER” WILL REFER TO SUCH ENTITY. IF CUSTOMER DOES NOT AGREE WITH ANY PROVISION OF THIS AGREEMENT, CUSTOMER MUST AND MAY NOT ACCESS OR USE THE COMPANY’S PROPERTY IN ANY MANNER FOR ANY PURPOSE.

This Agreement, by and between Customer and Company, is effective as of the date the Order Form is completed (the “Effective Date”) and governs Customer’s use of Company’s coaching and customer success software-as-a-service platform, including any software, documentation or data related thereto (the “Company Platform”). Each of Company and Customer may be referred to herein individually as a “Party” or collectively as “Parties”.

1. ACCESS TO PLATFORM.

1.1 Access to Platform. Company will make the Company Platform available to Customer.

Subject to the terms and conditions of this Agreement, Company hereby grants Customer the limited, non-exclusive, non-transferable, non-sublicenseable right to access and use the Company Platform solely for Customer’s internal business purposes. Customer will access the Company Platform using those certain username(s) and password(s) pursuant to which Customer accesses its Microsoft, Google, Salesforce, Slack and/or Hubspot accounts and/or other Third-Party Services (as defined below). Customer will be responsible for any actions or omissions of (i) Customer’s employees, contractors, consultants or any other such affiliated party, and (ii) any party accessing the Company Platform using such usernames and passwords or otherwise accessing the Company Platform through any account or technology owned or operated by Customer (“End Users”), and Customer agrees not to disclose such usernames and

passwords to any third parties (other than employees of Customer who have been authorized by Company to use the Company platform). Customer will inform Company immediately if it discovers that any such username and/or password has been disclosed or made available to a third party.

1.2 End Users. The minimum number of End Users for each license type will be specified on the Order Form (the “Minimum”). To the extent the number of End Users exceeds the Minimum, the Minimum will be increased by such number of additional End User(s) and such increased Minimum shall apply for the remainder of the then-current term and, unless otherwise specified on the Order Form, the fees due by Customer to Company will be increased on a pro rata basis based on (i) the average rate per End User and (ii) the amount of time remaining in such term. Prior to the beginning of any Renewal Term (as defined below), the Parties may agree in writing to modify the Minimum for such Renewal Term.

1.3 Jiminny Voice. Jiminny Voice is a chargeable add-on license which can be purchased in addition to the recording license. The addition of Jiminny Voice to Customers platform signifies the intention of Customer to purchase Jiminny Voice, and the acceptance by Customer to add the Jiminny Voice End User to the Minimum. For the avoidance of doubt, Customer shall not have any right to the telephone numbers provided by Company or otherwise used in connection with the Company Platform other than as incorporated therein and used in accordance with this Agreement, and Customer does not acquire any ownership interest, intellectual property right, right of control, right to port or other interest of any kind in any such telephone number. Any such telephone numbers may be withdrawn or exchanged at any time and in Company’s sole discretion. Customer’s right to use any such telephone number shall end automatically and immediately upon the expiration or termination of this Agreements.

1.4 License Restrictions and Responsibilities. Customer will not use the Company Platform for any purpose other than the purposes expressly set forth herein. Customer may not, directly or indirectly: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Company Platform; (b) modify, translate, or create derivative works based on the Company Platform (except to the extent expressly permitted by Company); (c) use the Company Platform for timesharing or service bureau purposes or otherwise for the benefit of a third party; or (d) remove any proprietary notices or labels. Customer shall be responsible, at its sole expense, for obtaining, operating, and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Company Platform, including, without limitation, computer systems, modems, hardware, server, software, operating systems, networking, web servers and the like.

1.5 License to Customer Data. Customer grants the Company a non-exclusive, worldwide, limited term, royalty-free right to host, use, copy, transmit and display Customer Data as

appropriate for the Company to provide and ensure proper operation of the Services in accordance with this Agreement, including to provide insights and analysis to optimize Customer's use of the Services.

Company will comply with all relevant data protection law as provided in the [Data Processing Addendum](#) agreed by Customer. The Data Processing Addendum is hereby incorporated into this agreement.

1.6 Feedback. Customer may from time to time provide suggestions, comments for enhancements or functionality or other feedback ("Feedback") to Company with respect to the Company Platform. Company will have full discretion to determine whether or not to proceed with the development of the requested enhancements, new features or functionality. Customer hereby grants to Company a royalty-free, fully paid up, worldwide, transferable, sublicenseable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback, and (b) use the Feedback and/or any subject matter thereof, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody, or are configured for use in practicing, the Feedback and/or any subject matter of the Feedback.

1.7 Changes. Company reserves the right, in its sole discretion, to make any changes to the Company Platform that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Company's services to Customers; (ii) the competitive strength of or market for Company's services; or (iii) the Company Platform's cost efficiency or performance; or (b) to comply with applicable law.

2. OWNERSHIP; RESERVATION OF RIGHTS. Customer acknowledges and agrees that, as between the Parties, Company retains all right, title and interest in and to the Company Platform and all intellectual property rights therein and thereto. Company grants no, and reserves any and all, rights other than the rights expressly granted to Customer under this Agreement with respect to the Company Platform. Customer will acquire no right, title, or interest in and to the Company Platform other than the limited licensed rights expressly granted under this Agreement. Notwithstanding the foregoing, Customer retains all right, title and interest in and to the Customer Data.

3. FEES; PAYMENT TERMS.

3.1 Fees. Customer will pay to Company any fees set forth on the Order Form in accordance with the terms and conditions set forth herein. Payment obligations are non-cancelable and fees paid are non-refundable.

3.2 Payment Terms. Unless otherwise stated in the Order Form, Company will provide an invoice to Customer for any fees due to Company. Customer will pay all fees to Company within thirty (30) days of receipt of any such invoice. If payment of any fees are not made when due and payable, a late fee will accrue at the rate of the lesser of one and one-half percent (1.5%) per month or the highest legal rate permitted by law. If any past due payment has not been received by Company within thirty (30) days from the time such payment is due, Company may suspend access to the Company Platform until such payment is made.

3.3 Net of Taxes. All amounts payable by Customer to Company hereunder are exclusive of any sales, use and other taxes or duties, however designated, including without limitation, withholding taxes, royalties, knowhow payments, customs, privilege, excise, sales, use, value added and Platform taxes (collectively "Taxes"). Customer will be solely responsible for payment of any Taxes, except for those taxes based on the income of Company. Customer will not withhold any Taxes from any amounts due Company.

3.4 Net of Fees. If an amount payable by Customer to Company is subject to bank fees/charges, Company shall be entitled to receive from Customer such amounts as shall ensure that the net receipt after bank fees/charges is the same as it would have been were the payment not subject to bank fees/charges.

3.5 Fair Use. With respect to Customers purchasing Jiminny Voice, Company reserves the right at its sole discretion to charge Customer at Company standard rates in accordance with Company Payment Terms in the event the End Users exceed, in aggregate, 1,350 minutes of telephone functionality on the Company Platform in any given thirty (30) day period.

3.6 International Use. With respect to Customers purchasing Jiminny Voice, Company reserves the right at its sole discretion to charge Customer for phone numbers purchased and calls made by End User to countries outside of your domestic zone at Company standard rates in accordance with Company Payment Terms.

4. TERM; TERMINATION.

4.1 Term; Termination. Subject to earlier termination as set forth in this Agreement, the term of this Agreement will commence on the Effective Date and continue for the initial term set forth in the Order Form, and shall automatically renew for the same period as the previous agreement (each, a "Renewal Term") unless either Party provides written notice of non-renewal at least sixty (60) days prior to the end of the then-current term. The renewal pricing set forth in Customer's Order Form will apply. If renewal pricing is not included in the Order Form, renewal pricing shall be effective from the date of the renewal and shall be calculated as an increase on the pricing for the previous term using the lower of (a) an increase of 5.0% and (b) an increase using the most recent US Consumer Price Index percentage (CPI) for the preceding 12 month period, or equivalent national price index where the customer is situated outside the USA. The

annual price change shall not be less than 0.0%. Company may terminate this Agreement, effective on written notice to Customer, if Customer fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Company's delivery of written notice thereof. In addition, either party may terminate this Agreement immediately if the other party breaches any material provision of this Agreement and does not cure such breach within thirty (30) days after receiving written notice thereof or if such breach is incapable of cure. Furthermore, either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

4.2 Effect of Termination or Expiration. In the event that this Agreement expires or is terminated for any reason, all rights, licenses, consents, and authorizations with respect to the Company Platform will immediately terminate, and you will (a) cease use of the Company Platform; (b) we will make the Customer Data, including your recorded calls, available to you for download or export for a period of 30 days following such termination and then will delete same; and (c) you will pay to Company all amounts due and owing under this Agreement.

4.3 Survival. Upon termination of this Agreement, all obligations in this Agreement will terminate, provided that Sections 1.4 (License Restrictions and Responsibilities), 1.5 (License to Customer Data), 1.6 (Feedback), 2 (Ownership; Reservation of Rights), 3 (Fees; Payment Terms), 4 (Term; Termination), 5 (Confidentiality), 6.2 (Disclaimer), 7 (Limitations of Liability), 8 (Indemnification) and 10 (General) will survive.

5. CONFIDENTIALITY.

5.1 Definition of Confidential information. "Confidential Information" means, subject to the exceptions set forth in Section 5.2 hereof, any information or data or materials, regardless of whether it is in tangible form, that is disclosed or otherwise made available by a party (the "Discloser") to the other party (the "Recipient") and that (a) the Discloser has marked as confidential or proprietary, or (b) the Discloser identifies as confidential at the time of disclosure with written confirmation within fifteen (15) days of disclosure to the Recipient; provided, however, that reports and/or information related to or regarding the Discloser's business plans, business methodologies, strategies, technology, specifications, development plans, customers, prospective customers, partners, suppliers billing records, and products or services will be deemed Confidential Information of the Discloser even if not so marked or identified, unless such information is the subject of any of the exceptions set forth in Section 5.2

hereof. For the avoidance of doubt, the Company Platform is Confidential Information of Company.

5.2 Exceptions to Confidential Information. Confidential Information will not include any information which: (a) the Recipient can show by written record was in its possession prior to disclosure by the Discloser hereunder, provided that the Recipient must promptly notify the Discloser of any prior knowledge; (b) appears in issued patents or printed publications in integrated form or which otherwise is or becomes generally known by the public other than through the Recipient's failure to observe any or all terms and conditions hereof; or (c) subsequent to disclosure to the Recipient by the Discloser, is obtained by the Recipient from a third person who is not subject to any confidentiality obligation in favor of Discloser.

5.3 Use and Disclosure of Confidential Information. The Recipient may only use the Confidential Information for the purpose of performing its obligations and exercising its rights hereunder. The Recipient must keep secret and will never disclose, publish, divulge, furnish or make accessible to anyone any of the Confidential Information of the Discloser, directly or indirectly, other than furnishing such Confidential Information to (a) the Recipient's employees who are required to have access to such Confidential Information in connection with the performance of the Recipient's obligations, or the exercise of the Recipient's rights, hereunder, and (b) professional advisers (e.g., lawyers and accountants), in each case, during the time that the Recipient is permitted to retain such Confidential Information hereunder; provided that any and all such employees are bound by written agreements or, in the case of professional advisers, ethical duties, respecting the Confidential Information in the manner set forth in this Agreement. The Recipient will use at least reasonable care and adequate measures to protect the security of the Confidential Information of the Discloser and to ensure that any Confidential Information of the Discloser is not disclosed or otherwise made available to other persons or used in violation of this Agreement.

5.4 Disclosures Required by Law. In the event that the Recipient is required by law to make any disclosure of any of the Confidential Information of the Discloser, by subpoena, judicial or administrative order or otherwise, the Recipient will first give written notice of such requirement to the Discloser, and will permit the Discloser to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to the Discloser in seeking to obtain such protection.

6. REPRESENTATIONS and WARRANTIES; DISCLAIMER.

6.1 Representations and Warranties. Each party represents and warrants to the other party that (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) such party has the full right, power, and authority to enter into this Agreement and to perform its obligations and grant the rights, licenses, consents, and authorizations its grants or is required to grant

hereunder, (c) the execution of this Agreement and performance of its obligations thereunder do not and will not violate any other agreement to which it is a party, and (d) this Agreement constitutes a legal, valid and binding obligation when signed by both Parties. Company will use reasonable efforts consistent with prevailing industry standards to maintain the Company Platform in a manner which minimizes errors and interruptions. Notwithstanding the foregoing, the Company Platform may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company will use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

6.2 Company Platform Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE COMPANY PLATFORM IS PROVIDED ON AN "AS-IS" BASIS AND COMPANY DISCLAIMS ANY ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. COMPANY DOES NOT WARRANT THAT THE COMPANY PLATFORM IS ERROR-FREE OR THAT OPERATION OF THE COMPANY PLATFORM WILL BE SECURE OR UNINTERRUPTED.

6.3 Third-Party Services Disclaimer. The Company Platform contains links to and may otherwise be integrated with third-party technology and services ("Third-Party Services"), including, without limitation, Third-Party Services offered by Microsoft, Google, Salesforce, Slack and Hubspot. Customer should contact the service administrator or webmaster for a Third-Party Service if Customer has concerns regarding such Third-Party Service. Company is not responsible for and has no control over the content of any Third-Party Services and does not make any representations regarding the content or accuracy of any materials on such Third-Party Services. Any dealings Customer has with third parties found while using the Company Platform are between Customer and the third party, and Customer agrees that Company is not liable for any loss or claim that Customer may have against any such third party. Customer represents and warrants that it agrees to and will not violate the applicable terms and conditions of any Third-Party Services. COMPANY IS NOT RESPONSIBLE FOR THE ACCURACY, AVAILABILITY OR RELIABILITY OF ANY INFORMATION, CONTENT, PRODUCTS, DATA, OPINIONS, ADVICE OR STATEMENTS MADE AVAILABLE IN CONNECTION WITH THE THIRD-PARTY SERVICES. AS SUCH, COMPANY WILL NOT BE LIABLE FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY OR IN CONNECTION WITH USE OF OR RELIANCE ON ANY SUCH THIRD-PARTY SERVICES.

7. LIMITATIONS OF LIABILITY.

7.1 Disclaimer of Consequential Damages. EXCEPT FOR (A) CUSTOMER'S BREACH OF SECTION 1.4 (LICENSE RESTRICTIONS AND RESPONSIBILITIES) ABOVE AND (B) EITHER PARTY'S BREACH OF

SECTION 5 (CONFIDENTIALITY) ABOVE, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, RELIANCE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, LOST OR DAMAGED DATA, LOST PROFITS OR LOST REVENUE, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EVEN IF A PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY THEREOF.

7.2 General Cap on Liability. EXCEPT FOR (A) CUSTOMER'S BREACH OF SECTION 1.4 (LICENSE RESTRICTIONS AND RESPONSIBILITIES) ABOVE, (B) EITHER PARTY'S BREACH OF SECTION 5 (CONFIDENTIALITY) ABOVE, AND (C) LIABILITY ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTIONS 8.1 AND 8.2 BELOW, AS APPLICABLE, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S LIABILITY FOR ALL CLAIMS ARISING UNDER OR RELATING TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE AGGREGATE FEES PAID AND PAYABLE BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

7.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

8. INDEMNIFICATION.

8.1 Indemnification by Company. Company will indemnify, defend and hold Customer and the officers, directors, agents, and employees of Customer ("Customer Indemnified Parties") harmless from settlement amounts and damages, liabilities, penalties, costs and expenses of whatever kind ("Liabilities") that are payable to any third party by the Customer Indemnified Parties (including reasonable attorneys' fees) arising from any claim, demand or allegation by a third party relating to or arising out of a claim that the Company Platform infringes or misappropriates any third party's intellectual property rights (except for claims for which Company is entitled to indemnification under Section 8.2, in which case Company will have no indemnification obligations with respect to such claim). Company will have no liability or obligation under this Section 8.1 with respect to any Liability if such Liability is caused in whole or in part by: (a) modification of the Company Platform by any party other than Company; (b) the combination, operation, or use of the Company Platform with other product(s), data or services where the Company Platform would not by itself be infringing; or (c) unauthorized or improper use of the Company Platform. This Section 8.1 states Company's entire obligation and Customer's sole remedies in connection with any claim regarding the intellectual property rights of any third party.

8.2 Indemnification by Customer. Customer will indemnify, defend and hold Company and the officers, directors, agents, and employees of Company (“Company Indemnified Parties”) harmless from Liabilities that are payable to any third party by the Company Indemnified Parties (including reasonable attorneys' fees) arising from, directly or indirectly, any claim, demand or allegation by a third party that arises out of or is in connection with any use by Customer or its End Users of the Company Platform in violation of (i) this Agreement, or (ii) any applicable law.

8.3 Action in Response to Potential Infringement. If the use of the Company Platform by Customer has become, or in Company’s opinion is likely to become, the subject of any claim of infringement, Company may at its option and expense (a) procure for Customer the right to continue using the Company Platform as set forth hereunder; (b) replace or modify the Company Platform to make it non-infringing so long as the Company Platform has at least equivalent functionality; (c) substitute an equivalent for the Company Platform or (d) if options (a)-(c) are not reasonably practicable, terminate this Agreement.

8.4 Indemnification Procedure. If a Customer Indemnified Party or a Company Indemnified Party (each, an “Indemnified Party”) becomes aware of any matter it believes it should be indemnified under Section 8.1 or Section 8.2, as applicable, involving any claim, action, suit, investigation, arbitration or other proceeding against the Indemnified Party by any third party (each an “Action”), the Indemnified Party will give the other Party (the “Indemnifying Party”) prompt written notice of such Action. The Indemnified Party will cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party will have the right to participate fully, at its own expense, in the defense of such Action with counsel of its own choosing. Any compromise or settlement of an Action will require the prior written consent of both Parties hereunder, such consent not to be unreasonably withheld or delayed.

9. EXPORT CONTROLS; GOVERNMENT MATTERS.

Customer may not remove or export from the United States or allow the export or re-export of the Company Platform, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Company Platform (including the software, documentation and data related thereto) are “commercial items” and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

10. MISCELLANEOUS.

10.1 Entire Agreement. This Agreement, together with the Data Processing Addendum incorporated herein by reference, constitutes the sole and entire agreement between the parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations. To the extent there is a conflict between these terms and conditions and the Order Form, these terms and conditions shall govern unless the Order Form expressly amends these terms and conditions. The exchange of a fully executed Order Form by fax or electronic signature will be sufficient to bind the Parties to these terms and conditions and the Order Form.

10.2 Amendment and Modification; Waiver. The date this Agreement was last updated is set forth at the bottom of this Agreement. Company may amend or modify this Agreement by posting updated terms to this web page and providing Customer with notice to the email address on file with Company. Customer's continued use of the Company Platform following the effective date of any such changes constitutes Customer's acceptance of the revised Agreement. Except as provided in this Section, this Agreement may not be amended, modified, or waived, in whole or part, except in writing and signed by an officer or duly authorized representative of both parties. Any waivers granted under this Agreement are effective only if recorded in a writing signed by the party granting such waiver. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

10.3 Severability. The terms and conditions of this Agreement are severable. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.4 Assignment. Neither Party may assign this Agreement without the other Party's prior written consent; provided, that, either Party may assign this Agreement without such consent to an affiliate or to a successor to all or substantially all of the business or assets to which this Agreement relates, whether by sale of stock, sale of assets, merger, reorganization or otherwise. Any assignment or attempted assignment by either Party in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement will be binding on the Parties and their successors and assigns.

10.5 Counterparts. This Agreement, including the Order Form, may be executed in counterparts, each of which shall be deemed to be an original, but together shall constitute one and the same instrument. The counterparts of this Agreement may be executed and delivered by facsimile or other electronic signature by either Party and the receiving Party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

10.6 Relationship of the Parties. The relationship between the parties is that of independent contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and a Party does not have any authority of any kind to bind the other Party in any respect whatsoever.

10.7 Notices. All notices under this Agreement will be in writing and sent to the recipient's address as set forth in the Order Form and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

10.8 Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service, in whole or in part, as a result of a cause beyond its reasonable control and without its fault or negligence, including, but not limited to, acts of God, acts of war, epidemics, fire, communication line failures, power failures, earthquakes, floods, blizzard, or other natural disasters (but excluding failure caused by a Party's financial condition or any internal labor problems (including strikes, lockouts, work stoppages or slowdowns, or the threat thereof)) (a "Force Majeure Event"). Delays in performing obligations due to a Force Majeure Event will automatically extend the deadline for performing such obligations for a period equal to the duration of such Force Majeure Event. Except as otherwise agreed upon by the Parties in writing, in the event such non-performance continues for a period of thirty (30) days or more, either Party may terminate this Agreement by giving written notice thereof to the other Party.

10.9 Governing Law; Submission to Jurisdiction. This Agreement will be governed by the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions. For all disputes relating to this Agreement, each Party submits to the exclusive jurisdiction of the state and federal courts located in Boston, Massachusetts and waives any jurisdictional, venue, or inconvenient forum objections to such courts.

10.10 Equitable Relief. Customer acknowledges that any unauthorized use of the Company Platform will cause irreparable harm and injury to Company for which there is no adequate remedy at law. In addition to all other remedies available under this Agreement, at law or in

equity, Customer further agrees that Company will be entitled to injunctive relief in the event Customer uses the Company Platform in violation of the limited license granted herein or uses the Company Platform in any way not expressly permitted by this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees. Failure by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

Last updated: May 21, 2024

