



## SAAS TERMS AND CONDITIONS AGREEMENT

This Agreement sets forth the terms under which Memcyco will provide Customer with access to and use of certain cloud-based software-as-a-service offering(s) identified in the applicable Order Form (each a **"SAAS Product"** and collectively, the **"SAAS Products"**) and/or Professional Services. Each SAAS Product will be deemed to include updated versions of same which are made available to Customer as part of the Maintenance and Support services. The Order Form will be: (a) used by Customer to order such SAAS Product; (b) executed by Customer and Memcyco (or one of its authorized resellers, if any); and (c) subject to this Agreement. The Order Form together with this Agreement forms a binding contract between Customer and Memcyco.

### 1. Definitions

**"Accesses"** or **"User Accesses"** means the aggregate number of times that all Users access the Customer website(s) which are enabled with the SAAS Product. For avoidance of doubt, each time that a single User accesses a Customer website which is enabled with the SAAS Product, it counts as a separate, additional Access.

**"Administrator(s)"** means the User(s) designated by Customer who are responsible for administering the SAAS Product and who are issued an Administrator login by Memcyco.

**"Affiliates"** means any entity that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting equity ownership.

**"Agreement"** means these terms and conditions, together with any and all Order Forms referencing these terms and conditions, the Schedules attached hereto and any other statements of work or exhibits.

**"Customer"** means the Customer entity that has executed an Order Form with Memcyco.

**"Customer Data"** means any data provided to Memcyco by Customer or its Users which is processed by and stored within Customer's instance of the SAAS Product.

**"Customer Personal Data"** means any Customer Data that is Personal Data.

**"Documentation"** means the reference, administrative and user manuals which are published by Memcyco and provided by Memcyco to Customer with the SAAS Product, which may be updated from time to time, but excluding any sales or marketing materials.

**"Free Trial"** means any SAAS Product that Memcyco makes available to Customer to try at Customer's option, at no additional charge, and which is clearly designated as "beta," "trial," "pre-GA," "pilot," "developer preview," "free trial," "evaluation," or by a similar designation.

**"Initial Term"** means the initial subscription term specified in the applicable Order Form, excluding any renewal terms.

**"Maintenance and Support"** means the services described on the "Maintenance and Support Guide" attached as Schedule B hereto.

**"Memcyco"** means either Memcyco Inc., a Delaware corporation having its address at 224 W 35th St., Ste 500, New York, NY 10001, or such other Affiliate of Memcyco Inc. which is a party to the Order Form. If a reseller of Memcyco is a party to the Order Form, then "Memcyco" shall mean Memcyco Inc.

**"Standard Contractual Clauses"** means the then-current Standard Contractual Clauses for International Transfers of Personal Data as approved by the European Commission, the United Kingdom, and Switzerland, respectively.

**"Order Form"** means a Memcyco order form or statement of work for initial purchase, add-on purchase or renewal which is executed by Customer and either Memcyco or an authorized reseller of Memcyco, and which specifies the SAAS Product and/or Professional Services to be provided by Memcyco subject to the terms of this Agreement.

**"Personal Data"** means any information relating to an identified or identifiable natural person.

**"Professional Services"** means all services performed by Memcyco pursuant to an Order Form under this Agreement, excluding SAAS Products and Maintenance and Support services.

**"Term"** means the Initial Term specified in the applicable Order Form and any renewal terms.

**"User"** means any of the following, and **"Users"** means all of the following:

- (i) "Internal Registered Users" which means employees and contract workers who are registered as authorized users of the Customer website(s) which are enabled with the SAAS Product;
- (ii) "External Registered Users" which means all individuals other than Internal Registered Users who are registered as authorized users of the Customer website(s) which are enabled with the SAAS Product; and

- (iii) “Guest User” which means individuals who visit the Customer website(s) which are enabled with the SAAS Product without a registered account on such Customer website(s).

## **2. General Terms of Access to the SAAS Product**

**2.1 License.** Subject to the terms of this Agreement and payment of the applicable fees, Memcyco grants to Customer during the Term a non-exclusive, non-transferable, license to permit Users to use the SAAS Product in accordance with the use parameters, pricing, and payment terms described in this Agreement and the applicable Order Form solely for Customer’s own internal business purposes, and in accordance with the terms and conditions of this Agreement. Memcyco shall be entitled to invoice Customer for, and Customer agrees to pay, additional fees calculated at Memcyco’s then-current rates for any usage of the SAAS Product by Customer which exceeds such licensed use parameters. Such additional fee calculation shall apply to the portion of the Term commencing on the start date of the then-next billing cycle for the Customer’s SAAS Product subscription. For example, if the Customer purchases a 3-Year subscription with annual billing and overuse occurs in Year-1, the increased subscription fees shall apply and shall be invoiced for Year-2 and Year-3 but shall not apply retroactively to Year-1.

**2.2 Customer Responsibilities.** Customer and its Users will comply with all applicable laws and regulations, including without limitation Privacy Laws, in connection with its use of the SAAS Product. Customer will not sell, lease, license or sublicense the SAAS Product. Except as permitted by this Agreement, no part of the SAAS Product may be copied, reproduced, distributed, republished, displayed, posted, or transmitted in any form or by any means. Except as permitted by applicable law, Customer agrees not to reverse engineer, decompile, disassemble or otherwise create, attempt to create or derive, or permit or assist anyone else to create or derive the source code of any software provided in connection with the SAAS Product. Customer agrees not to access the SAAS Product by any means other than through the interfaces that are provided by Memcyco.

**2.3 Service Level.** Memcyco’s commitment to the availability of the SAAS Product and related matters are specified on the “Service Level Agreement” attached as Schedule A hereto.

**2.4 Maintenance and Support.** As part of the SAAS Product, Memcyco will provide Customer with Documentation and other online resources to assist Customer in its use of the SAAS Product. Maintenance and Support services are described in the “Maintenance and Support Guide” attached as Schedule B hereto.

### **2.5 Security and Privacy.**

- a. Memcyco shall maintain commercially reasonable administrative, physical and technical safeguards for the protection, confidentiality and integrity of SAAS Product and the Customer’s Confidential Information. Each party shall comply with all applicable privacy laws in performance of its obligations under this Agreement.
- b. **GDPR.** The Data Processing Addendum available at <https://www.memcyco.com/home/wp-content/uploads/2022/09/Memcyco-DPA-Customers-web-4-26-22.pdf> is hereby incorporated into and made part of this Agreement and shall apply solely with regard to the processing of the Customer Personal Data of data subjects who are covered under the then-current General Data Protection Regulation adopted by the European Union (“**EU GDPR**”), the United Kingdom General Data Protection Regulation (“**UK GDPR**”) the Swiss Federal Act on Data Protection (“**Swiss FADP**”), other countries which have adopted or adopt in the future the terms of such regulation and the California Consumer Privacy Act of 2018 (“**CCPA**”).
- c. **Cross-Border Transfers.** The parties acknowledge that operation of the SAAS Product in the ordinary course of usage is likely to require international transfers of Customer Personal Data and the Customer hereby agrees to such transfers. The parties hereby agree to the Standard Contractual Clauses available at <https://www.memcyco.com/mmco/standard-contractual-clauses/> which are hereby incorporated into and made part of this Agreement and shall apply solely with regard to those cross-border transfers of Customer Personal Data which are required to be covered by Standard Contractual Clauses. The parties hereby acknowledge and agree that for purposes of the Standard Contractual Clauses, Customer shall be deemed to be the “Controller” and Memcyco shall be deemed to be the “Processor.”

**2.6. Implementation.** Professional Services for implementation and training ordered by Customer as set forth in the applicable Order Form will be performed in accordance with Memcyco’s customary practices for the level of services purchased. Implementation is performed remotely unless otherwise specified.

## **3. Confidentiality**

**3.1 Confidential Information.** For purposes of this Agreement, “**Confidential Information**” shall include the terms of this Agreement, each party’s proprietary technology, business processes and technical product information, designs and any information that is clearly identified in writing at the time of disclosure as confidential. Notwithstanding the foregoing, Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the Receiving Party; (4) the Receiving Party becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party; (5) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information; or (6) is aggregate

data regarding use of Memcyco's products and services that does not contain any personally identifiable or Customer-specific information.

**3.2 Non-Disclosure Obligations.** Each party agrees: (a) to keep confidential all Confidential Information; (b) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by the Disclosing Party; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information) and (d) to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need-to-know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or a regulation.

#### **4. Ownership of SAAS Product; Marks**

**4.1 SAAS Product.** Customer agrees that all intellectual property rights, title and interest in and to the SAAS Product and Documentation (including all updates, enhancements and derivative works thereof and thereto) are owned exclusively by Memcyco or its licensors. Except as provided in this Agreement, the time-limited access license, in the nature of a subscription, granted to Customer does not convey any rights in the SAAS Product, express or implied, or ownership in the SAAS Product or any intellectual property rights thereto. In addition, Memcyco shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the SAAS Product any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Users, relating to the operation of the SAAS Product.

**4.2 Statistical Usage Data.** Memcyco owns the statistical usage data derived from the operation of the SAAS Product, including log data, and the performance results for the SAAS Product ("Usage Data"). Nothing herein shall be construed as prohibiting Memcyco from utilizing the Usage Data for purposes of operating Memcyco's business; provided that the Usage Data shall be de-identified and presented in the aggregate so that it will not disclose the identity of Customer or any User(s) to any third party.

**4.3 Marks.** Any rights not expressly granted herein are reserved by Memcyco. Memcyco service marks and trademarks, logos and product and service names are marks of Memcyco (the "**Memcyco Marks**"). Customer agrees not to display or use the Memcyco Marks in any manner without Memcyco's express prior written permission. The trademarks, logos and service marks of Third-Party Application providers ("**Marks**") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party who may own the Mark.

#### **5. Payment Terms - Taxes**

**5.1** In consideration of the right to use the SAAS Product(s) and any associated professional services, Customer will pay the fees specified in the applicable Order Form within 30 days of receipt of invoice ("**Fees**"), unless provided otherwise in the Order Form. All amounts are payable in U.S. dollars unless otherwise specified in the applicable Order Form. Payments which are more than 30 days late will incur interest at the rate of one and one-half percent (1 1/2%) per month or the maximum allowed by law, whichever is less, on such delinquent amount from the due date thereof until the date of payment.

**5.2. Taxes.** All Fees payable under the applicable Order Form are exclusive of and do not include taxes or duties of any kind. Customer will be responsible for, and will promptly pay, all taxes and duties of any kind, including, but not limited to, any applicable sales tax, use tax, value added tax (VAT) or other similar taxes, if any, associated with this Agreement or Customer's receipt or use of the SAAS Product, excluding taxes based on Memcyco's gross or net income. If Customer is a tax-exempt organization and is not obligated to pay taxes arising out of this Agreement, Customer will provide Memcyco with any required documentation to verify its tax-exempt status with the applicable taxing authorities.

#### **6. Warranties**

**6.1 Warranty of Functionality.** Memcyco warrants that the SAAS Product will achieve in all material respects the functionality described in the Documentation applicable to the SAAS Product purchased by Customer. Customer's sole and exclusive remedy for Memcyco's breach of such warranty shall be that Memcyco shall be required to use commercially reasonable efforts to modify the SAAS Product to achieve in all material respects the functionality described in the Documentation and if Memcyco is unable to restore such functionality, Customer shall be entitled to terminate the Agreement and receive a prorated refund of any prepaid subscription fees for the remaining terminated portion of the Term. Memcyco shall have no obligation with respect to such a warranty claim unless notified of such claim within six months of the first instance of any material functionality problem.

**6.2 Professional Services Warranty.** Memcyco warrants that all Professional Services provided to Customer will be performed in a competent professional manner by individuals who have the requisite education, training, and experience to perform the applicable Professional Services.

**6.3 No Virus Warranty.** Memcyco warrants that the SAAS Product will utilize an updated version of industry standard anti-virus and malware application to check for and remove viruses, Trojan horses, worms, spyware, or other such malicious code (“**Malicious Code**”), except that Memcyco shall not be responsible for any Malicious Code contained in Customer-uploaded attachments or otherwise originating from Customer or its Users.

**6.4 Disclaimer.** *EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, MEMCYCO DOES NOT REPRESENT THAT CUSTOMER’S USE OF THE SAAS PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THE SAAS PRODUCT WILL MEET ALL OF CUSTOMER’S REQUIREMENTS OR THAT THE OVERALL SYSTEM OUTSIDE OF MEMCYCO’S OWNERSHIP AND/OR CONTROL THAT MAKES THE SAAS PRODUCT AVAILABLE (THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER’S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN THIS AGREEMENT ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY MEMCYCO. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.*

**6.5 Free Trials.** If Customer uses a Free Trial of a SAAS Product, Memcyco will make such Free Trial available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period specified in the applicable Order Form, (b) the start date of any SAAS Product subscription purchased by Customer for such SAAS Product, or (c) termination of the Free Trial by Memcyco in its sole discretion. A free trial period may be extended upon mutual agreement by Memcyco and Customer. Notwithstanding anything to the contrary in this Agreement, a Free Trial is provided “AS IS.” MEMCYCO MAKES NO REPRESENTATION OR WARRANTY AND SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO A FREE TRIAL. MEMCYCO SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO A FREE TRIAL SERVICE, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE MEMCYCO’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO A FREE TRIAL SERVICE IS US\$1,000. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 7 (“LIMITATION OF LIABILITY”).

## **7. Limitation of Liability**

**7.1** *TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COST OF COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).*

**7.2** *EXCEPT WITH REGARD TO AMOUNTS PAYABLE BY CUSTOMER UNDER THIS AGREEMENT, THE MAXIMUM LIABILITY OF EITHER PARTY TO THE OTHER OR ANY THIRD PARTY WHATSOEVER ARISING OUT OF OR IN THE CONNECTION WITH THIS AGREEMENT, INCLUDING THE USE OR OTHER DEPLOYMENT OF THE SAAS PRODUCT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, SHALL IN NO CASE EXCEED THE EQUIVALENT OF 12 MONTHS IN SUBSCRIPTION FEES FOR THE SAAS PRODUCT THAT IS THE SUBJECT OF THE CLAIM.*

## **8. Indemnification**

**8.1 Memcyco Indemnity.** Memcyco shall, at its own expense and subject to the limitations set forth in this Section 8, defend Customer from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively “**Claims**”) alleging that the SAAS Product, as used in accordance with the terms and conditions of this Agreement, infringes the copyrights, trade secrets, patents or trademarks of such third party and shall hold Customer harmless from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys’ fees) (collectively, “**Losses**”) to the extent based upon such a Claim. Excluded from these indemnification obligations are Claims to the extent arising from (a) use of the SAAS Product in violation of this Agreement or applicable law, (b) use of the SAAS Product after Memcyco notifies Customer to discontinue use because of an infringement claim, (c) modifications to the SAAS Product not made by Memcyco, or (d) use of the SAAS Product in combination with any software, application or service not provided by Memcyco. If a Claim is brought or threatened, Memcyco shall, at its sole option and expense, use commercially reasonable efforts either (a) to procure for Customer the right to continue using the SAAS Product without cost to Customer; (b) to modify or replace all or portions of the SAAS Product as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and provide to the Customer any pro-rata refund of the subscription fees pre-paid under the Agreement for the remaining terminated portion of the Term. The rights and remedies granted to Customer under this Section 8.1 state Memcyco’s entire liability, and Customer’s exclusive remedy, with respect to any claim of infringement of the intellectual property rights of any third party.

**8.2 Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section 8, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party’s cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising

therefrom. The indemnification obligations under this Section 8 are expressly conditioned upon the indemnified party's compliance with this Section 8.2. The indemnification obligations contained in this Section 8 shall survive termination of this Agreement for the later of the conclusion of a Claim or one year.

## **9. Termination**

**9.1 Termination for Cause, Expiration.** Either party may immediately terminate this Agreement and any applicable Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement that is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party shall expressly state all of the reasons for the claimed material breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and shall be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("**Notice**").

**9.2 Procedures upon Termination.** Upon termination or expiration of this Agreement for any reason, Customer shall have no rights to continue use of the SAAS Product. If this Agreement is terminated as a result of Customer's material breach of the Agreement, then Memcyco shall be entitled to all of the Fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of Memcyco's material breach of this Agreement, then Customer shall be entitled to a refund of the pro rata portion of any prepaid subscription fees paid by Customer to Memcyco under this Agreement for the remaining terminated portion of the Term.

**10. Suspension of the SAAS Product for Delinquent Account.** Memcyco reserves the right to suspend Customer's and any Customer Affiliates' access to and/or use of the SAAS Product for any accounts for which any payment is due but unpaid but only after Memcyco has provided Customer at least two (2) delinquency notices, and at least forty-five (45) days have passed since the transmission of the first such notice. Customer agrees that Memcyco shall not be liable to Customer or to any Customer Affiliate or other third party for any suspension of the SAAS Product pursuant to this Section.

## **11. General Provisions**

**11.1 Notices.** Notices between the parties to assert, preserve or defend contractual and/or other legal rights or obligations hereunder will be by personal delivery, overnight delivery, or certified or registered mail, return receipt requested, and will be deemed given upon receipt at the address of the recipient party or ten (10) days after deposit in the mail, or via email with confirmation of receipt. Addresses used will be the ones set forth above or such other address as a party hereto will notify the other in writing.

**11.2 Severability.** In the event of any invalidity of any provision of this Agreement, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement, and further agree to substitute for the invalid provision a mutually agreeable valid provision that most closely approximates the intent of the invalid provision.

**11.3 Headings.** The headings in this Agreement are for convenience of reference only and have no legal effect.

**11.4 No Third-Party Beneficiaries.** This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

**11.5 Assignment.** Neither party may assign, transfer, or delegate any of its rights and obligations under this Agreement without the prior written consent of an authorized representative of the other party except a party may assign this Agreement by operation of law or otherwise to any other party in connection with a merger, acquisition, reorganization, or a sale of substantially all of its assets (or additionally in the case of Memcyco, all of the technology assets comprising or relating to the SAAS Product) without prior consent of the other party. Any assignment in violation of this Agreement will be void and of no force and effect. All the terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

**11.6 Relationship.** Each party hereto is an independent contractor, and neither party is, nor will claim to be, a legal representative, partner, franchisee, agent, or employee of the other. This Agreement sets forth the Parties' entire liability and exclusive remedies relating to this Agreement and the SAAS Product provided to Customer under this Agreement.

**11.7 Publicity.** Customer agrees that Memcyco may use Customer's name, logo or trademarks to identify Customer as a customer of Memcyco in Memcyco's marketing materials and issue public announcements and press releases regarding this Agreement.

**11.8 Force Majeure.** Neither party will be liable to the other for a failure or delay in its performance of any of its obligations under this Agreement (except for the payment of amounts due hereunder) to the extent that such failure or delay is caused by circumstances beyond its reasonable control or by events such as fire, riot, flood, labor disputes, natural disaster, regulatory action, internet or telecommunications failures, terrorist acts, or other causes beyond such party's reasonable control, provided that the non-performing party gives notice of such condition and continues or resumes its performance of such affected obligation to the maximum extent and as soon as reasonably possible.

**11.9 Counterparts and Electronic Signatures.** This Agreement may be executed in counterparts, each of which will constitute an original, and all of which will constitute one agreement. A signature transmitted via facsimile, scanned original or third-party e-signature system will be deemed an enforceable signature for the purpose of demonstrating the signing party's assent to the Agreement.

**11.10 Entire Agreement.** This Agreement (including the Schedules hereto) constitutes the entire understanding and agreement between the parties with respect to the subject matter addressed herein and supersedes any and all prior or contemporaneous oral or written communications with respect to the subject matter hereof, all of which are merged herein. In the event of a conflict between the foregoing terms and conditions and any Schedules to this Agreement, the foregoing terms and conditions will control. The parties agree that in the event Customer utilizes a purchase order, any term therein which purports to modify or supplement the terms of this Agreement will be void with no force or effect. Any provisions necessary to interpret the respective rights and obligations of the parties hereunder will survive any termination or expiration of this Agreement, regardless of the cause of such termination or expiration.

**11.11 The Applicable Terms.** If Memcyco makes a material change to any applicable contract terms contained in a URL, then Memcyco will notify Customer by either sending an email to the notification email address or posting a notice in the Administrator's view of Customer's account. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify Memcyco within thirty (30) days after receiving notice of the change. If Customer notifies Memcyco as required, then Customer will remain governed by the URL terms in effect immediately prior to the change until the end of the then current Term for the affected SAAS Product. If the affected SAAS Product is renewed, it will be renewed under Memcyco's then current URL terms and conditions.

**11.12 Governing Law.** If Customer's address, as stated in the applicable Order Form, is located in the United States: (i) this Agreement will be governed by the laws of the State of New York, excluding its rules regarding conflicts of law, (ii) venue for any dispute hereunder will be a court of competent jurisdiction located in New York County, New York, and (iii) the parties irrevocably submit to the exclusive jurisdiction of such courts. If Customer's address, as stated in the applicable Order Form, is located outside of the United States: (a) this Agreement will be governed by the laws of England and Wales, excluding its rules regarding conflicts of law, (b) venue for any dispute hereunder will be a court of competent jurisdiction located in London, England, and (c) the parties irrevocably submit to the exclusive jurisdiction of such courts. All proceedings will be conducted, including all documents presented in such proceedings, in the English language. The English language version of this Agreement prevails over any other language version.

**11.13 Dispute Resolution.** Each party agrees that before it or any employee, agent or representative of the party files a claim or suit with a federal or state agency or court or other public forum, it shall provide thirty (30) days prior written notice to the other and that, within such thirty (30) day period (or longer, if extended by mutual desire of the parties), authorized representatives of the parties shall meet (or confer by telephone) at least once in a good faith attempt to resolve the perceived dispute.

*[End of main portion of Agreement. Schedules to follow]*

## Schedule A - Service Level Agreement

This Service Level Agreement (“**SLA**”) is a Schedule to the Memcyco Terms and Conditions between Memcyco Inc. and Customer, which is hereby incorporated by reference. This SLA applies to the SAAS Product during the Term as set forth in the applicable Order Form. The SAAS Product shall be operated on the Memcyco Network (as defined below).

### 1. Availability

a. Formula. The SAAS Product will, subject to the exceptions listed below, be available 99.7% of the time during each calendar month from the time that the SAAS Product is being used in Customer’s production environment following completion of implementation services (referred to herein as the “**Availability Commitment**”). The Availability Commitment does not apply to sandbox, beta and other test environments. The availability of the SAAS Product for a given month will be calculated according to the following formula (referred to herein as the “**Availability**”):

Where: 
$$\begin{aligned} \text{Total minutes in the month} &= \text{TMM} \\ \text{Total minutes in the month the SAAS Product is unavailable} &= \text{TMU} \end{aligned}$$

And: 
$$((\text{TMM}-\text{TMU}) \times 100)/\text{TMM}$$

b. For purposes of this calculation, the SAAS Product will be deemed to be unavailable (referred to herein as “**Unavailable**”) only (i) if the SAAS Product does not respond to HTTP requests issued by Memcyco’s monitoring software, or (ii) for the duration of a Severity-1 Error as defined in the Maintenance and Support Guide attached as a Schedule to the Agreement. Further, the SAAS Product will not be deemed Unavailable for any downtime or outages that result from the exceptions set forth in Section 2 of this SLA. Customer acknowledges that Memcyco’s system logs, records and data will provide the basis for SLA calculations and determinations.

### 2. Exceptions

a. The SAAS Product will not be considered to be Unavailable (and minutes will not accrue as TMU) for any downtime or outages that result from any maintenance performed by Memcyco during the standard Memcyco implementation period for the SAAS Product and any custom configuration services performed at Customer’s request which require deactivation to perform.

b. The Memcyco network extends to, includes, and terminates at the data center located router that provides the outside interface of each of Memcyco’s WAN connections to its backbone network providers (referred to herein as the “**Memcyco Network**”). The SAAS Product will not be considered Unavailable (and minutes will not accrue as TMU) for any downtime or outages that result from: (i) Customer’s information content or application programming, acts or omissions of Customer or its agents; (ii) delays or failures due to circumstances beyond Memcyco’s reasonable control that could not be avoided by its exercise of due care (including Force Majeure events as set forth in the Agreement); or (iii) failures of the Internet backbone itself and the network by which Customer connects to the Internet backbone or any other network unavailability outside of the Memcyco Network.

**3. Remedies** Subject to the exceptions provided for in this SLA, Customer will have the rights set forth below:

a. If the total Availability (as calculated above) for a given month is less than the Availability Commitment, Customer will receive one (1) Service Credit. In addition, for each 100-minute increment by which the allowable Unavailability is exceeded, Customer will receive one (1) additional Service Credit.

b. For purposes of this SLA, a Service Credit will be deemed to be an amount equal to the pro-rata fees for one (1) day of the subscription to the affected SAAS Product (herein referred to as a “**Service Credit**”). The total Service Credits for a given month will, in no event, exceed an amount equal to fifty percent (50%) of the then-current pro-rata monthly fees for the Subscription to use the affected SAAS Product. Service Credits will be applied as a credit to extend the Term of the applicable subscription term for the affected SAAS Product.

c. If the applicable SAAS Product fails to achieve the Availability Commitment, then Customer will be entitled as its sole and exclusive remedy, to Service Credits for the applicable SAAS Product in accordance with the terms set forth in this Section 3.

d. Remedies will not accrue if Customer is not current on its payment obligations (i.e., no Service Credits will be issued, and an outage will not be considered Unavailable for purposes of this SLA).

e. Upon written request from Customer, Memcyco will promptly provide a report specifying the level of Unavailability and Service Credits due (if any) for the requested month. To receive Service Credits, Customer must submit such request within ninety (90) days after the end of the month to which the request pertains.

f. Customer shall also have the additional remedy of termination of this Agreement upon written notice if Memcyco fails to meet Availability of at least 95% in two consecutive months or any three months in a six-month period.



## Schedule B – Maintenance and Support Guide

### TECHNICAL SUPPORT FOR MEMCYCO SAAS PRODUCT

This Maintenance and Support Guide is a Schedule to the Memcyco Terms and Conditions between Memcyco Inc. and Customer. This Schedule sets forth the terms, conditions, and procedures under which maintenance and technical support ("**Support**") is offered for the current and one prior version of the SAAS Product during the Term as set forth in the applicable Order Form.

**1. Scope.** Support will consist of: (i) telephone and web support to isolate, trouble shoot and resolve Errors, (ii) correction of Errors; and (iii) any Updates to the SAAS Products. Unless specified in the order form, Maintenance and Support will not include: (a) set-up, installation, or configuration of hardware and software; or (b) training or consultation regarding use of the SAAS Products.

"Error" means a reproducible failure of the SAAS Product to perform in substantial conformity with the specifications set forth in the Documentation.

"Updates" shall mean all improvements, updates, enhancements, error corrections, release notes, upgrades and changes to the SAAS Product and Documentation, as developed by Memcyco and made generally available without a separate charge to its installed base of licensees of the SAAS Products.

**2. Reporting an Error.** Customer agrees to: (i) provide Memcyco with reasonable detail of the nature of and circumstances surrounding the Error, (ii) provide a contact person with knowledge of the Error and availability to troubleshoot. Customer must first open a support ticket on Memcyco's website. For Critical Errors Customer must then contact the Memcyco Technical Support by phone at the number indicated below. Please see below for the contact information for Customer Support.

**Web:** <https://portal.memcyco.com>

**Phone:** US: + 1 (917) 997-1994 UK: + 44 (20) 3769-1836 Israel: +972-3-771-1884

**Email:** [support@memcyco.com](mailto:support@memcyco.com)

### 3. Error Severity Levels

Severity Level	Initial Response Time
<b>1 – Critical Error</b>  The SAAS Product is down or extremely impaired, production system is seriously impacted.	4 hours (24 x 7) Telephone / Web
<b>2 – Significant Error</b>  The software is mostly operational, and production is not seriously impacted.	8 hours (M-F, 8am-8pm EST) Telephone / Web
<b>3 – Minor Error</b>  Minor operational issue.	48 hours (M-F, 9am - 6pm EST) Web

**4.** Memcyco has no obligation to provide any Support to Customer: (i) for any software, hardware or other element of the Customer environment not provided by Memcyco, (ii) if Customer has used the SAAS Product in a manner that conflicts with the Documentation or instructions provided by Memcyco, including failure to follow implementation procedures, or (iii) if Customer has failed to replace earlier versions of the SAAS Product with Updates made available to Customer.

**5. Support for Previous Versions of the SAAS Product.** Memcyco shall provide Support for any of the following releases of the SAAS Product: (a) the then-current Generally Available (GA) release; and (b) the then-immediately prior GA release.