



Subscription and Services Agreement

This XFACTOR.IO SUBSCRIPTION AND SERVICES Agreement ("Agreement") is entered into between XFACTOR.IO, Inc. ("XFACTOR") and the customer identified on the order that incorporates this Agreement by reference (THE "Order"), and such customer, "Customer"), and is effective as of the effective date of such Order (the "Effective Date"). THE INDIVIDUAL ACCEPTING THIS AGREEMENT ON BEHALF OF CUSTOMER REPRESENTS THAT THEY THE AUTHORITY TO BIND CUSTOMER TO THIS AGREEMENT. XFACTOR and Customer may also be referred to individually as "Party" or collectively as the "Parties" under this Agreement. Certain capitalized terms are defined in Section 1 (Definitions) and others are defined contextually in this Agreement.

1. Definitions:

- **"Affiliate"** means an entity that controls, is controlled by, or is under common control of a Party, where "control" means ownership or control, directly or indirectly, of more than fifty percent (50%) of the voting interest of such entity or party (but only for so long as such control exists) or the right to otherwise control the decision making of the subject entity.
- **"Aggregated Usage Data"** means usage information reflecting the access or use of the Subscription Services by or on behalf of Customer or a User, including learnings and information on technical logs, User visits, predictive models and analytics, as well as statistical, functional, behavioral, or other information or data based on or derived from any of the foregoing.
- **"Customer Data"** means any content, data, and information, including Personal Data (as described within Section 2.2), and other related materials submitted by Customer or a User to the Services, including from Third Party Applications. Customer Data excludes Aggregated Usage Data and any suggestion, enhancement request, recommendation, correction, or other Feedback relating to the operation of the Subscription Services pursuant to Section 6.4.
- **"Documentation"** means the official Xfactor-provided standard usage documentation and related information applicable to the Services, whether in electronic, paper, or equivalent form, as updated by Xfactor.io from time to time.
- **"Harmful Code"** means code, files, scripts, agents, malware, or programs intended to do harm, including but not limited to viruses, worms, time bombs, and Trojan horses.
- **"Order"** means a written or electronic order form, executed by the Parties, identifying the Services (including Beta Services as applicable), Usage Metrics, and other information relevant to a specific transaction between Customer and Xfactor.io. Each Order will be governed by this Agreement and is incorporated herein by this reference.
- **"Personal Data"** means Customer Data relating to an identified or identifiable natural person.
- **"Professional Services"** means the implementation, technical, consulting, training, and related services provided by or through Xfactor.io, as described in the relevant Order or SOW.
- **"Services"** means collectively, as applicable, Subscription Services, Support Services, and Professional Services, Customer has ordered, and Xfactor.io has agreed to provide, as indicated on the applicable Order.
- **"Statement or Work"** or **"SOW"** means a document executed by the Parties describing Professional Services purchased by Customer pursuant to an Order. Each SOW will be governed by this Agreement and is incorporated herein by this reference.
- **"Subscription Services"** means the Xfactor.io software-as-a-service Go-to-Market platform, and all associated Updates, offered on a subscription basis by Xfactor.io via an Order that provides the functionality described in the Documentation.

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- **"Subscription Term"** means the entire period during which Customer is entitled to use the Subscription Services, including the initial term and any applicable renewal terms, as set forth on the applicable Order.
- **"Support Services"** means Xfactor.io's customer support for the Subscription Services as set forth at the Service Levels and Support Services linked in the Order, as may be updated from time to time by Xfactor.io, provided that Xfactor.io shall not make any changes to the Support Services during the Subscription Term that materially reduces the overall Support Services provided therein.
- **"Third Party Applications"** means any product, service, add-on, or platform not provided by Xfactor.io that Customer may opt to use with the Subscription Services as further described in Section 4.
- **"Updates"** means all updates and enhancements that Xfactor.io makes generally available, at no additional charge, to its customers of the Subscription Services identified in an Order and licensed hereunder pursuant to Section 2.3.
- **"Usage Metrics"** means the solutions, quantities, charges and related metrics used to determine the scope of Customer's access and use of the Services and associated fees, as set out in an Order.
- **"Users"** means the individual or agent authorized by Customer to use the Subscription Services. Users include employees, consultants, agents, and other third parties accessing the Subscription Services on Customer's behalf pursuant to this Agreement.

2. Provision of Services

- **2.1 Access to Subscription Services.** Subject to Customer's compliance with this Agreement and timely payment of applicable Fees (described below), during the Subscription Term, Xfactor.io will make the Subscription Services available to Customer for Customer's internal business use at the Usage Metrics purchased by Customer, and in accordance with applicable law. Customer agrees that its purchase and use of the Subscription Services are not contingent on any future functionality or features, or dependent on any oral or written public comments made by Xfactor.io regarding future functionality or features.
- **2.2 Protection of Customer Data.** Xfactor.io will maintain administrative, technical, and physical safeguards designed to protect the security, confidentiality, and integrity of Customer Data. Where Customer's use of the Services includes the processing of Personal Data subject to applicable data protection laws, it will be governed by the Data Protection Addendum located at DPA that is incorporated into this Agreement by reference. Customer will only provide Xfactor.io the minimum amount of Personal Data necessary to enable Customer to use the Services in accordance with this Agreement.
- **2.3 Changes to Services.** Subject to Subsection 8.2(b) below, Xfactor.io, may issue new releases for the Services during the Subscription Term which may include Updates, enhancements, or other modifications which will be included in the Fees set out in the Order.
- **2.4 Support Services.** During the Subscription Term, the Subscription Services will be subject to the service levels and terms of the Support Services.
- **2.5 Beta Services.** Xfactor.io may invite Customer and Users to discuss or evaluate certain pre-release or beta services (collectively "Beta Services"). Customer may accept or decline any such evaluation. Beta Services designated by Xfactor.io as Beta Services (e.g., "beta," "design partner," "non-production evaluation", or other similar designation) are solely for Customer's internal evaluation purposes. If Customer opts into a Beta Service, Customer agrees to participate in usage and other testing and provide Feedback (as defined below) about the Beta Services, as reasonably requested by Xfactor.io. Beta Services may be inoperable, incomplete, or include features not intended for release. Unless otherwise stated in an Order, any Beta Services evaluation period will expire upon the earlier of one (1) year from the evaluation start date or the date that a version of the Beta Services becomes generally available, unless such Beta Services are earlier discontinued by Xfactor.io in its sole discretion. Xfactor.io may discontinue Beta Services at any time and may never make Beta Services generally available.
Notwithstanding anything else in this Agreement, Beta Services are provided "as is" and Xfactor.io offers no warranty, indemnity, Support Services, and Xfactor.io will have no liability for, and Customer hereby releases Xfactor.io from any liability or damage arising out of or in connection with any Beta Service.

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3. Use of Services

- **3.1 Users.** Only Users are permitted to access and use the Services. Customer will be responsible for: (a) Users' compliance with this Agreement and any Order(s) issued hereunder; (b) the accuracy and quality of Customer Data, the means by which Customer acquired Customer Data, and obtaining appropriate usage rights with respect to Customer Data; (c) maintaining the confidentiality of usernames, passwords, and other account information (as applicable); (d) all activities that occur under its Users' usernames, passwords, or accounts as a result of Users' access to the Subscription Services; and (e) ensuring Users' use the Services only in accordance with (i) Documentation, and (ii) all applicable laws and government regulations. Customer will notify Xfactor.io immediately of any unauthorized use of, or access to, the Subscription Services. Customer acknowledges that Xfactor.io may contact Customer and Users in connection with their use of the Services.
- **3.2 Restrictions.** Customer will not: (a) make any Services available to any third party other than Customer or Users; (b) sell, resell, license, sublicense, distribute, rent, or lease any Services, or include any Services in a service bureau or outsourcing offering; (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Services to store or transmit Harmful Code; (e) interfere with or disrupt the integrity or performance of the Services or any third-party data contained therein; (f) permit direct or indirect access to or use the Services in a way that circumvents the Usage Metrics, or use the Services to access any Xfactor.io intellectual property, except as expressly permitted under this Agreement, an Order, or the Documentation; (g) frame or mirror any part of the Services, other than framing on Customer's own intranet(s) (as applicable), or otherwise for its own legitimate business purposes or as permitted in this Agreement; (h) access the Services in order to build a competitive product or service or to benchmark with a non-Xfactor product or service; (i) reverse engineer, copy, decompile, disassemble, or modify any software included as part of the Services (except to the extent expressly permitted by applicable law in conflict with this restriction); (j) utilize the Services for improper, fraudulent, or other non-legitimate business purposes; or (k) damage, interfere, disable, or impair the Services in any way.
- **3.3 Support Service Hours.** Xfactor.io shall provide the Support Services and resolve Outages between the hours of **8:00 AM ET and 6:00 PM ET** on weekdays, excluding US holidays.
- **3.4 Unlawful Use of Services.** Customer acknowledges that the Services may only be used for transactions that are permitted by law. Illegal use of any of the Services will be deemed a material breach of this Agreement, and such Services may be terminated at Xfactor.io's reasonable discretion.
- **3.5 Affiliates.** Customer's Affiliate(s) may purchase Services under this Agreement if such Affiliate directly enters into an Order with Xfactor.io, and by doing so such Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Each Affiliate's Orders, and the corresponding Usages Metrics, are separate and distinct from Customer's and other Affiliates' unless otherwise set forth on the Order.

4. Third-Party Applications:

Third Party Applications may be available to Customer, including via Xfactor.io's APIs, for use with the Services. By using Third-Party Applications, Customer permits Xfactor.io to grant such Third-Party Applications access to Customer Data or other data as required for the use and support of such Third-Party Applications in conjunction with the Services. Third-Party Applications are subject to the third-party provider's additional terms and may require an additional fee to such providers in order to use the Third-Party Applications. The Services may contain features designed to interoperate with Third-Party Applications. Such features are not considered Services under this Agreement. Xfactor.io may cease providing such features for any reason, including if the provider of the Third-Party Application ceases to make the Third-Party Application available for interoperation with the Services, without entitling Customer to any refund, credit, or compensation from Xfactor.io. Notwithstanding Xfactor.io's obligations in the DPA, Xfactor.io is not responsible for and offers no warranty with respect to Third-Party Applications or their use or protection of Customer Data.

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5. Fees and Payments

- 5.1 Fees. Customer will pay Xfactor.io all fees as set forth in the applicable Order or SOW ("**Fees**"). Except as set forth in Section 8.2, all payment obligations are non-cancelable, and Fees paid are non-refundable.
- 5.2 Payment Terms. Except as otherwise set forth in the applicable Order, all Fees will be billed annually in advance. All invoices for Fees are due and payable within the time frame and in United States Dollars ("**USD**") set forth in the applicable Order, without deduction or setoff. Interest accrues from the due date at the higher of 1.5% per month or the highest rate allowed by law ("**Late Payment Interest**"). Customer is responsible for providing complete and accurate billing and contact information to Xfactor.io and notifying Xfactor.io of any changes to such information. If Customer fails to pay any undisputed portion of a past due invoice within ten (10) business days after receiving notice that its account is overdue, Xfactor.io may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full ("**Non-Payment Suspension**"). Xfactor.io will not be obligated to continue to provide Services without payment of applicable Fees.
- 5.3 Use of Purchase Orders. No additional or inconsistent terms of any purchase order, or other form provided by Customer, will modify or supplement this Agreement, regardless of any failure of Xfactor.io to object to such terms, and any such additional or inconsistent terms in the purchase order will be void.
- 5.4 Taxes. Customer is responsible for any sales, use, Goods and Services Taxes ("**GST**"), value-added, withholding or similar taxes or levies that apply to its Orders (identified or not), whether domestic or foreign ("**Taxes**"), other than Xfactor.io's income tax. Fees and expenses are exclusive of Taxes.

6. Proprietary Rights and Licenses

- 6.1 Ownership; Reservation of Rights. As between Xfactor.io and Customer, all rights, title, and interest in and to all intellectual property rights in the Services and Xfactor.io's Confidential Information are and will remain owned exclusively by Xfactor.io and its licensors. Ownership in all Updates, derivatives, modifications, new functionalities, enhancements, and customization related to the Services created by or on behalf of Xfactor.io will immediately vest in Xfactor.io upon creation. Unless otherwise specified in the applicable SOW, all deliverables provided in the performance of Professional Services are owned by Xfactor.io and will be made available as part of the Subscription Services provided under this Agreement. Nothing in this Agreement will preclude or restrict Xfactor.io from using or exploiting any concepts, ideas, techniques, or know-how of or related to the Services. Other than as expressly set forth in this Agreement, no license or other rights in or to the Services or other Xfactor.io intellectual property rights are granted to Customer, and all such rights are expressly reserved to Xfactor.io and its licensors.
- 6.2 Customer Data. As between Customer and Xfactor.io, Customer Data, and Customer Confidential Information are and will remain owned exclusively by Customer or the User, as applicable. Customer hereby grants Xfactor.io, its Affiliates, and its subprocessors a worldwide, limited-term license to utilize Customer Data (subject to Section 2.2) as necessary for Xfactor.io to analyze, host, copy, transmit, display, access, and otherwise use Customer Data to provide the Xfactor.io Services in accordance with this Agreement and each Order executed hereunder.
- 6.3 Aggregated Usage Data. Customer agrees that Xfactor.io and its Affiliates may collect, process, use, and otherwise derive Aggregated Usage Data for its own analysis, models, marketing, support, and other lawful business purposes (e.g., improving Xfactor.io Services). Xfactor.io will only disclose Aggregated Usage Data if such data is (a) aggregated or anonymized, and (b) does not disclose the identity of Customer, Personal Data of its Users, or any Customer Confidential Information.
- 6.4 Feedback. To the extent that Customer or its Users provide any recommendations, suggestions, proposals, ideas, improvements, or other feedback regarding the Services or Documentation ("**Feedback**"), Customer hereby grants Xfactor.io an irrevocable, perpetual, royalty-free license to use, incorporate, and further develop such Feedback without any restrictions or attribution.

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7. Confidentiality

- 7.1 Definition of Confidential Information. "**Confidential Information**" means all information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Xfactor.io includes the Services including any discussions or information related to any Beta or pre-production Services; and Confidential Information of each Party includes the terms of this Agreement and all Orders (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information does not include any information that the Receiving Party can demonstrate (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party.
- 7.2 Protection of Confidential Information. The Receiving Party will (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (b) not use any Confidential Information for any purpose outside the scope of this Agreement; and (c) except as otherwise expressly consented to by an authorized representative of the Disclosing Party, limit access to Confidential Information to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less restrictive than those herein. Neither Party will disclose the terms of this Agreement or any Order to any third party other than its Affiliates, legal counsel, and accountants without the other Party's prior written consent, on condition that a Party that makes any such disclosure to its Affiliate, legal counsel, or accountants will remain responsible for such Affiliate's, legal counsel's, and accountants' compliance with this "Confidentiality" Section.
- 7.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information to the extent compelled by law to do so, on condition that the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the compelled disclosure. If the Receiving Party is compelled by law to disclose Confidential Information as part of a proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

8. Representation, Warranties, Exclusive Remedies, Disclaimers

- 8.1 General Warranty. Each Party represents and warrants that it has validly entered into this Agreement and has the legal power to do so.
- 8.2 Xfactor.io Limited Warranties. Xfactor.io warrants that (a) the Subscription Services will perform materially in accordance with the applicable Documentation; (b) Xfactor.io will not materially decrease the overall functionality of the Services during the current Subscription Term; (c) Xfactor.io will use industry standard measures to prevent Xfactor.io from introducing Harmful Code through the Subscription Services; and (d) Xfactor.io will perform the Professional Services in a diligent and professional manner. Customer's exclusive remedy and Xfactor.io's entire liability for a breach of the above warranties will be the correction of the deficient service that caused the breach of warranty, provision of comparable functionality, or, if Xfactor.io cannot accomplish the foregoing in a commercially reasonable manner, as determined in its reasonable discretion, Xfactor.io may terminate the deficient service and refund to Customer the Fees for the terminated Service that Customer prepaid to Xfactor.io, prorated to cover the remaining portion of the Subscription Term following notice of the breach of warranty.

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- **8.3 Disclaimers.** Except as expressly provided herein, neither Party or its licensors makes any warranty of any kind, whether express, implied, statutory, or otherwise, and each Party and its licensors specifically disclaim all implied warranties, including any implied warranty of merchantability, fitness for a particular purpose, title, or non-infringement, to the maximum extent permitted by applicable law. Xfactor.io does not warrant that Services will be error-free or uninterrupted, will meet Customer's requirements or expectations, or that its security measures will be sufficient to prevent third-party access to Customer Data.

9. Indemnification

- **9.1 Indemnification by Xfactor.io.** Xfactor.io will defend any claim brought against Customer by a third-party to the extent such claim alleges that Customer's use of the Subscription Services (as authorized in this Agreement, and as provided by Xfactor.io to Customer) infringes any valid and enforceable third-party patent, copyright, or validly registered trademark, or misappropriates a third-party trade secret (a "Claim"). If a third party makes a Claim against Customer, Xfactor.io will pay all damages (including reasonable attorneys' fees) finally awarded against Customer by a court of competent jurisdiction, or the settlement agreed to by Xfactor.io.
- If any Claim is brought or threatened, or if Xfactor.io reasonably believes that the Subscription Services may become the subject of a Claim, Xfactor.io may, at its sole option and expense (1) procure for Customer the right to continue to use the applicable Subscription Service; (2) modify the Subscription Service to make it non-infringing; (3) replace the affected aspect of the Subscription Service with non-infringing technology having substantially similar capabilities; or (4) if Xfactor.io determines none of the foregoing is commercially practicable, terminate this Agreement upon thirty (30) days' written notice and refund Customer any prepaid Fees related to the Subscription Services prorated for the remainder of the Subscription Term.
- Xfactor.io's defense and indemnity obligations do not apply to the extent that, and Xfactor.io will have no liability with respect to (1) any modification of the Subscription Services made by anyone other than Xfactor.io, (2) any use of the Subscription Services in combination with software, products, or services not provided by Xfactor.io, (3) any Third-Party Applications; (4) Services under an Order for which there is no charge; (5) Customer's use of the Subscription Services not in compliance with this Agreement; or (6) Customer's failure to use any modification or Update provided by Xfactor.io. This indemnity states **Xfactor.io's entire liability, and Customer's exclusive remedy, for any third-party Claims as described in Section 9.1.**
- **9.2 Indemnification by Customer.** Customer will defend any claim brought against Xfactor.io by a third party to the extent such claim relates to the Customer Data (if used by Xfactor.io in accordance with this Agreement) or Third-Party Applications built by or on behalf of Customer. If a third party makes such a claim against Xfactor.io, Customer will pay all damages (including reasonable attorneys' fees) finally awarded against Xfactor.io, (or amounts agreed in a monetary settlement) with respect to such claim. This indemnity states Customer's entire liability, and Xfactor.io's exclusive remedy, for any third-party claims as described in this Section 9.2.
- **9.3 Procedure.** The defense and indemnity obligations above are conditioned upon the indemnified Party providing the indemnifying Party with (a) prompt written notice, (b) sole control over the defense and any settlement negotiations, and (c) all information and assistance reasonably requested by the indemnifying Party in connection with the defense or settlement of the indemnifiable claim, on condition that the indemnified Party's prior written consent will be required with regard to any settlement that imposes any obligation or liability on the indemnified Party, such consent not to be unreasonable withheld, conditioned, or delayed. The indemnified Party may appear in connection with such claims, at its own expense, through counsel reasonably acceptable to the indemnifying Party.

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10. Limitation of Liability

- 10.2 Exclusion of Damages. Neither Party (or its Affiliates) will be liable for any loss of profits, revenues, or goodwill, or business interruption, loss of anticipated savings, loss of use, costs of substitute goods or services, work stoppage, or any indirect, special, incidental, exemplary, punitive, or consequential damages arising out of or relating to this Agreement, however caused, and based on any theory of liability, whether for breach of contract, breach of warranty, tort (including negligence), product liability, or otherwise, even if such Party is advised of the possibility of such damages. The foregoing disclaimer will not apply to the extent prohibited by law.
- 10.3 Limitation of Liability. A Party's (and its respective Affiliates') aggregate cumulative liability for all damages arising out of or related to this Agreement or the Services will not exceed the applicable Subscription Fees paid or payable to Xfactor.io for the Subscription Services giving rise to the claim during the twelve (12) month period immediately preceding the claim. The existence of more than one claim will not expand this limit. The liability limitations under this Section 10.3 will not apply to (a) Customer's obligations to pay Fees due under this Agreement; (b) Customer's breach of Sections 3.1 or 3.2; (C) either Party's gross negligence, willful misconduct, or fraud; or (D) either Party's negligence on-site during the performance of Professional Services that results in death, personal injury, or damage to tangible property.

11. Term and Termination

- 11.1 Term of Agreement. This Agreement will commence on the Effective Date and continue until terminated as permitted herein (the "Term"). If there are no active Orders, this Agreement may be terminated by either Party upon ninety (90) days' prior written notice.
- 11.2 Subscription Term. The initial Subscription Term and any applicable renewal Subscription Term will commence and expire in accordance with the start date and end date set forth in the Order. Unless otherwise specified in an Order, a Subscription Term will automatically renew for one (1) year on the same terms, unless either Party gives the other Party written notice (email is sufficient) of non-renewal at least thirty (30) days before the end of the relevant Subscription Term. Any new Service subsequently added to Customer's subscription will be coterminous with the current Subscription Term.
- 11.3 Suspension. In the event of Customer's or a User's breach of this Agreement, including without limitation for Non-Payment Suspension or violation of the restrictions in Section 3.2, Xfactor.io may, in its reasonable discretion, suspend Customer's or a User's access to or use of the Subscription Services. Notwithstanding the foregoing, Xfactor.io will use good-faith, reasonable efforts, unless the circumstances dictate otherwise, to reasonably notify Customer or a User via email before taking the foregoing actions.
- 11.4 Termination. Either Party may terminate this Agreement or any Order by written notice if the other Party is in material breach of this Agreement, where such material breach is not cured within thirty (30) days after written notice of the breach from the non-breaching Party, or with immediate effect where such material breach cannot be cured. For the avoidance of doubt, Customer's noncompliance with Section 3.2 is deemed a material breach of this Agreement. This Agreement may be terminated by either Party with immediate effect if the other Party becomes the subject of a petition in bankruptcy or other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors, and such petition or proceeding is not dismissed within forty-five (45) days.

11.5 Data Export & Deletion.

- **(a)** During a Subscription Term, Customer may export Customer Data from the Subscription Services or Xfactor.io may provide Professional Services subject to Xfactor.io's prevailing rates as further described in an Order or SOW executed hereunder.
- **(b)** After termination or expiration of this Agreement, within sixty (60) days of request, Xfactor.io may delete Customer Data and each Party will delete any Confidential Information of the other in its possession or control, provided that a Receiving Party may retain Confidential Information in accordance with its standard back up or retention policies or as required by applicable law, subject to the confidentiality provisions of the Agreement, including the DPA.

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- **11.6 Effect of Termination.** Upon the termination of this Agreement for any reason: (a) all outstanding Orders and access to the Subscription Services will automatically terminate; (b) Customer and its Users will immediately cease access and use of the Subscription Services, other than for retrieval purposes provided in above Section 11.5; (c) all outstanding payment obligations of Customer will become due and payable immediately. Except where an exclusive remedy is provided herein, exercising a remedy under this Agreement, including termination, does not limit other remedies a Party may have.
- **11.7 Surviving Provisions.** The Sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Representation, Warranties, Exclusive Remedies, Disclaimers", "Term and Termination," "Indemnification," "Limitation of Liability," and "General Provisions" will survive any termination of this Agreement.

12. General Provisions

- **12.1 Publicity and Reference.** Customer grants Xfactor.io the right to use Customer's company name and logo as a reference for marketing or promotional purposes on Xfactor.io's website and in other public or private communications with existing or potential customers, subject to Customer's standard trademark usage guidelines as provided to Xfactor.io from time-to-time. If, at any time, Customer does not wish to be used as a Xfactor.io reference, Customer may revoke such grant in part or in whole by sending an email stating its intent to: comms@xfactor.io.
- **12.2 Export Control.** Each Party will comply with all applicable Export Control and Sanctions Laws and Regulations in connection with providing and using the Services. Without limiting the foregoing, (a) each Party represents that it is not listed on any list of entities or individuals who are restricted from receiving U.S. services or items subject to U.S. jurisdiction (including but not limited to the Specially Designated Nationals and Blocked Persons List and the Entity List) nor is it owned or controlled by any such listed entity; (b) Customer will not, and will ensure that Users do not, violate any Export Control and Sanctions Laws and Regulations, or cause any such violation to occur; and (c) Customer will not use or cause any person to use the Services to store, retrieve, or transmit technical data controlled under the U.S. International Traffic in Arms Regulations.
- **12.3 Anti-Corruption.** Neither Party has promised, made, or received any bribe, kickback, or other similar payment or transfer of value from or to any director, officer, employee, agent, or other representative of the other Party in connection with this Agreement. Reasonable gifts, entertainment, sponsorships, and donations do not violate the above restriction.
- **12.4 U.S. Government Rights.** If Customer, or any User, is a branch, agency, or instrumentality of the United States Government, the following provision applies: The Services and Documentation comprise "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies in 48 C.F.R. 227.7202-1 and 22.7202-3.
- **12.5 Governing Law & Dispute Resolution.** This Agreement will be governed by and construed under the laws of the State of California without reference to conflict of laws principles. The provisions of the United Nations Convention of Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Acts will not apply to this Agreement in any manner whatsoever. The Parties will be subject to the exclusive jurisdiction of the state and federal courts located in San Francisco, California, and the Parties agree and consent to the exclusive jurisdiction and venue of such courts.
- **12.6 Notices.** Any required notice will be given in writing by customary means with receipt confirmed at the address of each Party set forth on the Order, or to such other address as either Party may substitute by written notice to the other; provided however, Xfactor.io may send operational and related notices to Customer and/or Authorized Users through the Subscription Services. Notices will be deemed to have been given at the time of actual delivery in person, one (1) day after delivery to an overnight courier service, three (3) days after deposit via certified mail, or upon confirmation of receipt if sent by email.

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- **12.7 Force Majeure.** Neither Party will be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in its performance under this Agreement (except for payment of Fees) due to any cause beyond its reasonable control, including without limitation elements of nature or acts of God, war, riots, civil disorders, rebellions, revolutions, pandemics or epidemics (or similar regional health crisis), actions or decrees of governmental bodies, acts or threats of terrorism, strikes, labor disputes, failure of utilities or telecommunications, or other causes beyond the reasonable control of the affected Party (each a "Force Majeure Event"). The Party suffering a Force Majeure Event will use reasonable efforts to mitigate against the effects of such Force Majeure Event.
- **12.8 Assignment.** Neither Party may assign this Agreement, in whole or part, without the prior written consent of the other Party, which will not be unreasonably withheld, and any other attempt to transfer a Party's rights or obligations under this Agreement will be void; however, either Party may assign this Agreement without consent to an Affiliate, in the event of a merger, corporate reorganization, or to a purchaser of a Party's business entity in the event of a sale of all or substantially all of its business or assets relating to this Agreement, or other change of control, on condition that the purchaser is not a competitor of the other Party. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Any other attempt to transfer a Party's rights or obligations under this Agreement is void.
- **12.9 Attorneys' Fees and Costs.** The prevailing party in any action to enforce this Agreement will be entitled to recover its reasonable attorneys' fees and costs in connection with such action.
- **12.10 Relationship of the Parties.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- **12.11 Subcontractors.** Xfactor.io may use subcontractors, and other third-party providers ("Subcontractors") in connection with the performance of its own obligations hereunder as it deems appropriate; provided that Xfactor.io remains responsible for the performance of each such Subcontractor. For purposes of clarity, Xfactor.io will remain responsible for third-party vendors that qualify as "subprocessors" as contemplated by the DPA and obligations as described in Section 2.2 above.
- **12.12 Entire Agreement; Order of Precedence.** This Agreement (together with any SOWs, Orders, and linked terms) contains the entire agreement of the Parties concerning the subject matter of this Agreement and supersedes all prior communications, representations, agreements, and understandings, either oral or written, between the Parties with respect to its subject matter. This Agreement may only be amended or waived by a writing signed by both Parties. In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (1) the DPA, (2) the Order, (3) SOW, (4) this Agreement, and (5) any links provided herein.
- **12.13 Modifications.** Xfactor.io may modify the terms of this Agreement (including any terms or policies referenced herein as applicable) from time to time, with notice to Customer as set forth in Section 12.6 (Notices) or by posting the updated and/or modified Agreement on Xfactor.io's website. Customer can review the most current version of the Agreement at anytime by visiting the web site. The revised Agreement will become effective on (a) the date set forth in the notice or (b) the effective date of the posted change (above), whichever is later. If Customer (or any Authorized User) access or uses the Subscription Services after the effective date, such use will constitute Customer's acceptance of any revised terms and conditions.
- **12.14 Miscellaneous.** If a provision of this Agreement is unenforceable or invalid, the provision will be revised so as to best accomplish the objectives of the Parties as evidenced by this Agreement, and the remainder of this Agreement will continue in full force. This Agreement is in the English language only, which language is controlling in all respects, and all versions of this Agreement in any other language are for accommodation only and will not be binding on the Parties. Waiver of any term of this Agreement or forbearance to enforce any term by either Party will not constitute a waiver as to any subsequent breach or failure of the same term, or a waiver of any other term of this Agreement. There are no third-party beneficiaries to this Agreement, and Customer acknowledges that Xfactor.io will have no obligations or liability whatsoever to any third parties with which Customer does business.