

# Implied General Terms and Conditions

## IMPORTANT - READ CAREFULLY BEFORE INSTALLING OR USING THE IMPLIED PRODUCTS.

**Effective:** February 1, 2022

This Master Agreement (“**Agreement**”) sets forth the specific terms under which Implied provides Customer, the entity or person placing an order for or accessing, Implied’s software products and services. This Agreement includes these terms and conditions, all Schedules, and Order Form(s) hereunder which are incorporated herein and made a part of this Agreement by reference, and contain, among other things, warranty disclaimers and liability limitations. Customer’s (or your) purchase, receipt and, use of Implied’s products and services are subject to the terms of this Agreement. You agree that this Agreement is enforceable like any written agreement signed by you.

If you are accessing or using Implied’s software products and services as an employee, contractor, or agent of a corporation, partnership or similar entity, then you must be authorized to sign for and bind such entity in order to accept the terms of this Agreement, and you represent and warrant that you have the authority to do so. The rights granted under this Agreement are expressly conditioned upon acceptance by such authorized personnel.

The “**Effective Date**” of this Agreement is the date which is the earlier of (a) Customer’s initial access to any software products or services (as defined below) through any online provisioning, registration or order process or (b) the effective date of the first Order Form or Partner Order Form, as applicable, referencing this Agreement. This Agreement will govern Customer’s initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

Modifications to this Agreement. From time to time, Implied may modify this Agreement. Unless otherwise specified by Implied, changes become effective for Customer upon renewal of the then-current software license term or entry into a new Order Form after the updated version of this Agreement goes into effect. Implied will use reasonable efforts to notify Customer of the changes through communications to

Customer by email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a license term or entering into a new Order Form, and in any event continued use of Implied’s software product or services after the updated version of this Agreement goes into effect will constitute Customer’s acceptance of such updated version.

## TERMS AND CONDITIONS

This Agreement sets forth the specific terms under which Implied provides Customer with products and services as set forth on the Order Form.

### 1. ORDER PROCESS.

**1.1 Order Form.** Each Order Form shall incorporate by reference the terms of this Agreement as though such provisions were set forth therein. If the terms of the Order Form conflict with the terms of this Agreement, the terms of the Order Form shall prevail but only to the extent the term is expressly superseded in the Order Form. Orders created by Customer through Implied's SaaS portal are deemed accepted when Implied provides access to the service environment selected by Customer. Implied's acknowledgement of or performance in response to Customer's purchase order shall constitute Implied's acceptance of Customer's offer to purchase, use and/or license the Software and/or Services in accordance with the terms and conditions of this Agreement and shall constitute an Order Form hereunder, provided, if a purchase order contains any terms or conditions that are different from or additional to the terms and conditions set forth in this Agreement, then Implied expressly rejects such different or additional terms and conditions, and such different or additional terms and conditions will not become a part of the agreement between the parties.

**1.2 Customer Affiliates.** Customer Affiliates may license Implied's products and services by executing Order Forms. By entering into an Order Form with Implied, a Customer Affiliate agrees to be bound by the terms and conditions of this Agreement as if it were an original Party hereto, and the terms of this Agreement that apply to Customer shall apply to the Customer Affiliate.

**1.3 Partner Order.** Customer may procure Software and Services directly from a reseller or other Implied-authorized distributor or reseller ("**Partner**") pursuant to a separate agreement that includes the partner order form and other commercial terms (a "**Partner Transaction**"). Implied will be under no obligation to provide Software and Services to Customer if it has not received the partner's order form

for Customer. Partner is not authorized to make any changes to this Agreement or otherwise authorized to make any warranties, representations, promises or commitments on behalf of Implied or in any way concerning the Software and Services. If Customer licensed the Software and Services through a Partner Transaction, then Customer agrees that Implied may share certain data and other information with the Partner related to Customer's access and use of the Software and Services.

## 2. FEES AND PAYMENT TERMS.

**2.1 Fees.** Customer shall pay all fees in accordance with the payment terms specified on the applicable Order Form. Except as otherwise specified in this Agreement, all payment obligations are non-cancelable and all fees are nonrefundable.

**2.2 Invoicing and Payment.** Except for online orders, Implied will invoice Customer in advance. All invoices are payable within thirty (30) days of the invoice date unless otherwise provided in the Order Form. Customer will be deemed to have received an invoice on: (i) the first business day after sending by electronic mail or, (ii) the second business day after mailing. Customer is responsible for providing complete and accurate billing and contact information and notifying Implied of any changes to such information. All payments are nonrefundable except as provided in this Agreement and are made without the right of setoff or chargeback. Implied reserves the right to charge a service fee in the amount of one percent (1%) per month on late payments. If Customer fails to pay fees in accordance with this section, Implied may suspend fulfilling its obligations under this Agreement until such payment is received by Implied.

**2.3 Credit Card or ACH Payments.** For online orders paid by credit card or ACH transfer, Implied uses a third-party processing service to process such payments. Customer consents to the use of such service and to the transfer of Customer's credit card or ACH details to such third-party processor. Customer agrees to be bound by any separate terms applicable to the processing service. Customer's credit card will be charged or ACH transfer will occur automatically for Customer's use of the Software or Services at the end of each billing cycle.

**2.4 Taxes.** Unless otherwise stated on the applicable Order Form, the fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is solely responsible for paying all applicable Taxes associated with its purchases hereunder. If Implied has the legal obligation to pay or collect Taxes for which Customer is responsible under this subsection, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Implied with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Implied is solely responsible for taxes assessable against it based on its income, property and employees.

**2.5 Partner Orders.** If Customer has procured the Software or Services through a Partner Transaction, then different terms regarding invoicing, payment and taxes may apply as specified between Customer and the Partner. Customer acknowledges that: (a) Implied may share information with the Partner related to Customer's use of Implied's Software or Services; (b) the termination provisions below will also apply if Customer's Partner fails to pay applicable fees; and (c) Partner is not authorized to make any changes to this Agreement or

otherwise authorized to make any warranties, representations, promises or commitments on behalf of Implied or in any way concerning the Software or Services.

### 3. CONFIDENTIALITY.

**3.1 Scope and Definition.** “**Confidential Information**” means all information of a Party (“**Disclosing Party**”) disclosed to the other Party (“**Receiving Party**”), whether orally or in writing, that is designated in writing or identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Software, logins, and other access codes and any and all information regarding Implied’s business, products and services are the Confidential Information of Implied. Customer Data is the Confidential Information of Customer. The Confidential Information of each Party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, pricing and business processes disclosed by such Party. Further, this section 3 will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt from Disclosing Party; (ii) is or has become public knowledge or publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by the personnel of the Receiving Party without access to or use of Confidential Information of the Disclosing Party.

**3.2 Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will: (i) not use the Disclosing Party’s Confidential Information except as needed to fulfill its obligations under this Agreement; (ii) not disclose such Confidential Information to any person or entity, other than its Affiliates, employees, consultants, agents and professional advisers who have a “need to know” for the Receiving Party to exercise its rights or perform its obligations hereunder, provided that such Affiliates, employees, consultants, and agents are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this section; and (iii) use the same degree of care as it uses to protect the confidentiality of its own Confidential Information of like kind, but in no event less than a reasonable degree of care.

**3.3 Compelled Disclosure.** If the Receiving Party is required by applicable law or court order to make any disclosure of Confidential Information, it will first give written notice of such requirement to the Disclosing Party (to the extent permitted by applicable law), and, to the extent within its control, permit the Disclosing Party to intervene in any relevant proceeding to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection.

**3.4 Equitable Relief.** The Receiving Party acknowledges that unauthorized disclosure of the Disclosing Party's Confidential Information may cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient remedy and, therefore, that upon any such unauthorized disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or in equity.

**3.5 Data Privacy and Security.** Unless a separate data processing addendum is entered into by the Parties, each Party shall comply with the Customer Data Processing Addendum ("**DPA**") located at [www.imply.io/legal](http://www.imply.io/legal) (or such successor URL as may be designated by Implied), which is incorporated herein by this reference. By each Party's acceptance and agreement to the terms and conditions of this Agreement, each Party is deemed to have signed the DPA, including the Model Clauses as "Data exporter" in the case of Customer, and as "Data importer" in the case of Implied. Implied will use appropriate administrative, physical and technical safeguards designed to prevent unauthorized access to, use or disclosure of Customer Data, as more fully described in its Security Addendum ("**Security Addendum**") located at [www.imply.io/legal](http://www.imply.io/legal) (or such successor URL as may be designated by Implied). Customer acknowledges that the content of the Security Addendum is subject to technical progress and development and that Implied may update or modify the Security Addendum from time to time; provided, however, that such updates and modifications will not result in the degradation of the overall security of the Implied's Software.

**3.6 Customer Usage Data.** Customer agrees that Implied is free to disclose anonymized aggregate measures of Customer's Software and Service usage and performance, and to reuse all general knowledge, experience, know-how, works and technologies (including ideas, concepts, processes and techniques) acquired during provision of the Software and Services ("**General Knowledge**"), including that it could have acquired performing the same or similar services for another customer. Customer further agrees that Implied shall have the right to create anonymized compilations and analyses of Customer's Software and Service use that is combined with data from numerous other customers ("**Aggregate Data**"), and to create reports, evaluations, benchmarking tests, studies, analyses and other work product from such Aggregate Data ("**Analyses**"). Implied shall have exclusive ownership rights to, and the exclusive right to use and distribute, such Aggregate Data and Analyses for any purpose, including, but not limited to advertising, marketing, and promotion of networking opportunities to other clients and prospective customers of its Software and Services; provided, however, that Implied shall not distribute Aggregate Data and Analyses in a manner that identifies Customer.

## **4. SOFTWARE LICENSE GRANT.**

**4.1 License Grant.** Subject to the terms and conditions of this Agreement, Implied hereby grants Customer a non-exclusive, non-transferable, non-sublicensable right to install, access and use the Software and

Documentation during the license term for Customer's internal business purposes. Implied will deliver the Software and Documentation to Customer by providing Customer with access to Implied's Site to download and/or use (depending on License Type) the Software and access to the Documentation, and through email, the access keys, on or before the delivery date as specified in the applicable Order Form or as otherwise agreed to by the Parties. The Software shall be deemed to be accepted upon delivery of the access keys or account log-in credentials.

**4.2 License Type.** Except for Software licensed on an Evaluation or Pre-Release basis, the license type ("License Type") shall be as set forth on the applicable Order Form. The License Types are as follows:

(i) "Software-as-a-Service" ("SaaS") means the Software is offered as a service and

hosted on Implied's servers.

(ii) "Hybrid License" means the on-premise offering of the Software, which is hosted by Customer, and under which Implied may have access to Customer Data at Customer's election.

(iii) "On-Premise License" means the on-premise offering of the Software, which is hosted by Customer, and under which Implied has no access to Customer Data.

**4.3 Evaluation License.** If Customer licenses the Software for evaluation purposes, Customer's use of the Software is only permitted in a non-production environment and expires thirty days from initial download or access. Notwithstanding any other provision in this Agreement, an Evaluation License of the Software is provided "as is" without indemnification, support or warranty of any kind, expressed or implied.

**4.4 Pre-Release License.** From time to time, Implied may make available certain products, features, services, or software that are not yet generally available. These pre-release offerings are not at the level of performance of a commercially available product offering and may not operate correctly and may be substantially modified prior to first commercial release, or, at Implied's option, may not be released commercially in the future.

Notwithstanding any other provision in this Agreement, access and use of the pre-release software is solely for the Licensee's internal evaluation purposes and is provided "as is" without indemnification, support, or warranty of any kind, expressed or implied.

**4.5 Restrictions on Use.** Except as otherwise expressly provided in this Agreement, Customer shall not (and shall not permit any third party to): (i) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make

any external commercial use of, outsource, or use in an application service provider or managed service provider environment, or otherwise generate income from the Software; (ii) copy the Software onto any public or distributed network, except for an internal and secure cloud computing environment; (iii) cause the decompiling, disassembly, or reverse engineering of any portion of the Software, or attempt to discover any source code or other operational mechanisms of the Software except where such restriction is expressly prohibited by law without the possibility of waiver, and then only upon prior written notice to Implied; (iv) modify, adapt, translate or create derivative works based on all or any part of the Software; (v) modify any proprietary rights notices that appear in the Software, Documentation, or components thereof; (vi) publish the results of any benchmarking tests run on the Software; (vii) use any Software in violation of any applicable laws and regulations (including any export laws, restrictions, national security controls and regulations), for any harmful, irresponsible or inappropriate purpose or outside of the license scope set forth in this Agreement; (viii) circumvent, disable or otherwise interfere with security-related features of the Software or features that prevent or restrict use or copying of any content or that enforce limitations on use of the Software; (ix) take any action that imposes or may impose an unreasonable or disproportionately large load on Implied's infrastructure or infrastructure which supports the Software.

**4.6 Documentation.** Implied will make available on its Site on the date the Software is delivered or made available to Customer at no additional charge an online copy of all generally available Documentation for the Software. Customer may make a reasonable number of copies of the Documentation for Customer's internal use, provided Customer reproduces copyright notices and any other legends of ownership on each copy.

## **5. SERVICES.**

**5.1 Support Services.** "Support" is defined as the responsibilities with respect to the Software as set forth in the applicable Order Form. "Maintenance" means the provision of error corrections and bug fixes for the Software, as well as updates made generally commercially available by Implied in its sole discretion. Implied will provide Support Services for the Software in accordance with its Support Service terms and as further described in the applicable Order Form(s).

**5.2 Consulting Services.** Customer may order Consulting Services which shall be subject to the terms of the Consulting Services Schedule.

## **6. REPRESENTATIONS AND WARRANTY.**



**6.1 Mutual Representations.** Each Party represents and warrants that it has the right to enter into this Agreement and any Order Form, doing so will not interfere with its contractual obligations to any third party, and the executed Agreement or Order Form shall constitute a valid binding obligation of such Party.

**6.2 Warranty Disclaimer.** Except for the limited warranties provided in this Agreement and any statutory warranty requirements which may not be limited or excluded, the Software, Documentation and Services, provided hereunder are provided “as is” and Implied makes no warranties, whether express, implied or statutory regarding or relating to the Software, Documentation and Services provided to Customer under this Agreement. Implied does not represent or warrant that the Software, Documentation and Services will be delivered free of any interruptions, delays, omission or errors or in a secure manner. The Software, Documentation and Services may be subject to limitations, delay and other problems inherent in the use of the internet and electronic communications. Implied is not responsible for any delays, delivery failures, or loss of data or damages resulting therefrom. THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ALL SUCH WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. IMPLIED AND ITS AFFILIATES DISCLAIM ALL WARRANTIES AND RESPONSIBILITY FOR THIRD PARTY SOFTWARE.

**7. CUSTOMER OBLIGATIONS.** Customer will: (i) provide Implied with all information and assistance required to provide the Software and Services and enable Customer’s use thereof; and (ii) is primarily responsible for Customer Data including the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer’s use of Customer Data within the Software and Services; (iii) immediately notify Implied of any unauthorized access, use, copying, distribution, or other suspected security breach in connection with the Software; (iv) not send to Implied or otherwise use any Customer Data in connection with this Agreement for which Customer does not own or has not procured sufficient license, right, consent and permission to copy, disclose, store, broadcast, transmit, or otherwise use in connection with the Software or Services; (v) not upload or transmit any Customer Data that impose heightened privacy, security or other obligations on Implied, without its express written consent, including, without limitation unencrypted or unmasked: (a) bank, credit card or other financial account identification or login credentials, (b) social security, tax, driver’s license or other government issued identification numbers, or (c) health records of a particular individual, including “protected health information” as defined by HIPAA; and (vi) be responsible for all activity that occurs in Customer’s or its Users’ accounts (and any transactions completed under Customer’s accounts will be deemed to have been lawfully completed by Customer). If Customer’s License Type is SaaS, in addition to the obligations above, Customer (vii) must register and set up an authorized account to use the SaaS; (viii) must keep its passwords secure and confidential and use commercially reasonable efforts to prevent unauthorized access to its account; and (ix) is responsible for all activity in its account.



**8. INTELLECTUAL PROPERTY.** Implied and its suppliers own and shall retain all proprietary rights, including all copyright, patent, trade secret, trademark and all other Intellectual Property Rights, in and to the Software, Documentation, and the results of any Service deliverables, and any and all related and underlying technology and documentation; and any derivative works, modifications, or improvements to any of the foregoing, including any Feedback that may be incorporated. Notwithstanding anything to the contrary herein, Implied may freely use and incorporate into Implied's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback provided by Customer or by any users of the Software and Services relating to Implied's Software and Services ("**Feedback**"). Customer acknowledges that the rights granted under this Agreement do not provide Customer with title to or ownership of the Software or Documentation. Customer retains all right, title and interest in and to the Customer Data.

**9. INDEMNIFICATION; LIMITATION OF LIABILITY; AND DISPUTE RESOLUTION.**

**9.1 Implied Indemnification.** Implied will indemnify, defend or settle any action brought against Customer to the extent that it is based upon a claim that the Software, as delivered under this Agreement and used within the scope of this Agreement, directly infringes any patent or copyright or misappropriates any trade secret, provided the infringement or misappropriation is not a result of Customer's actions, and will pay any damages that are finally awarded against Customer or agreed in settlement by Implied (including reasonable attorney fees) for such infringement or misappropriation, provided that Customer: (i) must notify Implied in writing of the claim no later than thirty (30) days after Customer learns; (ii) reasonably cooperates with Implied and provides Implied, at Implied's expense, with all assistance, information, and authority reasonably required for the defense and settlement of the claim; and (iii) grants Implied the sole control of the defense and all related settlement negotiations. This section and Implied's indemnification obligations shall survive the termination of the Agreement.

**9.2 Customer Indemnification.** Customer will indemnify, defend or settle any action brought against Implied and its officers, employees, and/or agents to the extent that it is based upon a claim arising out of or from the Customer Data including but not limited to claims of infringement of any patent or copyright or misappropriation of any trade secret, or a claim for violation of applicable law; or Customer's use of the Software or Services. Customer will pay any damages that are finally awarded against Implied (including reasonable attorney fees), provided that Implied: (i) must notify Customer of the claim no later than 30 days after Implied learns of the claim; (ii) reasonably cooperates with Customer and provides Customer, at Customer's expense, with all assistance, information, and authority reasonably required for the defense and settlement of the claim; and (iii) grants Customer the sole control of the defense and all related settlement negotiations provided that such settlement does not impose any costs or material disadvantage on or to Implied and is not without Implied's prior written consent. This section and Customer's indemnification obligations shall survive the termination of the Agreement.

**9.3 Injunctive Relief.** If an injunction is, or in Implied's opinion is likely to be, threatened, sought or obtained against Customer's use of the Software as a result of a third party infringement claim, Implied may, at its sole option and expense, (i) procure for Customer the right to continue using the affected Software, (ii) replace or modify the affected Software with functionally equivalent software so that it does not infringe, or (iii) terminate the Software License and refund any pre-paid but unused fees received from Customer for the then outstanding Software License term on a pro rata basis, if applicable.

**9.4 Disclaimer of Liability.** Implied shall have no liability or obligations, including those forth in Section 9.1, for any third party claim, if (i) Customer is in breach of the Agreement; or (ii) the claim is based on infringement or misappropriation arising from (a) modifications made by a party other than Implied to the Software or Service results, if the claim would not have occurred but for such modifications; (b) Customer's failure to use the then current, unaltered version of the applicable Software (including any maintenance release provided by Implied to avoid a claim); (c) any open source software or third party software; or (d) Customer's use of the Software or Service other than in accordance with this Agreement and the Documentation. Sections 9.1 and 9.4 constitute the entire liability of Implied, and Customer's sole and exclusive remedy, with respect to any third-party claims of infringement or misappropriation of intellectual property rights of any kind.

**9.5 Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:

(I) IN NO EVENT SHALL IMPLIED OR ITS AFFILIATES BE LIABLE TO CUSTOMER OR ITS AFFILIATES FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE;

(II) DURING THE ENTIRE TERM OF THIS AGREEMENT, THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY MATERIAL BREACH OF ANY PROVISION OF THIS AGREEMENT OR FOR ANY WARRANTY SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO IMPLIED IN THE PRIOR 12 MONTHS UNDER THE APPLICABLE ORDER FORM(S) OR STATEMENT OF WORK PRIOR TO THE ALLEGED BREACH.

(III) IMPLIED AND ITS AFFILIATES' TOTAL LIABILITY TO CUSTOMER AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE), SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO IMPLIED IN THE PRIOR 12 MONTHS

UNDER THE APPLICABLE ORDER FORM(S) OR STATEMENT OF WORK TO WHICH SUCH LIABILITY RELATES (“**GENERAL LIABILITY CAP**”);

(IV) IN THE CASE OF CLAIMS RELATED TO BREACH OF THE DPA OR SECURITY ADDENDUM (“**DATA PROTECTION CLAIMS**”), IMPLY AND ITS AFFILIATES’ TOTAL LIABILITY TO CUSTOMER AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED TWO TIMES (2X) THE GENERAL LIABILITY CAP;

(V) IN NO EVENT SHALL IMPLY (OR ITS AFFILIATES) BE LIABLE FOR THE SAME CLAIM OR EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE DATA PROTECTION CLAIMS CAP. IF CUSTOMER (AND/OR ITS AFFILIATES) HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE DATA PROTECTION CLAIMS CAP;

(VI) THE PARTIES AGREE THAT THIS SECTION WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE; AND

(VII) THE APPLICABLE MONETARY CAPS SET FORTH IN THIS SECTION SHALL APPLY ACROSS THIS AGREEMENT AND ANY AND ALL SEPARATE AGREEMENT(S) ON AN AGGREGATE BASIS, WITHOUT REGARD TO WHETHER ANY INDIVIDUAL CUSTOMER AFFILIATES HAVE EXECUTED A SEPARATE AGREEMENT IN ACCORDANCE WITH SECTION 1.2 (CUSTOMER AFFILIATES).

## **10. TERM AND TERMINATION.**

**10.1 Term.** This Agreement shall commence as of the Effective Date and shall remain in effect through the term on the Order Form unless terminated as provided in this section. Monthly SaaS Customers may discontinue their use of the SaaS at any time for any reason by following the process in the Implied SaaS portal to terminate its order. Discontinuing use of SaaS alone will not relieve Customer of any incurred fees and payment obligations, nor entitle Customer to a refund of any pre-paid amounts.

**10.2 Suspension.** Implied may suspend Customer's access to the SaaS: (i) if Implied considers it necessary to prevent or terminate any actual or suspected use of the of the SaaS in violation of this Agreement; or (ii) upon notice to Customer if: (a) Customer commits a material breach of this Agreement; or (b) if there is a threat to the security and integrity Implied's hosted environment. Suspension of the SaaS will be without prejudice to any rights or liabilities accruing before or during the suspension, including Customer's obligation to pay fees.

**10.3 Termination for Cause.** Either Party shall have the right to terminate this Agreement and the license granted herein upon written notice in the event the other Party fails to perform or observe any material term or condition of this Agreement (including a failure to pay fees) and such default has not been cured within thirty (30) days after written notice of such default to the other Party. Implied may also terminate this Agreement immediately if the Customer: (i) terminates or suspends its business; (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute; (iii) becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or (iv) has wound up or liquidated, voluntarily or otherwise.

**10.4 Effect of Termination.** Upon termination of the Agreement: (i) all unfulfilled Order Forms will be terminated at Implied's discretion; (ii) any amounts owed to Implied under the Agreement prior to such termination will be immediately due and payable; (iii) Implied's obligation to provide Support Services will terminate; (iv) Customer shall cease all use of the Software and return or certify destruction of all copies of the Software from Customer's computers and, if requested, confirm such in writing; and (v) Customer is solely responsible for exporting Customer Data prior to discontinuation or termination of its use of Evaluation Software or SaaS. Upon request, and subject to each Parties archival and backup protocols, each Party will destroy all Confidential Information obtained during the course of this Agreement and, if requested, confirm such in writing. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including without limitation Sections 3 (Confidential Information), 8 (Ownership), 9.1 and 9.2 (Indemnification), 9.4 (Disclaimer of Liability), 9.5 (Limitation of Liability), 10 (Term and Termination), 11 (General), and 12 (Definitions).

## **11. GENERAL TERMS.**

**11.1 Assignment.** Customer shall not assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, whether by operation of law or otherwise, to any third party without Implied's prior written consent. Any purported transfer, assignment or delegation without such prior written consent will be null and void and of no force or effect. Implied shall have the right to assign this Agreement to any successor to its business or assets, whether by merger, sale of assets, sale of stock,

reorganization or otherwise. Subject to this section, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

**11.2 Audit.** Imply may upon written notice, during the Term set forth in the Order Form, and for one (1) year thereafter, request that Customer provide a signed written certificate certifying its compliance with the terms of this Agreement including Order Form(s) and/or permit Imply to audit Customer's systems to ensure its compliance with the terms of this Agreement or Order Form(s). Customer shall be liable for promptly remedying any underpayments revealed during the audit. If the audit reveals an underpayment discrepancy in excess of five percent (5%) of fees due, Customer will also be liable for the costs of the audit.

**11.3 Force Majeure.** A Party will be excused from a delay in performing, or a failure to perform, its obligations under this Agreement to the extent such delay or failure is caused by the occurrence of any major contingency beyond the reasonable control, and without any fault, of such Party, other than the failure to meet financial obligations. In such event, the performance times shall be extended for a period of time equivalent to the time lost because of the excusable delay. In order to avail itself of the relief provided in this Section for an excusable delay, the Party must act with due diligence to remedy the cause of, or to mitigate or overcome, such delay or failure.

**11.4 Relationship of the Parties.** Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between the Parties hereto. Neither Party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other party in any respect whatsoever. Each Party may identify the other as a customer or supplier, as applicable, and place the other Party's logo on its website.

**11.5 Notices.** All notices permitted or required under this Agreement shall be in writing and shall be deemed to have been given when delivered in person (including by overnight courier), or five (5) business days after being mailed by first class, registered or certified mail, postage prepaid, to the address of the Party specified on the Order Form.

**11.6 Compliance with Laws; Export Control; Government Regulations.** Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. The Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Customer represents that (i) it is not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or

(b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (ii) it will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be “commercial computer software” and “commercial computer software documentation”, respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

**11.7 Entire Agreement; Modification; Waiver.** This Agreement represents the entire agreement between the Parties, and supersedes all prior or contemporaneous agreements and understandings, written or oral, with respect to the matters covered by this Agreement, and is not intended to confer upon any third party any rights or remedies hereunder. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by both Parties. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

**11.8 Governing Law.** This Agreement will be governed by and construed under the laws of the State of California excluding choice of law principles, and in no event will this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. In the event either Party brings any action at law or in equity against the other Party relating to this Agreement, the venue for such action shall be with a state court in Santa Clara County or a federal court in the Northern District of California.

**11.9 Prevailing Party Attorney Fees.** If any party hereto commences any action against any other party hereto with respect to the enforcement or interpretation of the Agreement, the prevailing party in such action shall be entitled to an award of its costs of suit, including reasonable attorney fees.

**11.10 Severability.** If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect.

**11.11 Construction.** The titles and section headings used in this Agreement are for ease of reference only and shall not be used in the interpretation or construction of this Agreement. No rule of construction resolving any ambiguity in favor of the non-drafting Party shall be applied hereto. The word “including”, when used herein, is illustrative rather than exclusive and means “including, without limitation.”

## 12. DEFINITIONS.

**Specific Words or Phrases.** For purposes of this Agreement, each word or phrase listed below shall have the meaning designated. Other words or phrases used in this Agreement may be defined in the context in which they are used, and shall have the respective meaning there designated.

“**Affiliate**” means and includes any entity that directly or indirectly controls, is controlled by, or is under common control with a Party, where “control” means the ownership of, or the power to vote, at least fifty percent (50%) of the voting stock, shares or interests of such entity. An entity that otherwise qualifies under this definition will be included within the meaning of “Affiliate” even though it qualifies after the execution of this Agreement.

“**Agreement**” means the cover page, these terms and conditions, and Schedules, together with any terms attached hereto or incorporated herein by reference, and all Order Forms.

“**Consulting Services**” means the consulting, installation, implementation, training, technical service manager, and other services performed by or on behalf of Implied as described in the Order Form, including any statement of work mutually agreed and executed by the Parties, which shall be governed by the terms and conditions of this Agreement.

“**Customer Data**” means any data input into, processed by, and/or stored by the Software by or for Customer or Customer’s Users.

“**Documentation**” means all technical manuals, end user documentation, and Training Materials (defined in Consulting Services Addendum) that are normally supplied by Implied via its website or otherwise to its commercial customers, as may be updated from time to time by Implied.

“**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trademarks, trade secrets, moral rights know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.



“**Party**” means either “Imply” or “Customer”, individually as the context so requires; and “**Parties**” means “Imply” and “Customer”, collectively.

“**Services**” means collectively the Support Services and Consulting Services as set forth in the Order Form.

“**Site**” means the Imply website located at <https://www.imply.io>.

“**Software**” means the software, as set forth on the applicable Order Form provided by Imply through the Site or otherwise.

“**Software License**” means the subscription license to the Software.

“**Support Services**” are the support and maintenance services to be provided by Imply in connection with the Software License, Imply’s terms are available at <https://imply.io/subscription-support-maintenance-terms/>. Upon renewal, the terms will automatically update to Imply’s then current Support Service terms available at the aforementioned website.

“**User**” means an employee, advisor, or agent of Customer that has been assigned a unique username-password combination to access and use the Software on Customer’s behalf.

### **Imply Data, Inc Consulting Services Schedule**

This Consulting Services Schedule (“**Schedule**”) is made pursuant to and shall be governed by the Agreement and is effective as of the Agreement Effective Date. Capitalized terms used in this Schedule but not defined herein shall have the meanings given them in the Agreement.

**1. CONSULTING SERVICE SCOPE.** Imply will provide Customer the Consulting Services agreed by the Parties in the applicable Order Form. Consistent with Imply’s status as an independent contractor, Imply will retain the sole and exclusive right to supervise, control, and direct the manner and means by which it conducts the Consulting Services. Each Order Form will describe the Consulting Services to be performed by Imply, including, if and when applicable, the compensation and other consideration for such Consulting Services; a

payment schedule or other custom payment terms; responsibilities on the part of the Customer, including Customer Requirements (as that term is defined below); any specifications; a schedule of deliverables; the term of the Order Form; a description of reimbursable expenses; and any other terms and conditions mutually agreed upon by the Parties in connection with Implied's performance of the Services. Implied will be reimbursed for expenses incurred that are reasonable and that have been approved in advance by Customer. Consulting Services are only for Customer's internal use. Customer may not use the Consulting Services to supply any installation, consulting or training services to any third party. Subject to the Limited Services Warranty set forth below, all Consulting Services shall be deemed accepted upon delivery.

**2. CHANGE ORDERS.** Customer may request that changes be made to the Consulting Services described in the Order Form (e.g., an addition, a deletion, or another modification to the applicable deliverables). If a change order recites changes that materially increase the scope of the Consulting Services or the time, effort, or expense required to perform the applicable Consulting Services, then within ten (10) business days after Implied's receipt of the requested changes, Implied will provide to Customer a summary of the modifications to be made to the applicable Order Form in order to effect the requested change. During the ten (10) business day period following Customer's receipt of Implied's estimate, the Parties will work together in good faith to prepare a revised Order Form. If, within such ten

(10) business day period, the Parties are unable to agree on a revised Order Form, the then-existing Order Form will remain in full force and effect, and Implied will have no further obligation with respect to the applicable Change Order. If the Parties are able to agree on a revised Order Form, the mutually agreed-upon changes will be memorialized in an amendment to the Order Form, which will be attached to the then-existing Order Form and this Agreement. All notices pursuant to this section will be in writing (an email will suffice).

**3. CUSTOMER REQUIREMENTS.** Customer shall be responsible for providing Implied with the following: Customer's business requirements, technical data, computer facilities, network access, programs, software, files, lists, documentation, test data, sample output, feedback, or other information, equipment, materials, assistance, and resources in Customer's possession or control that it is necessary or advisable for Implied to have, or have access to, in order to effectively perform the Consulting Services set forth in the applicable Order Form (collectively "**Customer Requirements**"). Customer will make Customer Requirements readily available to Implied in a timely manner at no charge. Customer will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness, and consistency of any and all Customer Requirements supplied by Customer, including being responsible for any fees, expenses, and other costs incurred or accrued during any resulting delay, or delays. Customer acknowledges that the timely provision of and access to the Customer Requirements may be essential to Implied's performance of the Services and that Implied's ability to

complete the Services may be dependent upon the same. If Customer fails to provide the Customer Requirements necessary for Implied to fulfill an obligation hereunder, Implied is discharged from any such obligation until Customer provides such information and/or assistance.

#### **4. TRAINING.**

**4.1 Location and Timing.** Training shall be provided at the location set forth in the Order Form (the “**Location**”). If no location is specified, the training will be provided at a Location to be determined and confirmed in writing with the Customer. For onsite, virtual and e-learning training, the Customer is responsible for testing all necessary facilities and systems prior to the scheduled training to enable Implied to provide the training unless otherwise specified in the Order Form. Unless otherwise advised, Customer training participants who attend public training should arrive at the classroom location no later than fifteen (15) minutes (and no later than thirty (30) minutes to the virtual classroom) prior to the commencement of the training on the first training day. Where and when the length of a course is specified in a number of days, a “day” is not more than seven (7) hours of lecture with a one (1) hour breakfast or lunch. Any onsite training will be agreed between the Parties, but shall not include more than seven (7) hours of lecture on any single day. Training is only valid for the number of courses, dates and times (including the start and end date), Locations, delivery mechanisms (i.e., onsite, virtual or other), and number of students (participants) specified in the Order Form. Training dates must be confirmed three or more weeks in advance of the training date. All confirmed training registrations will be subject to the postponement policy as detailed in Section 5.

**4.2 Course Availability and Content.** Training content will be substantially in line with the relevant training description set forth in Customer’s Order Form. Implied reserves the right to withdraw or re- schedule training at any time prior to the training start date without any liability to the Customer. In the event that Implied is aware that there is a need to reschedule, then Implied will make a reasonable effort to notify the Customer at least one week in advance.

**4.3 Training Participants.** Customer may substitute training participants by giving forty-eight (48) hour written notice to Implied prior to the commencement of the scheduled training. Implied reserves the right to exclude training participants from the class who are, in its reasonable opinion, causing disruption to such class. In the event of such exclusion no refund of any associated fees will be made. Implied does not allow Customers to have additional participants “audit” its training courses. Customer agrees to pay for any and all participants that are in the classroom at the time of training, including last minute participants and drop-ins.

**5. POSTPONEMENT OF SERVICES.** No penalty will be assessed if Customer postpones a scheduled Consulting Service to be performed at Customer's site (hereafter a "**scheduled service**") at least twenty (20) business days or more before the start of the scheduled service. If Customer postpones a scheduled service at least ten (10) but less than twenty (20) business days before the start of the scheduled service, a penalty of ten percent (10%) of the amount of the scheduled service fee may be assessed plus any nonrefundable travel or expense costs. If Customer postpones a scheduled service less than ten (10) business days before the start of the scheduled service, a penalty up to twenty-five percent (25%) of the scheduled service may be assessed plus any nonrefundable travel or expense costs.

**6. LIMITED SERVICES WARRANTY.** Imply shall provide qualified service providers who perform in a professional and workmanlike manner in accordance with industry standards. The warranty specified in this section shall apply only to failures or breaches of warranty which are reported to Imply by Customer within thirty (30) days after the date the Consulting Services are delivered to Customer. Imply's sole obligation for failure to meet the warranty specified above shall be for Imply, upon receipt of written notice of such failure from Customer, to attempt to remediate the failure or cure the breach within thirty

(30) days of Customer's written notice thereof. If Imply is unable to correct the failure or cure the breach, then Imply shall return any fees paid for the defective Consulting Services.