



MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (“MSA”) set forth the understanding, terms and conditions that apply to access and use of the Services (as defined below) of **Fullcast Inc.** (“**Provider**”) by the customer set forth on an Order Form submitted to Provider (“**Customer**”). These Terms, together with (i) any order form submitted by Customer and accepted by Provider (“**Order Form**”), any statement of work submitted to and accepted by Provider (“**SOW**”), and (iii) Provider’s Privacy Policy found at <https://www.fullcast.com/others/privacy-policy/>, constitute the “**Agreement.**” Provider and Customer may be referred to herein individually as a “**Party**” or collectively as the “**Parties.**”

This Agreement becomes binding on the Parties upon the earliest of: (1) when Customer or an Authorized User first accesses or uses the Services, (2) when Customer or an Authorized User electronically clicks an “I Accept,” “Sign up” or similar button or check box referencing this Agreement, or (3) when Customer enters into an Order Form (“Effective Date”).

BEFORE ACCEPTING THIS AGREEMENT, CUSTOMER IS ADVISED TO CAREFULLY READ THE AGREEMENT AND ANY APPLICABLE DOCUMENTATION. BY CLICKING TO ACCEPT THE AGREEMENT, CUSTOMER (1) AGREES TO BE BOUND BY AND BECOMES A PARTY TO THE AGREEMENT AND (2) CONFIRMS THAT THE INDIVIDUAL ENTERING THE AGREEMENT HAS AUTHORITY TO SO BIND CUSTOMER WITHOUT FURTHER ACTION BY CUSTOMER. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THE AGREEMENT, CUSTOMER SHOULD NOT CLICK THE “AGREE” BUTTON AND THE SERVICES WILL NOT BE USABLE.

WHEREAS, Customer desires to utilize Provider’s Services as described herein and Provider desires to provide Customer access to such Services, subject to the terms and conditions set forth in the Agreement;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

- 1.1. “**Access Credentials**” means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Services.
- 1.2. “**Assignees**” means Customer’s employees, agents, consultants, contractors or other representatives with respect to whom Customer is using the Services or who are contemplated in any plan, assignment (routing, territory, or otherwise), model or report created by using the Services.
- 1.3. “**Authorized Users**” means Customer’s employees (a) who are authorized by Customer to access and use the Services in accordance with the Agreement, (b) who have been made known to, and received access credentials and login details from, Provider, and (b) for whom access to the Services has been purchased hereunder. Authorized Users must be 18 years of age or older and not barred from using the Services by any Law.
- 1.4. “**Customer Data**” means information, data, and other content, in any form or medium, that is uploaded directly by Customer or that is collected by Provider from and regarding an Authorized User, through the Services. Customer Data may, in some situations, include Authorized Users’ or Assignees’ Personal Information. Customer Data does not include Resultant Data or Usage Data.
- 1.5. “**Data Protection Laws**” mean collectively any applicable data protection, privacy, or similar laws applicable to the processing of Personal Information in the jurisdiction where Services are performed or used or applicable to the Personal Information processed as part of the Services, if any.
- 1.6. “**Intellectual Property Rights**” means all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, data or database protection, or other intellectual property rights Laws and all similar or equivalent rights or forms of protection, in any part of the world.
- 1.7. “**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction. “**Law**” includes all Data Protection Laws.



- 1.8. **“Personal Information”** means information which may be used, alone or in conjunction with any other information, to identify a specific person or to make a specific person identifiable, including, without limitation, any (1) name, social security number, date of birth, official State or government issued driver’s license or identification number, alien registration number, government passport number, employer or taxpayer identification number; (2) unique biometric data, such as fingerprint, voice print, retina, iris image, or other unique physical representation; (3) unique electronic identification number, address, or routing code; or (4) telecommunication identifying information or access device, in each case to the extent protected under any Data Protection Law.
- 1.9. **“Resultant Data”** means data or information related to or derived from Customer Data that is processed by Provider in an aggregate, de-identified, or anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.
- 1.10. **“Services”** means Provider’s software identified on the Order Form and provided on a software-as-a-service basis that is made accessible to Customer through its Authorized Users. “Services” specifically includes access to and use of Provider’s web application and mobile application, if any.
- 1.11. **“Usage Data”** means any data or other information relating to the provision, access, use, operation, or performance of the Services by Customer and its Authorized Users, including any data or other information derived therefrom. For clarity, Usage Data will not contain Customer Data and will be anonymized, aggregated, and de-identified.

2. Services.

- 2.1. License and Use of Services. Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms of the Agreement, Provider grants to Customer a non-exclusive, limited, revocable, non-transferable, and non-sublicensable right to access and use the Services during the Term, solely for use by Customer and its Authorized Users, where applicable, in accordance with the Agreement. Such use is limited to Customer’s internal use. Customer has and will retain sole responsibility for all access to and use of the Services by any Customer personnel and Authorized Users and will securely administer the distribution and use of all Access Credentials to protect against any unauthorized access to or use of the Services. Customer shall implement all security measures recommended by Provider to protect both Customer’s and Provider’s systems.
- 2.2. Use Restrictions.
 - (a) If applicable, the Services are limited based on the software package Customer orders in the Order Form. Customer acknowledges and can find the resource limits for the applicable Services package at: <https://support.fullcast.io/article/495-resource-limits>.
 - (b) If applicable, Customer may use the Services to create plans, assignments (routing, territory, or otherwise), models and reports that include up to the number of Allowed Assignees set forth in the Order Form. If Customer exceeds such usage, or creates plans, assignments, models or reports with respect to a number of Assignees in excess of the Allowed Assignees, Customer agrees to pay Provider for such excess usage per the Order Form and Section 3 below. More generally, the Services are subject to usage limits specified in Order Forms and the Agreement. If Customer exceeds a contractual usage limit, Provider may work with Customer to reduce Customer’s usage so that it conforms to that limit or to execute an Order Form or Statement of Work for additional quantities of the applicable Services or Professional Services promptly upon Provider’s request, and Customer will pay any invoice for excess usage in accordance with these Terms.
 - (c) Customer will not (and will not allow any Authorized User or third party to): (i) copy, modify, adapt, translate or otherwise create derivative works or improvements of the Services, (ii) reverse engineer, decompile, disassemble, decode, adapt or otherwise attempt to discover the source code of the Services, in whole or in part, (iii) rent, lease, lend, sell, sublicense, assign, distribute, publish or otherwise transfer or make available rights in or to the Services not in accordance with the Agreement, (iv) remove, delete, alter, or obscure any specifications, documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services, including any copy thereof, (v) grant access to the Services to any third party other than an Authorized User, (vi) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Services, (vii) upload any information to the Services that is “Protected Health Information” as defined under the Health Insurance Portability and Accountability Act, or (viii) access or use the Services in any manner or for any



purpose: (A) that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Provider customer); (B) to gather competitive information or compete directly or indirectly with Provider; or (C) that violates any applicable Law. Customer shall comply with all applicable Laws and regulations in Customer's use of and access to the Services.

- 2.3. Community Guidelines. The Services may permit Customer and Authorized Users to upload data, information, or other materials, including Customer Data, in a manner that makes such data, information, or other materials publicly available or accessible to other users of the Services. Customer is solely responsible for any data, information, or other materials, including Customer Data that it uploads to the Services. Neither Customer nor any Authorized User will use the Services to do any of the following:
- (d) Harass, threaten, disrupt, or defraud other users or otherwise create or contribute to an unsafe, harassing, threatening or disruptive environment;
 - (e) Make unsolicited offers, advertisements, political campaigns, proposals, or send junk mail or "spam" to other users;
 - (f) Impersonate another person or access another user's account;
 - (g) Share Provider-issued passwords with any third party or encourage any other users to do so;
 - (h) Upload any material that is damaging to computer systems or data of Provider or users of the Services (e.g. viruses, corrupted files, or any other similar software files); and
 - (i) Upload or post any material that is inappropriately violent, unduly graphic, pornographic, bigoted, derogatory, racist, or offensive, or that violates the Intellectual Property Rights of any third party.

Customer acknowledges that Provider has the right, but no obligation, to monitor any data, information, or other materials that Customer or Authorized Users may upload to the Services. Provider may remove any data, information, or other material that Provider determines, in its sole discretion, violates the foregoing requirements; *provided*, that Provider takes no responsibility and assumes no liability for any data, information, or other material that is uploaded to the Services by Customer or any Authorized User.

- 2.4. Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of the Services to its customers; (ii) the competitive strength of or market for the Services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law.
- 2.5. Suspension or Termination of Services. Provider may, directly or indirectly, suspend or otherwise deny Customer's, Authorized Users', or any other person's access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if there has been a material breach of Customer's obligations under the Agreement, including an Authorized User's breach. This Section does not limit any of Provider's other rights or remedies, whether at Law, in equity, or under the Agreement.
- 2.6. Technical Support Services: Availability. Provider shall host, serve, distribute, and enable the availability of the Services and ensure that the same are available to Customer and its Authorized Users in a commercially reasonable manner. Provider will provide the support and maintenance detailed here: <https://www.fullcast.com/web-support-maintenance/>
- 2.7. Professional Services. Provider will provide any professional services, including without limitation, customization, implementation, or other services ("Professional Services") that are described on the Order Form or an applicable SOW executed between the Parties from time to time. Provider will diligently perform the Professional Services in accordance with the applicable SOW, including any specifications in the SOW.



- (a) **Non-Exclusivity of Professional Services.** Customer acknowledges that Provider may provide services similar to the Professional Services on behalf of other Provider customers. Customer agrees that Provider may work for other customers without restriction, even if work is done for a potentially competing company or individual. Nothing in the Agreement may be construed to limit Provider's business, including the provision of the Services to other Provider customers.
- (b) **Ownership.** Notwithstanding anything to the contrary in the Agreement or any SOW, Provider retains ownership of all of Provider's Intellectual Property Rights directly or indirectly related to the Professional Services performed under any SOW, whether now existing or whether conceived, developed, or reduced to practice, solely or jointly with Customer, in connection with the Professional Services or otherwise related to Provider's Services under this Agreement.

2.8. **Federal Regulations.** If applicable, Customer shall not remove or export from the United States or allow the export or re-export of the Services or any software related thereto, or any direct product thereof in violation of any restrictions, Laws, or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, software and documentation accessed as part of the Services are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government is governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

2.9. **Access to Third-Party Systems.** If applicable, Customer shall cooperate with Provider for Provider to access Customer's necessary third-party systems and data to allow Provider to provide the Services. Customer represents, warrants, and covenants, that Customer has or will obtain all necessary rights from such third-party systems for Provider to access such systems.

3. **Fees and Payment.** Customer shall pay Provider the fees set forth in the Order Form or any applicable SOW, including any expenses or costs of the Services or Professional Services that Provider passes through to Customer. Unless otherwise set forth in the Order Form or applicable SOW, invoices are due and payable in United States dollars within thirty (30) days after the invoice date, without deduction or setoff. For the avoidance of doubt, if Customer's usage of the Services exceeds the number of Allowed Assignees set forth on the Order Form, Customer agrees to pay to Provider the Excess Assignee Fee per Assignee for each month in which such excess usage occurs. Such excess usage fees will be aggregated and invoiced by Provider on a quarterly basis. Customer shall pay or reimburse Provider for all federal, state, local, sales, use, value added, excise, or other taxes, fees, or duties arising out of or related to the Agreement or the transactions contemplated hereby, other than net income taxes imposed on Provider. Any amount not paid within thirty (30) days of its due date is subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is more, determined and compounded daily from the date due until the date paid. The fees for any annual period after the Initial Term shall equal the then-current pricing of the Provider's Services, which may include (without limitation) adjustments for inflation or other increases in costs or value associated with improvements in such Services. Provider shall notify Customer of price changes at least 60 days before the end of the then-current annual period, and the fees for the subsequent annual period shall be due at the commencement of such annual period. Except as otherwise provided for herein, Customer is not entitled to a refund of fees paid to Provider.

4. **Confidentiality and Data Privacy.**

4.1. **Confidential Information.** In connection with this Agreement each Party (as the "Disclosing Party") may disclose or make available Confidential Information to the other Party (as the "Receiving Party"). Subject to Section 4.2, "Confidential Information" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, or information that should by its nature be considered confidential, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential". Without limiting the foregoing, the Services and the



underlying data (including Resultant Data and Usage Data) are the Confidential Information of Provider and Customer Data is the Confidential Information of Customer.

- 4.2. Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with the Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not known to the Receiving Party to be under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.
- 4.3. Protection of Confidential Information. Neither Party shall use the Confidential Information of the other Party for any purpose except to exercise its rights and perform its obligations under this Agreement. Neither Party shall disclose, or permit to be disclosed, either directly or indirectly, any Confidential Information except to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 4.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 4. Each Party shall safeguard the other Party's Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care, shall promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information, and cooperate with the Disclosing Party to prevent further unauthorized use or disclosure.
- 4.4. Compelled Disclosures. If the Receiving Party or any of its representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 4.3; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 4.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

5. Intellectual Property Rights.

- 5.1. Services. As between Customer and Provider, Provider is and will remain the sole and exclusive owner of all right, title, and interest in and to the Services and any underlying data (excluding Customer Data, but including Resultant Data and Usage Data), including all Intellectual Property Rights therein, and with respect to third-party materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to such third-party materials. Customer has no right, license, or authorization with respect to any of the Services or underlying data (other than the Customer Data) except as expressly set forth in Section 2 or the applicable third-party license, in each case subject to any restrictions in the Agreement (or such third-party license, as applicable). All other rights in and to the Services are expressly reserved by Provider. To the extent Customer has any right, title, or interest in the Resultant Data or Usage Data, Customer hereby assigns all such right, title, and interest in and to such Resultant Data and Usage Data, including in each case, all Intellectual Property Rights relating thereto. Customer hereby grants to Provider a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable (only to a successor in interest by way of merger, reorganization or sale of all or substantially all assets of the business unit performing the Services or equity, or operation of law), sublicensable license to use, copy, modify, or distribute, including by incorporating into the Services, any suggestions, enhancement requests, recommendations or other feedback provided by Customer, its users, and any Authorized User, relating to the operation of the Services ("**Feedback**"). Included in such license is the right to (i) identify or reference Customer as a user of Provider's Services and a right to use Customer's logo in connection therewith, and (ii) perform and make public a case study with respect to Customer and its use of the Services and results of the Services. For the avoidance of doubt, Provider may use the Resultant Data, Usage Data, and Feedback (1) to make



any changes or improvements to the Services, and (2) to develop other product and services.

- 5.2. **Customer Data.** As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights embodied therein, subject to the rights and permissions granted in this Section 5.2. Customer hereby grants to Provider a worldwide, non-exclusive, irrevocable, royalty-free, fully paid-up, sublicensable and transferable license to (i) use, copy, process, transmit, store, host, edit, modify, aggregate, combine, reproduce, distribute, display, perform, and prepare derivative works of the Customer Data in connection with the Services and (ii) otherwise access, use or make reference to any Intellectual Property Rights in the Customer Data: (a) to provide the Services including to enable the Customer and any Authorized Users to access and use the Services; (b) for diagnostic purposes; and (c) as reasonably required for the performance of Provider's obligations under the Agreement. For clarity, the foregoing license continues after termination of the Agreement with respect to any Customer Data that Customer or any Authorized User posts or otherwise makes publicly available through the Services. To the extent any Customer Data constitutes Personal Information, the terms of Provider's Privacy Policy apply.
- 5.3. **Personal Information.** Each Party shall use and process any Personal Information that such Party has access to in connection with the Agreement, including with the data processing addendum found at: <https://www.fullcast.com/data-processing-addendum/>, and in accordance with applicable Data Protection Laws. Customer acknowledges that Provider may provide the Services, including processing of Personal Information, in the United States. Customer consents to Provider's processing of Personal Information, either directly or through Provider's vendors, service providers, affiliates, or other subprocessors in the United States, including if such processing includes cross-border transfers of Personal Information to the United States.

6. **Representations, Warranties and Covenants.**

- 6.1. **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that (a) it is duly organized, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation or other organization, (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under the Agreement; and (c) when executed/electronically accepted and delivered by both Parties, the Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.
- 6.2. **Additional Customer Representations, Warranties, and Covenants.** Customer represents, warrants, and covenants to Provider that"
 - (a) Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and processed in accordance with the Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law;
 - (b) to the extent Customer has access to and utilizes any Authorized Users' or Assignees' Personal Information in the Services, Customer represents and warrants that Customer has secured all permissions necessary to allow Provider to process such Personal Information; and
 - (c) Customer will, and will cause its Authorized Users to, comply in all material respects with Provider's Security Enhancements located here: <https://support.fullcast.com/article/543-fullcast-security-enhancements> (the "**Security Enhancements**").
- 6.3. **Third-Party Software.** The Services may contain or require use of third-party software that may be subject to additional notices or terms and conditions. Subject to Provider's provision of the Services in accordance with the terms of this Agreement, Provider makes no warranties and accepts no liability with respect to third-party software.
- 6.4. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES AND COVENANTS SET FORTH IN SECTION 6.1, ALL SERVICES ARE PROVIDED "AS-IS" AND "AS-AVAILABLE." PROVIDER DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL SATISFY CUSTOMER'S



REQUIREMENTS OR SPECIFICATIONS. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, PROVIDER HEREBY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

7. **Indemnification.**

- 7.1. **Provider Indemnification.** Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorney fees (“Losses”) incurred by Customer resulting from any claim or action by a third party that Customer’s use of the Services (excluding third party materials) in accordance with the Agreement infringes or misappropriates such third party’s Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from (a) modification of the Services other than: (i) by or on behalf of Provider; or (ii) with Provider’s written approval in accordance with Provider’s written specification, (b) combination of the Services (or any portion thereof) with any other product or service, (c) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Provider, (d) Customer Data, (e) Authorized User Personal Information (unless required by Data Protection Laws), (f) Provider implementing instructions or requests of Customer, or (g) any act, omission, or other matter described in Section 7.2, whether or not the same results in any claim or action against or Losses by any Provider Indemnitee.
- 7.2. **Customer Indemnification.** Customer shall indemnify, defend, and hold harmless Provider and its affiliates and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a “**Provider Indemnitee**”) from and against any and all Losses incurred by such Provider Indemnitee resulting from any claim or action by a third party (other than an affiliate of a Provider Indemnitee) to the extent that such Losses arise out of or result from, or are alleged to arise out of or result from (a) Customer’s use of the Services not in accordance with the Agreement, including Customer’s failure to implement recommended security measures, or (b) the Customer Data, including any processing of Customer Data by or on behalf of Provider in accordance with the Agreement. The foregoing obligation does not apply to the extent that the alleged Losses arise from any act or other matter described in Section 7.1 to the extent Provider is indemnifying Customer for such act or other matter.
- 7.3. **Indemnification Procedure.** Each Party shall promptly notify the other Party in writing of any claim or action for which such Party believes it is entitled to be indemnified. The Party seeking indemnification shall cooperate with the other Party at the indemnitor’s sole cost and expense. The indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the indemnitor’s sole cost and expense. The Party seeking indemnification may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The indemnitor shall not settle any claim or action in any manner that adversely affects the rights of the Party seeking indemnification without that Party’s prior written consent, which shall not be unreasonably withheld or delayed. If the indemnitor fails or refuses to assume control of the defense of such claim or action, the Party seeking indemnification may, but has no obligation, to defend against such claim or action, including settling such claim or action after giving notice to the indemnitor, in each case in such manner and on such terms as the Party seeking indemnification may deem appropriate. The Party seeking indemnification’s failure to perform any obligations under this Section 7.3 will not relieve the indemnitor of its obligations under this 7, except to the extent that the indemnitor can demonstrate that it has been prejudiced as a result of such failure.
- 7.4. **Mitigation.** If any of the Services are, or in Provider’s opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer’s or any Authorized User’s use of the Services is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense (a) obtain the right for Customer to continue to use the Services materially as contemplated by the Agreement, (b) modify or replace the Services, in whole or in part, to seek to make the Services (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services, as applicable, under the Agreement, or (c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and require Customer to immediately cease any use of the Services or any specified part or feature thereof, provided that if such termination occurs prior to the first anniversary of the Effective Date, subject to Customer’s compliance with its post-termination obligations set forth



in Section 9.3, Customer will be entitled to a pro rata refund.

7.5. **Sole Remedy.** THIS SECTION 7 SETS FORTH CUSTOMER’S SOLE REMEDIES AND PROVIDER’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

8. **Limitations of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER IS NOT LIABLE FOR CUSTOMER’S LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF PROVIDER OR ITS AFFILIATES HAVE BEEN ADVISED OF, KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. PROVIDER’S (AND ITS AFFILIATES’) TOTAL CUMULATIVE LIABILITY TO CUSTOMER OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM CLAIMS OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER BY CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9. **Term and Termination.**

9.1. **Term.** The Agreement commences as of the Effective Date and will continue in effect for the period set forth in the order form (the “**Initial Term**”), unless earlier terminated by a Party in accordance with the terms of this Agreement. Following the Initial Term, this Agreement automatically renews for successive one (1) year terms (each, a “**Renewal Term**” and together with the Initial Term, the “**Term**”) unless either Party provides notice of non-renewal to the other Party at least thirty (30) days prior to the end of the then-current Term.

9.2. **Termination.**

(a) In addition to any other express termination right set forth elsewhere in this Agreement either Party may terminate the Agreement, effective on written notice to the other Party, if (i) the other Party materially breaches the Agreement and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach, or (ii) if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, in each case that is not discharged within sixty (60) days; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(b) Notwithstanding anything to the contrary in the Agreement, Provider may terminate this MSA, the Agreement, or any SOW if Provider discontinues an applicable product; provided, that Provider gives Customer sixty (60) days’ prior written notice to Customer and a pro rata refund of any prepaid Fees.

9.3. **Effect of Termination or Expiration.** Upon any expiration or termination of the Agreement, except as expressly otherwise provided in the Agreement:

(a) all rights, licenses, consents, and authorizations granted by either Party to the other hereunder will immediately terminate;

(b) each Party shall immediately cease all use of any Confidential Information of the other Party and (i) promptly return or destroy, at the Receiving Party’s election and subject to applicable Law, all documents and tangible materials containing, reflecting, incorporating, or based on Confidential Information; and (ii) permanently erase all Confidential Information from all systems the Receiving Party directly or indirectly controls,



provided that, for clarity, Provider's obligations under this Section 9.3 do not apply to any Resultant Data or Usage Data; and

- (c) notwithstanding anything to the contrary in the Agreement, the Receiving Party may retain Confidential Information (i) to the extent and for so long as required by applicable Law and (ii) in the Receiving Party's backups, archives, and disaster recovery systems until such Confidential Information is deleted in the ordinary course. For the avoidance of doubt, all information and materials described in this Section 9.3(c) will remain subject to all confidentiality, security, and other applicable requirements of the Agreement.
- (d) If this Agreement is terminated by Customer in accordance with Section 9.2(a) above, Provider will refund Customer any prepaid fees covering the remainder of the applicable term of all Order Forms or Statements of Work after the effective date of termination. If this Agreement is terminated by Provider in accordance with Section 9.2(a) above, Customer will pay any unpaid fees covering the remainder of the term of all Order Form or Statements of Work to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Provider for any period prior to the effective date of termination.

10. Miscellaneous.

- 10.1. Force Majeure. Provider will be excused from performance of the Agreement to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control.
- 10.2. Entire Agreement. This MSA (including any modification hereof in accordance with Section 10.7), together with the Order Form, any SOW, and Provider's Privacy Policy, represents the sole and complete agreement between Customer and Provider concerning its subject matter, and supersedes all prior agreements (both written and oral) between the Parties with respect thereto.
- 10.3. Severability. If any term or provision of the Agreement is held to be invalid, illegal or unenforceable for any reason, such provision will be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of the Agreement will continue in full force and effect.
- 10.4. Disputes.
 - (a) The Parties shall first attempt to resolve any dispute arising out of or related to the Agreement ("**Dispute**") by submitting to the senior management of Provider and Customer for attempted resolution of the Dispute. Senior management shall discuss the problem and negotiate in good faith to resolve the Dispute without necessity of any formal relating thereto.
 - (b) If senior management, within fifteen (15) calendar days of their first communication have not resolved the Dispute, the Parties shall thereafter submit the Dispute to binding arbitration in accordance with the commercial rules of the American Arbitration Association then in effect (the submission date to be deemed the "**Arbitration Date**"). The arbitration must be held in Salt Lake City, Utah. The Parties shall mutually choose a single commercial arbitrator with substantial experience in resolving complex commercial contract disputes. If the Parties cannot agree upon the arbitrator within fifteen (15) days of the Arbitration Date, then a single arbitrator will be selected in accordance with the rules of the American Arbitration Association. The arbitrator will have the authority to grant specific performance and to allocate between the Parties the costs of arbitration (including service fees, arbitrator fees and all other fees related to the arbitration) in such equitable manner as the arbitrator may determine. The non-prevailing Party in the arbitration shall pay the prevailing Party's reasonable costs and expenses incurred in connection therewith (including reasonable attorney fees and payment for the arbitrator). Judgment upon the award so rendered may be entered in a court having jurisdiction or application may be made to such court for judicial acceptance of any award and an order of enforcement, as the case may be. Notwithstanding the foregoing, either Party may institute an action in a court of proper jurisdiction for preliminary injunctive relief pending a final decision by the arbitrator, provided that a permanent injunction and damages may only be awarded by the arbitrator.



- (c) The Parties must institute any permitted legal suit, action, or proceeding arising out of or related to the Agreement exclusively in the federal or state courts in and for Salt Lake County, Utah, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein is effective service of process for any suit, action, or other proceeding brought in any such court. Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to the Agreement or the transactions contemplated hereby.
- 10.5. Governing Law. Delaware law governs the Agreement without reference to its conflict of law principles.
- 10.6. Notices. Any notices to Provider or to Customer must be sent to Provider's or Customer's, as applicable, address, via personal delivery, registered or certified mail, overnight courier, or email (with confirmation of transmission) and are deemed given (a) if delivered personally, upon receipt; (b) if delivered by registered or certified mail, three business days following deposit with the USPS; (c) if delivered by overnight courier, on the business day following deposit with such courier; and (d) if delivered by email, when sent, if sent during the recipient's normal business hours, and otherwise on the next business day. Each Party's address for service of notices is as follows:
- To Provider:
Attn: Legal Department
- legal@fullcast.com
- To Customer at the contact information included on the Order Form.
- 10.7. Amendment; Waiver. At certain times, Provider may in its discretion need to make revisions to this Agreement. Provider will notify Customer of any such changes by posting notices on through the Services or by emailing or otherwise notifying Customer, as appropriate in the circumstances. If Customer continues using the Services after the effective date of the changes, Customer is deemed to have accepted the revisions. If Customer does not agree to the revisions, Customer may notify Provider by sending an email to customersupport@fullcast.com and the Parties shall negotiate in good faith to come to an agreement regarding such revisions.
- 10.8. Assignment and Change of Control. Customer may not assign, delegate, or otherwise transfer any of Customer's rights or obligations in the Agreement without Provider's prior written consent, and any such attempt is void. No permitted assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under the Agreement. Provider may not assign the Agreement without providing notice to Customer, except Provider may assign the Agreement or any rights or obligations under the Agreement to an Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void. The Agreement is binding upon and inures to the benefit of any respective successors and permitted assigns of the Parties hereto.
- 10.9. No Third-Party Beneficiaries. The Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement.
- 10.10. Relationship of the Parties. The relationship between Provider and Customer is one of independent contractors and nothing contained in the Agreement may be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party has authority to contract for or bind the other Party in any manner whatsoever.
- 10.11. Survival. The following provisions survive any termination of the Agreement: Sections 1, 3, 4, 5, 6, 7, 8, 9.3, and 10.
- 10.12. Equitable Relief. Each Party acknowledges that a breach or threatened breach by such Party of any of its obligations could cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable



relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at Law, in equity, or otherwise.

10.13. Counterparts. The Parties may execute this MSA in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.

10.14. Reservation of Rights. Provider reserves for itself any right not expressly set forth in the Agreement.