



Software as a Service (SaaS) Agreement

Bidgely, Inc. – [Subscriber]

_____ **[•], 2025**

Version 1.0

Software as a Service (SaaS) Agreement
Utility - Bidgely
Date

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This agreement (together with all Statements of Work (SOW) made hereunder, the "**Agreement**") is entered into, to be effective as of [Effective Date] ("**Effective Date**"), by and between:

1. [Subscriber], with its registered office at _____ hereinafter referred to as "**Subscriber**"
2. **Bidgely, Inc.** with its registered office at 153 2nd Street, Suite 102, Los Altos, CA 94022, hereinafter referred to as **Bidgely**;

Hereinafter each individually and jointly referred to as: the **Party** or the **Parties**.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1 The Agreement

- 1.1 This Agreement and the documents appended to this Agreement (the "**Annexes**") contain all generally applicable agreements between the Parties relating to the Services to be delivered to Subscriber by Bidgely, as described in sequentially numbered ordering documents covered by this Agreement that reflects the nature and content of the specific subscription and professional services to be delivered by Bidgely to Subscriber, the term during which such services will be provided, applicable fees, and any applicable additional terms or restrictions (each, a "Statement of Work (SOW)", and collectively, the "SOWs").
- 1.2 The provisions and terms of the Agreement are applicable to all SOWs agreed between Subscriber and Bidgely unless the Parties agree explicitly otherwise in the SOWs.
- 1.3 The agreements that are recorded in this Agreement shall replace all agreements –oral and in writing - made between the Parties relating to the Services agreed between the Parties.
- 1.4 In case of any conflict, the terms in the **SOW(s)** will take precedence over the **Agreement**.

2 The Services

- 2.1 This Agreement sets forth the terms and conditions under which Bidgely agrees to provide Subscriber with access to use certain hosted, software-as-a-service applications (the "**Service**"), and to provide certain other mutually agreed services reasonably necessary for Subscriber to productive use of the Service, which may include customization/integration, user identification and password change management, data import/export, monitoring, technical support, maintenance, training, backup and recovery, and change management as further set forth in a SOW ("**Professional Services**") in the form attached hereto or in other statements of services containing substantially similar information and

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identified as a SOW. The Agreement shall remain in effect unless terminated as provided for herein.

- 2.2 Subject to the terms and conditions of this Agreement and each applicable SOW, including without limitation payment of applicable Fees, Bidgely grants Subscriber a limited, revocable, nonexclusive, nontransferable right for any Subscriber authorized employee or agent to act on its behalf (each, an "Authorized User") to access and use the Service during the applicable Subscription Term for its intended purpose and in accordance with all applicable documentation (including the ability to make those end-user facing features of the Service to Subscriber's end user customers ("**End Users**").
- 2.3 Restrictions and limitations on access/use of Services. Except as otherwise expressly permitted under this Agreement, Subscriber agrees that it shall not, nor shall it permit Authorized Users or End Users to: (i) use the Services in excess of or beyond the relevant Subscription Term; (ii) make the Services available to anyone other than Authorized Users; (iii) use the Services(s) to upload or transmit or store infringing, libelous, or otherwise unlawful or tortious material, or data in violation of third-party privacy or other rights; (iv) use the Services(s) to upload or transmit malicious code; (v) intentionally interfere with or disrupt the integrity or performance of the Services(s) or data contained therein; (vi) attempt to modify, create derivative works based upon, reverse engineer or decompile, decrypt, disassemble the Services(s); (vii) release, publish, and/or otherwise make available to any third party (other than Authorized Users) the results of any performance or functional evaluation of the Services(s) without the prior written approval of Bidgely; (viii) use the Services(s) in violation of any relevant laws or regulations. The foregoing restrictions with respect to the Services(s) apply equally to any component or portion of the Services(s). Without limiting the generality of the foregoing, SOWs may include additional mutually agreed limitations applicable to Subscriber's or Authorized Users' access or use of the Services.
- 2.4 Subscriber Responsibilities.
 - 2.4.1 Subscriber shall (a) be responsible and liable for any action or inaction of Authorized Users and End Users which is in violation of this Agreement, (b) be solely responsible for the accuracy, quality, integrity and legality of the means by which Subscriber (and Authorized Users) acquire, upload, transmit and process data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services by its employees, or agents, and notify Bidgely promptly of any such unauthorized access or use, (d) use the Services only in accordance with the associated documentation and applicable laws and government regulations, and (e) make any disclosures to and obtain any consents from Authorized Users as required by any applicable law, rule or regulation for the use, processing, transfer, disclosure, or access to data in or for the Services or as otherwise contemplated by this Agreement.

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- 2.4.2 Privacy Policy. Subscriber will ensure that its End User privacy policy includes provision that notifies End Users that: (i) Bidgely will receive energy usage related information from their applicable appliances ("Usage Data"), (ii) Bidgely will use Usage Data to help make personalized product and energy saving recommendations (which may be via email, physical mailings, and other marketing channels), (iii) Bidgely may internally use Usage Data in an anonymized, aggregate form to help improve Bidgely's products and services (such as training algorithms), and (iv) Bidgely may share consumer information (name, email address, and receipt as proof of appliance purchase) with partners as necessary to track, maintain, and process rebates. The parties will work together diligently, and in good faith, with respect to the inclusion of such language in the privacy policy.
- 2.5 The method and means of providing the Services shall be under the exclusive control, management, and supervision of Bidgely, giving due consideration to the requests of Subscriber unless the provision of the Services contains the processing and use of personal data transferred to Bidgely. Without limiting the generality of the foregoing, Bidgely will make the Services available as Ordered pursuant to the terms of the Service Level Agreement.
- 2.6 For the avoidance of doubt, the terms of this Agreement supersede those of any click through agreement or other online terms and conditions accepted by Subscriber or an Authorized User.
- 2.7 Subscriber will ensure that any End Users (i.e., homeowners) of mobile applications or other services that enable access and use of features of the Service ("End User Applications") enter binding written end user agreements that, at a minimum, include those terms set forth on Exhibit A.

3 Change Control Procedure

- 3.1 Subscriber may, upon written notice, request changes to the scope of the Service or Professional Services provided under a SOW. If Subscriber requests an increase or decrease in the scope, Subscriber shall notify Bidgely, and Bidgely shall notify Subscriber whether the change is rejected, or if it were to be accepted would have an associated cost increase or degradation to the quality or reliability Service or applicable SLA. If Subscriber approves, Subscriber shall issue a change order including the applicable changes in scope, fees, SLAs or otherwise, which will (to the extent consistent with the foregoing) be executed by the Bidgely and be deemed to modify the terms of the applicable SOW. For the avoidance of doubt, Bidgely is not obligated to accept any applicable proposed change order.

4 Term and Termination; Renewals

- 4.1 This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement or a SOW is terminated earlier in accordance with the terms set forth herein, the term of a SOW (the

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"**Initial Term**") shall commence on the Start Date and continue until the End Date. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, a SOW shall automatically renew for successive one (1) year terms (each, a "**Renewal Term**", and together with the Initial Term, the "**Subscription Term**") unless a party provides the other party with written notice of non-renewal at least thirty (30) calendar days prior to the last day of the then-current term; and, (b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term.

- 4.2 If either party materially breaches any of its duties or obligations hereunder and such breach is not cured, within thirty (30) calendar days after written notice of the breach (or the breaching party is not, during that time, diligently pursuing a cure to the non-breaching party's sole satisfaction), the non-breaching party may terminate this Agreement or a SOW for cause as of a date specified in such notice. In addition, Bidgely may, without terminating, suspend the Service offered under a SOW during any period of non-compliance.
- 4.3 If Subscriber terminates the contract for convenience, Subscriber is required to pay in full for the current annual term of services and as such any unpaid fees for that annual term will accelerate and be promptly due. If Subscriber has already paid for the full term, there will be no refund for any unused portion of the term.
- 4.4 The termination of this Agreement and/or SOW(s) shall explicitly not release the Parties from those obligations that – by their nature – are intended to be maintained, including that which is specified in relation to confidentiality, the use of third parties and liability for taxes, intellectual property, liability and governing law and dispute resolution.

5 Force Majeure Event

- 5.1 An event of force majeure ("**Force Majeure Event**") is an event or circumstance which is beyond the reasonable control and without the fault or negligence of Bidgely and which by the exercise of reasonable diligence Bidgely was unable to prevent, including the following:
- riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not) acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition, or compulsory acquisition by any governmental or competent authority;
 - earthquakes, flood, fire, storm, hurricane, or other physical natural disaster; and
 - nationalization, government sanction, blockage, embargo, strikes at national level or industrial disputes at a national level, or strike or industrial disputes by labor not employed by Bidgely or its suppliers and which affect provision of the Services but excluding any industrial dispute which is specific to the performance of the Services or this Agreement.

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- Interruption or failure of electricity, Internet or telephone service, or failure of the data hosting service by the hosting provider (which currently is Amazon Web Services).

Accordingly, Bidgely will be excused for the performance of this Agreement to the extent caused by or arising out of a Force Majeure Event, and Subscriber understands and acknowledges that Bidgely's inability to perform may last longer than the Force Majeure Event itself.

6 **Fees; Billing**

- 6.1 Subscriber shall be responsible for and shall pay to Bidgely the fees for the Service ("**Subscription Fees**"), and to the extent billed separately for support of the Service ("**Support Fees**") and any applicable Professional Services ("Professional Service Fees", together with Subscription Fees and Support Fees, the "**Fees**") as further described in a SOW.
- 6.2 Unless otherwise provided in the applicable SOW, Subscription Fees and Support Fees are due and payable in advance (with any applicable credits and true ups applied to the next monthly payment), and Professional Services Fees are invoiced monthly in arrears, payable net thirty (30) days from invoice date.
- 6.3 Subscriber will be responsible for and pay in full any Taxes that may be incurred in connection with the sale of any goods or services contemplated by this Agreement including any transfer, sales, use and excise Taxes, but excluding any Taxes based on the income of Bidgely, employment or withholding taxes.
- 6.4 Any terms and conditions included in a Subscriber purchase order or a Bidgely invoice are expressly rejected and shall be deemed to be solely for the convenience of the respective party, and no such term or condition shall be binding upon the parties or made a part of (or used in the interpretation of) the terms of this Agreement.
- 6.5 Notwithstanding anything to the contrary herein, Bidgely shall not suspend any part of the Services where Subscriber is reasonably, timely, and in good faith disputing any amount due to Bidgely and has provided supporting documentation, while such dispute continues to be pending in good faith.

7 **Representations and Warranties**

- 7.1 Each of Subscriber and Bidgely represent and warrant that:
 - 7.1.1 it is a business duly incorporated and is validly existing under the laws of its state of incorporation;
 - 7.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
 - 7.1.3 the execution, delivery, and performance of this Agreement has been

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duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;

7.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,

7.1.5 there is no outstanding litigation, arbitrated matter, or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

7.2 **DISCLAIMER.** EXCEPT FOR THE FOREGOING EXPRESS WARRANTIES, BIDGELY MAKES NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT TO THE SERVICE OR PROFESSIONAL SERVICES OR ANY OTHER MATERIALS OR ASSISTANCE PROVIDED HEREUNDER, ALL OF WHICH ARE PROVIDED AS-IS AND WHERE-IS, WITH ALL FAULTS. BIDGELY EXPRESSLY DISCLAIMS WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE, AND QUIET ENJOYMENT.

8 Non-Disclosure of Confidential Information, Privacy.

8.1 **"Confidential Information"** means any non-public data, information and/or other material regarding the products, software, services, employees, or business of a party (and/or, if either party is bound to protect the confidentiality of any third party's information, of a third party) provided by one party ("**Disclosing Party**") to the other party ("**Receiving Party**") where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like. Personal data transmitted to Bidgely by Subscriber or other Customer shall be deemed Confidential Information even if not marked or otherwise communicated as being "proprietary" or "confidential" or the like.

8.2 Without limiting the foregoing, the relevant Services(s) and any performance data, benchmark results, and technical information relating thereto, and Bidgely's pricing information shall be deemed the Confidential Information of Bidgely. Notwithstanding the foregoing, Confidential Information shall not include information which: (i) is already known to the Receiving Party on a non-confidential basis prior to receipt hereunder by the Disclosing Party; (ii) becomes publicly available without wrongful act of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party on a non-confidential basis; or (iv) is independently developed or created by the Receiving Party without use of the Disclosing Party's Confidential Information. If any Confidential Information is required to be disclosed by law or governmental

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regulation, it may be disclosed to the extent of such requirement, provided that the Receiving Party provides reasonable notice to Disclosing Party of such required disclosure and reasonably cooperates with the Disclosing Party in limiting such disclosure and/or obtaining confidential treatment for any information so disclosed.

- 8.3 Except as expressly authorized herein, the Receiving Party agrees to: (a) use the Confidential Information of the Disclosing Party only to perform its obligations hereunder (including providing the features and services associated with the normal use of the Services) or to exercise rights granted to it hereunder (including in connection with the normal use of the Services) or to enforce or require compliance with the terms herein; (b) treat all Confidential Information of the Disclosing Party in the same manner as it treats its own similar Confidential Information, but in no case will the degree of care be less than reasonable care; and (c) disclose the Disclosing Party's Confidential Information only to those employees of the Receiving Party who have a reasonable need to know such information for the purposes of this Agreement, provided that any such employee shall be subject to obligations of non-use and confidentiality with respect to such Confidential Information at least as restrictive as the terms of this Agreement, and the Receiving Party shall remain solely liable for any non-compliance of such employee with the terms of this Agreement.

9 Proprietary Rights.

- 9.1 Subscriber acknowledges that, while performing the Services, Bidgely may use software and related processes, instructions, methods, and techniques that have been previously developed by Bidgely (collectively, the "Bidgely Materials," which shall include the Service and all components, modifications, enhancements, revisions, and new versions thereof). The Bidgely Materials, and all intellectual property rights therein and thereto shall remain the sole and exclusive property of Bidgely. Except for the limited right to access and use on a hosted basis as expressly granted herein, Subscriber shall have no rights to Services. Any Intellectual Property developed by Bidgely, including in connection with performing Professional Services, remains exclusively the property of Bidgely.
- 9.2 Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Bidgely Materials. Nothing in this Agreement shall be deemed or interpreted to grant to either party any ownership or other interest, in the Confidential Information or Bidgely Materials, whether by implication, estoppel or otherwise.
- 9.3 Notwithstanding anything to the contrary provided herein, Subscriber understands and agrees that the value of the Service to improve the insight into End Users access and use of Subscribers' services is derived in part from the aggregate analysis of data across Bidgely's customers, and Subscriber hereby

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expressly authorizes Bidgely to store, use, and process any and all data provided by or on behalf of Subscriber (including by End Users) in connection with use of the Service as provided herein ("**Usage Data**"), may be used on an aggregated basis in connection with the development, support, enhancement, and improvement of Bidgely's products and services (including associated algorithm, models, machine learning, and associated technologies), provided that the foregoing is not a license from Subscriber to disclose any Usage Data on a raw or disaggregated basis, or to identify Subscriber (or Subscriber's End Users) as the source of any such data. All enhancements to Bidgely's products, services, and technology, including arising out of the use of Usage Data, belong solely to Bidgely.

9.4 The provisions of this Section shall survive the termination of this Agreement.

10 **Indemnification; Limitation of Liability; Insurance**

10.1 Bidgely agrees to defend and indemnify Subscriber from and against all losses incurred by Subscriber arising from any third-party claim that the Services, when used by Subscriber as contemplated herein infringes or violates any patent, copyright, trademark, license or other intellectual property or proprietary right of any third party. The foregoing obligation of Bidgely shall be subject to the following: (a) that Subscriber give Bidgely prompt written notice of any such claim, provided that Subscriber's failure to provide such prompt written notice does not relieve Bidgely of its indemnification obligation except to the extent Bidgely has been prejudiced or exposed to additional costs or damages; (b) that Subscriber permits Bidgely to control and direct the defense or settlement of any such claim; and (c) that Subscriber provides Bidgely all reasonable assistance in connection with the defense or settlement of any such claim, at Bidgely's sole expense. The remedies set forth in this Section constitute Subscriber's exclusive remedies, and Bidgely's entire liability, with respect to the infringement, violation, or misappropriation of any third-party intellectual property by the Services. In all cases, Bidgely's costs will be capped at the appropriate insurance amount or the amount of invoices collected in the prior 12 months, whichever is greater.

10.2 Subscriber agrees to defend and indemnify Bidgely from and against all losses incurred by Bidgely arising from Subscriber's use of the Services in violation of this Agreement (including without limitation failure to bind End Users to the Minimum Terms), or (other than with respect to a claim for which Bidgely is obligated to indemnify for) infringes or violates any patent, copyright, trademark, license or other intellectual property or proprietary right of any third party (including without limitation, any claims associated with End User or other information or materials provided by or on behalf of Subscriber to Bidgely in connection with its use of the Services). The foregoing obligation of Subscriber shall be subject to the following: (a) that Bidgely gives Subscriber and Subscriber Representatives prompt written notice of any such claim; (b) that Bidgely permit Subscriber to control and direct the defense or settlement of any such claim; and (c) that Bidgely provides Subscriber all reasonable assistance in connection with the defense or settlement of any such claim, at the sole expense of

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Subscriber and Subscriber Representatives. The remedies set forth in this Section constitute Bidgely's exclusive remedies, and Subscriber's entire liability, with respect to the infringement, violation, or misappropriation of any third-party intellectual property by Subscriber's use of the Services in violation of this Agreement. In all cases, Subscriber's costs will be capped at the appropriate insurance amount or the amount of invoices collected in the prior 12 months, whichever is greater.

10.3 LIMITATION OF LIABILITY. IN NO EVENT WILL SUBSCRIBER OR BIDGELY OR BIDGELY'S LICENSORS BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICE, PROFESSIONAL SERVICES OR OTHERWISE ARISING IN CONNECTION WITH THIS AGREEMENT (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT TORT OR OTHERWISE), AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY OR BIDGELY'S LICENSORS ARISING IN CONNECTION WITH THIS AGREEMENT (UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT OR OTHERWISE) EXCEED THE APPROPRIATE INSURANCE AMOUNT OR THE FEES PAID FOR THE RELEVANT SERVICE IN THE PRECEDING TWELVE (12) MONTHS, WHICHEVER IS GREATER. NOTWITHSTANDING THE FORGOING, THE LIABILITY LIMITATIONS DESCRIBED HEREIN SHALL NOT APPLY TO ANY LIABILITY ARISING FROM A PARTY'S, BREACH OF CONFIDENTIALITY OR PRIVACY OBLIGATIONS, OR ANY AMOUNTS PAYABLE TO A THIRD PARTY IN CONNECTION WITH INDEMNITY OBLIGATIONS DESCRIBED HEREIN.

10.4 At all times during the term of this Agreement, Bidgely will maintain the insurance set forth in this Section 10.4. All insurance will be carried with responsible insurance companies of recognized standing which are authorized to do business in the state or other jurisdiction in which the Service is rendered and are rated A VIII or better by A.M. Best. Subscriber will be named as an additional insured on the policy. A copy of the insurance certificates will be provided on request.

- Workers Compensation. Statutory workers' compensation covering all state and local requirements.
- Commercial General Liability. The limits for bodily injury and property damage combined will be at least: Each Occurrence Limit \$2,000,000; Aggregate Limit \$4,000,000
- Umbrella Liability. Such insurance will provide additional limits of not less than \$10,000,000 per occurrence more than the limits stated above (and \$10,000,000 in the aggregate).
- Errors & Omissions. The limits for errors and omissions insurance will be at least: Each Occurrence Limit \$5,000,000; Aggregate Limit \$5,000,000.
- Cyber Liability. The limits for cyber liability insurance will be at least: Each Occurrence Limit \$5,000,000; Aggregate Limit \$5,000,000

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- 10.5 The insurance above will provide that such insurance is primary coverage with respect to all insureds and additional insureds. The insurance coverages described in this section may be obtained through any combination of primary and excess or umbrella liability insurance. Bidgely shall give Subscriber thirty (30) days written notice of any material change or alteration in the coverage specified above or cancellation of any policy of insurance required hereunder. The carrying by Bidgely of the insurance required herein shall in no way be interpreted as relieving Bidgely of any other obligations it may have under the Agreement.

11 **General.**

- 11.1 Bidgely represents and warrants that it is an independent contractor with no authority to contract for Subscriber or in any way to bind or to commit Subscriber to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Subscriber. Under no circumstances shall Bidgely, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of Subscriber. In recognition of Bidgely's status as an independent contractor, Subscriber shall carry no Workers' Compensation insurance or any health or accident insurance to cover Bidgely or Bidgely's agents or staff, if any. Subscriber shall not pay any contributions to Social Security, unemployment insurance, withholding taxes, any other applicable taxes, nor provide any other contributions or benefits, which might be expected in an employer-employee relationship. Neither Bidgely nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of Subscriber.
- 11.2 In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.
- 11.3 Where agreement, approval, acceptance, consent, or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder.
- 11.4 The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 11.5 Any notice given pursuant to this Agreement shall be in writing and shall be

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given by certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by mail shall be deemed effective on the date it is delivered to the addressee or two days from the proof of date of mailing whatever is earlier.

- 11.6 This Agreement is personal to Subscriber. Neither party may directly or indirectly assign this Agreement, or the rights or duties created by this Agreement, without the prior written consent of the other party, except that either party may assign this Agreement as a whole to a successor to all or substantially all of its assets or business related to this Agreement, whether such assignment is affected in connection with a sale of such party's assets or stock or through merger, an insolvency proceeding or otherwise.
- 11.7 This Agreement and its attached exhibits and annexes constitute the entire agreement between the parties and supersede all previous representations, understandings, or agreements between Subscriber and Bidgely as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- 11.8 All rights and remedies of the parties herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Bidgely for the enforcement of this Agreement, and temporary and permanent injunctive relief.
- 11.9 Subscriber cannot – implicitly or explicitly – derive any exclusive rights from the provisions of the Agreement in relation to the delivery of Services.
- 11.10 If one or more of the provisions of the Agreement and/or SOW is/are deemed to be invalid, declared void and/or unenforceable by a legal ruling or by an arbitration ruling, such invalidity, voidness and/or unenforceability shall have no effect on the other provisions of the Agreement and/or SOW. In such a case the Parties shall enter negotiations aimed at replacing as closely as possible the invalid, void and/or unenforceable provision with a clause that has the same intended effect as the invalid, void and/or unenforceable provision.

12 Governing Law and Jurisdiction

- 12.1 This agreement and any disputes or claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of the State of California, without regards to principles of conflicts of law. All disputes arising hereunder shall be subject to the exclusive jurisdiction of the State and Federal Courts located in Santa Clara County, California.

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Annex A - End User Minimum Terms

Subscriber's terms of service under which features of the Service are made available to End Users shall include at least the following minimum terms protecting Bidgely:

1. All warranties, express, implied, and statutory, including without limitation warranties of merchantability, fitness for a particular purpose, and non-infringement are disclaimed on behalf of Bidgely, to the maximum extent allowed pursuant to permissible law;
2. All liability is disclaimed on behalf of Bidgely, to the maximum extent allowed pursuant to permissible law;
3. All intellectual property rights in and to the Service are reserved expressly to Bidgely;
4. End Users' use rights are revocable and terminable, at a minimum in connection with uncured breach of applicable terms;
5. Bidgely is expressly identified as a direct and intended third party beneficiary of the applicable terms, entitled to enforce the terms directly with the applicable End User.

For the avoidance of doubt, the protections for Bidgely described above may (except in the case of #5) be implemented without reference to Bidgely by name, as with language applying to Subscriber "and its licensors, suppliers, vendors, and partners" or similar.