

FIDDLER LABS INC.
SOFTWARE LICENSE AGREEMENT (HOSTED)

THIS SOFTWARE LICENSE AGREEMENT (THE “**AGREEMENT**”) IS A LEGAL CONTRACT BETWEEN FIDDLER LABS INC. (“**FIDDLER**”) AND THE LEGAL ENTITY YOU REPRESENT (E.G., YOUR EMPLOYER) (“**CUSTOMER**”) (EACH OF FIDDLER AND CUSTOMER, A “**PARTY**”) AND GOVERNS YOUR ACCESS TO AND USE OF THE LICENSED SOFTWARE (AS DEFINED BELOW). BY CLICKING THE “**I AGREE**” BUTTON OR OTHERWISE USING OR ACCESSING THE LICENSED SOFTWARE, CUSTOMER AGREES TO BE BOUND BY ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT. THE AGREEMENT TAKES EFFECT WHEN YOU CLICK THE “**CREATE CONTRACT**” BUTTON OR, IF EARLIER, WHEN YOU START USING THE LICENSED SOFTWARE (THE “**EFFECTIVE DATE**”). IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT, DO NOT USE THE LICENSED SOFTWARE, AND EXIT NOW BY CHOOSING THE “**I DO NOT AGREE**” BUTTON. IF YOU SELECT THE “**I DO NOT AGREE**” BUTTON AND HAVE ALREADY PAID FOR THE SOFTWARE, PLEASE CONTACT FIDDLER FOR A REFUND. UNLESS YOU CLICK THE “**I DO NOT AGREE**” BUTTON, THE FEES PAID FOR THE LICENSED SOFTWARE ARE NOT REFUNDABLE, EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT.

THE PERSON CLICKING THE “**I AGREE**” BUTTON, REPRESENTS THAT HE/SHE HAS READ THIS AGREEMENT AND UNDERSTANDS ITS TERMS AND CONDITIONS AND THAT HE/SHE HAS THE RIGHT AND THE AUTHORITY TO BIND THE CUSTOMER TO THE TERMS AND CONDITIONS IN THIS AGREEMENT.

Customer and Fiddler hereby agree as follows:

1. **DEFINITIONS.** Certain capitalized terms shall have the meanings set forth below in this Section 1 or if not defined in this Section 1, as provided where such terms are first used herein.

1.1 “**Confidential Information**” means any material or information relating to a Party’s research, development, products, product plans, services, customers, customer lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the software and any databases (including any data models, structures, non-customer specific data and aggregated statistical data contained therein) of Fiddler shall constitute Confidential Information of Fiddler.

1.2 “**Documentation**” shall mean Fiddler’s standard user manuals and/or related documentation generally made available to licensees of the Licensed Software.

1.3 “**Licensed Software**” means Fiddler’s proprietary software application(s) to which access is granted pursuant to this Agreement.

1.4 “**Marketplace**” means the AWS Marketplace (available at <https://aws.amazon.com/marketplace>).

1.5 “**Product Listing Page**” means the applicable product listing page on the Marketplace that provides information about, and the option to purchase access to, the Licensed Software.

1.6 “**Term**” means the period during which this Agreement remains in force and effect in accordance with Section 12.1.

2. **GENERAL.** This Agreement contains the terms and conditions governing the legal relationship between Fiddler and Customer relating to the mutual covenants and obligations of the Parties. Fiddler’s provision of access to a hosted, online version of its proprietary software, and the provision of services related to such services, are subject to the terms and conditions contained in this Agreement. However, Customer acknowledges and understands that this Agreement do not, absent Customer purchasing access to the Licensed Software via the Marketplace, impose any obligation upon Fiddler to provide any such license, access or services.

3. **ACCESS TO LICENSED SOFTWARES.** Subject to the terms and conditions of this Agreement and during the Term, Fiddler shall provide Customer with access to the Licensed Software solely in accordance with applicable Documentation provided by Fiddler, and solely for Customer’s internal business purposes in accordance with all usage limitations set forth on the applicable Product Listing Page (“**Usage Limits**”). Customer understands that this Agreement grants certain rights of access only, and that nothing in this Agreement may be interpreted to require delivery of a copy of the Licensed Software to Customer or installation of such a copy upon any computers or systems under Customer’s control.

4. FIDDLER OBLIGATIONS

4.1 **Procedures and Technical Protocols.** Fiddler will specify to Customer procedures according to which Customer may establish and obtain access to, and use of, the features and functions of the Licensed Software, which may include without limitation, provision of access codes, passwords, technical specifications, connectivity standards or protocols, or any other relevant procedures (together with relevant portions of the Documentation, the “**Access Protocols**”).

4.2 **Responsibility for Hosting of Service.** As between the Parties, Fiddler will bear responsibility, at its own expense, for hosting and operation of hardware and software necessary to provide the Licensed Software through Fiddler’s URL provided to Customer for use by Customer, provided that Customer will be responsible for procuring and/or operating computer systems, software and telecommunications services meeting such minimum technical requirements as Fiddler may specify, as necessary for Customer to obtain access to the Licensed Software as hosted by Fiddler.

4.3 **Data Retention.** Customer acknowledges and understands that use of the Licensed Software will permit or require Customer to provide certain of Customer’s data to Fiddler for purposes of processing or storage using the features and functions of the Licensed Software (“**Customer Data**”). During the term of this Agreement, Fiddler will make such Customer Data available to Customer through online access to the Licensed Software. All such Customer Data shall be considered proprietary to Customer, and Fiddler will not use such Customer Data except as necessary to perform under this Agreement. Customer acknowledges and agrees that Fiddler will have no obligation to archive or

back-up Customer Data, nor will Fiddler have any liability for any loss or corruption of Customer Data, nor will Fiddler have any obligation under this Agreement to retain any Customer Data after the expiration or termination of the Term.

4.4 Personal Information; Sensitive Data. Customer acknowledges and agrees that the Licensed Software are not designed to store personally identifiable information, medical information, personal data, or any other sensitive information of any kind (collectively, "**Sensitive Data**") or any data, information, or content that is unlawful, unsafe, inappropriate, or offensive or which contains any harmful, malicious, or disruptive viruses, Trojan horses, or other code (together, all of the foregoing with the Sensitive Data, "**Restricted Data**"), and that notwithstanding anything to the contrary set forth herein, (a) Customer will not provide any Restricted Data to or through the Licensed Software and (b) Fiddler does not and shall not have any responsibility or liability related to such Restrictive Data, including without limitation any obligation to protect or secure such Restricted Data.

4.5 Professional Services; Training and Support. Customer may request that Fiddler provide certain professional services related to Customer's use of the Licensed Software, including, by way of example, configuration or customization of the Licensed Software, training of Customer personnel regarding use of the Licensed Software and/or provision of technical support related to the Licensed Software. However, unless otherwise agreed between the Parties in a written agreement, Fiddler shall have no obligation to provide or perform and such services for or on behalf of Customer.

5. GENERAL USAGE RESTRICTIONS

5.1 Prohibited Uses. Customer will not use the Licensed Software or Documentation for any purposes beyond the scope of the licenses granted in this Agreement. Without limiting the generality of the foregoing, Customer will not (i) authorize or permit use of the Licensed Software or Documentation in excess of the Usage Limits; (ii) market or distribute access to the Licensed Software or market or distribute the Documentation; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Customer's rights under the access rights granted in Section 3; (iv) use the Licensed Software in any time-sharing or service bureau arrangement, including, without limitation, any use to provide services or process data for the benefit of, or on behalf of, any third party; (v) modify or create any derivative works of the Licensed Software (or any component thereof) or Documentation, except with the prior written consent of Fiddler; (vi) combine or integrate the Licensed Software with hardware, software or technology not provided to Customer by Fiddler hereunder; or (vii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Licensed Software is compiled or interpreted, and Customer hereby acknowledges that nothing in this Agreement shall be construed to grant Customer any right to obtain or use such source code.

5.2 Third-Party Restrictions. Customer shall undertake all measures necessary to ensure that its use of the Licensed Software and the Documentation complies in all respects with any contractual or other legally binding obligations of Fiddler to any third party, provided that Fiddler has notified Customer with respect to any such obligations. Customer shall not enter into any contractual relationship or other legally binding obligation with any third party which shall have the purpose or effect of encumbering the use or provision by Fiddler of the Licensed Software or the Documentation.

5.3 Compliance with Laws.

(a) Export Compliance. Licensed Software and other technology made available to Customer (or any derivatives thereof), may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit users to access or use any Licensed Software in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

(b) Anti-Corruption. Customer agrees that Customer have not received, been offered, solicited, or accepted any illegal (in accordance with applicable state and federal law) or improper bribe, kickback, payment, gift, or thing of value from any of Fiddler employees or agents in connection with the Agreement.

(c) Anti-Terrorism. Neither Party is in violation of any U.S. anti-terrorism law (including applicable Executive Orders), or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any U.S. anti-terrorism law.

5.4 Proprietary Notices. Customer shall duplicate all proprietary notices and legends of Fiddler and its suppliers or licensors upon any and all copies of the Documentation made by Customer. Customer shall not remove, alter, or obscure any such proprietary notice or legend. Customer shall create and maintain complete and accurate records of all copies of the Documentation made by or on behalf of Customer, including the date such copies are made and where such copies are located. Customer shall promptly provide a copy of such records upon request by Fiddler.

6. FEES AND PAYMENTS

6.1 Fees Payable. In consideration for Fiddler's performance under this Agreement, Customer agrees to pay such amounts as described on the applicable Product Listing Page. All amounts due hereunder shall be due in accordance with Customer's payment obligations for Customer's Marketplace account, or if not already established for Customer's Marketplace account, annually upfront in advance.

6.2 Customer's Operating Expenses. As between the Parties, Customer shall bear all expenses incurred in performance of its obligations or exercise of its rights under this Agreement.

6.3 Disputed Charges. Customer must notify Fiddler in writing of any dispute or disagreement with invoiced charges within thirty (30) days after the date of invoice. Absent such notice, Customer shall be deemed to have agreed to the charges as invoiced after the expiration of such time period.

6.4 Late Charges. Fiddler reserves the right to charge, and Customer agrees to pay, a late charge equal to one and one-half percent (1½%) per month on any amount that is not the subject of a good faith dispute that is unpaid on the due date, and on any other outstanding balance.

6.5 Suspension of Service. In the event that Customer's account is more than thirty (30) days overdue, Fiddler shall have the right in its sole discretion, in addition to its remedies under this Agreement or pursuant to applicable law, to suspend Customer's use of the Licensed Software, without further notice to Customer, until Customer has paid the full balance owed, plus any interest due in accordance with the Agreement, and has made any security deposit required by Fiddler in its sole discretion.

6.6 Taxes. All amounts payable under this Agreement shall exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges. Customer will be responsible for payment of all such taxes (other than taxes based on

Fiddler's income), fees, duties and charges, and any related penalties and interest, arising from the payment of any fees hereunder, the grant of license rights hereunder, or the delivery of services. Customer will make all payments required hereunder to Fiddler free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on any payments hereunder to Fiddler will be Customer's sole responsibility, and Customer will, upon Fiddler's request, provide Fiddler with official receipts issued by the appropriate taxing authority, or such other evidence as Fiddler may reasonably request, to establish that such taxes have been paid.

6.7 Auditing Rights and Required Records. If any amounts payable under this Agreement are not based upon a fixed sum ascertainable as of the Effective Date, Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two (2) years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder. Fiddler will have the right, at its own expense, upon reasonable prior notice, periodically to inspect and audit the records of Customer with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Fiddler with respect to any amounts due and payable during the period to which such inspection and audit relate, Customer shall promptly pay such amounts as are necessary to rectify such underpayment, together with interest in accordance with Section 6.4, and further provided that if the amount of such underpayment equals or exceeds five percent (5%) of the total amounts due and payable by Customer during period to which such audit relates, Customer shall reimburse Fiddler for the cost of such inspection and audit. Such inspection and auditing rights shall extend throughout the Term and for a period of two (2) years after the termination of this Agreement.

7. CONFIDENTIALITY

7.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

7.2 Mutual Confidentiality Obligations. Each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

7.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 7.1 and 7.2 shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

8. OWNERSHIP. Subject to the rights granted in Section 3, Customer acknowledges that Fiddler and its licensors own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and other intellectual property rights ("Intellectual Property Rights") in and to the Licensed Software and the Documentation (including all components thereof), and Fiddler expressly reserves all rights not expressly granted to Customer in this Agreement. Customer shall not engage in any act or omission that would impair Fiddler's and/or its licensors' Intellectual Property Rights in the Licensed Software and any other materials, information, processes or subject matter proprietary to Fiddler.

9. WARRANTIES

9.1 Representations and Warranties. Each Party represents and warrants to the other that the execution and performance of this Agreement does not and shall not violate any other contract, obligation, or instrument to which it is a party, or which is binding upon it, including terms relating to covenants not to compete and confidentiality obligations.

9.2 No Other Warranties. EXCEPT AS OTHERWISE EXPRESSLY WARRANTED IN THIS AGREEMENT, THE LICENSED SOFTWARE, LICENSED SOFTWARE, AND ANY OTHER MATERIALS, SOFTWARE, DATA AND/OR SERVICES PROVIDED BY FIDDLER ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND FIDDLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, QUIET ENJOYMENT, VALUE, ACCURACY OF DATA, OR QUALITY, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, WORKMANSHIP, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY FIDDLER ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF TRADE. FIDDLER DOES NOT WARRANT THAT THE LICENSED SOFTWARE, THE LICENSED SOFTWARE OR ANY OTHER INFORMATION, MATERIALS, TECHNOLOGY OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. CUSTOMER ACKNOWLEDGES THAT FIDDLER'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF CUSTOMER ONLY.

10. LIMITATION OF LIABILITY

10.1 Limitations. IN NO EVENT SHALL FIDDLER BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF FIDDLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. EXCEPT WITH RESPECT TO LIABILITY ARISING FROM FIDDLER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 11, THE CUMULATIVE

LIABILITY OF FIDDLER TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO FIDDLER BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

10.2 **Essential Basis.** The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

11. INDEMNIFICATION

11.1 Indemnification by Fiddler.

(a) Fiddler shall defend, indemnify, and hold Customer harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any claim by a third party that any use of, or access to, the Licensed Software expressly authorized under this Agreement infringes or misappropriates, as applicable, any U.S. patent issued as of the Effective Date or any copyrights or trade secrets under applicable laws of any jurisdiction within the United States, provided that Customer gives Fiddler (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Fiddler may reasonably request, at Fiddler's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Fiddler shall not settle any third-party claim against Customer unless such settlement completely and forever releases Customer with respect thereto or unless Customer provides its prior written consent to such settlement. In any action for which Fiddler provides defense on behalf of Customer, Customer may participate in such defense at its own expense by counsel of its choice.

(b) Notwithstanding the foregoing, Fiddler shall have no obligation or liability to the extent that the alleged infringement arises from (1) the combination, operation, or use of the Licensed Software with products, services, information, materials, technologies, business methods or processes not furnished by Fiddler; (2) modifications to the Licensed Software, which modifications are not made by Fiddler; (3) failure to use updates to the Licensed Software provided by Fiddler; or (4) use of the Licensed Software except in accordance with any applicable user documentation or specifications (circumstances under the foregoing clauses (1), (2), (3) and (4), collectively, "**Customer Indemnity Responsibilities**").

(c) Upon the occurrence of any claim for which indemnity is or may be due under this Section 11.1, or in the event that Fiddler believes that such a claim is likely, Fiddler may, at its option (i) modify the Licensed Software so that it becomes non-infringing, or substitute functionally equivalent software or services; (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) terminate this Agreement on written notice to Customer and refund to Customer all prepaid, but unearned amounts for the Licensed Software. The obligations set forth in this Section 11.1 shall constitute Fiddler's entire liability and Customer's sole remedy for any actual or alleged infringement or misappropriation.

11.2 Indemnification by Customer. Customer shall indemnify, hold harmless, and, at Fiddler's option, defend Fiddler from and against all losses, expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any claim by any third party arising from or in connection with Customer Indemnity Responsibilities, Customer's breach of this Agreement, or any data, information or other content or materials provided to Fiddler by Customer under this Agreement. Fiddler agrees to give Customer (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Customer may reasonably request, at Customer's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Customer shall not settle any third-party claim against Fiddler unless such settlement completely and forever releases Fiddler with respect thereto or unless Fiddler provides its prior written consent to such settlement. In any action for which Customer provides defense on behalf of Fiddler, Fiddler may participate in such defense at its own expense by counsel of its choice.

12. TERM AND TERMINATION

12.1 Agreement. This Agreement shall become effective upon the Effective Date and shall continue for one (1) year thereafter, unless earlier terminated in accordance with this Section 12. For the avoidance of doubt, this Agreement shall not automatically renew after the end of the one- (1) year term.

12.2 Termination for Breach. Either Party may terminate this Agreement immediately upon written notice in the event that the other Party materially breaches this Agreement and thereafter (i) in the case of material breach resulting from non-payment of amounts due hereunder, has failed to pay such amounts within thirty (30) days after receiving written notice thereof; or (ii) has failed to cure any other material breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the terminating Party) within thirty (30) days after receiving written notice thereof.

12.3 Termination Upon Bankruptcy, Insolvency, Etc. Either Party may terminate this Agreement immediately upon written notice after the other Party has executed an assignment for the benefit of creditors or filed for relief under any applicable bankruptcy, reorganization, moratorium, or similar debtor relief laws, or in the event that a receiver has been appointed for the other Party or any of its assets or properties, or an involuntary petition in bankruptcy has been filed against such other Party, which proceeding or petition has not been dismissed, vacated, or stayed within thirty (30) days.

12.4 Accrued Obligations. Termination of this Agreement shall not release the Parties from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this Agreement to survive termination. Notwithstanding the foregoing, the Party terminating this Agreement as permitted by any provision in this Section 12 shall incur no additional liability merely by virtue of such termination.

12.5 Cumulative Remedies. Termination of this Agreement, regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby.

12.6 Effect of Termination. Upon any termination of this Agreement, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) delete the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; (iii) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession; and (iv) shall promptly pay all amounts due and remaining payable hereunder.

12.7 **Effect of License Termination.** Upon any termination of this Agreement, Customer shall (i) immediately discontinue all access to, and use of, the Licensed Software and Documentation; and (ii) promptly pay to Fiddler all amounts due and remaining payable under this Agreement.

12.8 **Survival of Obligations.** The provisions of Sections 4.4, 5, 6, 7, 8, 9, 10, 11, 12.8, and 13 as well as Customer's obligations to pay any amounts due and outstanding hereunder, shall survive termination or expiration of this Agreement.

13. MISCELLANEOUS

13.1 **Governing Law.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND SHALL BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO ITS RULES REGARDING CONFLICTS OF LAWS. CUSTOMER AGREES THAT ANY AND ALL CAUSES OF ACTION BETWEEN THE PARTIES ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE STATE AND FEDERAL COURTS LOCATED WITHIN THE STATE OF CALIFORNIA.

13.2 **Arbitration.** ANY CLAIM OR CONTROVERSY ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY BREACH THEREOF BETWEEN THE PARTIES SHALL BE SUBMITTED TO FINAL AND BINDING ARBITRATION BEFORE JAMS IN THE STATE OF CALIFORNIA, COUNTY AND CITY OF SAN FRANCISCO, PURSUANT TO THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES. ALL PARTIES FURTHER AGREE THAT THE ARBITRATION SHALL BE CONDUCTED BEFORE A SINGLE ARBITRATOR WHO SHALL BE AN INDEPENDENT RETIRED CALIFORNIA OR FEDERAL JUDGE OR JUSTICE WHO CURRENTLY IS, OR WAS AT THE TIME OF RETIREMENT, IN GOOD STANDING. SUBJECT TO THE FOREGOING, THE ARBITRATOR SHALL BE SELECTED THROUGH THE PROCEDURE SET FORTH IN RULE 15, SUBSECTIONS (b) – (f) OF THE JAMS COMPREHENSIVE ARBITRATION RULES AND PROCEDURES. The Parties further agree that, upon application of the prevailing party, any Judge of the Superior Court of the State of California, for the County of San Francisco, may enter a judgment based on the final arbitration award issued by the JAMS arbitrator, and the Parties expressly agree to submit to the jurisdiction of this Court for such a purpose. THE PARTIES UNDERSTAND THAT BY AGREEMENT TO BINDING ARBITRATION THEY ARE GIVING UP THE RIGHTS THEY MAY OTHERWISE HAVE TO TRIAL BY A COURT OR A JURY AND ALL RIGHTS OF APPEAL, AND TO AN AWARD OF PUNITIVE OR EXEMPLARY DAMAGES.

13.3 **Force Majeure.** Fiddler shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of Fiddler. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

13.4 **Notices.** All notices required by or relating to this Agreement shall be in writing and shall be sent by means of electronic mail, if to Customer, to the email address associated with Customer's account, or if to Fiddler, at legal@Fiddler.com. Customer hereby consents to receiving electronic communications from Fiddler relating to this Agreement. Customer agrees that any notices, agreements, disclosures, or other communications that Fiddler sends to Customer electronically will satisfy any legal communications requirements, including that such communications be in writing.

13.5 **Publicity.** Fiddler may publicly refer to Customer, including on Fiddler's website and in sales presentations, as a Fiddler customer and may use Customer's logo for such purposes. Customer hereby grants to Fiddler a limited, worldwide license to use Customer's logo in conformance with Customer's trademark usage guidelines and solely for the purposes of fulfilling its obligations or exercising its rights hereunder.

13.6 **Assignment.** Neither Party shall assign its rights or delegate its obligations under this Agreement without the other Party's prior written consent, and, absent such consent, any purported assignment or delegation shall be null, void and of no effect. Notwithstanding the foregoing, either Party may assign this Agreement, without requiring such prior consent, in connection with a merger or sale of all or substantially all of its assets, provided that the assignee agrees in writing to assume the assignor's obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of Fiddler and Customer and their successors and permitted assigns.

13.7 **Independent Contractors.** Customer and Fiddler acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.

13.8 **Amendment.** No amendment to this Agreement shall be valid unless such amendment is made in writing and is signed by the authorized representatives of the Parties.

13.9 **Waiver.** No waiver under this Agreement shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay or forbearance by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

13.10 **Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

13.11 **Causes of Action.** No action arising from or related to this Agreement may be brought by either Party more than one (1) year after the cause of action has accrued, except that an action for non-payment may be brought within two (2) years after the date such amount was due.

13.12 **No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

13.13 **U.S. Government End-Users.** Each of the components that constitute the Licensed Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Licensed Software with only those rights set forth herein.

13.14 **Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

13.15 **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein.