

## STANDARD CONTRACT - ClimateTracker

### 1. Scope.

**1.1 Terms and Conditions.** This Standard Contract (the “**Standard Contract**”) sets forth the terms and conditions applicable to the licensing of the SaaS Service from the licensor (“**Licensor**”) by the Party subscribing to the SaaS Service (“**Buyer**”), and made available from Licensor’s Computing Environment. The offer of SaaS Service pursuant to this, and Buyer’s purchase of the corresponding Subscription, constitutes each Party’s respective acceptance of this Standard Contract and their entry into this Agreement (defined below). Unless defined elsewhere in this Standard Contract, terms in initial capital letters have the meanings set forth in Section 13. Buyer and Licensor may be referred to collectively as the “**Parties**” or individually as a “**Party**”.

**1.2 SaaS Service Subscription.** Licensor will fulfil the Subscription to Buyer, deployed via SaaS Service through Licensor’s Computing Environment. The pricing and term (if not on demand) are set forth in the Schedule.

**1.3 Agreement.** Each Subscription is subject to and governed by this Standard Contract, the terms and conditions of the NDA (if any), the Privacy and Security Terms for SaaS Service Subscriptions, and any amendments to any of the foregoing as may be agreed upon by the Parties, which together constitute the agreement between Buyer and Licensor (the “**Agreement**”). Each Subscription is a separate agreement between Buyer and Licensor. In the event of any conflict between the terms and conditions of the various components of this Agreement, the following order of precedence will apply: (a) any amendment agreed upon by the parties; (b) the Privacy and Security Terms for SaaS Service Subscriptions; (c) the NDA (if any); and (d) this Standard Contract.

### 2. Licenses.

#### 2.1 Licensed Materials.

**2.1.1** Licensor hereby grants to Buyer during the term of the Subscription, subject to Section 2.1.2, a nonexclusive, worldwide (subject to Section 12.6), nontransferable (except in connection with an assignment permitted under Section 12.4), non-terminable (except as provided in Section 10) license under all Proprietary Rights in and to the SaaS Service and to allow its Users to access and use the SaaS Service, or the applicable SaaS Service component, in accordance with the usage purchased in the Subscription.

**2.1.2** Buyer may use the SaaS Service only: in support of the internal operations of Buyer’s and its Affiliates’ business(es) or organization(s), in connection with Buyer’s and its Affiliates’ products and services (but, for clarity, not as a stand-alone product or service of Buyer or its Affiliates), and/or in connection with Buyer’s and its Affiliate’s interactions with Users.

**2.1.3** Buyer may make a reasonable number of copies of the Documentation as necessary to use such SaaS Service in accordance with the rights granted under this Agreement, provided that Buyer includes all proprietary legends and other notices on all copies. Licensor retains all rights not expressly granted to Buyer under this Agreement.

**2.2 Affiliates and Contractors.** With respect to Affiliates and Contractors that Buyer allows to use the Licensed Materials: (a) Buyer remains responsible for all obligations hereunder arising in connection with such Affiliate’s or Contractor’s use of the Licensed Materials; and (b) Buyer agrees to be directly liable for any act or omission by such Affiliate or Contractor to the same degree as if the act or omission were performed by Buyer such that a breach by an Affiliate or a Contractor of the provisions of this Agreement will be deemed to be a breach by Buyer. The performance of any act or omission under this Agreement by an Affiliate or a Contractor for, by or through Buyer will be deemed the act or omission of Buyer.

**2.3 Restrictions.** Except as specifically provided in this Agreement, Buyer and any other User of any Licensed Materials, in whole or in part, may not: (a) copy the Licensed Materials, in whole or in part; (b) distribute copies of Licensed Materials, in whole or in part, to any third party; (c) modify, adapt, translate, make alterations to or make derivative works based on Licensed Materials or any part thereof; (d) except as permitted by Law, decompile, reverse engineer, disassemble or otherwise attempt to derive source code, algorithms or the underlying structure of the SaaS Service; (e) use, rent, loan, sub-license, lease, distribute or attempt to grant other rights to any part of the Licensed Materials to third parties; (f) use the Licensed Materials to act as a service bureau or application service provider; or (g) permit access of any kind to the Licensed Materials to any third party.

**2.4 Open Source Software.** Subject to the requirements of Section 5.1(d), SaaS Service may contain or be provided with Open Source Software. If Buyer's use of the SaaS Service subjects Buyer to the terms of any license governing the use of Open Source Software, then information identifying such Open Source Software and the applicable license shall be incorporated or referenced in the Documentation. The terms of this Agreement apply to Open Source Software (i) to the extent not prohibited by the license to which the Open Source Software is subject, including without limitation, warranties and indemnification, (ii) and except to the extent required by the license to which the Open Source Software is subject, in which case the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including without limitation, any provisions governing attribution, access to source code, modification and reverse engineering.

**2.5 High-Risk Activities.** The SaaS Service is not designed or developed for use in high-risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the SaaS Service could lead to severe physical or environmental damages ("**High Risk Activities**"). Buyer will not use the SaaS Service for High Risk Activities.

### **3. Services.**

**3.1 SaaS Service.** The **Buyer** is purchasing a SaaS Service Subscription, and the Licensor will provide the SaaS Service promptly following purchase of the Subscription and continuing until termination of the Subscription. Licensor will provide Buyer all license keys, access credentials and passwords necessary for access and use of the SaaS Service ("**Keys**").

**3.2 Upgrades.** The SaaS Service may be upgraded to include additional, new or changed functionality and/or support for changes in government regulations. The Buyer will be responsible for content and checking accuracy of their data following upgrades, under Section 7.2.2.

### **4. Proprietary Rights.**

**4.1 Licensed Materials.** Subject to the licenses granted herein, Licensor will retain all right, title and interest it may have in and to the Licensed Materials, including all Proprietary Rights therein. Nothing in this Agreement will be construed or interpreted as granting to Buyer any rights of ownership or any other proprietary rights in or to the Licensed Materials or any Proprietary Rights therein.

**4.2 Feedback.** Buyer may, at its option, provide suggestions, ideas, enhancement requests, recommendations or feedback regarding the Licensed Materials or Support Services ("**Feedback**"), provided however, that Feedback does not include any Proprietary Rights of Buyer or Buyer's Affiliates or any Buyer Data or Buyer Materials. Licensor may use and incorporate Feedback in Licensor's services without compensation or accounting to Buyer, provided that neither Licensor nor its use of the Feedback identifies Buyer as the source of such Feedback. Feedback is not confidential to Buyer. Buyer will have no obligation to provide Feedback, and all Feedback is provided by Buyer "as is" and without warranty of any kind.

## 5. Warranties.

**5.1 Licensed Materials.** Licensor represents and warrants that: (a) for Subscriptions with Entitlement Pricing, deployed as a SaaS Service, the SaaS Service will conform, in all material respects, to the Documentation during the term of the Subscription; (b) Licensor will use industry standard practices designed to detect and protect the SaaS Service against any viruses, “Trojan horses”, “worms”, spyware, adware or other harmful code designed or used for unauthorized access to or use, disclosure, modification or destruction of information within the SaaS Service or interference with or harm to the operation of the SaaS Service or any systems, networks or data, including as applicable scanning for malware and other security vulnerabilities with up to date scanning software or service on a regular basis; and (c) the SaaS Service, and Buyer’s use thereof as permitted under this Agreement, will not be subject to any license or other terms that require that any Buyer Data, Buyer Materials or any software, documentation, information or other materials integrated, networked or used by Buyer with the SaaS Service, in whole or in part, be disclosed or distributed in source code form, be licensed for the purpose of making derivative works, or be redistributable at no charge.

**5.3 Remedies.** If the SaaS Service fails to conform to the foregoing warranties, Licensor promptly will, at its option and expense, correct the SaaS Service to conform to the warranties. If Licensor does not correct the SaaS Service to conform to the warranties within a reasonable time, not to exceed 30 days (or such other period as may be agreed upon by the Parties) (the “**Cure Period**”), as Buyer’s sole remedy and Licensor’s exclusive liability (except as provided in Section 9), Buyer may for a period of 30 days following the conclusion of the Cure Period (or such other period as may be agreed upon by the Parties), elect to terminate the Subscription and this Agreement without further liability and Licensor will provide Buyer with a refund of any fees prepaid to Licensor by Buyer, prorated for the portion of the Subscription unused at the time Buyer reported the breach of warranty to Licensor, as well as, if applicable, any service credits available under Licensor’s Support Services or other policies.

**5.4 Warranty Exclusions.** Licensor will have no liability or obligation with respect to any warranty to the extent attributable to any: (a) use of the SaaS Service by Buyer in violation of this Agreement or applicable Law; (b) modifications to the Licensed Materials not provided by Licensor or its Personnel; (c) use of the SaaS Service in combination with third-party equipment or software not provided or made accessible by Licensor or contemplated by the Documentation; or (d) use by Buyer of SaaS Service in conflict with the Documentation, to the extent that such nonconformity would not have occurred absent such use or modification by Buyer.

**5.5 Compliance with Laws.** Each Party represents and warrants that it will comply with all applicable international, national, state and local laws, ordinances, rules, regulations and orders, as amended from time to time (“**Laws**”) applicable to such Party in its performance under this Agreement.

**5.6 Power and Authority.** Each Party represents and warrants that: (a) it has full power and authority to enter in and perform this Agreement and that the execution and delivery of this Agreement has been duly authorized; and (b) this Agreement and such Party’s performance hereunder will not breach any other agreement to which the Party is a party or is bound or violate any obligation owed by such Party to any third party.

**5.7 Disclaimer.** EXCEPT FOR THE WARRANTIES SPECIFIED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE LICENSED MATERIALS, SERVICES, BUYER MATERIALS AND BUYER DATA, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. Licensor does not warrant: (a) that the Licensed Materials will meet Buyer’s requirements; or (b) that the operation of the SaaS Service will be uninterrupted or error free.

## 6. Confidentiality.

**6.1 Confidential Information.** “**Confidential Information**” means any non-public information directly or indirectly disclosed by either Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) or accessible to the Receiving Party pursuant to this Agreement that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential, including without limitation technical data, trade secrets, know-how, research, inventions, processes, designs, drawings, strategic roadmaps, product plans, product designs and architecture, security information, marketing plans, pricing and cost information, marketing and promotional activities, business plans, customer and supplier information, employee and User information, business and marketing plans, and business processes, and other technical, financial or business information, and any third party information that the Disclosing Party is required to maintain as confidential. Confidential Information will not, however, include any information which: (a) was publicly known or made generally available to the public prior to the time of disclosure; (b) becomes publicly known or made generally available after disclosure through no fault of the Receiving Party; (c) is in the possession of the Receiving Party, without restriction as to use or disclosure, at the time of disclosure by the Disclosing Party; (d) was lawfully received, without restriction as to use or disclosure, from a third party (who does not have an obligation of confidentiality or restriction on use itself); or (e) is developed by the Receiving Party independently from this Agreement and without use of or reference to the Disclosing Party’s Confidential Information or Proprietary Rights. Except for rights expressly granted in this Agreement, each Party reserves all rights in and to its Confidential Information. The Parties agree that the Licensed Materials are Confidential Information of Licensor.

**6.2 Obligations.** The Parties will maintain as confidential and will avoid disclosure and unauthorized use of Confidential Information of the other Party using reasonable precautions. Each Party will protect such Confidential Information with the same degree of care that a prudent person would exercise to protect its own confidential information of a like nature, and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof or access thereto. Each Party will restrict Confidential Information to individuals who need to know such Confidential Information and who are bound to confidentiality obligations at least as protective as the restrictions described in this Section 6. Except as necessary for the proper use of the SaaS Service, the exercise of a Party’s rights under this Agreement, performance of a Party’s obligations under this Agreement or as otherwise permitted under this Agreement, neither Party will use Confidential Information of the other Party for any purpose except in fulfilling its obligations or exercising its rights under this Agreement. Each Party will promptly notify the other Party if it becomes aware of any unauthorized use or disclosure of the other Party’s Confidential Information, and reasonably cooperate with the other Party in attempts to limit disclosure.

**6.3 Compelled Disclosure.** If and to the extent required by law, including regulatory requirements, discovery request, subpoena, court order or governmental action, the Receiving Party may disclose or produce Confidential Information but will give reasonable prior notice (and where prior notice is not permitted by applicable Law, notice will be given as soon as the Receiving Party is legally permitted) to the Disclosing Party to permit the Disclosing Party to intervene and to request protective orders or confidential treatment therefor or other appropriate remedy regarding such disclosure. Disclosure of any Confidential Information pursuant to any legal requirement will not be deemed to render it non-confidential, and the Receiving Party’s obligations with respect to Confidential Information of the Disclosing Party will not be changed or lessened by virtue of any such disclosure. Notwithstanding any provisions herein, if Buyer is a government agency or entity, Buyer will comply with all Laws applicable to it with respect to disclosure of public information.

**6.4 NDA.** Buyer and Licensor may agree to a separate nondisclosure agreement between Buyer and Licensor (or the respective Affiliates of Buyer and Licensor) (“**NDA**”) that applies to disclosures occurring during the term of the Subscription, in which case the terms and conditions thereof are incorporated herein by reference and will apply instead of subsections 6.1 through 6.3 of this Section 6.

## **7. Additional SaaS Service Obligations and Responsibilities.**

### **7.1 Acceptable Use; Restrictions on Sensitive Information.**

**7.1.1** Buyer will not intentionally use the SaaS Service to: (a) store, download or transmit infringing or illegal content, or any viruses, “Trojan horses” or other harmful code; (b) engage in phishing, spamming, denial-of-service attacks or fraudulent or illegal activity; (c) interfere with or disrupt the integrity or performance of the SaaS Service, component or data contained therein or on Licensor’s system or network or circumvent the security features of the SaaS Service; or (d) perform penetration testing, vulnerability testing or other security testing on the SaaS Service, component or Licensor’s systems or networks or otherwise attempt to gain unauthorized access to the SaaS Service or Licensor’s systems or networks.

**7.1.2** Buyer will not use the SaaS Services to store or process Highly Sensitive Information unless Licensor specifically purchases a SaaS Service Subscription designed to be used with Highly Sensitive Information. “**Highly Sensitive Information**” means, for purposes of this Agreement: (1) special categories of data enumerated in applicable Data Protection Laws, including European Union Regulation 2016/679, Article 9(1) or any successor legislation; (2) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) (“**HIPAA**”); (3) credit, debit, or other payment card data, including bank account numbers; (4) social security numbers, driver’s license numbers, or other government identification numbers; (5) other information subject to additional protections or regulation under specific laws such as the Children’s Online Privacy Protection Act or Gramm-Leach-Bliley Act (or related rules or regulations). Supplier shall have no responsibility for Highly Sensitive Information where the SaaS Service is not approved by Licensor to be used with Highly Sensitive Information.

**7.1.3** Licensor may suspend Buyer’s or a User’s right to access or use any portion or all of the SaaS Service immediately upon notice to Buyer (a) if Licensor, after reasonable due diligence given the nature and severity of the issue, reasonably determines that: (i) Buyer or a User’s use of the SaaS Service poses a material risk to the security or operation of Licensor’s systems, the SaaS Service or the systems or data of any other customer, or (ii) Buyer or a User’s use of the SaaS Service violates this Section 7.1 or is illegal or fraudulent; or (b) Buyer fails to pay any undisputed amounts within 30 days after notice of past due amounts. To the extent reasonably practicable, Licensor will limit the suspension of the SaaS Service pursuant to subsection (a) as needed to mitigate the applicable risk. Licensor will promptly restore the SaaS Service to Buyer upon resolution of the issue and/or payment of the outstanding amounts (as applicable).

### **7.2 Buyer Data and Buyer Materials.**

**7.2.1** Buyer is and will continue to be the sole and exclusive owner of all Buyer Materials, Buyer Data and other Confidential Information of Buyer, including all Proprietary Rights therein. Nothing in this Agreement will be construed or interpreted as granting to Licensor any rights of ownership or any other proprietary rights in or to the Buyer Data and Buyer Materials.

**7.2.2** Buyer is and will continue to be the sole and exclusive party responsible for the content and the accuracy of all Buyer Materials and Buyer Data.

**7.2.3** Buyer will obtain all necessary consents, authorizations and rights and provide all necessary notices and disclosures in order to provide Buyer Data to Licensor and for Licensor to use Buyer Data in the performance of its obligations in accordance with the terms and condition of this Agreement, including any access or transmission to third parties with whom Buyer shares or permits access to Buyer Data.

**7.2.4** The Parties agree that Buyer Data and Buyer Materials are Confidential Information of Buyer. Buyer hereby grants to Licensor a nonexclusive, nontransferable (except in connection with an assignment permitted under Section 12.4), revocable license, under all Proprietary Rights, to reproduce and use Buyer Materials and Buyer Data solely for the purpose of, and to the extent necessary for, performing Licensor’s obligations under this Agreement. In no event will Licensor access, use or disclose to any third party any Buyer Data or any Buyer

Materials for any purpose whatsoever other than as necessary for the purpose of providing the SaaS Service to Buyer and performing its obligations under this Agreement. Licensor will not aggregate, anonymize or create any data derivatives of Buyer Data other than as necessary to provide the SaaS Service and to perform its obligations in accordance with the terms and conditions of this Agreement.

**7.2.5** Buyer will have full access to, and has the right to review and retain, and is expected to have backups of, the entirety of Buyer Data contained in the SaaS Service. At no time will any computer or electronic records containing Buyer Data be stored or held in a form or manner not readily accessible to Buyer through the ordinary operation of the Product. Licensor will provide to Buyer all passwords, codes, comments, keys and documentation necessary for such access and use of the SaaS Service, and Buyer will be entitled to delete, or have Licensor delete, Buyer Data as expressly specified by Buyer.

**7.3 System Data.** To the extent that System Data identifies or permits, alone or in conjunction with other data, identification, association, or correlation of or with Buyer, its Affiliates, Users, customers, suppliers or other persons interacting with any of the foregoing, or any Confidential Information of Buyer or any device as originating through or interacting with Buyer or its Affiliates (“**Identifiable System Data**”), Licensor may only collect and use Identifiable System Data internally to administer, provide and improve the SaaS Service as a generally available service offering, to identify opportunities for Buyer to optimize its use of the SaaS Service, including the provision of additional training, and to identify to Buyer complementary uses of Licensor’s other products and services. Licensor will not target any data analysis at, or otherwise use any Identifiable System Data to derive or attempt to derive information regarding, Buyer and its Affiliates, their businesses, operations, finances, users, customers, prospective customers, suppliers or other persons interacting with Buyer and its Affiliates. Licensor will not target any development efforts arising from its use of Identifiable System Data at any person on the basis of the intended recipient’s relationship with Buyer or any of its Affiliates or the intended recipient being in same industry or market as Buyer or any of its Affiliates. Licensor will not use or disclose any Identifiable System Data for any other purpose unless otherwise agreed in writing by the Parties, and will, except for the use permitted in this Section, maintain the confidentiality and security of Identifiable System Data as Confidential Information.

**7.4 Use of Other Data.** Notwithstanding the foregoing, nothing in this Agreement will restrict: (a) Licensor’s use of System Data or data derived from System Data that does not identify or permit, alone or in conjunction with other data, identification, association, or correlation of or with (i) Buyer, its Affiliates, Users, customers, suppliers or other persons interacting with Buyer and its Affiliates or any Confidential Information of Buyer, or (ii) any device (e.g. computer, mobile telephone, or browser) used to access or use the SaaS Service as originating through Buyer or its Affiliates or interacting with Buyer or its Affiliates; or (b) either Party’s use of any data, records, files, content or other information related to any third party that is collected, received, stored or maintained by a Party independently from this Agreement.

**7.5 Security; Breach Notification.** Licensor will comply with the security practices (if any) incorporated or referenced in the Documentation for the SaaS Service, provided however that at all times Licensor will, consistent with industry standard practices, implement and maintain physical, administrative and technical safeguards and other security measures: (a) to maintain the security and confidentiality of Buyer Data; and (b) to maintain the availability and integrity of Buyer Data and to protect Buyer Data from known or reasonably anticipated threats or hazards to its security, including accidental loss, unauthorized use, access, alteration or disclosure. Licensor will inform Buyer promptly upon discovery of any material unauthorized access to, any unauthorized loss, use or disclosure of any Buyer Data ( a “**Security Incident**”), provided that such notification is not prohibited by Law. Licensor will investigate the cause of the Security Incident and take reasonable steps to prevent further unauthorized access, loss, use or disclosure of Buyer Data. At Buyer’s request and cost, Licensor will reasonably cooperate with Buyer in complying with its obligations under applicable law pertaining to responding to a Security Incident. Licensor’s obligation to report or respond to a Security Incident under this Section is not an acknowledgement by Licensor of any fault or liability with respect to the Security Incident.

## **7.6 Data Protection Legislation.**

**7.6.1** Each Party will comply with all Data Protection Laws and Privacy Laws, and any implementations of such Laws, applicable to its performance under this Agreement. The Parties acknowledge and agree that they will consider in good faith implementing any codes of practice and best practice guidance issued by relevant authorities as they apply to applicable country specific Data Protection Laws or their implementations.

**7.7 Remedies.** Each Party agrees that in the event of a breach or threatened breach of this Section 7, the non-breaching Party will be entitled to injunctive relief against the breaching Party in addition to any other remedies to which the non-breaching Party may be entitled.

## **8. Limitations of Liability.**

**8.1 Disclaimer; General Cap.** SUBJECT TO SECTIONS 8.2, 8.3 AND 8.4, IN NO EVENT WILL (a) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (b) EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY, WILL NOT EXCEED \$5,000,000 NZD IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE DAMAGES..

**8.2 Exception for Gross Negligence, Willful Misconduct or Fraud.** THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTION 8.1(a) AND (b) WILL BE LIMITED TO \$5,000,000 NZD including any GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD.

**8.3 Exception for Certain Indemnification Obligations.** THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 8.1(a) AND (b) WILL NOT APPLY TO ANY COSTS OF DEFENSE AND ANY AMOUNTS AWARDED AGAINST THE INDEMNIFIED PARTY BY A COURT OF COMPETENT JURISDICTION OR AGREED UPON PURSUANT TO SETTLEMENT AGREEMENT THAT ARE SUBJECT TO SUCH PARTY'S INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER THIS AGREEMENT.

### **8.4 Special Cap for Security Breach.**

**8.4.1** FOR SAAS SERVICE SUBSCRIPTIONS, THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 8.1(a) AND (b) WILL NOT APPLY TO, AND INSTEAD SECTION 8.4.2 WILL APPLY TO: (a) GOVERNMENT FINES AND PENALTIES INCURRED BY BUYER AND BUYER'S OUT-OF-POCKET, REASONABLE AND DOCUMENTED COSTS OF INVESTIGATION, NOTIFICATION, REMEDIATION AND MITIGATION SPECIFIED IN SECTION 9.5 RESULTING FROM ANY SECURITY INCIDENT RESULTING FROM BREACH OF LICENSOR'S OBLIGATIONS UNDER THE PRIVACY AND SECURITY TERMS OR ANY VIOLATION BY LICENSOR OF DATA PROTECTION LAWS, AND LICENSOR'S OBLIGATIONS WITH RESPECT THERETO PURSUANT TO SECTION 9.5; AND (b) ANY LIABILITIES ARISING FROM CLAIMS BROUGHT BY THIRD PARTIES AGAINST BUYER ARISING FROM ANY SECURITY INCIDENT RESULTING FROM BREACH OF LICENSOR'S OBLIGATIONS UNDER ANY PRIVACY AND SECURITY TERMS OR ANY VIOLATION BY LICENSOR OF DATA PROTECTION LAWS, INCLUDING OUT-OF-POCKET COSTS OF DEFENSE AND ANY AMOUNTS AWARDED AGAINST BUYER BY A COURT OF COMPETENT JURISDICTION OR AGREED UPON PURSUANT TO A SETTLEMENT AGREEMENT.

**8.4.2** FOR SAAS SERVICE SUBSCRIPTIONS, LICENSOR'S AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR ANY SECURITY INCIDENT RESULTING FROM BREACH OF LICENSOR'S OBLIGATIONS UNDER ANY PRIVACY AND SECURITY TERMS OR RESULTING FROM BREACH OF LICENSOR'S OBLIGATIONS UNDER THE PRIVACY AND SECURITY TERMS OR ANY VIOLATION BY LICENSOR OF DATA PROTECTION LAWS, INCLUDING GOVERNMENT FINES AND PENALTIES INCURRED BY BUYER AND BUYER'S OUT-OF-POCKET, REASONABLE AND DOCUMENTED COSTS

SET FORTH IN SECTION 9.5 AND LICENSOR'S INDEMNIFICATION AND DEFENSE OBLIGATIONS PURSUANT TO SECTION 9.1(b) AND ITS OBLIGATIONS PURSUANT TO SECTION 9.5 AND LICENSOR'S OBLIGATIONS WITH RESPECT THERETO PURSUANT TO SECTION 9.5, WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY, WILL NOT EXCEED (IN LIEU OF AND NOT IN ADDITION TO THE AMOUNT SET FORTH IN SECTION 8.1) THREE TIMES THE FEES AND OTHER AMOUNTS PAID AND REQUIRED TO BE PAID UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE DAMAGES.

## **9. Indemnification.**

**9.1 Licensor Indemnity.** Licensor will, at its expense, defend Buyer and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Buyer Indemnified Parties**") from and against any and all claims, actions, proceedings and suits brought by a third party (including government investigations), ("**Claims**") to the extent arising out of or alleging of any of the following: (a) infringement, misappropriation or violation of any Proprietary Rights by the Licensed Materials or Buyer's use thereof as permitted under this Agreement; and (b) any unauthorized access, use or disclosure of Buyer Data resulting from breach of Licensor's obligations under the Privacy and Security Terms or any violation by Licensor of Data Protection Laws. Licensor will pay all costs, damages and amounts finally awarded by a court or agreed upon in settlement (as set forth in Section 9.3 below) and any government fines and penalties assessed against or incurred by Buyer in any such Claims.

**9.2 Buyer Indemnity.** Buyer will, at its expense, defend Licensor and its Affiliates and their respective officers, directors, employees, agents and representatives (collectively "**Licensor Indemnified Parties**") from and against any and all Claims to the extent arising out of or alleging of any of the following: (a) infringement, misappropriation or violation of any Proprietary Rights by the Buyer Materials or Buyer Data or Licensor's use thereof as permitted under this Agreement; and (b) any unauthorized or unlawful receipt, processing, transmission or storage of Buyer Data by Licensor in the performance of its obligations as permitted under this Agreement resulting from breach of Buyer's obligations under Section 7.2.3. Buyer will pay all costs, damages and amounts finally awarded by a court or agreed upon in settlement (as set forth in Section 9.3 below) and any government fines and penalties assessed against or incurred by Licensor in any such Claims. Notwithstanding any provisions herein, if Buyer is a government entity, this Section 9.2 will not apply except as permitted by applicable Law.

**9.3 Process.** The party(ies) seeking indemnification pursuant to this Section 9 (each, an "**Indemnified Party**" and collectively, the "**Indemnified Parties**") will give the other Party (the "**Indemnifying Party**") prompt notice of each Claim for which it seeks indemnification, provided that failure or delay in providing such notice will not release the Indemnifying Party from any obligations hereunder except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnified Parties will give the Indemnifying Party their reasonable cooperation in the defense of each Claim for which indemnity is sought, at the Indemnifying Party's expense. The Indemnifying Party will keep the Indemnified Parties informed of the status of each Claim. An Indemnified Party may participate in the defense at its own expense. The Indemnifying Party will control the defense or settlement of the Claim, provided that the Indemnifying Party, without the Indemnified Parties' prior written consent: (a) will not enter into any settlement that; (i) includes any admission of guilt or wrongdoing by any Indemnified Party; (ii) imposes any financial obligations on any Indemnified Party that Indemnified Party is not obligated to pay under this Section 9; (iii) imposes any non-monetary obligations on any Indemnified Party; and (iv) does not include a full and unconditional release of any Indemnified Parties; and (b) will not consent to the entry of judgment, except for a dismissal with prejudice of any Claim settled as described in (a). The Indemnifying Party will ensure that any settlement into which it enters for any Claim is made confidential, except where not permitted by applicable Law.

**9.4 Infringement Remedy.** In addition to Licensor's obligations under Section 9.1, if the SaaS Service or other Licensed Materials is held, or in Licensor's opinion is likely to be held, to infringe, misappropriate or violate any Proprietary Rights, or, if based on any claimed infringement, misappropriation or violation of Proprietary Rights, an injunction is obtained, or in Licensor's opinion an injunction is likely to be obtained, that would prohibit or interfere with Buyer's use of the Licensed Materials under this Agreement, then Licensor will at its



option and expense either: (a) procure for Buyer the right to continue using the affected Licensed Materials in accordance with the license granted under this Agreement; or (b) modify or replace the affected Licensed Materials so that the modified or replacement Licensed Materials are reasonably comparable in functionality, interoperability with other software and systems, and levels of security and performance and do not infringe, misappropriate or violate any third-party Proprietary Rights. If, in such circumstances, Licensor cannot not successfully accomplish any of the foregoing actions on a commercially reasonable basis, Licensor will notify Buyer and either Party may terminate the Subscription and this Agreement, in which case Licensor will refund to Buyer any fees prepaid to Licensor by Buyer prorated for the unused portion of the Subscription. For clarity, Licensor's indemnification and defense obligations under this Section include infringement Claims based on use of the Licensed Materials by Buyer Indemnified Parties following an initial infringement Claim except that, if Licensor responds to an infringement Claim by accomplishing the solution in (b), Licensor will have no obligation to defend and indemnify Buyer for infringement Claims arising from Buyer's use after the accomplishment of (b) of the infringing Licensed Materials for which Licensor provided modified or replacement Licensed Materials and a reasonable time to implement the modified or replacement Licensed Materials.

**9.5 Security Breach Remedy.** In the case of a SaaS Service Subscription, in addition to Licensor's obligations under Section 9.1, in the event of any Security Incident resulting from breach of Licensor's obligations under any Privacy and Security Terms or any violation by Licensor of Data Protection Laws, Licensor will pay the government fines and penalties and other out-of-pocket costs incurred by Buyer, to the extent reasonable and documented, for (a) investigating and responding to the Security Incident; (b) legal advice regarding the Security Incident; (c) providing notification to affected individuals, applicable government and relevant industry self-regulatory agencies and the media; (d) providing credit monitoring and/or identity theft services to affected individuals; (e) operating a call center to respond to questions from affected individuals; and (f) any other investigation, mitigation, remediation, or notification required by law or regulators to be undertaken by Buyer in response to such Security Incident.

## **9.6 Limitations.**

**9.6.1** Licensor will have no liability or obligation under this Section 9 with respect to any infringement Claim to the extent attributable to any: (a) modifications to the Licensed Materials not provided by Licensor or its Personnel; (b) use of the SaaS Service in combination with third-party equipment or software not provided or made accessible by Licensor or not specifically referenced for use with the Licensed Materials by the Documentation; or (c) use of the Licensed Materials by Buyer in breach of this Agreement. Licensor's liability under this Section 9 with respect to any infringement Claim that is attributable to use of the SaaS Service in combination with third-party equipment or software provided or made accessible by Licensor or specifically referenced by the Documentation is limited to Licensor's proportional share of defense costs and indemnity liability based on the lesser of: (i) the value of the contribution of the Licensed Materials to the total value of the actual or allegedly infringing combination; or (ii) the relative contribution of the Licensed Materials to the actual or allegedly infringed claims (e.g., the Licensed Materials are alleged to satisfy one limitation of a claim with four separate limitations and Licensor would be responsible for a 25% share of the defense and indemnity obligations).

**9.6.2** Buyer will have no liability or obligation under this Section 9 with respect to any infringement Claim to the extent attributable to any: (a) modifications to the Buyer Materials or Buyer Data not provided by Buyer or its Personnel; or (b) use of the Buyer Materials or Buyer Data by Licensor in breach of this Agreement.

**9.6.3** This Section 9 states the entire liability of Licensor with respect to infringement, misappropriation or violation of Proprietary Rights of third parties by any Licensed Materials or any part thereof or by any use thereof by Buyer, and this Section 9 states the entire liability of Buyer with respect to infringement, misappropriation or violation of Proprietary Rights of third parties by any Buyer Materials, Buyer Data or any part thereof or by any use, receipt, storage or processing thereof by Licensor.

**9.7 Not Limiting.** The foregoing indemnities will not be limited in any manner whatsoever by any required or other insurance coverage maintained by a Party.

## **10. Term and Termination.**

**10.1 Term.** This Agreement will continue in full force and effect until conclusion of the Subscription, unless terminated earlier by either Party as provided by this Agreement.

**10.2 Termination.** Either Party may terminate the Subscription or this Agreement if the other Party materially breaches this Agreement and does not cure the breach within 30 days following its receipt of written notice of the breach from the non-breaching Party. In the case of a SaaS Service Subscription, termination by Licensor pursuant to this Section does not prejudice Buyer's right, and Licensor's obligation, to extract or assist with the retrieval or deletion of Buyer Data as set forth in Section 10.3.2 following such termination.

### **10.3 Effect of Termination.**

**10.3.1** Upon termination or expiration of the Subscription or this Agreement, Buyer's access to the SaaS Service provided under such Subscription may be disabled and discontinued. Termination or expiration of any Subscription purchased by Buyer from Licensor will not terminate or modify any other Subscription purchased by Buyer from Licensor.

**10.3.2** Within 45 days (or such other period as may be agreed upon by the Parties in writing) following termination or expiration of any SaaS Service Subscription for any reason the Buyer may retrieve or delete Buyer Data itself with support from Licensor as reasonably requested by Buyer. If Buyer retrieves or deletes Buyer Data itself, Licensor will assist Buyer, as reasonably requested by Buyer, in validating whether the retrieval or deletion was successful. Buyer Data must be provided or extractable in a then-current, standard non-proprietary format. Notwithstanding anything herein to the contrary, Licensor's duty to return or enable Buyer's retrieval or deletion of the Buyer Data pursuant to this Section 10.3.2 may be delayed but will not be discharged due to the occurrence of any Force Majeure event. Following Buyer's retrieval or deletion of Buyer Data and Licensor's validation thereof or expiration of the applicable period, whichever is soonest, Licensor may, and within a reasonable time thereafter will, permanently delete and remove Buyer Data (if any) from its electronic and hard copy records. If Licensor is not able to delete any portion of the Buyer Data or Buyer Confidential Information, it will remain subject to the confidentiality, privacy and data security terms of this Agreement.

**10.3.3** The Licensor is not responsible if the Buyer fails to adequately back up or retrieve their data following termination or expiration of their SaaS Service Subscription.

**10.3.4** Sections 4 (Proprietary Rights), 6 (Confidentiality), 7.2.1 (Buyer Data and Buyer Materials), 8 (Limitations of Liability), 9 (Indemnification), 10.3 (Effect of Termination), 11 (Insurance), 12 (General) and 13 (Definitions) together with all other provisions of this Agreement that may reasonably be interpreted or construed as surviving expiration or termination, will survive the expiration or termination of this Agreement for any reason; but the non-use and nondisclosure obligations of Section 6 will expire five years following the expiration or termination of this Agreement, except with respect to, and for as long as, any Confidential Information constitutes a trade secret.

## **11. Insurance.**

**11.1 Coverages.** Each Party will obtain and maintain appropriate insurance necessary for implementing and performing under this Agreement in accordance with applicable Law and in accordance with the requirements of this Section 11. Subject to Licensor's right to self-insure as described below, Licensor will at its own cost and expense, acquire and continuously maintain Commercial General Liability insurance during the term of this Agreement.

## **12. General.**

**12.1 Applicable Law.** This Agreement will be governed and interpreted under the laws of New Zealand, excluding its principles of conflict of laws. The Parties agree that any legal action or proceeding relating to this

Agreement will be instituted solely in the courts located in Auckland, New Zealand. Each Party irrevocably submits to the jurisdiction of such courts, and each Party waives any objection that it may have to the laying of the venue of any such action or proceeding in the manner provided in this Section. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**12.2 Good Faith Negotiations.** Before taking any legal action a Party must use best efforts to resolve any dispute arising out of or in connection with this Agreement through good faith negotiations.

**12.3 Mediation.** Any dispute or difference arising out of or in connection with this Agreement, or the subject matter of this Agreement, including any question about its existence, validity or termination, shall be referred to mediation in accordance with the Mediation Rules of the New Zealand Dispute Resolution Centre before taking any legal action.

**12.4 Assignment.** Neither Party may assign or transfer this Agreement or any rights or delegate any duties herein without the prior written consent of the other Party, which will not be reasonably withheld, delayed or conditioned. Notwithstanding the foregoing, and without gaining the other Party's written consent, Licensor may assign this Agreement, in its entirety, and delegate its obligations to its Affiliates or to any entity acquiring all or substantially all of its assets, whether by sale of assets, sale of stock, merger or otherwise and Buyer may assign this Agreement, in its entirety, to any Affiliates or entity acquiring all or substantially all of its assets related to Buyer's account or the Buyer's entire business, whether by sale of assets, sale of stock, merger or otherwise. Any attempted assignment, transfer or delegation in contravention of this Section will be null and void. This Agreement will inure to the benefit of the Parties hereto and their permitted successors and assigns.

**12.5 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and there are no other representations, understandings or agreements between the Parties relating to the subject matter hereof. This Agreement is solely between Buyer and Licensor. Neither Amazon Web Services, Inc. nor any of its Affiliates, or Graph Research Labs Limited, are a party to this Agreement and none of them will have any liability or obligations hereunder. The terms and conditions of this Agreement will not be changed, amended, modified or waived unless such change, amendment, modification or waiver is in writing and signed by authorized representatives of the Parties. NEITHER PARTY WILL BE BOUND BY, AND EACH SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THIS AGREEMENT (WHETHER PROFFERED ORALLY OR IN ANY QUOTATION, PURCHASE ORDER, INVOICE, SHIPPING DOCUMENT, ONLINE TERMS AND CONDITIONS, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE, OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES.

**12.6 Export Laws.** Each Party will comply with all applicable customs and export control laws and regulations of the United States and/or such other country, in the case of Buyer, where Buyer or its Users use the Product or Services, and in the case of Licensor, where Licensor provides the SaaS Service. Each Party certifies that it and its Personnel are not on any of the relevant U.S. Government Lists of prohibited persons, including but not limited to the Treasury Department's List of Specially Designated Nationals and the Commerce Department's list of Denied Persons. Neither Party will export, re-export, ship, or otherwise transfer the Licensed Materials, Services or Buyer Data to any country subject to an embargo or other sanction by the United States or other applicable jurisdiction.

**12.7 Force Majeure.** Neither Party will be liable hereunder for any failure or delay in the performance of its obligations in whole or in part, on account of riots, fire, flood, earthquake, explosion, epidemics, war, strike or labor disputes (not involving the Party claiming force majeure), embargo, civil or military authority, act of God, governmental action or other causes beyond its reasonable control and without the fault or negligence of such Party or its Personnel and such failure or delay could not have been prevented or circumvented by the non-performing Party through the use of alternate sourcing, workaround plans or other reasonable precautions (a "Force Majeure Event"). If a Force Majeure Event continues for more than 14 days for any Subscription with Entitlement Pricing, Buyer may cancel the unperformed portion of the Subscription and receive a pro rata refund of any fees prepaid by Buyer to Licensor for such unperformed portion.

**12.8 Government Rights.** As defined in FARS §2.101, the SaaS Service and Documentation are “commercial items” and according to DFARS §252.227 and 7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation”. Consistent with FARS §12.212 and DFARS §227.7202, any use, modification, reproduction, release, performance, display or disclosure of such commercial software or commercial software documentation by the U.S. government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**12.9 Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**12.10 No Third-Party Beneficiaries.** Except as specified in Section 9 with respect to Buyer

**12.11 Indemnified Parties and Licensor Indemnified Parties,** nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations or liabilities whatsoever.

**12.12 Notices.** To be effective, notice under this Agreement must be given in writing. Each Party consents to receiving electronic communications and notifications from the other Party in connection with this Agreement. Each Party agrees that it may receive notices from the other Party regarding this Agreement: (a) by email to the email address designated by such Party as a notice address for the Standard Contract; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognized courier service. Notice will be deemed given upon written verification of receipt.

**12.13 Nonwaiver.** Any failure or delay by either Party to exercise or partially exercise any right, power or privilege under this Agreement will not be deemed a waiver of any such right, power or privilege under this Agreement. No waiver by either Party of a breach of any term, provision or condition of this Agreement by the other Party will constitute a waiver of any succeeding breach of the same or any other provision hereof. No such waiver will be valid unless executed in writing by the Party making the waiver.

**12.14 Publicity.** The Licensor may issue publicity materials that refer to the other Party or its Affiliates, and use any trade name, trademark, service mark or logo of the other Party or its Affiliates in any advertising, promotions or otherwise without the other Party’s prior written consent. However, the Buyer can request in writing at any time to opt out of publicity from the Licensor.

**12.15 Relationship of Parties.** The relationship of the Parties will be that of independent contractors, and nothing contained in this Agreement will create or imply an agency relationship between Buyer and Licensor, nor will this Agreement be deemed to constitute a joint venture or partnership or the relationship of employer and employee between Buyer and Licensor. Each Party assumes sole and full responsibility for its acts and the acts of its Personnel. Neither Party will have the authority to make commitments or enter into contracts on behalf of, bind, or otherwise oblige the other Party.

**12.16 Severability.** If any term or condition of this Agreement is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, and each term and condition will be valid and enforceable to the fullest extent permitted by law.

**12.17 Subcontracting.** Licensor may use Subcontractors in its performance under this Agreement, provided that: (a) Licensor remains responsible for all its duties and obligations hereunder and the use of any Subcontractor will not relieve or reduce any liability of Licensor or cause any loss of warranty under this Agreement; and (b) Licensor agrees to be directly liable for any act or omission by such Subcontractor to the same degree as if the act or omission were performed by Licensor such that a breach by a Subcontractor of the provisions of this Agreement will be deemed to be a breach by Licensor. The performance of any act or omission under this Agreement by a Subcontractor for, by or through Licensor will be deemed the act or omission of Licensor. Upon

request, Licensor will identify to Buyer any Subcontractors performing under this Agreement, including any that have access to Buyer Data, and such other information reasonably requested by Buyer about such subcontracting.

**12.18 Change to this Agreement** The Licensor may change any of these EULA conditions at any time, and will communicate such changes via our AWS EULA, our website or direct email to the Buyer. If the Buyer does not agree to the changes then the Buyer has the right to contact the Licensor and end the Buyers fixed term early, and the Licensor may refund the unused portion of the Buyer's payment.

### **13. Definitions.**

**13.1 "Affiliate"** means, with respect to a Party, any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

**13.2 "Buyer Data"** means all data, records, files, information or content, including text, sound, video, images and software, that is (a) input or uploaded by Buyer or its Users to or collected, received, transmitted, processed, or stored by Buyer or its Users using the SaaS Service in connection with this Agreement, or (b) derived from (a). Buyer Data is Confidential Information of Buyer.

**13.3 "Buyer Materials"** means any property, items or materials, including Buyer Data, furnished by Buyer to Licensor for Licensor's use in the performance of its obligations under this Agreement.

**13.4 "Buyer's Computing Environment"** means the Buyer computing environment in which Licensor authorizes use of the Subscription.

**13.5 "Contractor"** means any third party contractor of Buyer or other third party performing services for Buyer, including outsourcing suppliers.

**13.6 "Data Protection Law"** means all data protection and privacy laws applicable to the processing of Personal Data under the Agreement, including Regulation 2016/679 (General Data Protection Regulation) ("GDPR"), and Cal. Civ. Code 1798.100 et seq. (California Consumer Privacy Act) ("CCPA").

**13.7 "Documentation"** means the user guides, manuals, instructions, specifications, notes, documentation, printed updates, "read-me" files, release notes and other materials related to the SaaS Service, its use, operation or maintenance, together with all enhancements, modifications, derivative works, and amendments to those documents, that Licensor publishes or provides under this Agreement.

**13.8 "Entitlement Pricing"** means any Subscription pricing model where Buyer purchases a quantity of usage upfront, include prepaid and instalment payment pricing models.

**13.9 "International Data Transfer Mechanism"** means the special protections that some jurisdictions require two or more parties that transfer information across international borders to adopt to make the transfer lawful, e.g., Standard Contractual Clauses, Binding Corporate Rules, or statutory obligations that require the parties to adopt certain technical, organizational, or contractual measures. "Transfer," in the context of an International Data Transfer Mechanism, means to disclose or move personal data from a storage location in one jurisdiction to another, or to permit a party in one jurisdiction to access Personal Data that the other party stores in another jurisdiction that requires an International Data Transfer Mechanism.

**13.10 "Licensed Materials"** means the SaaS Service, Documentation and any other items, materials or deliverables that Licensor provides, or is obligated to provide, as part of a Subscription.

**13.11 "Licensor's Computing Environment"** means the computing infrastructure and systems used by Licensor to provide the SaaS Service.

**13.12 “Open Source Software”** means software distributed under a licensing or distribution model that is publicly available and makes the source code to such software available to licensees for use, modification and redistribution.

**13.13 “Personal Data”** means information the Buyer Data that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a data subject. “Personal Data” includes equivalent terms in other Data Protection Law, such as the CCPA-defined term “Personal Information,” as context requires, to the extent such information forms part of the Buyer Data.

**13.14 “Personnel”** means a Party or its Affiliate’s directors, officers, employees, non-employee workers, agents, auditors, consultants, contractors, subcontractors and any other person performing services on behalf of such Party (but excludes the other Party and any of the foregoing of the other Party).

**13.15 “Privacy and Security Terms”** means Section 7.5, the attached Data Protection Addendum (if applicable), and any other terms and conditions regarding the privacy and security of data agreed upon by the parties that are a part of this Agreement, whether in an addendum or amendment to this Standard Contract.

**13.16 “Proprietary Rights”** means all intellectual property and proprietary rights throughout the world, whether now known or hereinafter discovered or invented, including, without limitation, all: (a) patents and patent applications; (b) copyrights and mask work rights; (c) trade secrets; (d) trademarks; (e) rights in data and databases; and (f) analogous rights throughout the world.

**13.17 “SaaS Service”** means access and use of the SaaS Service, as deployed and hosted by Licensor in the Licensor’s Computing Environment, and any software and other technology provided or made accessible by Licensor in connection therewith (and not as a separate product or service) that Buyer is required or has the option to use.

**13.18 “Services”** means all services and tasks that Licensor provides or is obligated to provide under this Agreement, including without limitation Support Services.

**13.19 “Subcontractor”** means any third party subcontractor or other third party to whom Licensor delegates any of its duties and obligations under this Agreement.

**13.20 “Subscription”** means a SaaS Service subscription for a specific use capacity purchased by Buyer and fulfilled by Licensor provided as a SaaS Service through Licensor’s Computing Environment.

**13.21 “Support Services”** means the support and maintenance services for the SaaS Service that Licensor provides, or is obligated to provide.

**13.22 “System Data”** means data and data elements (other than Buyer Data) collected by the SaaS Service, SaaS Service or Licensor’s Computer Environment regarding configuration, environment, usage, performance, vulnerabilities and security of the SaaS Service that may be used to generate logs, statistics and reports regarding performance, availability, integrity and security of the SaaS Service.

**13.23 “User”** means Buyer, its Affiliates and any person or software program or computer systems authorized by Buyer or any of its Affiliates to access and use the SaaS Service as permitted under this Agreement, including Contractors of Buyer or its Affiliates.