Platform Terms of Service Agreement

Last Updated: July 25, 2019

PLEASE READ THE FOLLOWING TERMS OF SERVICE (THE "TERMS") CAREFULLY BEFORE ACCESSING AND USING THE SIGMA COMPUTING, INC. ("SIGMA") SERVICES (THE "SERVICES"), WHICH ARE PROVIDED THROUGH THE WEBSITE LOCATED AT sigmamultisite.wpengine.com.

THESE TERMS, TOGETHER WITH AN EXECUTED ORDER OR PURCHASING AGREEMENT, GOVERN THE USE OF THE SERVICES UNLESS YOU AND SIGMA HAVE EXECUTED A SEPARATE AGREEMENT GOVERNING THE USE OF THE SERVICES. "YOU" OR "CUSTOMER" MEANS THE ENTITY THAT USES THE SERVICES. BY ACCESSING OR USING THE SERVICES OR MAKING ANY PAYMENT IN RESPECT OF THE SERVICES, YOU SIGNIFY YOUR ASSENT TO THESE TERMS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, YOU MAY NOT ACCESS OR USE THE SERVICES.

1. **DEFINITIONS.** Certain definitions used in these Terms are set forth below; other capitalized terms used herein shall have the respective meanings set forth elsewhere in these Terms.

1. "**Confidential Information**" means business, technical and financial information of the disclosing party that is designated in writing as confidential, or is disclosed such that a reasonable person would understand the confidentiality of the information disclosed. The Services, and all enhancements and improvements thereto constitutes the Confidential Information of Sigma and the Customer Content constitutes the Confidential Information of Customer. Confidential Information does not include information that (i) is previously rightfully known to the receiving party without restriction on disclosure, (ii) is or becomes known to the general public, through no act or omission on the part of the receiving party, (iii) is disclosed to the receiving party by a third party without breach of any nondisclosure obligation, or (iv) is independently developed by the receiving party.

2. "**Customer Content**" means any content, information, works of authorship, images, videos, data, text or other materials Customer posts, uploads or otherwise makes available on or via the Services, and specifically any data that Customer inputs into the Services.

3. "**Feedback**" means any feedback, comments or suggestions Customer may provide to Sigma regarding Sigma's current or future products or services.

4. "**Order Form**" means an order or quote, which shall be in writing, signed by both parties, and shall specify the Services to be purchased by Customer from Sigma.

5. "**Services**" means Sigma's cloud-based intelligence tool and service accessible through Sigma's website designed to allow Customer to input and analyze data, with an option to share certain outputs of such data with other individuals and partners.

6. "**Term**" means the term beginning upon the Start Date and ending on the End Date set forth in each Order Form subject to these Terms.

2. **ACCESSING THE SERVICES**

1. **Subscription Rights.** Subject to the terms and conditions herein, Sigma hereby provides Customer with the right to use and access the Services during the Term for Customer's internal business purposes for the scope of use set forth in the applicable Order Form. Sigma, its suppliers and service providers reserve all rights not expressly granted in these Terms.

2. **Restrictions.** Except as expressly permitted in these Terms, Customer shall not, and shall not permit any of its users to:
a) license, sell, lease, transfer, assign, copy, distribute, republish, transmit or otherwise commercially exploit any portion of the Services;
(b) modify, translate, adapt, merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Services (unless and only to the extent expressly prohibited by applicable law); (
c) "scrape" or download data from any web pages contained in the Services ;
(d) access the Services in order to build a similar or competitive website, platform or service;
(e) remove or destroy any copyright notices or other proprietary markings contained on any portion of the Services;

(f) use the Services in violation of applicable laws, including but not limited to any privacy laws;

(g) interfere with or damage the Services, including, without limitation, by introducing viruses and other harmful code or by using flood pings, denial-of-service attacks, or similar methods or technology;

(h) attempt to gain unauthorized access to the Services or circumvent any technical measures to protect the Services; or

(i) attempt to probe, scan, or test the vulnerability of the Services or any Sigma system or networks.

3. **Registering Customer's Account**. To use the Services, Customer must register for an account with Sigma ("Account") and provide certain information about Customer. Customer represents and warrants that to the best of its knowledge: (a) all registration information Customer submits is truthful and accurate; (b) Customer will maintain the accuracy of such information; and (c) Customer's use of the Services does not violate any applicable law, rule or regulation (e.g., Customer is not located in an embargoed country or are not listed as a prohibited or restricted party). Customer is responsible for maintaining the confidentiality of Customer's Account login information and is fully responsible for all activities that occur under Customer's Account. Customer agrees to promptly notify Sigma of any unauthorized use, or suspected unauthorized use, of Customer's Account or any other breach of security. Sigma shall not be liable for any loss or damage arising from Customer's failure to comply with the above requirements.

4. **Customer Providing Content**. Customer shall provide Customer Content to Sigma or input such into the Services. Customer agrees not to upload to the Services any "protected health information", as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") unless the parties have entered into a Business Associate Agreement ("BAA"), which shall be incorporated into these Terms. Any "protected health information" submitted to Sigma or the Services pursuant to a BAA shall be submitted as Customer Content. Sigma will maintain appropriate administrative, physical, and technical safeguards in accordance with commercially reasonable industry standards for the protection of the security, confidentiality and

integrity of Customer Content, which will include, but will not be limited to measures designed to prevent unauthorized access, use, modification or disclosure of Customer Content. At any time prior to the date of deletion described below in Section 6.3, Customer may request a copy of all Customer Content, and Sigma shall provide the same to Customer within ten (10) days of such request, at no cost to Customer.

3. **OWNERSHIP.**

1. **Services.** Sigma retains all right, title and interest in the Services, including, without limitation, the trademarks, tradenames, logos, content, works of authorship and other materials therein, excluding any Customer Content, as well as any Feedback.

2. **Customer Content.** As between Sigma and Customer, Customer retains all right, title and interest (including all intellectual property rights) in and to the Customer Content. Subject to the terms set forth herein, Customer hereby grants to Sigma a non-exclusive, royalty-free, fully paid-up right and license to reproduce, display, digitally transmit and otherwise use Customer Content for the purpose of providing, improving, and/or maintaining the Services.

4. **CONFIDENTIALITY**

During the term of these Terms, each party (the "Disclosing Party") may provide the other party (the "Receiving Party") with Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except to provide or use the Services hereunder and as otherwise expressly permitted under these Terms. The Receiving Party will limit access to the Confidential Information to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under these Terms or is

required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order**.**

5. **FEES AND EXPENSES**

1. **Fees.** Customer shall pay to Sigma all fees in U.S. dollars, as specified in any Order Form (the "Fees"). Except as specified in an Order Form, all amounts are due within 30 days after invoice date. Any amounts due hereunder are exclusive of, and Customer shall be responsible for, all sales taxes, value added taxes, duties, use taxes, withholdings and other governmental assessments, excluding taxes based on the net income of Sigma, unless Customer provides to Sigma a valid tax-exempt certificate.

2. **Expenses.** Customer shall pay for all reasonable costs and expenses (including reasonable travel and out-of-pocket expenses) incurred by Sigma related to its performance of these Terms.

3. **Audit.** Customer shall maintain complete and accurate records with respect to the number of users. Customer shall permit Sigma or its designated agents to audit the Services and all related books and records with respect to Customer's use of the Services, during reasonable business hours upon at least 15 days prior written notice, and such audit shall not unduly interfere with Customer's operations. If the audit reveals any breach of these Terms, except for changes in the number of users, Customer shall bear the reasonable cost of any such audit.

6. **TERM AND TERMINATION**

1. **Term.** These Terms will remain in full force and effect during the Term, unless terminated in accordance with these Terms.

2. **Termination and Other Remedies.** Either party may terminate these Terms if: (a) the other party materially breaches these Terms and does not cure such breach within thirty (30) days of notice of such breach from the non-breaching party or (b) there is no Order Form in place with an active Services term. In addition, should Customer breach these Terms, Sigma reserves the right to: (i) suspend Customer's access to the Services, provided that Sigma will reinstate access if the breach is remedied by Customer within ten (10) days of

written notice by Sigma of such breach; (ii) notify the proper law enforcement authorities in the event Customer's breach constitutes illegal activity, and provide Customer Content to such law enforcement as necessary for any investigation.

3. **Effect of Termination** Upon termination or expiration of these Terms, (i) Customer right to access and use the Services shall immediately terminate; (ii) within 30 days of such termination or expiration, Sigma shall delete Customer's passwords and all related information, files and Customer Content associated with or inside Customer's Account, unless Customer requests an earlier deletion in writing; and (iii) the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under these Terms, and the Receiving Party shall provide to the Disclosing Party a written affidavit certifying compliance with this sentence. All provisions of these Terms which by their nature should survive, shall survive termination, including without limitation, ownership provisions, warranty disclaimers, indemnification and limitation of liability.

7. **INDEMNIFICATION**

1. **Indemnification by Sigma.** Sigma shall indemnify, defend and hold harmless Customer and its officers, directors, employees, shareholders, agents, successors, and permitted assigns (the "Indemnified Parties") from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with any actual or threatened claim, suit, action, or proceeding brought by a third party against any of the Indemnified Parties arising out of or in connection with an allegation that the Services infringe upon or violates the proprietary or intellectual property rights of any third party. If the Services are held to infringe or violate the proprietary or intellectual property rights of a third party, or in Sigma's reasonable opinion are likely to be held to infringe or violate the same, Sigma shall, at its expense, promptly secure the right for Customer to continue to use the Services or replace or modify the Services to make it non-infringing without any loss of functionality or if neither of the foregoing is commercially reasonably, terminate these Terms and the licenses granted

herein and provide Customer with a refund of any prepaid Fees applicable to the period after such termination. The Indemnified Parties shall (a) promptly give Sigma written notice of the claim or proceeding, (b) give Sigma sole control of the defense and settlement of the claim or proceeding (except that Sigma may not settle any claim or proceeding unless it unconditionally releases the Indemnified Parties of all liability), and (c) give Sigma all reasonable assistance, at Sigma's request. The foregoing is Sigma's sole liability and Customer's exclusive remedy for any infringement or misappropriation claims related to the Services.

2. **Indemnification by Customer.** Customer agrees to indemnify and hold Sigma, its parents, subsidiaries, affiliates, directors, officers, agents and employees (collectively, the "Sigma Parties") harmless from any losses, costs, liabilities and expenses (including reasonable attorneys' fees) relating to or arising out of: (a) Customer's violation of Section 2 of these Terms; or (b) Customer's violation of any applicable laws, rules or regulations through or related to Customer's use of the Services. Sigma reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, in which event Customer will fully cooperate with Sigma in asserting any available defenses. Customer will not settle any claim without Sigma's prior written consent.

8. **LIMITED WARRANTY**

1. **Limited Warranty.** Sigma warrants that the Services will operate in substantial conformity to the on-line documentation in all material respects. Sigma's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty shall be, at no charge to Customer, for Sigma to use commercially reasonable efforts to correct the reported non-conformity, or if Sigma determines such remedy to be impracticable, either party may terminate the applicable Order Form and Customer will receive as its sole remedy a refund of any Fees Customer has pre-paid for use of the Service for the terminated portion of the applicable Order Form.

2. **Disclaimer of Warranties.** EXCEPT FOR THE LIMITED WARRANTY ABOVE, THE SIGMA PARTIES EXPRESSLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY

KIND, WHETHER, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. SIGMA PARTIES MAKE NO WARRANTY THAT: (1) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS; (2) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE; OR (4) ANY ERRORS IN THE SERVICES WILL BE CORRECTED. ANY CONTENT DOWNLOADED FROM OR OTHERWISE ACCESSED THROUGH THE SERVICES IS ACCESSED AT CUSTOMER'S OWN RISK, AND CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S PROPERTY OR PERSON, INCLUDING, BUT NOT LIMITED TO, CUSTOMER'S COMPUTER SYSTEM.

9. **LIMITATION OF LIABILITY.** EXCEPT FOR ANY CLAIMS ARISING FROM A PARTY'S BREACH OF SECTION 4 (CONFIDENTIALITY) OR SECTION 2 (USE OF THE SERVICES), THE PARTIES' RESPECTIVE OBLIGATIONS UNDER SECTION 7 (INDEMNIFICATION), OR ANY CLAIMS ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT (COLLECTIVELY, THE "EXCLUDED CLAIMS"), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, REVENUE OR DATA, OR COSTS DUE TO PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THESE TERMS, ON ANY THEORY OF LIABILITY. TO THE EXTENT PERMITTED BY LAW, EXCEPT FOR EXCLUDED CLAIMS, EACH PARTY'S TOTAL, CUMULATIVE, AGGREGATE LIABILITY SHALL NOT EXCEED THE SUM OF ALL AMOUNTS PAID AND PAYABLE BY CUSTOMER TO SIGMA IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE APPLICABLE CLAIM.   SIGMA SHALL HAVE NO LIABILITY FOR CUSTOMER'S USE OF OR SHARING OF THE

CUSTOMER CONTENT TO A THIRD PARTY. THE LIMITATIONS OF DAMAGES SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN SIGMA AND CUSTOMER.

10.   **MARKETING.** Sigma may identify Customer and use and display Customer's name, logo, trademarks, or service marks on Sigma's website and in Sigma's marketing materials without Customer's prior written consent.

11.   **GENERAL PROVISIONS**

1. **Electronic Communications.** The communications between Customer and Sigma use electronic means, whether Customer visits the Services or send Sigma emails, or whether Sigma posts notices through the Services or communicates with Customer via email. Customer (a) consents to receive communications from Sigma in an electronic form, and (b) agrees that all terms and conditions, agreements, notices, disclosures, and other communications that Sigma provides to Customer electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing.

2. **Assignment.** Either party may assign or transfer these Terms as a result of a merger, acquisition, corporate restructuring, change in control or similar such transaction or sale of all or substantially all of its assets related to these Terms. Except as set forth in the preceding sentence, these Terms may not be assigned or transferred by a party without the other party's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

3. **Force Majeure.** Neither party shall be liable for any delay or failure to perform resulting from causes outside its reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargos, acts of civil or military authorities, fire, floods, accidents, strikes or shortages of transportation facilities, fuel, energy, labor or materials.

4. **Dispute Resolution.** The parties shall attempt in good faith to resolve any dispute arising out of or relating to these Terms promptly by negotiation between representatives with the authority to resolve such dispute. If the matter has not been resolved within thirty (30) days of a party's request for negotiation, either party may initiate arbitration as provided below.

5. **Arbitration.** Any dispute arising out of or relating to these Terms shall be submitted to arbitration. In the event the parties cannot agree on a neutral arbitrator, the parties agree to utilize the American Arbitration Association, under the Arbitration Rules then in effect. Any court having jurisdiction thereof may enter judgment upon the award rendered by the arbitrator(s). The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such damages with respect to any dispute resolved by arbitration. The decision of the arbitrator shall be in accordance with the terms and conditions of these Terms, shall be binding upon the parties, and may not be appealed. The parties will comply with the arbitrator's decision in good faith. Either party may apply to any court with proper jurisdiction for enforcement of the arbitration decision. Unless otherwise agreed to, the place of arbitration shall be in San Francisco, California. The fees and expenses of the arbitrator shall be divided equally between the parties unless otherwise ordered by the arbitrator.

6. **Equitable Relief.** The parties agree that any breach of confidentiality or intellectual property infringement and violation of intellectual property ownership rights, may cause irreparable damage to the other party and that in the event of such breach, infringement or violation, the non-breaching party shall have, in addition to any and all remedies of law, the right to seek an injunction, specific performance or other equitable relief in a court of law to enforce the breaching party's obligations under these Terms.

7. **Governing Law.** These Terms and any action related thereto will be governed and interpreted by and under the laws of California, without giving effect to its conflict of laws principles. Customer and Sigma agree that to the extent that litigation is permitted and undertaken in connection with these Terms, it will be litigated exclusively in the state or federal courts located in San Francisco, California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms.

8. **Compliance with Laws.** Each party agrees to comply with all applicable laws and regulations in the performance of its obligations hereunder, including with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) each party

represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country, (ii) Customer will not (and will not permit any third parties to) access or use the Services in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will not submit to the Services any information that is controlled under the U.S. International Traffic in Arms Regulations. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any Sigma employees or agents in connection with these Terms.

9. **Federal Government End Use Provisions.** Sigma provides the Services, including all related software, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in these Terms. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Sigma to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

10. **Notice.** Notices under these Terms shall be sufficient only if in writing and personally delivered, delivered by a major commercial rapid delivery courier service or mailed by certified or registered mail, return receipt requested to a party. Customer may give notice to Sigma Computing at the following address: Sigma Computing, Inc., 405 Howard Street, Suite 600, San Francisco 94105.

11. **Waiver.** Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12. **Severability.** If any provision of these Terms is, for any reason, held to be invalid or unenforceable, the other provisions of these Terms will remain enforceable, and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

13. **Entire Agreement.** These Terms, and all executed Order Form(s) are the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter. In the event of any conflict between these Terms and any Order Form, these Terms shall govern.

ABOUT THESE TERMS:

Sigma may modify these Terms or any additional terms that apply to the Services to, for example, reflect changes to the law or changes to our Services. You should look at the Terms regularly. Sigma will post notice of modifications to these Terms on this page. Changes will not apply retroactively and will become effective no sooner than fourteen days after they are posted. However, changes made for legal reasons will be effective immediately. If You do not agree to the modified terms for the Services, You should discontinue Your use of those Services.