



## SUBSCRIPTION SERVICE AGREEMENT

PLEASE READ THIS SUBSCRIPTION SERVICE AGREEMENT ("AGREEMENT") BEFORE USING ANY SAVIYNT APPLICATIONS OR SERVICE OFFERINGS. SAVIYNT, INC., AND/OR ITS AFFILIATES ("SAVIYNT") IS WILLING TO GRANT ACCESS TO THE SAVIYNT APPLICATIONS OR SERVICE OFFERINGS TO YOU AS THE COMPANY OR THE LEGAL ENTITY THAT WILL BE UTILIZING THE SAVIYNT APPLICATIONS OR SERVICE OFFERINGS (HEREINAFTER, "CUSTOMER") SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY ENTERING INTO THIS AGREEMENT ON BEHALF OF THE CUSTOMER, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THE CUSTOMER TO THIS AGREEMENT.

BY ACCESSING OR USING THE SAVIYNT APPLICATIONS OR SERVICE OFFERINGS, YOU SIGNIFY ACCEPTANCE OF, AND AGREE TO, THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS OR USE ANY OF THE SAVIYNT APPLICATIONS OR SERVICE OFFERINGS. IF THE PARTIES HAVE A FULLY EXECUTED AGREEMENT THAT EXPRESSLY GOVERNS CUSTOMER'S ORDERS FOR THE SAVIYNT APPLICATIONS OR SERVICE OFFERINGS, THAT AGREEMENT SHALL SUPERSEDE THIS AGREEMENT.

FROM TIME TO TIME, SAVIYNT MAY MODIFY THE TERMS AND CONDITIONS OF THIS AGREEMENT. CONTINUED USE OF ANY SAVIYNT APPLICATIONS OR SERVICE OFFERINGS AFTER AN UPDATED VERSION OF THIS AGREEMENT GOES INTO EFFECT WILL CONSTITUTE CUSTOMER'S ACCEPTANCE OF THE UPDATED VERSION.

## SUBSCRIPTION SERVICE TERMS

### 1. DEFINITIONS

**1.1 Affiliate** means any entity that directly or indirectly controls, is controlled by, or is under common control with Saviynt or Customer. "**Control**," for purposes of this definition, means (a) direct or indirect ownership or control of more than 50% of the voting interests of the subject entity or (b) the power to direct or cause the direction of the management or policies, whether through ownership of voting stock or otherwise.

**1.2 Application** means a Saviynt proprietary software application program with the functionality described in the Documentation, including modifications, revisions, upgrades, updates and enhancements, if any.

**1.3 Customer Data** means all electronic data and/or Personal Information transmitted by or on behalf of Customer (including its customers and end users) to or from the Subscription Service or which it processes through the Subscription Service. Customer Data does not include information or data regarding usage or performance of the Subscription Service that are not linked to or associated with Personal Information.

**1.4 Documentation** means Saviynt's user manuals, and other published protocols, standards and technical specifications made available by Saviynt to Customer regarding the use or operation of the Subscription Service.

**1.5 Intellectual Property Rights** means current and future worldwide rights under patent, copyright, trademark

or trade secrets, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Subscription Service is used or offered.

**1.6 Order Document** means a schedule, quote, order form or statement of work by which Customer (or a Partner on Customer's behalf) orders Services that are governed by the terms of this Agreement.

**1.7 Partner** means a reseller or distributor that has an agreement with Saviynt that authorizes the Partner to resell the Subscription Services or Professional Services.

**1.8 Personal Information** means any personal data, either alone or in combination with other information, by which a natural person can be identified or located, or that can be used to identify or locate a natural person, household or device.

**1.9 Professional Services** means all technical and non-technical consulting and, advisory services identified in an Order Document including, but not limited to, training, standard installation, integration, configuration, expert services and other time and materials services.

Professional Services purchased from Saviynt may be provided by Saviynt or its subcontractor. Customer grants Saviynt a right to use the Customer's systems, proprietary and third-party products, Confidential Information, Customer Data and information as necessary to perform the Professional Services.

Saviynt holds and retains the Intellectual Property Rights to all training course materials.

**1.10 Services** means Subscription Services, Support Services and Professional Services.

**1.11 Territory** means worldwide except for any countries sanctioned, embargoed or prohibited to do business with under U.S. or other applicable laws.

**1.12 User** means, as set forth in the relevant Order Document, an employee, agent or independent contractor of Customer or Customer's Affiliates with a unique active human resource identity common across all applications.

## **2. SUBSCRIPTION SERVICE**

**2.1 Subscription.** Saviynt (or its Affiliates) grant a non-exclusive, non-transferable, non-sublicensable right to access and use the Application(s) or other functionality for Customer's internal business operations in the Territory, and when applicable, for the number of Users purchased by Customer from Saviynt and as specified in an Order Document with Saviynt or Partner (the "**Subscription Service**"). Unless otherwise stated in an Order Form, the initial subscription term will be for three (3) years (the "**Initial Subscription Term**"). The Subscription Service will renew for subsequent periods for the existing Subscription Service and number of Users, at pricing set forth in an Order Document (each, a "**Renewal Term**") unless either party provides the other with written notice of its intent not to renew no less than 90 days prior to the end of the current Subscription Term or Renewal Term. The Initial Subscription Term and each Renewal Term may be collectively referred to as the "Term." Customer is responsible for payment of the Subscription Service Fees for the purchased User quantity at all times during the Initial Subscription Term or any Renewal Term. The Subscription Service Fees are based on the number of Users or other quantity as indicated on a Saviynt or a Partner Order Document and will not be decreased during a Subscription Term. Saviynt may modify the Subscription Service (e.g., to maintain or improve functionality or security), provided the modification does not materially negatively affect the Subscription Service.

**2.2 Subscription Renewals Not Made Through Partner.** Customer may renew the Subscription Service directly with Saviynt in the event (i) a Partner is no longer designated by Saviynt as a Partner; (ii) a Partner is no longer an operating entity; or (iii) Customer no longer desires to engage in business with the Partner. With respect to (iii), Saviynt reserves the right to direct the Customer to another Partner that can facilitate the renewal process.

**2.3 Subscription Start Date.** Unless otherwise specified in the Order Document, the subscription start date is the date Saviynt provides Customer login access for a Subscription Service ("**Subscription Start Date**"). The Subscription Start Date is the date the Subscription Term begins, which is not dependent on a customer launch date, go-live date or the date a Subscription Service is ready for use in a production environment.

**2.4 Support Services.** Saviynt will provide online support services through its [Customer Support Portal](https://saviynt.com/Agreements-SupportTerms/), which is available 24x7 for self-service technical assistance for the Subscription Service during the Subscription Term in accordance with its support and managed platform services policies ("**Support Policies**"), as updated from time to time. A description of Saviynt's Support Policies can be found at: <https://saviynt.com/Agreements-SupportTerms/>.

**2.5 Service Level Agreement.** Saviynt will use commercially reasonable efforts to make the production instance of the Subscription Service available pursuant to the terms of Saviynt's current Service Level Agreement, as updated from time to time. A description of Saviynt's Service Level Agreement can be found at: <https://saviynt.com/agreements-sla>.

**2.6 Customer Responsibilities and Conditions of Use.** Customer is responsible for all activities conducted by it or through the accounts of its Users in the Subscription Service, and agrees to abide by the Customer Responsibilities and Conditions of Use, as updated from time to time. Customer Responsibilities and Conditions of Use can be found at: <https://saviynt.com/Agreements-CustomerResponsibilities/>. Any breach of the Customer Responsibilities and Conditions of Use may result in the immediate suspension or termination of the Subscription Service by Saviynt.

## **3. SECURITY**

**3.1 Safeguards.** Saviynt will maintain commercially reasonable and appropriate administrative, physical, technical and organizational safeguards designed to protect and secure Customer Data against unauthorized and unlawful loss, access or disclosure. Saviynt will maintain physical, electronic and procedural safeguards in compliance with applicable cyber security and privacy laws (which may include the California Consumer Protection Act of 2018, Regulation (EU) 2016/679 the General Data Protection Regulation and other applicable privacy laws) to protect Customer Data. Customer understands and agrees that the technical and organizational measures are subject to technical progress, development and improvements for the protection of Personal Information and Saviynt reserves the right to update the technical and organizational security measures provided the technical and organizational security measures will not materially diminish Saviynt's information security obligations described therein. The Customer and Saviynt agree to abide by the Data Processing Agreement, as updated from time to time, available at: <https://saviynt.com/Agreements-DPA/>.

**3.2 Notification.** If Saviynt discovers that Customer Data has been acquired by an unauthorized person or otherwise been the subject of an unauthorized disclosure, Saviynt will promptly notify Customer, without undue delay, as allowed by applicable law.

**3.3 Compliance/Audits.** Saviynt represents and warrants that it is currently SOC 1 Type II, SOC 2 Type II,

ISO 27001 and ISO 27017 and FedRAMP compliant. Customer agrees that Saviynt's SOC 2 and ISO 27000 reports will be used to satisfy any audit or inspection requests by or on behalf of Customer, and Saviynt shall make such reports available to Customer.

#### 4. ORDERS, FEES AND PAYMENT

**4.1 Orders.** Customer may purchase Services by either (a) entering into a binding Order Document with Saviynt directly or (b) entering into an Order Document with a Partner that is subsequently acknowledged by Saviynt ("**Partner Order**").

The Order Document for the purchase of Professional Services will describe the services to be performed and may include, but not be limited to, any of the following: project scope, resources, party responsibilities, deliverables ("**Deliverables**"), fees, expenses and payment schedule. The scope of any Professional Services shall be limited to (i) programs and deployment planning, (ii) configuration and integration assistance, and/or (iii) interface adaptor efforts. Professional Services shall not constitute works-for-hire.

Each Order Document with Saviynt shall be signed by both Customer and Saviynt, and Customer will provide a purchase order (if applicable).

All Services purchased by Customer through either Saviynt, or a Partner, shall be governed exclusively by this Agreement and, subject to Section 12.1 (Entire Agreement/Severability/Wavier and Modification), the applicable Order Document or Partner Order Document. Any conflicting terms and conditions included in a Customer issued purchase order to Saviynt or Partner shall have no contractual effect, will be null and void and shall be superseded by the terms and conditions of this Agreement.

#### 4.2 Fees, Invoicing and Payment.

**4.2.1 Direct Purchases from Saviynt.** For direct purchases from Saviynt, all fees and related expenses for the Subscription Service shall be set forth in an applicable Order Document ("**Subscription Service Fees**"). Unless otherwise specified in an Order Document, Subscription Service fees are due and payable in U.S. Dollars thirty (30) days from (a) the Subscription Start Date for Subscription Services and on the anniversary date of the Subscription Start Date for each Renewal Term thereafter, or (b) from the invoice date for Professional Services. Invoices are deemed received immediately if emailed or five (5) after mailing. Subscription Service Fees are non-refundable and the Customer's payment obligation is not cancelable, except where otherwise stated in the Agreement. Saviynt will notify Customer of a price increase for the Subscription Service in any Renewal Term no later than sixty (60) days before the end of a current Subscription Term.

**4.2.2 Purchases Through a Partner.** For any Services purchased by Customer through a Partner, the invoicing, pricing and payment terms are established through the Partner Order or agreement entered into by and between

Customer and the Partner, and all payments will be made directly to Partner. Partner will notify Customer of a price increase for the Subscription Service in any Renewal Term no later than sixty (60) days before the end of a current Subscription Term.

**4.2.3 Customer Affiliate Orders.** Customer Affiliates located in the Territory may execute an Order Document with Saviynt or Partner under this Agreement and will be entitled to all the rights and be bound by all the obligations of Customer under this Agreement, any amendments whenever made, and the Order Document executed by the Affiliate. Customer will (a) remain obligated to perform its commitments (including payment obligations) under the Agreement with respect to any Subscription Services provided to its Affiliates; and (b) act as the single point-of-contact with Saviynt or the Partner with respect to the Subscription Services provided to its Affiliates.

**4.3 Taxes.** Service fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever ("**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases and will hold Saviynt or Partner harmless for the collection and/or payment of all regulatory taxes applicable to the Subscription Services and Professional Services. For clarity, Saviynt and the Partner are solely responsible for taxes assessable against them based on their income, property and employees.

**4.4 Invoice Dispute.** Customer must pay all undisputed amounts to Saviynt or Partner in accordance with this Section 4. The Customer must provide written notice to Saviynt or the Partner of its good faith dispute within fifteen (15) days of invoice receipt. Saviynt or Partner will promptly review and respond to the notice. After the dispute is resolved, Customer will immediately pay the invoice. If the Customer fails to provide notice to Saviynt or the Partner within the 15-day period, then the Customer's right to dispute the invoice will be deemed waived.

**4.5 Future Functionality.** Customer agrees that its purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Saviynt or the Partner regarding future functionality or features of the Subscription Services

#### 5. TERMINATION

**5.1 Term.** This Agreement shall be in effect commencing on the Effective Date and shall continue in effect for so long as there is an active Order Document arising under this Agreement.

**5.2 Subscription Service Termination.** Either party may terminate the Agreement or a Subscription Service:

(a) for cause upon 30 days' written notice to the other party of a material breach, including untimely payment or

violation of the conditions of assignment set forth in Section 12.2, if the breach remains uncured at the expiration of the 30-day period. Consent to extend the cure period will not be unreasonably withheld, so long as the breaching party has commenced cure during the 30-day notice period and pursues cure of the breach in good faith; or

(b) immediately if the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days.

(c) Notwithstanding the above, Saviynt may terminate the Agreement or a Subscription Service with at least 30 days prior notice if a change in law comes into effect that renders Saviynt's provision of the Subscription Service illegal, impossible or would materially adversely affect Saviynt's ability to provide the Subscription Service.

**5.3 Suspension for Ongoing Harm.** Saviynt reserves the right to suspend Customer's access or use of all or part of the Subscription Service if Saviynt reasonably concludes that Customer or its User's use of the Subscription Service is causing immediate and/or ongoing harm to Saviynt or the security, integrity or availability of the Subscription Services in violation of Customer Responsibilities and Use Restrictions set forth in Section 2.6. Saviynt will use commercially reasonable efforts under the circumstances to provide Customer notice of the cause of the suspension, and the suspension will only remain in place for the minimum amount of time necessary for Customer to cure the breach which led to the suspension. If Saviynt suspends Customer's right to access or use any portion or all of the Subscription Service in accordance with this Section 5.3: (i) Customer will remain responsible for all fees and charges; (ii) Saviynt will not be bound by any service level agreement during the suspension period; (iii) Saviynt shall not be liable to Customer or to any third party for any liabilities, claims or expenses arising from or related to any suspension of the Subscription Services in accordance with this Section 5.3; (iv) the suspension shall not extend the term of any applicable Order Document; and (v) Saviynt will not delete any Customer Data on the Subscription Service as a result of the suspension, except as specified elsewhere in this Agreement.

#### **5.4 Effect of Termination.**

a. If the Agreement or Subscription Service is terminated by Customer in accordance with Section 5.2(a) or 5.2(b), or by Saviynt in accordance with Section 5.2(c), Customer shall be entitled to a pro-rata refund of the unused and remaining portion of any prepaid fees made by Customer to Saviynt or the Partner prior to the effective date of termination. Such pro-rata refund shall be paid by Saviynt or the Partner in accordance with the payment terms set forth in this Agreement or in the agreement between Customer and the Partner, and Customer will be released from any further obligation to make payment to Saviynt or Partner for the Subscription Service Fees associated with the remaining unused portion of the then current Term.

b. If the Agreement or Subscription Service is terminated by Saviynt in accordance with Section 5.2(a) or 5.2(b), Customer shall not be entitled to a refund of the unused and remaining portion of prepaid fees paid by Customer to Saviynt or the Partner up to the effective date of termination, and all unpaid fees under active Order Documents shall be accelerated and become immediately due and payable.

c. In no event will termination relieve the Customer of its obligation to pay Saviynt or the Partner within ten (10) business days any and all undisputed fees and expenses that accrued up to and through the effective date of termination.

d. Upon termination of the Agreement or Subscription Service: (i) Customer's Subscription Service and access to it will immediately cease and its license to use any standard deliverables including without limitation application program interfaces, configurations, information, documents reports, technical and non-technical data, specifications and other material will immediately terminate; (ii) Saviynt has no obligation to maintain any Customer Data except as otherwise specified in Section 5.5; and (iii) Customer must, in accordance with Saviynt's directions, return or destroy any Saviynt Confidential Information and Documentation, and provide written certification of destruction.

**5.5 Return of Customer Data after Termination.** Saviynt will not delete any of the Customer Data in an Application or Subscription Service as a result of termination of that Application or Subscription Service during the 30 days following termination. Within 10 days following the termination date, Customer must provide Saviynt with a written request for download, migrate or transfer of the Customer Data in a SQL format. Saviynt has no obligation to maintain or provide any of the Customer Data after the 30-day period and will thereafter, unless legally prohibited, delete all the Customer Data stored in that Application or Subscription Service.

**5.6 Professional Service Termination.** Customer may terminate a Professional Services engagement in whole or in part with thirty (30) days' prior written notice, and Saviynt will not be responsible for the resulting conditions of Deliverables. Customer will pay all Professional Service fees and expenses incurred through the termination of the Professional Services engagement including those fees associated with Professional Services provided on incomplete milestones, if any.

#### **6. INTELLECTUAL PROPERTY RIGHTS**

**6.1 Reservation of Rights.** Except as expressly set forth in this Agreement, this Agreement does not grant (a) Saviynt any Intellectual Property Rights in Customer Data or (b) Customer any Intellectual Property Rights in the Subscription Services or Saviynt trademarks. Saviynt will own all rights in any copy, translation, modification, adaptation or derivation of the Subscription Services, including any improvement or development thereof.

**6.2 Suggestions.** Saviynt may, at its discretion and for

any purpose, use, modify, and incorporate into its products and services, license and sublicense, any feedback, comments, or suggestions Customer or its Users provide to Saviynt without any obligation to Customer.

## **7. CONFIDENTIALITY**

**7.1 Confidential Information.** Confidential Information means any material, data, or information, in any form or media, that is proprietary or confidential to a disclosing party and is marked as confidential, or by its nature or treatment by its owner or by the circumstances surrounding such disclosure should reasonably be considered confidential. Confidential Information includes, without limitation: (a) nonpublic information relating to the disclosing party's technology, prices, Intellectual Property Rights, specifications, manuals, business plans, product roadmaps, results of benchmark tests, promotional and marketing activities, finances and other business affairs; (b) Customer Data and third party information that the receiving party is obligated to keep confidential; (c) the discussions, negotiations and proposals between the parties leading to this Agreement and any Order Documents; and (d) the Agreement and Order Documents. Saviynt and Customer agree that the terms and conditions of this Agreement are Confidential Information; however, the existence of this Agreement is not Confidential Information. Confidential Information does not include information that: (i) is or becomes publicly available without breach of the Agreement; (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party; (iii) is independently developed by receiving party after disclosure without breach of the Agreement; or (iv) is obtained by the receiving party from a third party without any confidentiality obligation.

**7.2 Use.** Receiving party will use disclosing party's Confidential Information solely to perform its obligations under this Agreement and will take all reasonable steps to safeguard disclosing party's Confidential Information, including the same degree of care it uses to protect its own Confidential Information. Receiving party must not disclose disclosing party's Confidential Information except to its employees, Affiliates and contractors who (a) have a need-to-know Confidential Information in connection with this Agreement and (b) are bound by written confidentiality obligations no less restrictive than these terms. Receiving party must promptly notify disclosing party in writing of unauthorized use or disclosure of Confidential Information and take all reasonable action to recover Confidential Information and prevent further unauthorized use or disclosure, including action for seizure and injunctive relief. If the receiving party fails to do so in a timely manner, disclosing party may take any reasonable steps at receiving party's expense, and receiving party must reasonably cooperate.

**7.3 Disclosure.** Receiving Party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving

party (a) gives the disclosing party reasonable written notice to allow the disclosing party to seek a protective order or other appropriate remedy (except to the extent the receiving party's compliance with the foregoing would cause it to violate a court order or other legal requirement), (b) discloses only such information as is required by the governmental entity or otherwise required by law, and (c) uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information disclosed.

## **8. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS**

**8.1 Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so. Each party will comply with the laws and regulations applicable to it in connection with its obligations and performance under this Agreement. The Customer is responsible for ensuring that its use of the Subscription Services is in accordance with laws and regulations that apply to it.

**8.2 Subscription Service Warranty.** Saviynt represents and warrants that: (a) it owns or otherwise has sufficient rights to the Subscription Services and technology to grant the rights in this Agreement; and (b) the Subscription Services will materially conform to the Documentation during the Subscription Term. The warranties in Section 8 do not cover problems caused by (i) abuse, misuse, alteration, neglect, accident, unauthorized repair or installation, or acts or omissions of any party other than Saviynt; (ii) Customer's hardware, software, networks or systems; or (iii) Customer not using the Subscription Service according to the Documentation.

**8.3 Remedy for Subscription Service Warranty Claims.** Except as otherwise explicitly provided in this agreement, Customer's remedy for any Subscription service warranty claim that is not resolved by Saviynt in accordance with the Agreement is for Customer to terminate in writing the Subscription Service that gave rise to the claim, discontinue using the Subscription Service, and in accordance with Section 5.4, Customer will receive a pro-rata refund of the unused and remaining portion of any prepaid fees made by Customer to Saviynt or the Partner prior to the Effective Date of the terminated Subscription Service. In addition, Customer will be released from any further obligation to make payment to Saviynt, or the Partner for the Subscription Service fees associated with the remaining unused portion of the then current Term.

**8.4 General Disclaimer.** EXCEPT AS OTHERWISE EXPLICITLY PROVIDED IN THIS AGREEMENT, THE SUBSCRIPTION SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE." SAVIYNT, ITS AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND GUARANTEES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, ORAL OR WRITTEN, FOR THE SUBSCRIPTION SERVICE AND ITS USE, SUFFICIENCY, OR ACCURACY INCLUDING WITHOUT LIMITATION,

ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACHIEVE ANY INTENDED RESULT OR NON-INFRINGEMENT OR TO BE FREE OF HARMFUL CODE OR ERROR FREE; AND WARRANTY ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. SAVIYNT MAKES NO WARRANTY REGARDING ANY NON-SAVIYNT APPLICATION WITH WHICH THE SUBSCRIPTION SERVICES MAY INTEROPERATE.

**8.5 Professional Services Warranty.** Saviynt warrants that any Professional Services it provides will be performed in a good and workmanlike manner in accordance with industry standards. The Customer must provide a written warranty claim to Saviynt within thirty (30) after the date of the invoice for the Professional Services or as otherwise stated in the statement of work. Saviynt, at its option, will re-perform Professional Services that do not comply with the warranty at no additional charge, or if not practical and solely at Saviynt's option, refund the part of the Professional Services fee, if paid, for the Professional Services that do not comply with the warranty.

**8.6 Personnel.** Saviynt will determine which of its personnel or subcontractors will perform the Professional Services. If Customer is dissatisfied with the Professional Services, the parties will in good faith determine a resolution. If the resolution involves reassigning personnel, Saviynt will do so as soon as practical and commercially reasonable, according to local law. Customer agrees that reassignment of personnel may delay the Professional Services.

## **9. INDEMNIFICATION**

**9.1 Indemnification by Saviynt.** Subject to Section 9.5 (Indemnity Process), Saviynt will indemnify and defend Customer, its employees, officers, directors, shareholders, parents and subsidiaries against an unaffiliated third party claim or legal action alleging: (a) that the Subscription Service as provided by Saviynt to Customer directly infringes or misappropriates a U.S. patent, copyright, trademark or trade secret; (b) harm caused by Saviynt's gross negligence or willful misconduct; or (c) bodily injury, death, or tangible property damage to the extent caused by Saviynt, its employees, subcontractors or agents.

**9.2 Indemnification by Customer.** Subject to Section 9.5 (Indemnity Process), Customer will indemnify and defend Saviynt, its employees, officers, directors, shareholders, parents, subsidiaries and licensors against an unaffiliated third party claim or legal action alleging: (a) a violation arising from or related to Customer's provision of the Customer Data to Saviynt or Customer's or its User's use of the Subscription Service(s) in breach of this Agreement directly infringes or misappropriates a U.S. patent, copyright, trademark or trade secret; (b) harm caused by Customer's gross negligence or willful misconduct; or (c) bodily injury, death, or tangible property damage to the extent caused by Customer, its employees, subcontractors or agents.

**9.3 Exceptions.** Saviynt has no obligation or liability

under Section 9.1(a) arising from: (a) Customer's breach of this Agreement or use of the Subscription Service in a manner contrary to the Documentation; (b) unauthorized modification of the Subscription Service made by anyone other than Saviynt, or modification made by Saviynt for non-standard features or functionality for Customer or according to Customer's direction if the infringement would not have occurred without Customer's requested modifications; (c) use of any Subscription Service in combination with hardware, software, method or process not provided or approved by Saviynt if infringement would not occur without the combination, unless the Documentation expressly authorizes a combination with such hardware, software, method or process; (d) any content, information, data or Customer Data provided by Customer, Users, or other third parties; or (e) Customer's failure to cooperate or allow Saviynt to install a revision, update or release provided by Saviynt that would have eliminated the infringement.

**9.4 Possible Infringement.** If Saviynt believes the Subscription Service infringes or may be alleged to infringe a third party's Intellectual Property Rights, then Saviynt may: (a) obtain the right for Customer, at Saviynt's expense, to continue using that Subscription Service; (b) provide a non-infringing, functionally equivalent replacement; or (c) modify the Subscription Service so that it no longer infringes. If the options described in this Section are not commercially reasonable then Saviynt may terminate Customer's use of the affected Subscription Service (with a pro-rata refund of any prepaid fees for the terminated Subscription Service).

**9.5 Indemnity Process.** The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. Failure to provide timely notice or reasonable assistance will relieve the indemnifying party of its obligations under Section 9 to the extent the indemnifying party has been materially prejudiced. The indemnifying party will have full control and authority over the defense, including appeals, negotiations, and any settlement, except that: (a) it may not make an admission of fault on behalf of the other party without written consent, (b) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (c) the other party may join in the defense with its own counsel at its own expense. The indemnifying party will (i) retain and pay attorneys and court costs as part of its defense obligation, (ii) reimburse the other party for reasonable out-of-pocket expenses that it incurs in providing assistance, and (iii) pay the amount of any resulting adverse final judgment (including any award of attorney's fees, costs and punitive damages), penalties, sanctions or settlement. THE SOLE LIABILITIES AND EXCLUSIVE REMEDIES FOR THE INDEMNIFICATION CLAIMS ARE AS DESCRIBED IN SECTION 9.

## **10. LIMITATION OF LIABILITY**

**10.1 Limitation.** The aggregate liability for all claims under this Agreement is limited to direct damages up to the amounts paid and/or payable by Customer to Saviynt under

this Agreement during the twelve (12) months prior to the event giving rise to liability. This limitation applies to any damage, however caused, and on any theory or liability, whether for breach of contract, tort, misrepresentation, negligence (active or otherwise), the use or performance of the Subscription Services, or otherwise and regardless of whether the damages were foreseeable or not.

**10.2 Exclusion.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR LICENSORS BE LIABLE UNDER THIS AGREEMENT FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING (BY WAY OF EXAMPLE AND NOT AN EXHAUSTIVE LIST) LOSS OF REVENUES OR PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION OR LOSS OF USE, GOODWILL OR OTHER COMMERCIAL DAMAGES OR LOSSES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, HOWEVER CAUSED AND WHETHER IN CONTRACT, NEGLIGENCE OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE OR REASONABLY FORESEEABLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. The foregoing disclaimer will not apply to the extent prohibited by applicable law.

**10.3 Exceptions to Limitations.** The limits of liability in Section 10.1 apply to the fullest extent permitted by law, except with regard to: (a) violation of the other's Intellectual Property Rights; (b) death or bodily injury claims, tangible property damage, willful misconduct, gross negligence or fraud; (c) Customer's failure to comply with Section 2.6 (Customer Responsibilities and Conditions of Use) or its payment obligations; or (d) breach of a party's obligations under Section 7 (Confidentiality) or Section 9 (Indemnification). Notwithstanding anything to the contrary in the Agreement, Saviynt's aggregate liability with respect to a breach of Customer Data and Personal Information will be limited to the amounts in Section 10.1.

## **11. INSURANCE.**

**11.1** Saviynt shall maintain at its own expense, insurance coverage of the types and in the amounts required by applicable law and/or reasonable, prudent business practice, including the following minimum insurance coverage from companies maintaining an AM Best rating of A-VII or higher (or its equivalent):

(i) Commercial General Liability including (A) bodily injury, (B) property damage, (C) products and completed operations, and (D) personal and advertising injury coverage, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate;

(ii) Business Automobile Liability for hired and non-owned vehicles in an amount of not less than One Million Dollars (\$1,000,000) for combined single limit;

(iii) Workers Compensation at statutory limits and

Employer's Liability at limits not less than One Million Dollars (\$1,000,000) per occurrence; and

(iv) Professional Liability/E&O/Cyber Liability Insurance covering errors, omissions or negligent acts in the performance of the services or provision of the products and services being provided to Customer or on behalf of Customer hereunder. Such errors and omissions insurance shall include coverage for claims with respect to network risks (such as data breaches, unauthorized access, ID theft, privacy violations, degradation, downtime, etc.), media liability, including copyrights and trademarks. Such insurance will in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate.

**11.2 Policy Details.** Saviynt will use commercially reasonable efforts to provide Customer prompt notice in writing of any cancellation, material modification or non-renewal of policies.

## **12. GENERAL PROVISIONS**

**12.1 Entire Agreement/Severability/Waiver and Modification.** The Agreement, Schedules, Order Document(s), and any amendments contain the entire agreement with respect to the subject matter of this Agreement and supersede and replace all prior or contemporaneous proposals, understandings, agreements, negotiations and representations, oral or written. Any pricing, payment and term length conditions in an Order Document that are inconsistent with the Agreement will control for that Order Document only. Any inconsistent or additional terms of Customer's purchase order are excluded regardless of Saviynt or the Partner accepting the purchase order for payment purposes. If there is a conflict between these Subscription Service Terms and any attached terms for a specific Subscription Service, the attached terms will control with respect to that specific Subscription Service only. All headings are for reference purposes only and do not affect the interpretation of the Agreement. If any part of this Agreement is held unenforceable, the rest remains in full force and effect. Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver, amendment or other modification of this Agreement must be in writing and signed by both parties. Where Saviynt is required to "click through" or otherwise accept any online terms to register as Customer's vendor, to provide the Services to Customer, or to enable Customer's receipt of the Services (as a condition to its provision, vendor registration or receipt of Services), the terms are not binding and shall not be deemed to modify this Agreement.

**12.2 Assignment.** Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets,



provided that in the event of an assignment by Customer, all fees then due and payable to Saviynt or the Partner have been paid. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.3 No Agency/Third Party Beneficiaries.** Saviynt and Customer are not legal partners or agents; rather, the parties are independent contractors. Neither party shall be responsible for the acts or omissions of the other party or the other party's personnel. Saviynt does not undertake to perform any of Customer's regulatory obligations, nor assume any responsibility for Customer's business or operations. Except for any third-party rights held by Saviynt's licensors, there are no third-party beneficiaries to this Agreement.

**12.4 Force Majeure.** Neither Saviynt nor Customer will be liable to the other for any delay or failure to perform hereunder to the extent caused by a condition that was beyond the party's reasonable control, including acts of God, (for example, natural disaster, fire, flood or explosion), acts of war or terrorism (including cyber terrorism), riot, labor conditions, governmental action (including the passage of laws or regulations or other acts of government that impact the delivery of Subscription Services), and service disruptions involving Internet, telecommunications, utility disturbances, hardware, software or power system not within the party's possession or reasonable control (a "**Force Majeure Event**").

**12.5 Notice.** Notice or approval must be in writing, signed by a party's authorized representative and sent by email transmission, overnight courier or registered or certified mail to the address provided on the Signature Form or otherwise specified in writing by a party for notice. Notices provided by email transmission or overnight courier will be effective one (1) business day after they are sent. Notices provided by registered or certified mail will be effective three (3) business days after they are sent. All notices shall be sent to the other party at the address set forth on the first page of this Agreement.

**12.6 Dispute Resolution.** The parties will attempt in good faith to resolve any controversy or claim promptly through business discussions and will, upon written request, escalate a dispute to executive management for resolution. If the parties fail to resolve the dispute within 30 days of written request, or any longer period agreed to in writing, the parties may pursue the remedies to which they are entitled. This Section does not restrict either party's right to seek injunctive relief.

**12.7 Injunctive Relief.** The parties acknowledge that any breach of their obligations under this Agreement with respect to Intellectual Property Rights, Confidential Information, or Customer's breach of its obligations in Section 2.6 (Customer Responsibilities and Conditions of Use), may cause irreparable injury for which the remedies at law are inadequate and therefore the non-breaching party is entitled to immediate equitable relief, without requirement of posting bond and without the necessity of

showing actual money damages, in addition to all other remedies provided by this Agreement or available at law or in equity.

**12.8 Governing Law.** The Agreement is governed as follows: (i) North American Customers will contract through Saviynt, Inc. or Saviynt Canada Ltd and the governing law shall be the laws of State of California USA; (ii) European, Middle East and African Customers will contract through Saviynt Europe Ltd or Saviynt GmbH and the governing law shall be the laws of England and Wales; (iii) Australian Customers will contract through Saviynt Australia Pty Ltd and the governing law shall be laws of Australia; (iv) Indian Customers will contract through Saviynt India Private Limited and the governing law shall be laws of India; and (v) all other Asia and Oceania Customers will contract through Saviynt Singapore Pte Ltd and the governing law shall be the laws of Singapore without regard to their conflict of laws principles. Each party waives the right to jury trial for any legal action, in law or equity. The United Nations Convention on Contracts for the International Sale of Goods and Uniform Computer Information Transaction Act, as adopted by any state or governing body, does not apply.

**12.9 Anti-Bribery/Corruption.** Neither party (a) has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement or (b) has made, paid, given, or agreed to make, pay or give any bribe, kickback, payment, gift, or thing of value to any foreign government official or other person in violation of applicable laws related to the prevention of corruption, including the U.S. Foreign Corrupt Practices Act of 1977 ("Anti-Corruption Laws") in connection with this Agreement. If either party learns of any violation of the foregoing restriction, the party will use reasonable efforts to promptly notify the other party.

**12.10 Export Laws.** Each party is responsible for ensuring that its actions with respect to the Subscription Services comply with the export control laws of the United States or other applicable law ("**Export Laws**"). Customer will not, directly or indirectly, export, re-export, transfer, re-transfer, sell, supply, or allow access to or use of the Subscription Services to, in, by, or for sanctioned, embargoed, or prohibited countries, persons, or end uses, directly or indirectly, in violation of the Export Laws (collectively, "**Prohibited Uses**"). The Customer is responsible for screening for Prohibited Uses and obtaining any required licenses, governmental approval, or other authorizations. Saviynt may terminate the Agreement if it determines, in its sole discretion, that the Customer has breached, intends to breach, or insists upon breaching any of the provisions of this clause.

**12.11 Publicity.** Upon implementation and use of the Subscription Service in production, Saviynt may use Customer's name and/or logos on Saviynt's public website, client lists and other marketing materials to identify Customer as a Subscription Service customer upon receipt of Customer's prior written consent. Saviynt agrees that it



will comply with any written guidelines Customer may deliver to Saviynt regarding the use of its name and/or logos, and any such use shall not be deemed Customer's endorsement of the Subscription Service.

**12.12 Survival.** Upon termination of this Agreement, all of the Parties' respective rights and obligations hereunder

shall cease, except that Sections 4 (Orders, Fees and Payment), 5.4 (Effect of Termination), 5.5 (Return of Customer Data after Termination), 6 (Intellectual Property Rights), 7 (Confidentiality), 9 (Indemnification), 10 (Limitation of Liability) and 12 (General Provisions) will survive any termination or expiration of this Agreement.