

## SUBSCRIPTION TERMS AND CONDITIONS

These Subscription Terms and Conditions are incorporated by this reference into the Order Form (collectively referred to as the “Agreement”) entered into by Simon Data Inc. (“**Simon Data**”), a Delaware corporation with its principal place of business at 224 W 35th St, Ste 500, New York, NY 10001 and the customer identified in the Order Form (“**Customer**”).

### 1. DEFINITIONS.

- 1.1. “**Authorized User**” means any employee or contractor of Customer, identified by a unique email address and user name, who is registered under the Account; provided that no two persons may register or use the Service as the same Authorized User.
- 1.2. “**Consulting Services**” means any additional professional services to be delivered by Simon Data, such as implementation, training, consultation, services integration consulting or assistance, that are set forth in an Order Form as described in Section 2.
- 1.3. “**Customer Data**” means all data and information submitted or otherwise transmitted, delivered or made available to the Service by Customer.
- 1.4. “**Documentation**” means the Service documentation provided by or made available by Simon Data.
- 1.5. “**Malicious Code**” means any software viruses, worms, Trojan horses and other harmful computer code, files, scripts, or agents.
- 1.6. “**Order Form**” means a standard Simon Data order form or any other document separately and specifically approved by Simon Data that describes the Simon Data Service to be purchased by Customer and is signed or otherwise agreed upon by both parties.
- 1.7. “**Personal Information**” means any information relating to an identified or identifiable natural person; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity or any data, data element or information that is subject to breach notification, data security obligations or other data protection laws.
- 1.8. “**Service**” means the interactive platform and solution (including the AI Functionality) provided by Simon Data to Customer and related services identified in an Order Form.
- 1.9. “**Service Term**” means the subscription period(s) specified in an Order Schedule during which users may use the Service.

### 2. SERVICE.

- 2.1. Provision of the Service. Subject to and conditioned on Customer’s compliance with all other terms and conditions of this Agreement, Simon Data will make the Service available to Customer during the applicable Service Term in accordance with the Documentation and this Agreement.
- 2.2. Access Rights. Customer has a non-exclusive, non-sublicensable, nontransferable (except as specifically permitted in this Agreement) right to access and use the Service as set forth in the Documentation and this Agreement during the applicable Service Term, solely for Customer’s internal business purposes and subject to the scope of use defined in the applicable Order Form(s).
- 2.3. Restrictions. Customer will not (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, offer in a service bureau, or otherwise make the Service available to third parties, other than Authorized Users; (b) copy or modify the Service or Documentation or create derivative works based on the Service or Documentation; (c) reverse engineer or decompile any portion of the Service or Documentation, including, without limitation, any software used by Simon Data to provide the Service and the Documentation, except as permitted by law; (d) copy any features, functions, integrations, interfaces or graphics of the Service or the Documentation.

- 2.4. Consulting Services. Simon Data may perform Consulting Services as described in an Order Form. Simon Data will provide such resources and utilize such Simon Data employees and consultants as Simon Data deems necessary to perform such Consulting Services. If Simon Data utilizes subcontractors, Simon Data will be responsible for the acts of such subcontractors hereunder as if it had performed the acts itself. Unless otherwise agreed in an Order Form, any software or other materials developed by Simon Data during the provision of such Consulting Services will be owned by Simon Data. Simon Data hereby grants to Customer a non-exclusive right to access, copy, modify, and use such developed materials solely for purposes of accessing and using the Service during the Service Term.

### **3. AI FUNCTIONALITY AND SERVICE TRANSPARENCY.**

- 3.1. Description of AI Functionality. Simon Data provides certain artificial intelligence-enabled features and services (“**AI Functionality**”) as part of the Service. The AI Functionality may include, without limitation, predictive analytics, segmentation, scoring, and other automated insights derived from data inputs provided or made accessible by Customer.
- 3.2. Scope of Analysis. The AI Functionality may process and analyze Customer Data, including product catalog information and related metadata, to generate data-driven predictions, behavioral insights, or audience segments. Processing activities occur within Simon Data’s designated infrastructure, which includes Snowflake Cortex or such other sub-processor environment as identified in Simon’s Data Processing Addendum.
- 3.3. Transparency of Processing. Simon Data shall, upon the Customer’s reasonable written request and at its sole discretion, provide Customer with a general description of the AI Functionality including (a) the categories of data analyzed, (b) the nature of automated processing performed, and (c) the types of outputs generated (including predictions, segments, and scoring). Processing of data for AI features may occur through third-party environments, including Snowflake Cortex or other secure cloud infrastructures utilized by Simon Data from time to time.
- 3.4. Nothing contained in this clause shall require Simon Data to reveal any proprietary algorithms, model parameters, source code, or confidential technical information, and Simon Data shall have no obligation to disclose the specific logic or methodology underlying its AI models. Simon Data may update such descriptions periodically to reflect changes in its technology stack or data-processing practices at its sole discretion.

### **4. CUSTOMER OBLIGATIONS.**

- 4.1. Customer Responsibilities; Acceptable Use. Customer has exclusive control and responsibility for determining what data Customer submits into, or otherwise permits access to in connection with, the Service and for obtaining all necessary consents and permissions for submission of Customer Data and processing instructions to Simon Data. Customer is responsible for the accuracy, quality, and legality of all Customer Data, and for the acts and omissions of Authorized Users in accessing and using the Simon Data Service. Customer will use reasonable measures to prevent, and will promptly notify Simon Data of, any known or suspected unauthorized use of the Simon Data Service or Authorized User access credentials. Customer will not access or use the Service: (a) for purposes of benchmarking or competitive analysis of the Service or to develop or provide a product or service that competes with the Service; (b) to send or store infringing, obscene, threatening, or otherwise unlawful material, including material that violates third party privacy rights; (c) in violation of applicable law; (d) to send or store material containing Malicious Code; (e) in a manner that interferes with or disrupts the integrity or performance of the Service or data contained in the Service; or (f) to gain unauthorized access to the Service (including unauthorized features and functionality) or its related systems or networks. If Simon Data suspects any breach of the requirements of Section 2.3 above or of this Section 4.1, including without limitation by Authorized Users, Simon Data may, in addition to such other remedies as Simon Data may have, suspend Customer’s access to the Service without advanced notice. If the Customer is purchasing Simon Mail, by signing this Agreement the Customer agrees to the Simon Data Acceptable Use Policy: <https://www.simondata.com/acceptable-use-policy/>

- 4.2. **Responsible Use of AI Functionality.** Customer shall use the AI Functionality solely in compliance with all applicable laws, regulations, and industry standards, including without limitation those relating to data protection, privacy, consumer protection, and anti-discrimination. Customer acknowledges that it retains full control and responsibility for (a) all input data, prompts, and configurations submitted to the AI Functionality; (b) all decisions, actions, or omissions taken in reliance on any output generated thereby; and (c) ensuring that its use of the AI Functionality does not result in unlawful, unethical, or discriminatory outcomes.
- 4.3. **Prohibited Use.** Customer shall not use the AI Functionality to: (a) generate, train, or deploy models that discriminate against individuals or groups based on protected characteristics; (b) process special categories of personal data (as defined under applicable privacy laws) unless expressly permitted in writing by Simon; or (c) develop or operate autonomous decision-making systems that produce legal or similarly significant effects on individuals without human oversight.
- 4.4. **Cooperation and Assistance.** As a condition to Simon Data's obligations hereunder, Customer will at all times: (a) provide Simon Data with good faith cooperation and assistance and make available such information, facilities, personnel and equipment as may be reasonably required by Simon Data in order to provide the Service and Support Services, including, but not limited to, providing or providing access to Customer Data, security access, information, and software interfaces to Customer's business applications; and (b) carry out in a timely manner all other Customer responsibilities set forth in this Agreement.
- 4.5. **Enforcement.** Simon Data may suspend or terminate any user's access to the Service upon notice to Customer in the event that Simon Data reasonably determines that such user has violated the terms and conditions of this Agreement or that such access is having a materially detrimental impact on Simon Data, Customer, any other Simon Data customer, or the public.
5. **CUSTOMER SUPPORT.** Simon Data will provide customer support to Customer in accordance with the package that is identified on the Order Form, as further detailed at: <https://www.simondata.com/service-level-agreement>
6. **FEES; PAYMENT.**
- 6.1. **Fees.** Customer will pay all fees and charges to Customer's account pursuant to the applicable Order Form or SOW as invoiced by Simon Data. Unless otherwise set forth in an Order Form or SOW, amounts are due and payable within 30 days following the date of invoice. Except as otherwise specified in an Order Form or SOW, (a) fees are quoted and payable in United States dollars, (b) fees are based on the Services and subscription term purchased as indicated in an Order Form and not actual usage, (c) payment obligations are non-cancelable and fees paid are non-refundable unless otherwise provided herein, and (d) the number of subscriptions purchased will not be decreased during the relevant Service Term.
- 6.2. **Taxes.** All fees are exclusive of all applicable taxes, levies, or duties, and Customer will be responsible for payment of all such taxes, levies, or duties, excluding taxes based solely on Simon Data's income. Customer will pay all fees to free and clear of, and without reduction for, any VAT, GST, withholding, or similar taxes; any such taxes imposed on payments of fees will be Customer's responsibility, and Customer will provide receipts issued by the appropriate taxing authority to Simon Data on request to establish that such taxes have been paid.
- 6.3. **Effect of Nonpayment.** Customer's access to the Service may be suspended or terminated if Customer's account falls into arrears. Unpaid amounts may be subject to interest at the lesser of 1.5% per month or the maximum permitted by law plus all collection costs, including reasonable attorney's fees. Suspension will not relieve Customer's obligation to pay amounts due for the full Service Term. Upon termination of this Agreement for failure to pay fees, Customer will pay the balance due on Customer's account.
7. **OWNERSHIP.** As between Simon Data and Customer, the Service (not including any Customer Data), and all intellectual property rights therein or relating thereto, are and will remain the exclusive property of Simon Data or its licensors. Simon Data reserves all rights not expressly granted in this Agreement. Simon Data acknowledges that, as between Customer and Simon Data, Customer owns all worldwide right, title and interest in and to all

Customer Data and Simon Data will not obtain any ownership rights or interests in such data. Customer hereby grants to Simon Data a non-exclusive license to use, reproduce, distribute copies of and make available the Customer Data only as is necessary to provide the Service. Notwithstanding anything to the contrary in this Agreement or elsewhere, Simon Data may monitor Customer's use of the Service, analyze Customer Data, and compile statistical and performance information related to Customer Data and the provision and operation of the Service. Simon Data may make such statistical and performance information publicly available in an anonymized and aggregated manner, provided that such information does not incorporate identifiable Customer Data or Customer Confidential Information. Simon Data retains all intellectual property rights in such statistical and performance information.

## 8. CONFIDENTIALITY.

- 8.1. **Definition.** “**Confidential Information**” means any non-public business or technical information disclosed by one party to the other party that: (a) if disclosed in writing, is marked “confidential” or “proprietary” at the time of disclosure; (b) if disclosed orally, is identified as “confidential” or “proprietary” at the time of disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after any such disclosure; or (c) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. For clarity, Customer Data is considered to be Confidential Information of Customer.
- 8.2. **Exclusions.** The obligations and restrictions set forth below will not apply to any information that: (a) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure; (c) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (d) the receiving party rightfully obtains from a third party who has the right to disclose such information without breach of any confidentiality obligation to the disclosing party.
- 8.3. **Use and Nondisclosure.** A receiving party will not use the disclosing party's Confidential Information except as necessary for the performance or enforcement of this Agreement and will not disclose such Confidential Information to any third party except to those of its employees and subcontractors who have a *bona fide* need to know such Confidential Information for the performance or enforcement of this Agreement; provided that each such employee and subcontractor is bound by a written agreement that contains use and disclosure restrictions consistent with the terms set forth in this Section. Each receiving party will protect the disclosing party's Confidential Information from unauthorized use and disclosure using efforts equivalent to or better than the efforts that the receiving party ordinarily uses with respect to its own confidential information and in no event less than a reasonable standard of care.
- 8.4. **Permitted Disclosures.** The provisions of this Section will not restrict either party from disclosing Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement or limit the scope of such request. The party responding to such an order or requirement will only disclose that information that is expressly required.

## 9. DATA SECURITY; PRIVACY.

- 9.1. **Security.** During the Service Term, Simon Data will, consistent with industry standard practices, implement and maintain reasonable physical, administrative and technical safeguards and other security measures: (a) to maintain the security and confidentiality of Customer Data; and (b) to protect Customer Data from known or reasonably anticipated threats or hazards to its security, availability and integrity, including accidental loss, unauthorized use, access, alteration or disclosure. If Simon Data detects or becomes aware of any breaches of security or unauthorized access affecting Customer Data, Simon Data will promptly report such security breach or unauthorized access to Customer.
- 9.2. **Personal Information.**

**9.2.1.** Customer acknowledges that as between the parties, Customer is responsible for obtaining all necessary consents and permissions for submission of, or provision of access to, Customer Data and processing instructions to Simon Data.

**9.2.2.** With respect to Personal Information Customer submits to the Service, Customer is considered the “data controller” and Simon Data is considered the “data processor.” Customer will not submit sensitive information (including government issued identification numbers, financial account information, payment card information and personal health information) to the Service except with Simon Data’s prior written approval.

**9.2.3.** Without limiting the generality of the foregoing, if Simon Data is collecting, processing, storing or transferring Personal Information on behalf of Customer, then Simon Data and Customer agree to be bound by the Data Processing Addendum located at <https://www.simondata.com/data-processing-agreement/>.

## **10. WARRANTIES; DISCLAIMERS.**

10.1. By Each Party. Each party represents and warrants that it has the power and authority to enter into this Agreement and that its respective provision and use of the Service is in compliance with laws applicable to such party.

10.2. By Simon Data.

**10.2.1. Conformity with Documentation.** Simon Data warrants and represents that the applicable Service, when used in accordance with the Documentation and this Agreement, will conform to the specifications for such Services expressly set forth in the Documentation during the Service Term. Customer’s sole and exclusive remedy and Simon Data’s entire liability for any breach of this Section shall be as follows: Simon Data will have 30 days after written notice to deliver a correction that resolves the nonconformity of the Service with this Section or shall refund to Customer any prepaid fees paid under this Agreement in a prorated amount based on the remaining days in the Service Term, and all remaining obligations under this Agreement will terminate.

**10.2.2. Consulting Services.** Simon Data warrants and represents that the Consulting Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

**10.2.3. No Viruses.** Simon Data warrants and represents that the Service will be free from Malicious Code.

**10.2.4. Nature of Outputs.** The AI Functionality generates outputs, including but not limited to predictions, scores, and audience segments (“**AI Outputs**”). These AI Outputs are probabilistic in nature and provided for informational purposes only. Simon Data does not guarantee the accuracy, completeness, or reliability of any AI Outputs and expressly disclaims any responsibility for business decisions made based on such outputs. The AI Outputs do not constitute professional advice of any kind. Customer remains solely responsible for all actions and decisions made in reliance on them. The general limitation of liability provisions in Section 13 shall apply in addition to this Section.

10.3. By Customer. Customer represents and warrants that Customer has the right to provide the Customer Data to Simon Data and otherwise process the Customer Data through the Service in connection with this Agreement, that Customer’s instructions for use of Customer Data in the Service do not and will not violate the terms or conditions of this Agreement or applicable law, and that Customer Data does not and will not infringe or misappropriate any third party’s copyright, trademark, trade secret, or privacy rights.

10.4. WARRANTY DISCLAIMERS. EXCEPT AS EXPRESSLY WARRANTED ABOVE, ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND THE SERVICES (INCLUDING THE AI FUNCTIONALITY) ARE PROVIDED “AS IS.” THE FOREGOING WARRANTIES DO NOT APPLY TO ANY SERVICES PROVIDED ON A FREE OR EVALUATION BASIS, WHICH ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. SIMON DATA, ITS LICENSORS AND SERVICE PROVIDERS

DISCLAIM ALL LIABILITY RELATED TO DELAYS, DELIVERY FAILURES, INTERCEPTION, ALTERATION OR OTHER DAMAGE RESULTING FROM PROBLEMS INHERENT IN THE USE OF THE INTERNET, MOBILE AND PERSONAL COMPUTING DEVICES, AND TRANSMISSION OF ELECTRONIC COMMUNICATIONS OVER THE INTERNET OR OTHER NETWORKS OUTSIDE OF ITS CONTROL.

## 11. INDEMNITY.

- 11.1. Indemnity by Simon Data. Simon Data will defend against any suit or action brought against Customer to the extent that it is based upon a third party claim that the Service, as provided by Simon Data to Customer pursuant to this Agreement, infringes any patent, copyright, trade secret, or other intellectual property right of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim, including any award in final judgment against or paid in settlement by Customer. Simon Data's obligations under this Section are contingent upon: (a) Customer providing Simon Data with prompt written notice of such claim; (b) Customer providing reasonable cooperation to Simon Data, at Simon Data's expense, in the defense and settlement of such claim; and (c) Simon Data having sole authority to defend or settle such claim. THE PROVISIONS OF THIS SECTION SET FORTH SIMON DATA'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.
- 11.2. Indemnity by Customer. Customer will defend any suit or action brought against Simon Data to the extent that it is based upon a third party claim arising from (a) any breach by Customer of its obligations hereunder, (b) alleged infringement by Customer of any third party intellectual property rights, and/or (c) the Customer Data submitted by any Authorized User or otherwise processed through Customer's account, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim, including any award in final judgment against or paid in settlement by Customer. Customer's obligations under this Section are contingent upon: (i) Simon Data providing Customer with prompt written notice of such claim; (ii) Simon Data providing reasonable cooperation to Customer, at Customer's expense, in the defense and settlement of such claim; and (iii) Customer having sole authority to defend or settle such claim.
- 11.3. Indemnity for Misuse. Simon Data shall have no responsibility or liability arising from or related to (a) Customer's misuse or misconfiguration of the AI Functionality, (b) any outputs generated as a result of Customer-provided data or instructions, or (c) Customer's reliance on such AI Outputs. Without limiting Section 11 (Indemnity), Customer shall indemnify, defend, and hold harmless Simon Data and its affiliates, officers, and employees from and against any claims, losses, or damages arising from Customer's violation of this Section. Customer shall indemnify and hold Simon Data harmless from any third-party claim, governmental investigation, or proceeding arising out of Customer's use of the AI Functionality in violation of law, this Agreement, or applicable ethical standards regarding artificial intelligence.

## 12. TERM AND TERMINATION.

- 12.1. Term and Termination. Each Order Form will commence on its execution by the parties and unless terminated earlier in accordance with its terms will remain in force and effect for the Service Term set forth therein. Unless otherwise set forth in an Order Form, upon the expiration of the Service Term, each Service Term will automatically renew for consecutive periods of 1 year unless either party provides the other party with written notice of its termination of the Service Term or renewal term no less than 60 days prior the expiration of such term. Unless otherwise set forth in an Order Form, fees to be paid by the Customer during a renewal term will be the same as fees paid during the initial Service Term. An Order Form will terminate 30 days after a party's notice to the other party that such other party is in material breach of any of the terms or conditions of the Order Form unless the other party cures such breach within such period. Either party may terminate an Order Form immediately upon written notice in the event the other party (a) becomes insolvent or files or has filed against it a petition in bankruptcy (which is not dismissed within 30 calendar days after it is filed); (b) makes an assignment for the benefit of creditors; or (c) dissolves or ceases to do business in the ordinary course.

- 12.2. Rights and Obligations Upon Expiration or Termination. Upon expiration or termination of an Order Form, Customer's right to access and use the Service will immediately terminate, Customer will immediately cease all use of the Service, and each party will return and make no further use of any Confidential Information, materials, or other items (and all copies thereof) belonging to the other party. To the extent applicable, Simon Data will cease accessing any Customer Data. Simon Data may destroy or otherwise dispose of any Customer Data in its possession unless Simon Data receives, no later than 10 days after the effective date of the expiration or termination of this Agreement, a written request that Simon Data continue to allow Customer access to Customer Data within the Service for a period of up to 30 days. Upon such request, Simon Data will use reasonable efforts to permit such access.
- 12.3. Survival. The rights and obligations of Simon Data and Customer contained in Sections 1 (Definitions), 6 (Fees), 7 (Ownership), 8 (Confidentiality), but only with respect to Confidential Information disclosed during the Service Term, 10.4 (Disclaimer), 12.2 (Rights and Obligations Upon Expiration or Termination), 13 (Limitation of Liability), and 14 (General) survive any expiration or termination of this Agreement.
13. **LIMITATION OF LIABILITY.** IN NO EVENT WILL SIMON DATA OR ITS LICENSORS OR SERVICE PROVIDERS BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR OTHER ECONOMIC LOSS, WHETHER OR NOT SIMON DATA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE. NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, IN NO EVENT WILL SIMON DATA'S OR ITS LICENSORS' OR SERVICE PROVIDERS' AGGREGATE LIABILITY TO CUSTOMER, OR ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S ACCESS TO AND USE OF THE SERVICES EXCEED THE AMOUNTS PAID BY CUSTOMER TO SIMON DATA IN THE 12-MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
14. **GENERAL.**
- 14.1. Marketing. Simon Data may publish Customer's name and logo, in their correct and present forms, on Simon Data's websites and other marketing materials for the limited purpose of identifying Customer as a client of Simon Data. Other than as stated herein, no public announcement or press release concerning the Customer's relationship with Simon Data or services provided by Simon Data to Customer will be made without Customer's prior written consent.
- 14.2. Governing Law. This Agreement and all matters arising out of or relating to this Agreement will be governed by the laws of the State of New York, without regard to its conflict of law provisions. Any legal action or proceeding relating to this Agreement will be brought exclusively in the state or federal courts located in the state of New York, county of New York, borough of Manhattan. Simon Data and Customer hereby agree to submit to the jurisdiction of, and agree that venue is proper in, those courts in any such legal action or proceeding.
- 14.3. Waiver; Severability. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.
- 14.4. Notices. All notices, including notices of address change, required to be sent hereunder will be in writing and will be sent to the addresses set forth above or delivered in person. The notices will be deemed to have been given upon: (a) the date actually delivered in person; (b) the day after the date sent by overnight courier; or (c) three (3) days following the date such notice was mailed by first class mail. Notices may be confirmed by email or fax.
- 14.5. Force Majeure. Neither party will be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of events beyond the reasonable control of such party, which may include without limitation denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the

non-performing party will be excused from any further performance of its obligations effected by the Force Majeure Event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.

- 14.6. Compliance with Laws. Each party agrees to comply with all applicable laws and regulations with respect to its activities hereunder, including, but not limited to, any export laws and regulations of the United States.
- 14.7. Relationship Between the Parties. Nothing in this Agreement will be construed to create a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other's behalf without such other party's prior written consent.
- 14.8. Assignment. Customer may not assign or transfer this Agreement, in whole or in part, without Simon Data's prior written consent. Simon Data may freely assign or transfer this Agreement and any Order Form by operation of law or otherwise. Any attempted assignment or transfer in violation of this Section will be null and void. Subject to the foregoing restrictions, this Agreement will inure to the benefit of the successors and permitted assigns of the parties.
- 14.9. Entire Agreement. This Agreement, including the Order Forms and any additional terms referred herein or in the applicable Order Form, constitutes the complete and exclusive agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the subject matter of this Agreement. Simon Data may, in its sole discretion, modify or update this Agreement from time to time. Customer's continued use of the Service after any such change constitutes Customer's acceptance of the new Agreement.
- 14.10. Headings. The headings in this Agreement are for the convenience of reference only and have no legal effect.