

DATAWORKZ SAAS SERVICES AGREEMENT

THIS DATAWORKZ SAAS SERVICES AGREEMENT ("AGREEMENT") CONTAINS THE TERMS FOR USE FOR THE SAAS SERVICES AND RECEIPT OF ANY PROFESSIONAL SERVICES AND IS BETWEEN DATAWORKZ INC. ("DATAWORKZ"), A DELAWARE CORPORATION HAVING A PLACE OF BUSINESS AT 529 FIERRO LOOP, CAMPBELL, CA 95008 AND THE PARTY AGREEING TO THE TERMS OF THIS AGREEMENT ("CUSTOMER"). BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CLICKING AN "ACCEPT" OR SIMILAR BUTTON, OR OTHERWISE USING THE SAAS SERVICES, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. CUSTOMER MAY NOT USE THE SAAS SERVICES WITHOUT AGREEING TO THIS AGREEMENT FIRST. IF A WRITTEN AGREEMENT REGARDING CUSTOMER'S USE OF THE SAAS SERVICES EXISTS BETWEEN AND HAS BEEN EXECUTED BY BOTH DATAWORKZ AND CUSTOMER, THE TERMS OF THAT WRITTEN AGREEMENT SHALL TAKE PRECEDENCE OVER THIS AGREEMENT.

1. DEFINITIONS.

"Affiliate" means and includes any entity that directly or indirectly controls, is controlled by, or is under common control with a party, where *"control"* means the ownership of, or the power to vote, at least fifty percent (50%) of the voting stock, shares, or interests of such entity.

"Customer Data" means information which Customer inputs into the SaaS Services and data output from the SaaS Services that is made available to Customer or can otherwise be retrieved or accessed by Customer through the SaaS Services.

"Customer Equipment" means Customer's computer hardware, software, and network infrastructure used to access the SaaS Services.

"Effective Date" means the sooner of the date this Agreement is executed by Customer or Customer and Dataworkz execute and Order Form referencing this Agreement.

"Extension Term" means each additional period beyond the Initial Term that for which the term for the applicable SaaS Service is extended, and if no period is stated, each Extension Term is one (1) year.

"Initial Term" means the first term for the SaaS Services defined in an Order Form.

"Order Form" means a Dataworkz ordering document that is executed by the parties, references this Agreement, and lists the applicable term, fees, SaaS Services and any Professional Services ordered by Customer, and any additional terms applicable to the SaaS Services.

"Professional Services" means the professional/consulting services listed in Section 4, the Professional Services Description, and as may be further identified in an Order Form.

"Professional Services Description" means the description of the Professional Services purchased by Customer contained in the applicable description document.

"Support" has the meaning set forth in Section 7.

"Taxes" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

"Term" means the Initial Term and any Extension Term applicable to each SaaS Service.

"SaaS Services" means the applicable SaaS Services and/or Professional Services.

"SaaS Services Description" means the description of the applicable SaaS Services purchased by Customer and specified on an Order Form.

"Updates" means all SaaS Services updates and enhancements that Dataworkz generally makes available at no additional charge to its customers of the SaaS Services listed in an Order Form who are current in payment of applicable fees.

"Users" means Customer's employees, contractors, and agents who are authorized by Customer to use the SaaS Services on its behalf.

2. TERMS OF THE SAAS SERVICES. Subject to the terms of the Agreement and each Order Form, Dataworkz grants Customer a non-exclusive, non-transferable right to access and use the SaaS Services listed under an Order Form during the Term. Customer's right to use the SaaS Services is also limited to any other restrictions contained in an Order Form.

3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF THE SAAS SERVICES AND DATAWORKZ'S RIGHTS.

3.1 As between the parties, Customer is responsible for (i) all activities conducted under its User logins, (ii) obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use the SaaS Services, and (iii) ensuring that the Customer Equipment and any ancillary services are compatible with the SaaS Services and comply with all configuration requirements set forth in the SaaS Services Description.

3.2 Customer shall use the SaaS Services solely for its internal business purposes, in compliance with applicable law, and shall not: (a) resell, sublicense, lease, time-share to any third party (unless otherwise expressly permitted in an Order Form); (b) send or store infringing or unlawful material using the SaaS Services; (c) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the SaaS Services or the data contained therein; (d) modify, copy or create derivative works based on the SaaS Services; (e) reverse engineer the SaaS

Services; (f) propagate any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; (g) access the SaaS Services for the purpose of building a competitive product or service or copying its features or user interface; (h) use the SaaS Services, or permit the SaaS Services to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Dataworkz's prior written consent; or (i) permit access to the SaaS Services by a direct competitor of Dataworkz.

3.3 Any failure of Customer to comply with the obligations set forth in this Section 3 may be deemed a material breach of this Agreement. If Customer fails to comply with the obligations set forth in this Section 3 within three (3) days of receipt of notice from Dataworkz to do so, Dataworkz reserves the right to suspend the use of the SaaS Services until such failure is remedied.

4. PROFESSIONAL SERVICES.

4.1 Dataworkz shall provide Professional Services as set forth in an Order Form and the applicable Professional Services Description or as otherwise set forth in an Order Form executed by the parties.

4.2 Dataworkz shall not be liable for failure to perform any of its obligations, including satisfaction of the time deadlines set forth in any Order Form, where Dataworkz is unable to perform, or its performance is delayed, due to the actions or inactions of Customer including, but not limited to, Customer's failure to meet its project deadlines, fulfill the Customer obligations set forth in any Order Form or provide necessary information or adequate working conditions, including, without limitation, equipment, space, personnel, or technical support.

4.3 Any material changes to an Order Form shall be set forth in a new Order Form signed by both parties.

5. OWNERSHIP AND USE.

5.1 Customer shall retain all ownership rights in the Customer Data (as defined in Section 1) and Customer Confidential Information. Except as otherwise expressly identified in a mutually executed Order Form, Dataworkz shall have and retain all ownership rights in the SaaS Services, report format and structure and general statistical information, and all work developed or created by Dataworkz during the course of providing Support or Professional Services to Customer (if any). Dataworkz hereby grants Customer a royalty-free, nonexclusive, right to use the foregoing on the same terms and conditions as the SaaS Services subject to any and all agreed upon fees.

5.2 Dataworkz shall own any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or its Users relating to the Dataworkz Products.

6. FEES.

6.1 The Fees for the SaaS Services are as stated in an Order Form and are effective during the Initial Term specified therein. Unless otherwise stated in an Order Form, Fees for the Initial Term are due upon the Effective Date of the applicable Order Form. Fees for any Extension Terms are due in accordance with the above, except that they are due on the effective date of the renewal.

6.2 Upon execution of this Agreement, payment obligations are non-cancelable and, except as expressly provided in this Agreement, upon payment, all payments made by Customer are non-refundable. All undisputed fees due hereunder shall be due and payable within thirty (30) days of receipt of invoice unless otherwise stated in an order form. Any payment not received from Customer by the due date may accrue (except for amounts then under reasonable and good faith dispute) late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Failure to make payments in accordance with this Section may result in suspension of Customer's ability to access the SaaS Services until payment is made. In the event Customer issues purchase orders in its normal course of business, Customer shall provide Dataworkz with a purchase order upon execution of this Agreement, or if Customer does not provide Dataworkz with such purchase order, Customer authorizes Dataworkz to accept this Agreement in lieu of a purchase order.

6.3 Unless otherwise provided, Dataworkz's fees do not include any Taxes. Customer is responsible for paying all Taxes, including, but not limited to sales, use, GST, and VAT taxes associated with its purchases hereunder, excluding Taxes based on Dataworkz's net income. If Dataworkz includes on the invoice such Taxes for which Customer is responsible, the tax amount invoiced shall be paid by Customer, unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority upon execution of this Agreement. Taxes not included on a Dataworkz invoice shall be the responsibility of the Customer to remit to the appropriate tax authorities as necessary.

6.4 Customer shall reimburse Dataworkz for all reasonable, pre-approved and appropriately documented travel and related expenses incurred by Dataworkz in performing Professional Services at Customer's location. Customer shall be responsible for its own travel and out of pocket expenses associated with attending any training services at a Dataworkz facility.

6.5 Customer shall keep and maintain accurate systems logs and records as are necessary to determine Customer's compliance with the use and other restrictions and Fees due under this Agreement ("Records"). Upon reasonable request by Dataworkz, Customer shall review its records and pay any underpaid Fees related to an over usage or notify Dataworkz that no additional Fees are due. Dataworkz or its authorized representative shall also have the right to audit the books and records of Customer, at Dataworkz's expense, to determine whether Customer is in compliance with this Agreement ("**Audit**"). If an Audit reveals that Dataworkz has been underpaid, Customer shall immediately pay Dataworkz such underpaid amount plus interest thereon at the rate of one and a half percent (1.5%)

per month. Any Audit shall be performed only during Customer's normal business hours upon reasonable prior written notice, no more frequently than once per calendar year, and shall be performed in such a manner as to avoid unreasonable interference with Customer's business operations.

7. SUPPORT. Dataworkz shall provide Support as long as Customer is current on payment of any Support fees (if any) and all other Fees listed in an Order Form. Support shall be provided in accordance with Dataworkz's standard support policy, a copy of which is available upon request.

8. WARRANTIES.

8.1 Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it shall comply with all applicable laws in its performance hereunder.

8.2 Dataworkz warrants (i) it will provide the Professional Services in a professional and workmanlike manner consistent with good industry standards and practices; and (ii) that for a period of thirty (30) days after completion, the Professional Services will conform to the representations in Section 4. As Customer's sole and exclusive remedy and Dataworkz's entire liability for any breach of the foregoing warranty, Dataworkz will repair and/or re-perform the Professional Services.

8.3 Dataworkz warrants that the SaaS Services will substantially conform in all material respects in accordance with the SaaS Services Description. Customer will provide prompt written notice of any non-conformity. As Customer's sole and exclusive remedy and Dataworkz's entire liability for any breach of the foregoing warranty, Dataworkz will confirm and then fix, provide a work around, or otherwise repair or replace the nonconforming portion of the SaaS Services, or, if Dataworkz is unable to do so, terminate the right to use the SaaS Services and return the SaaS Services Fees paid to Dataworkz for the period beginning with Customer's notice of nonconformity through the remainder of the Initial Term or then-current Extension Term, as applicable.

8.4 EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DATAWORKZ DOES NOT WARRANT THE OPERATION OF THE SAAS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

9. INDEMNITY.

9.1 Dataworkz shall defend, indemnify and hold Customer and its officers, directors, employees, subsidiaries and shareholders harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") (i) made or brought against Customer by a third party alleging that the use of the SaaS Services as contemplated hereunder infringes the U.S. intellectual property rights of such third party or (ii) based on a violation of any statute, law, ordinance or regulation by Dataworkz, provided that Customer (a) promptly gives written notice of the Claim to Dataworkz; (b) gives Dataworkz sole control of the defense and settlement of the Claim (provided that Dataworkz may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to Dataworkz, at Dataworkz's cost, all reasonable assistance.

9.2 As it relates to 9.1(i), Dataworkz may, at its sole option and expense: (i) procure for Customer the right to continue using the SaaS Services under the terms of this Agreement; (ii) replace or modify the SaaS Services to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the right to use the infringing SaaS Services and refund Customer the prepaid fees for the remainder of the Initial Term or then-current Extension Term as measured from the date of termination.

9.3 As it relates to 9.1(i), Dataworkz shall have no liability for any Claim to the extent the Claim is based upon (i) the use of the SaaS Services in combination with any other product, service or device not furnished, recommended or approved by Dataworkz, if such Claim would have been avoided by the use of the SaaS Services, without such product, service or device; or (ii) Customer's use of the SaaS Services other than in accordance with this Agreement.

9.4 The provisions of this Section 9 set forth Dataworkz'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.

9.5 Customer shall defend, indemnify and hold Dataworkz, its officers, directors, employees, subsidiaries and shareholders harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with all Claims arising out of (i) a violation of any statute, law, ordinance, or regulation by Customer; and/or (ii) Customer Data used in conjunction with the SaaS Services. Dataworkz shall have the right to participate in such defense with counsel of its own choosing at its expense.

10. CONFIDENTIALITY AND DATA SECURITY.

10.1 As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in an Order Form), the SaaS Services, documentation, business and marketing plans, technology and technical information, product designs, and certification and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of

any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

10.2 Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

10.3 If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

10.4 Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information as long as it remains confidential and, upon request, return to the Disclosing Party or destroy all materials containing such Confidential Information.

10.5 Dataworkz shall take appropriate physical, technical, and administrative security measures sufficient to secure the Customer data entered into the SaaS Services ("Customer Data") against any unauthorized disclosure, and as required by any applicable law or regulation. Without limiting the foregoing, Dataworkz will implement security measures that are consistent with industry standards.

10.6 Dataworkz will (a) process Customer Data only to the extent, and in such manner, as is necessary to provide the SaaS Services to Customer and its Users under this Agreement and in accordance with Customer's instructions from time to time; (b) not otherwise process or use the Customer Data; and (c) keep Customer Data logically separate from other data and information that is held by Dataworkz. For purposes of clarity, the provisions above apply to all Customer Data, including but not limited to personal information. Dataworkz shall promptly comply with any request from Customer requiring Dataworkz to delete Customer Data. Dataworkz will provide Customer with the means to access, amend, delete or transfer Customer Data. If Dataworkz receives any third-party communication relating directly or indirectly to the processing of the personal information, Dataworkz must promptly notify Customer and must fully cooperate and assist Customer in addressing the communication. Dataworkz will, at its expense, provide Customer with reasonable assistance to comply with any obligations under the applicable data protection laws relating to personal information.

11. LIMITATION OF LIABILITY.

11.1 EXCEPT (i) FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS; (ii) FOR CUSTOMER'S FAILURE TO PAY ANY FEES DUE UNDER THIS AGREEMENT; (iii) IN THE EVENT OF EITHER PARTY'S UNAUTHORIZED USE, DISTRIBUTION OR DISCLOSURE OF THE OTHER PARTY'S INTELLECTUAL PROPERTY; OR (iv) EITHER PARTY'S MATERIAL BREACH OF SECTION 10 (COLLECTIVELY, "EXCLUSIONS"), IN NO OTHER EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE ANNUALIZED FEES OWED OR PAID TO DATAWORKZ FOR THE SAAS SERVICES GIVING RISE TO THE CLAIM DURING THE TWELVE MONTHS PRIOR TO WHEN THE CLAIM ACCRUED.

11.2 EXCEPT FOR THE EXCLUSIONS, IN NO OTHER EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGE TO GOODWILL HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.3 THE PARTIES' LIABILITY FOR THE EXCLUSIONS WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WILL BE LIMITED TO (5) TIMES THE ANNUALIZED FEES OWED OR PAID TO DATAWORKZ FOR THE SAAS SERVICES GIVING RISE TO THE CLAIM DURING TWELVE MONTHS PRIOR TO WHEN THE CLAIM ACCRUED.

12. TERM AND TERMINATION.

12.1 This Agreement commences on the Effective Date and continues until all rights granted in accordance with this Agreement and the applicable Order Form(s) have expired or have been terminated. The Initial Term applicable to each Order Form commences upon Customer's execution of such Order Form and shall expire at the end of the Initial Term or then-current Extension Term. Each Order Form shall be automatically extended for Extension Term(s) equal to the greater of the previous Term or twelve (12) months (at the current price of the SaaS Services) unless either party provides written notice of non-renewal to the other at least thirty (30) days before such expiration.

12.2 A party may terminate this Agreement or an Order Form for cause: (i) upon 30 days' written notice to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; and (iii) as otherwise provided herein.

12.3 Either party may terminate the Agreement immediately by written notice if no Order Form is in effect.

12.4 Upon termination of this Agreement or an Order Form, Customer shall: (i) cease all use of the Services. The parties' rights and obligations under Sections 5, 6, 8.4, 9-11, 12.5, and 13 shall survive termination of this Agreement.

13. General

13.1 The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby.

13.2 Notices shall be in writing, sent using a recognized private mail carrier or the United States Postal Service and effective on proof of delivery.

13.3 No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Customer and Dataworkz. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than an Order Form, or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement, which includes all documents referenced herein, Order Forms and attachments hereto, represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. This Agreement is not for the benefit of any third party.

13.4 No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

13.5 Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to a natural disaster, actions or decrees of governmental bodies or communications line failure which (i) hinders, delays or prevents a party in performing any of its obligations, (ii) is beyond the control of, and without the fault or negligence of, such party, and (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against.

13.6 Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, Dataworkz may assign this Agreement in its entirety, without consent of the Customer, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity. Any attempted assignment in breach of this Section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. For clarity, Dataworkz may use subcontractors in the ordinary course of its business.

13.7 A party will be excused from a delay in performing, or a failure to perform, its obligations under the Agreement (other than payment obligations) to the extent such delay or failure is caused by the occurrence of any contingency beyond the reasonable control, and without any fault, of such Party. In such event, the performance times will be extended for a period of time equivalent to the time lost because of the excusable delay; provided, however, if the delay or failure continues for more than twenty (20) days, the Party not relying on the excusable delay may terminate the Agreement upon notice to the other party. In order to avail itself of the relief provided in this Agreement, a party must act with due diligence to remedy the cause of, or to mitigate or overcome, such delay or failure.

13.8 Dataworkz may access and use Customer Data to the extent necessary to provide, support and improve the Service under this Agreement and for its own business purposes on an anonymized and aggregated basis in a manner that does not disclose Customer as the source and the contents of the underlying Customer Data. Such uses may include, but are not limited to, enabling the sharing of network alerts and vulnerabilities and other network issues Dataworkz discovers through its provision of the SaaS Services.

13.9 In any action to interpret or enforce this Agreement, the prevailing party shall be awarded all court costs and reasonable attorneys' fees it incurs.

13.10 There are no third-party beneficiaries to this Agreement.

13.11 Dataworkz may list Customer's name in Dataworkz's customer lists on Dataworkz's website and in its marketing materials.

13.12 Each party agrees to comply fully with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the SaaS Services.

13.13 This Agreement shall be governed exclusively by the internal laws of the state of California, without regard to its conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California, for resolution of any disputes arising out of this Agreement.