

CRESTA

MASTER SUBSCRIPTION SERVICE AGREEMENT

This Master Subscription Service Agreement (the “Agreement”) is effective as of Sales Order Effective Date for the Sales Order that references this Agreement (“Effective Date”). This Agreement is made between Cresta Intelligence, Inc., a Delaware corporation, with a principal place of business at 101 Montgomery Street, Suite 200, The Presidio of San Francisco, San Francisco, California 94129 (“Cresta”), and the party who signed the Sales Order which references this Agreement (“Customer”). Cresta and Customer may be referred to each as a “Party” and collectively as the “Parties”. This Agreement is accepted by Customer by signing a Sales Order which references this Agreement or by accessing the Subscription Service. In consideration of the mutual promises in this Agreement, the Parties agree:

1. DEFINITIONS

1.1 Affiliates means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For this definition “control” means the direct possession of a majority of the outstanding voting securities of an entity.

1.2 Cresta Content means all Content provided by Cresta to Customer through Customer’s use of the Subscription Service.

1.3 Content means text, images, documents, materials, and all other forms of data or communication.

1.4 Customer Content means all Content Customer or its Users provide and use with the Subscription Services.

1.5 Documentation means the standard documentation for the Subscription Service Cresta provides to assist its customers in using the Subscription Service, including user and system administrator guides and manuals.

1.6 Sales Order means each Cresta ordering document signed by both Parties for the order of Subscription Services..

1.9 Subscription Service(s) means Cresta’s proprietary subscription-based solution stated in a Sales Order.

1.10 Users mean individuals authorized by Customer to use the Subscription Services. Users consist of employees or independent contractors of Customer or its Affiliates.

2. SUBSCRIPTION SERVICES

2.1 Subscription Services. Cresta shall provide Customer with the Subscription Service specified in a Sales Order. Any conflict between the terms in this Agreement and any Sales Order shall be resolved in favor of the Sales Order. Customer agrees that purchases are not contingent on the delivery of any future functionality or features or depend on any oral or written comments made by Cresta regarding future functionality or features.

2.2 Subscription Service. Subject to the terms of this Agreement, Cresta grants to Customer, solely during the term of the applicable Sales Order, a non-exclusive, non-transferable license to access and use the Subscription Service solely for Customer’s internal business purposes as stated and limited in the applicable Sales Order. This license is restricted to use by Customer and its Users and does not include the

right to use the Subscription Service on behalf of any third party.

3. FEES; PAYMENT TERMS

3.1 Fees. Customer agrees to pay Cresta the License Fees and expenses incurred on the basis and at the rates specified in each Sales Order. Unless otherwise stated in a Sales Order, payment shall be due within thirty (30) days after receipt of Cresta’s invoice and shall be made in US Dollars. Customer agrees to pay a late charge of one percent (1%) per month, or the maximum lawful rate permitted by law, whichever is less, for all amounts, not subject to a good faith dispute, and not paid when due. Besides paying the fees, Customer shall also pay all pre-approved reasonable travel and out-of-pocket expenses incurred by Cresta.

3.2 Disputed Charges. If Customer disputes any charge or amount on any invoice, Customer shall pay the amounts due under this Agreement less the disputed amount, and the Parties shall diligently resolve such disputed amount. Cresta may terminate Subscription Services if a dispute is not resolved within 60 days. An amount is considered disputed in good faith if (i) Customer delivers a written statement to Cresta by the due date of the invoice, describing the basis of the dispute and the amount being withheld by Customer, (ii) such written statement represents that the amount in dispute has been determined after due investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from Customer not in dispute have been paid timely.

3.3 Taxes. Fees are exclusive of taxes. Customer is responsible for the payment of all sales, use and similar taxes arising from or relating to the Subscription Services rendered, except for taxes related to Cresta’s net income and any taxes or obligations imposed upon Cresta under federal, state and local wage laws.

4. CONFIDENTIALITY

4.1 Confidential Information. During the term of this Agreement, each Party will regard any information provided to it by the other Party and designated in writing as proprietary or confidential to be confidential (“Confidential Information”). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing Party’s business and the industry in which it operates, is of a confidential or proprietary nature. The receiving Party shall hold in confidence, and shall not disclose

(or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who has a need to know such Confidential Information in the performance under this Agreement. The receiving Party and its Representatives shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the disclosing Party. Each Party accepts responsibility for the actions of its Representatives and shall protect the other Party's Confidential Information as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The Parties expressly agree that the terms and pricing of this Agreement are Confidential Information and Customer further agrees that it shall not use the Subscription Services to conduct comparative analysis, evaluations or product benchmarks regarding the Subscription Services and will not publicly post any analysis or reviews of the Subscription Services without Cresta's prior written approval. A receiving Party shall promptly notify the disclosing Party upon learning of a breach or threatened breach and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.

4.2 **Exclusions.** Information is not Confidential Information if such information: (i) is known before receipt from the disclosing Party, with no obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving Party without using the disclosing Party's Confidential Information. The receiving Party may disclose Confidential Information under the requirements of law, legal process or government regulation, provided that a protective order is in place or it gives the disclosing Party reasonable prior written notice to permit the disclosing Party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

4.3 **Injunctive Relief.** The Parties acknowledge that any use of the disclosing Party's Confidential Information in a manner inconsistent with this Agreement may cause the disclosing Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both Parties agree that, besides any other remedy the disclosing Party may have an injunction or injunctions to restrain such use.

5. LIMITED WARRANTY

5.1 **Subscription Service Warranty.** Cresta warrants that during the term of any Sales Order for the Subscription Service, the Subscription Service will conform, materially, with the Documentation. Cresta does not warrant it can correct all reported defects or that use of the Subscription Service will be uninterrupted or error free. Cresta makes no warranty regarding features or services provided by third parties. For any breach of the above warranty, Customer must specify the non-conformity and Cresta will, at no additional cost to

Customer, provide remedial services necessary to enable the Subscription Service to conform to the warranty. Customer will provide Cresta with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any non-conformity. These remedies are Customer's sole remedies for breach of the above warranty. Such warranty shall only apply if the Subscription Service has been utilized by Customer in accordance with the Sales Order and this Agreement.

5.2 **No Other Warranty.** CRESTA DOES NOT REPRESENT THAT THE SUBSCRIPTION SERVICES WILL BE ERROR-FREE OR THAT THE SUBSCRIPTION SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SUBSCRIPTION SERVICES WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SUBSCRIPTION SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN THIS SECTION ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY CRESTA. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SUBSCRIPTION SERVICES ARE ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

6. LIMITATION OF LIABILITY.

6.1 **Consequential Damage Waiver.** Except as may arise out of either Party's breach of Confidentiality, or misuse of intellectual property rights, neither Party will be liable to the other or any third party for loss of profits, or special, indirect, incidental, consequential or exemplary damages, including lost profits and costs, in connection with the performance of the Subscription Services, or the performance of any other obligations under this Agreement, even if it knows the possibility of such damages.

6.2 **Limitation of Liability.** Except as may arise out of breach of Confidentiality, misuse of intellectual property rights, or indemnification obligations, the total cumulative liability of a Party for any claims and damages under this Agreement, whether arising by statute, contract, tort or otherwise, will not exceed the amount paid or owed by Customer to Cresta under the Sales Order which forms the subject of the claim during the six (6) month period immediately preceding the event giving rise to the claim. This Agreement allocates risks between the Parties. The pricing in each Sales Order reflects this allocation of risk and limitation of liability.

7. TERM

7.1 **Term.** This Agreement will commence on the Effective Date and will continue until terminated as provided below. The term of the Subscription Service is in the Sales Order. Cresta reserves the right to change the rates, applicable charges and usage policies and to introduce new charges, for Subscription Services after providing Customer written notice of changes (which notice may be provided by e-mail) at least 60 days before the renewal date of the Sales Order.

7.2 Termination. Either Party may terminate this Agreement or any Sales Order (i) immediately, if there is a material breach of this Agreement or any such Sales Order by the other Party which is capable of being cured but is not cured within thirty (30) days of written notice from the other Party, or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of a Sales Order shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Sales Orders. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other Party if at such time there are no outstanding Sales Orders then in effect. All rights and obligations of the Parties which are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Sales Order.

7.3 Effect of Termination. Upon any termination or expiration of this Agreement or any Sales Order, Cresta shall no longer provide the Subscription Services to Customer and Customer shall cease and cause its Users to cease using the Subscription Services. If termination is for Cresta's breach, Customer shall pay Cresta for all fees that had accrued before the termination date; otherwise Customer shall pay all invoices and amounts due. Except as stated, termination of this Agreement by either Party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such Party. Upon termination of this Agreement, each party shall promptly return or destroy all Confidential Information of the other party in its possession. Upon termination, Cresta will have no further obligation to store and/or make available Customer Content and may delete the same.

8. OWNERSHIP; USE OF CONTENT; OBLIGATIONS

8.1 Customer Content. Customer retains ownership of all right, title and interest in all Customer Content. Customer will not provide personal information relating to its own customers without Cresta's prior written consent. If Customer provides such information to Cresta without Cresta's prior written consent, Cresta shall not be responsible and liable for any breach of any data protection laws and regulations resulting from Customer providing such personal information.

8.2 Customer Content License Grant. By submitting, uploading, providing, transmitting or otherwise providing Customer Content on or through the Subscription Services, Customer grants to Cresta a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable and sublicensable right and license to collect, access, use, process, transmit, display, publish, adapt and modify the Customer Content as required for Cresta and its subcontractors and service providers to provide, improve, and enhance the Subscription Services, respond to service or technical problems, and to operate its business. Customer represents, warrants and covenants to Cresta it has and will have all necessary rights to provide to Cresta the Customer Content, including without limitation obtaining any necessary third-party consents to provide such Customer Content. Customer agrees that both during the term of this Agreement and

thereafter, Cresta may collect, analyze, disclose, distribute, copy, display and use anonymized or aggregated Customer Content, or data derived from Customer Content, and information, analysis, statistics, and data about Customer's or its Users' access and use of the Subscription Services, for any purpose (subject to Cresta's compliance with law and confidentiality obligations), including to provide, operating, analyzing, and improving the Subscription Services, provided, however, that Cresta shall not publicly disclose or distribute any such data unless such data is in an anonymized aggregated form that would not permit a third party to identify the data as associated with Customer or any of its Users.

8.3 Subscription Service and Cresta Content. Customer agrees that as between Cresta and Customer, all right, title and interest in the Subscription Service and in each case all derivatives and copies thereof (including any patents, copyrights, trade secret rights, registered and/or unregistered trademarks, trade names and associated goodwill, and moral rights ("Intellectual Property Rights") are and shall remain Cresta's or its licensors'. These rights are protected by international treaties and applicable national law. All rights not granted to Customer in this Agreement are reserved to Cresta and its licensors. The Subscription Services are licensed, not sold, and Customer acquires no ownership of the Subscription Services or other Intellectual Property Rights. Licensee is prohibited from using or accessing the Subscription Services for any other purpose or use. Cresta also retains ownership of all Intellectual Property Rights in all Cresta Content and Cresta's Confidential Information. The Cresta Content is licensed and not sold. During the term of this Agreement, Cresta grants to Customer a limited, worldwide, non-exclusive, non-transferable, royalty-free right to use, display, transmit, and distribute the Cresta Content solely in connection with Customer's licensed use of the Subscription Service. Customer's right to use the Subscription Service and the Cresta Content is valid only during the term of this Agreement and only in strict compliance with this Agreement. Cresta in no way conveys any right or interest in the Cresta Content other than a limited license to use it under this Agreement. Customer is prohibited from using or accessing the Cresta Content for any other purpose or use.

8.4 Customer Obligations. Customer is responsible for all activities conducted under its User logins and for its Users' compliance with this Agreement. Unauthorized use, resale or commercial exploitation of the Subscription Service is prohibited. Customer is responsible for procuring and maintaining Customer's infrastructure, network connections and access to the Subscription Service. Customer shall not (and shall allow no third party to): reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Subscription Service or access the Subscription Service to build a competitive product or service or copy ideas, features, functions or graphics of the Subscription Service. Except as permitted in this Agreement, Customer shall not copy, license, sell, transfer, make available, lease, time-share, distribute, or assign this license, the Subscription Service to any third-party. Customer shall be liable for any breach of this Agreement by any of its Users. Cresta reserves the right to terminate any User's right to

access the Subscription Service if such User has violated the restrictions in this Agreement. Customer is solely responsible for all Customer Content. Customer shall maintain backups of all Customer Content and Cresta shall not be liable for losing Customer Content. Cresta does not guarantee the accuracy, integrity or quality of such Customer Content. Neither Customer nor its Users shall use the Subscription Service to: (a) send, upload or otherwise transmit any Customer Content that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any Customer Content that infringes any proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other harmful code, files or programs; (d) interfere with or disrupt the Subscription Service or networks connected to the Subscription Service; or (e) violate any law or regulation.

9. INDEMNIFICATION

9.1 *Cresta Indemnification.* Cresta will indemnify, defend and hold Customer and its Affiliates harmless against any costs, liabilities, losses, and expenses (including reasonable attorneys' fees) (collectively, "Losses") incurred relating to a third party claim Customer or any of its Affiliates alleging that using the Subscription Services infringes any United States patent, copyright or trademark. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Subscription Services in violation of this Agreement or applicable law, (b) use of the Subscription Services after Cresta notifies Customer to discontinue use because of an infringement claim, (c) any claim relating to any third party products or services or Customer Content, (d) modifications to the Subscription Services made other than by Cresta (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Subscription Services with software or equipment which Cresta did not provide, if such claim would not arise based on the Subscription Services absent such combination, operation, or use; or (f) compliance by Cresta with Customer's requirements or specifications if and to the extent such compliance with Customer's requirements or specifications resulted in the infringement. If the Subscription Services are held to infringe, Cresta will, at its own expense, in its sole discretion use commercially reasonable efforts either (a) to procure a license that will protect Customer against such claim without cost to Customer; (b) to replace the Subscription Services with non-infringing Subscription Services without material loss of functionality; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Sales Order and refund to the Customer any prepaid unused fees paid to Cresta for the infringing Subscription Services. The rights and remedies granted Customer under this Section 9.1 state Cresta's entire liability, and Customer's exclusive remedy, regarding any claim of infringement of the intellectual property rights of a third party.

9.2 *Customer Indemnification.* Customer shall indemnify, defend, and hold Cresta and its Affiliates harmless against any

Losses resulting from a claim, suit, action, or proceeding brought by any third party against Cresta or any of its Affiliates that arises out of or results from a claim (i) alleging that the Customer Content, or any use thereof, infringes the intellectual property rights or proprietary rights of others, or has caused harm to a third party, or (ii) arising out of Customer's breach of Sections 8.4 or violation of any law.

9.3 *Indemnification Procedure.* The indemnified Party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, but a late notice will not remove the indemnifying Party's obligation unless prejudice is shown, and (ii) allow the indemnifying Party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. The indemnified Party shall provide the indemnifying Party with reasonable cooperation and assistance in defending such claim (at the indemnifying Party's cost).

10. GENERAL PROVISIONS

10.1 *Entire Agreement and Controlling Documents.* This Agreement, and all Sales Orders, contains the entire agreement between the Parties regarding the subject hereof, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) is binding upon the Parties and their permitted successors and assigns. Only a written instrument signed by the Parties may amend this Agreement or a Sales Order. Any inconsistent or conflicting terms in any purchase order issued by Customer are rejected and shall be of no force or effect, even if the order is accepted by Cresta. This Agreement shall be construed and interpreted fairly, under the plain meaning of its terms, and there shall be no presumption or inference against the Party drafting this Agreement in construing or interpreting the provisions hereof.

10.2 *Assignment.* This Agreement shall be binding upon and to benefit of Cresta and Customer and their permitted successors and assigns. Either Party may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of stock or substantially all of its assets. Otherwise, neither Party may assign this Agreement without the prior written consent of the other Party, and any attempted assignment without such consent will be void. Cresta may use independent contractors, sub processors or subcontractors to assist in the delivery of Subscription Services. Cresta shall be liable for the actions or omissions of such independent contractors, sub processors or subcontractors.

10.3 *Governing Law.* This Agreement and any claim arising between the Parties shall be governed by and construed under the laws of the State of California without regard to its conflict of law provisions. Any legal action or proceeding between the Parties or regarding this Agreement shall be brought in the state or federal courts in San Francisco, California. The Parties agree to the exclusive jurisdiction and venue in San Francisco, California. The prevailing Party shall be entitled to recover its reasonable attorneys' fees.

10.4 *Relationship of the Parties.* Cresta and Customer are independent contractors, and nothing in this Agreement

shall be construed as making them partners or creating the relationships of employer and employee, master and servant, or principal and agent between them, for any purpose. Neither Party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

10.5 **Force Majeure.** Except for the obligation to make payments, nonperformance of either Party shall be excused if performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, epidemics, pandemics, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing Party.

10.6 **Certification and Audit.** At Cresta's written request and no more than once every twelve (12) months, Customer shall provide Cresta with a signed certification verifying that the Subscription Service is being used under this Agreement. Cresta may perform an audit of Customer's use of the Subscription Service and Customer's compliance with this Agreement and an applicable Sales Order. Any such audit shall be made at Cresta's expense unless the audit shows an underpayment or over use of over 5% of the period audited in which case, Customer shall reimburse Cresta's expense for the audit.

10.7 **Modifications to Subscription Service.** Cresta may modify the Subscription Service or particular components of the Subscription Service which do not materially degrade the functionality or features of the Subscription Service.

10.8 **Notices.** Any notice, under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed, or by email with a return receipt record; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received. Notices shall be sent to the address of the Cresta as stated above and to Customer as stated in the applicable Sales Order. Either Party may change its address by giving notice of such change.

10.9 **No Third-Party Beneficiaries.** There are no intended third-party beneficiaries under this Agreement.

10.10 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original for all purposes. Signatures to this Agreement and Sales Orders may be electronic and transmitted by scanned documents or electronic signature providers such as DocuSign. And email alone shall not be considered a signed document for contractual purposes.

10.11 **Waiver and Severability.** Performance of any obligation required by a Party may be waived only by a written waiver signed by the other Party. Each waiver is only effective for the specific obligation waived. The failure of either Party to exercise any of its rights under this Agreement is not a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of the other

provisions, and this Agreement will be construed as if such invalid or unenforceable provision(s) were omitted.

11. SECURITY REQUIREMENTS

11.1 **Privacy/Security Requirements.** If Cresta will have access to Customer's Systems and/or Nonpublic Personal Information, Cresta shall conform to Type 2 SOC 2 2020 and ISO/IEC 2701:2013 and ISO/IEC 27701:2019 standards. "Customer's Systems" means Customer's internal computer systems, and "Nonpublic Personal Information" means all personally identifying information, behavioral or demographic information, sensitive financial information, biometric information, or other information, disclosed by Customer, or which Cresta or Cresta Personnel acquire, access or derive in connection with this Agreement that, either individually or when combined with other information, could identify, contact or derive information specific to a particular individual, such as that individual's identity, first and last name, social security number, government issued identification information (including driver's license number, passport number, and military ID), telephone number, credit card number, payment card data, postal address, e-mail address, account information, payroll information, financial information, health information, employee identification number, criminal or employment history, mother's maiden name, birth date or other factors specific to that individual's physical or financial identity.