LaunchDarkly Enterprise Subscription Terms

PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE USING THE LAUNCHDARKLY SERVICE OFFERED BY CATAMORPHIC, CO., A DELAWARE CORPORATION, DBA AS LAUNCHDARKLY ("**LAUNCHDARKLY**" OR "**COMPANY**"). BY MUTUALLY EXECUTING ONE OR MORE ORDER FORMS WITH COMPANY WHICH REFERENCE THESE TERMS (EACH, AN "**ORDER FORM**") OR BY ACCESSING OR USING THE LAUNCHDARKLY SERVICE IN ANY MANNER, YOU ("**YOU**" OR "**CUSTOMER**") AGREE TO BE BOUND BY THESE TERMS (TOGETHER WITH ALL ORDER FORMS (THE "**AGREEMENT**") TO THE EXCLUSION OF ALL OTHER TERMS. YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT; IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ORGANIZATION OR ENTITY, REFERENCES TO "CUSTOMER" AND "YOU" IN THIS AGREEMENT, REFER TO THAT ORGANIZATION OR ENTITY. IF YOU DO NOT AGREE TO ALL OF THE FOLLOWING, YOU MAY NOT USE OR ACCESS THE LAUNCHDARKLY SERVICE IN ANY MANNER.

1. DEFINITIONS

"**Affiliate(s)**" means, with respect to a party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such party where Control means direct or indirect ownership of more than fifty percent (50%) of the voting interests of the subject entity.

"**Customer Data**" means all electronic data or information submitted to the LaunchDarkly Service by Customer or submitted on behalf of Customer by a Third Party Service.

"**Customer Equipment**" means Customer's and its Affiliates' computer hardware, software and network infrastructure used to access the LaunchDarkly Service.

"**Documentation**" means the published specifications of the LaunchDarkly Service, as may be updated or amended from time to time, as determined and provided by LaunchDarkly to Customer, or available at https://docs.launchdarkly.com/home?_gl=1*v0mipv*_gcl_au*ODc4MzE3NjA5LjE2OTE1OTgwMjI.

"**Entitlement**" means the specific use limitations with respect to Customer's access to and use of the LaunchDarkly Service as specified in the corresponding Order, such as but not limited to: Seats and usage restrictions.

"**Fees**" mean the fees payable to LaunchDarkly for the Services, as outlined in an Order.

"**Order(s)**" means a valid purchase under an order form, statement of work or other ordering document specifying the Services to be provided under this Agreement, entered into between Customer (or a Partner on Customer's behalf) and LaunchDarkly or any of their Affiliates, including any addenda and supplements thereto. By entering into an Order hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"**Order Form**" means the ordering document issued by LaunchDarkly to Customer (or Partner on Customer's behalf) describing the Services purchased under an Order.

"**Partner**" means a reseller or distributor that has an agreement with LaunchDarkly authorizing the Partner to resell the Services.

"**LaunchDarkly Service**" means the LaunchDarkly online, cloud-based feature flag management solution made available to its customer on a subscription basis, as further described in the corresponding Order and Documentation.

"**Seat**" means a license granted by LaunchDarkly for a single User to access and utilize the LaunchDarkly Services, if applicable.

"**Sensitive Data**" means any data that constitutes sensitive personal data or special category data or like terms under applicable data privacy laws, intellectual property, proprietary business models, and any data which may be subject to the Gramm-Leach-Bliley Act (GLBA), the Payment Card Industry Data Security Standards (PCI Data Security Standards), or similar laws, government-issued identification numbers, account security information, individual financial account information, credit/debit/gift or other payment card information, account passwords, individual credit and income information.

"**Services**" means the products and services that are provided by LaunchDarkly and ordered by Customer hereunder, services purchased by Customer on LaunchDarkly's online purchasing portal; or services provided to Customer free of charge (as applicable) under a free trial.

"**Term**" as it relates to an Order means the applicable term described in each Order, and as it relates to this Agreement, is as defined in Section 10.1 below.

"**Third Party Service(s)**" means any online applications, integrations, offline software products or code, or systems not developed by LaunchDarkly that the Customer may choose to enable to connect with the LaunchDarkly Service.

"**User(s)**" means Customers and its Affiliates and their respective employees, agents, contractors, service providers or consultants who access or use the LaunchDarkly Service as authorized by Customer (including but not limited to by the provision of a Seat, if applicable).

2. LAUNCHDARKLY RESPONSIBILIITES

2.1. <u>SUBSCRIPTION TO THE LAUNCHDARKLY SERVICE</u>. LaunchDarkly shall, upon Customer's purchase of a subscription to the LaunchDarkly Service hereunder, make the LaunchDarkly Service available to Customer pursuant to this Agreement and the applicable Order during the subscription Term, and grants to Customer a limited, non-sublicensable, non-exclusive, non-transferable (except as expressly permitted in Section 12.7) right during the Term to allow its Users to access and use the Service in accordance with the Documentation, solely for Customer's internal business purposes. LaunchDarkly shall provide to Customer the corresponding level of support indicated in the applicable Order, each as described at the following URL: https://launchdarkly.com/policies/support-policy/ ("Support"). The LaunchDarkly Service will meet the requirements in the corresponding Service Level indicated in the applicable Order. The Service Levels are described at the following URL: https://launchdarkly.com/policies/service-level-agreement/.

2.2. <u>PROTECTION OF CUSTOMER DATA.</u> LaunchDarkly will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in the Security Program Addendum found at the following URL: https://launchdarkly.com/policies/security-program-addendum/. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). LaunchDarkly will provide the LaunchDarkly Service in accordance with the Security Program Addendum and this Agreement. In addition, the LaunchDarkly Service undergoes penetration testing performed by a third party at least twice a year.

2.3. <u>PROTECTION OF PERSONAL DATA.</u> Any processing of Customer Data that constitutes personal data (as defined by applicable laws) is also governed by the LaunchDarkly Data Processing Addendum ("DPA"), in the form made available at the LaunchDarkly website at the following URL: https://launchdarkly.com/policies/data-processing-addendum/, unless otherwise executed by the parties.

3. CUSTOMER RESPONSIBILITIES

3.1. <u>USE OF THE SERVICES</u>. Customer will:

(a) be responsible for obtaining and maintaining any Customer Equipment and any ancillary services needed to connect to, access or otherwise use the LaunchDarkly Service, including any Third Party Services;

(b) be responsible for configuring the LaunchDarkly Service, including but not limited to determining what Customer Data is collected, stored, used, displayed, and/or exported through the software development kit ("SDK") (or any application programming interface/API) based on the private attributes or similar features in the LaunchDarkly Service;

(c) be responsible for Users' compliance with this Agreement;

(d) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the LaunchDarkly Services, and the interoperation of any Third Party Services with which Customer uses the LaunchDarkly Service;

(e) ensure that Customer Data does not include any Sensitive Data;

(f) use commercially reasonable efforts to prevent unauthorized access to or use of LaunchDarkly Services, and notify LaunchDarkly promptly of any such unauthorized access or use;

(g) use the LaunchDarkly Service and Documentation only in accordance with this Agreement, the applicable Order, Documentation, the Acceptable Use Policy at the following URL: https://launchdarkly.com/policies/aup/, and applicable laws and government regulations; and

(h) comply with terms of service of any Third Party Services with which Customer uses the LaunchDarkly Service.

3.2. USAGE LIMITS. Services are subject to usage limits specified in Order and Documentation, including but not limited to the number of Seats or Hosts, as defined in the Order Form. If Customer exceeds a contractual usage limit, LaunchDarkly may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, despite LaunchDarkly's efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order for additional quantities of the applicable Services promptly upon LaunchDarkly's request, and/or pay any invoice for excess usage in accordance with Section 5 (Invoicing and Payment) below.

3.3. USAGE RESTRICTIONS. Customer will not:

(a) resell, sublicense, lease, time-share or otherwise make the LaunchDarkly Service available to any third party;

(b) use the LaunchDarkly Service to intentionally send or store infringing or unlawful material or material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or program;

(c) modify, copy or create derivative works of the LaunchDarkly Service;

(d) reverse engineer the LaunchDarkly Service;

(e) access the LaunchDarkly Service for the purpose of building a competitive product or service;

(f) use the LaunchDarkly Service solely for the purpose of monitoring the availability, performance or functionality, or for any benchmarking or competitive purposes intended to be disclosed to a third party;

(g) provide access to the LaunchDarkly Service to a known competitor of LaunchDarkly;

(h) permit direct or indirect access to or use of the LaunchDarkly Service in a way that circumvents a contractual usage limit or facilitates access to the functionality of the LaunchDarkly Service by a User;

(i) if applicable, temporarily reassign Seats to various Users on an ongoing basis as a means of providing Seat sharing among multiple Users. For the avoidance of doubt, this does not prohibit Customer from permanently reassigning a Seat during the term in instances where a User may no longer need access to the LaunchDarkly Services, for example, in instances of personnel changes or use by temporary contractors or agents.

3.4. THIRD PARTY SERVICES. Customer may choose to install or enable Third Party Services for use with the LaunchDarkly Service. Any use by Customer of any Third Party Services is solely the responsibility of Customer and the applicable Third Party Services provider. Customer acknowledges that, if enabled by Customer, providers of such Third Party Services may have access to Customer Data. To the extent Customer authorizes the access or transmission of Customer Data through a Third Party Service, such Third Party Service terms will govern, and LaunchDarkly will not be responsible for, any use, disclosure, modification or deletion of such Customer Data by Third Party Services or for any act or omission on the part of such third party provider or its service.

3.5. TEMPORARY SUSPENSION. LaunchDarkly may suspend Customer's right to access or use any portion or all of the LaunchDarkly Service immediately upon notice to Customer if LaunchDarkly determines: (a) Customer's use of the LaunchDarkly Service (i) poses a security risk to the LaunchDarkly Service or any third party, (ii) could adversely impact LaunchDarkly's systems, the LaunchDarkly Service or the systems or content of any other customer, (iii) could subject LaunchDarkly, its affiliates, or any third party to liability, or (iv) could be fraudulent. Additionally, LaunchDarkly may suspend Customer's right to access or use any portion or all of the LaunchDarkly Services upon fifteen (15) days' notice if Customer is in breach of either its obligations under this Section 3, or more than 30 days delinquent in its payment obligations under Section 5 below.

3.6. EFFECT OF SUSPENSION. If LaunchDarkly suspend Customer's right to access or use any portion or all of the LaunchDarkly Service: (a) Customer remains responsible for all fees and charges Customer incur during the period of suspension; and (b) Customer will not be entitled to any service credits under the Service Level Agreements for any period of suspension.

4. INTELLECTUAL PROPERTY, CUSTOMER DATA AND INFORMATION SECURITY

4.1. OWNERSHIP. LaunchDarkly retains all right, title and interest to all intellectual property rights in and to the LaunchDarkly Service, the SDK, the Documentation, and all underlying technology, software, processes, algorithms, user interfaces, know-how and all modifications and derivative works thereof. Customer acknowledges and agrees that the LaunchDarkly Service is a software-as-a-service offering, and that Customer is not entitled to a copy of the underlying software or code.

4.2. FEEDBACK. Customer hereby grant's LaunchDarkly a fully paid, royalty-free, perpetual, irrevocable, worldwide, non-exclusive, and fully sublicensable right and license to use, reproduce, perform, display, distribute, adapt, modify, create derivative works of, and otherwise commercially exploit any suggestion, feedback or ideas Customer submits to LaunchDarkly, and Customer acknowledges and agrees that LaunchDarkly assumes no obligation of confidentiality or nondisclosure, express or implied with respect to such feedback or ideas submitted to LaunchDarkly.

4.3. CUSTOMER DATA. Customer hereby grants to LaunchDarkly and its Affiliates a worldwide, non-exclusive, limited-term license to access, use, process, copy, distribution, perform, export, and display Customer Data only as necessary (a) for LaunchDarkly to provide, maintain, and update the Service; (b) to prevent or address service, security, support, or technical issues; (c) as required by law and subject to the compelled disclosure requirements of Section 8.3 (Compelled Disclosure) below; and (d) as expressly permitted in writing by Customer. Customer is solely responsible for Customer Data, and Customer represents and warrants that it has secured all rights in and to Customer Data from its Authorized Users or third parties as may be necessary to grant this license.

4.4. ANONYMIZED DATA. Customer agrees that LaunchDarkly may collect, use, and disclose anonymized or aggregated data ("Anonymized Data") for its business purposes, including industry analysis, benchmarking, and analytics. Anonymized Data collected, used, and disclosed will be in aggregate and deidentified form only and will not identify Customer, its Authorized Users, or Customer Data. The rights to Anonymized Data shall survive termination of this Agreement.

5. INVOICING AND FEES

5.1. DIRECT PURCHASES. For Orders purchased directly with LaunchDarkly, Customer shall pay all fees specified in an Order Form (the "Fees"). Each Order Form with LaunchDarkly shall be signed by both parties or issued by LaunchDarkly and acknowledged by Customer via the issuance of a purchase order that incorporates the Order by reference only when finally accepted by LaunchDarkly. Except as otherwise specified herein or in an Order Form: (a) Fees are based on subscription purchase and not actual usage; (b) payment obligations are non-cancelable, and (c) all Fees paid are non-refundable. Customer is responsible for ensuring that it has provided LaunchDarkly with the most current billing information. In the event Customer issues purchase orders in its normal course of business and furnishes LaunchDarkly with a purchase order number in advance of the invoice date, LaunchDarkly will make every reasonable effort to reference such PO number on the invoice Invoices will be sent via email to the email indicated in the Billing Information section of each Order Form. Unless otherwise specified in the Order, payment for any fees will be due within thirty (30) days of the date of invoice.

5.1.1. TAXES. LaunchDarkly's Fees do not include any Taxes, and Customer is responsible for paying all Taxes arising from its purchases hereunder, excluding Taxes based on LaunchDarkly's net income, employees, or property. "Taxes" as used herein means any direct or indirect local, state, federal or foreign value-added, sales, use or withholding taxes. If LaunchDarkly has the legal obligation to pay or collect Taxes for which Customer is responsible, the appropriate amount of such Taxes shall be invoiced to and paid by Customer, unless Customer provides a valid tax exemption certificate authorized

by the appropriate taxing authority in advance. The failure to include Taxes on an invoice does not relieve the Customer of its obligation to pay such Taxes as required in the applicable taxing jurisdiction. All amounts payable to LaunchDarkly under this Agreement shall be without set-off and without deduction of any taxes, levies, imposts, charges, withholdings and/or duties of any nature which may be levied or imposed, including without limitation, value added tax, customs duty and withholding tax. Further, Customer agrees that in the case where Taxes are required to be deducted from payments to LaunchDarkly, such as but not limited to VAT, GST or similar withholding obligations, Customer will increase the Fees payable to LaunchDarkly so that LaunchDarkly receives from Customer (without any liability for Taxes) the amount equal to the total Fees LaunchDarkly would have received but for such withholding or deductions (the "True Up").

    5.1.2. <u>OVERDUE CHARGES.</u> If any invoiced amount not subject to good faith dispute is not received by LaunchDarkly by the due date, then without limiting LaunchDarkly's rights or remedies Customer agrees that LaunchDarkly may impose interest at the rate of 1.5% of the outstanding balance per month or the maximum rate permitted by law, whichever is lower.

5.2. <u>PURCHASES THROUGH A PARTNER.</u> For any Services purchased by Customer through a Partner, the pricing and payment terms are established through the order or agreement entered into by and between Customer and the Partner and all payments will be made directly to Partner. If a Partner is entitled to terminate or suspend any Services purchased by Customer due to non-payment and notifies LaunchDarkly, LaunchDarkly may suspend or terminate the Services identified by the Partner. Subsequently, if Partner notifies LaunchDarkly that Customer is entitled to reinstatement of any Services purchased by Customer pursuant to the Order, and Customer is otherwise in compliance with the terms of this SaaS Agreement, LaunchDarkly shall reinstate the Services as soon as reasonably practicable. LaunchDarkly shall not be liable to Customer or to any third party for any liabilities, claims, or expenses arising from or relating to any suspension or termination of Services in accordance with this Section 5.2.

5.3. <u>FUTURE FUNCTIONALITY.</u> Customer agrees that its subscription or other purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by LaunchDarkly regarding future functionality or features.

6. REPRESENTATIONS AND WARRANTIES

6.1. <u>GENERAL.</u> Each party represents and warrants that it has all necessary right, title and authority to enter into and perform under this Agreement. Customer warrants that it has the rights to provide and use any and all Customer Data in accordance with the terms of the Agreement. Each party warrants that it will conform to all applicable laws in its performance hereunder.

6.2. <u>PERFORMANCE WARRANTY.</u> LaunchDarkly warrants that the operation of the LaunchDarkly Service will substantially conform in all material respects to the Documentation during the Term. Customer will provide prompt written notice of any non-conformity.

6.3. <u>REMEDIES.</u> As Customer's sole and exclusive remedy, and LaunchDarkly's entire liability for any breach of the foregoing warranty, LaunchDarkly will remedy the nonconformance, or if LaunchDarkly is unable to do so, terminate the applicable Order(s) and refund any unused, prepaid Fees with respect to the applicable Order calculated on a pro-rata basis.

6.4. <u>DISCLAIMER OF WARRANTIES.</u> CUSTOMER AGREES THAT LAUNCHDARKLY IS NOT RESPONSIBLE FOR THE PERFORMANCE OR INTEGRATION OF ANY THIRD PARTY SERVICES AND THAT SUCH PERFORMANCE IS GOVERNED BY THE CUSTOMER'S TERMS OF USE FOR SUCH THIRD PARTY SERVICES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY NOR ITS SUPPLIERS MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LAUNCHDARKLY DOES NOT WARRANT THE OPERATION OF THE LAUNCHDARKLY SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE.

7. INDEMNIFICATION

7.1. <u>INDEMNIFICATION BY LAUNCHDARKLY.</u> LaunchDarkly shall defend and indemnify Customer against any Claims made or brought against Customer by a third party (a) alleging that use of the LaunchDarkly Service by Customer as authorized under this Agreement infringes the U.S. patent, copyright or other intellectual property right of a third party. "**Claim(s)**" means any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings made or brought by a third party.

    7.1.1. <u>EXCLUSIONS.</u> LaunchDarkly shall have no obligation under this Section 7, and shall have no liability with respect to any Claim to the extent the Claim is based upon (i) the use of the LaunchDarkly Service in combination with any other product, service or device not provided by LaunchDarkly, if such Claim would have been avoided by the use of the LaunchDarkly Service, without such product, service or device; or (ii) Customer's use of the LaunchDarkly Service other than in accordance with this Agreement.

    7.1.2. <u>CONTINUED USE.</u> If LaunchDarkly reasonably believes it may be subject to a claim of infringement it may, at its sole option and expense: (i) procure for Customer the right to continue using the LaunchDarkly Service under the terms of this Agreement; (ii) replace or modify the LaunchDarkly Service to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate access to and use of the infringing LaunchDarkly Service and provide a pro-rata refund of the LaunchDarkly prepaid unearned Fees in the then-current Term.

7.2. <u>INDEMNIFICATION BY CUSTOMER.</u> Customer shall defend, indemnify and hold LaunchDarkly and its Affiliates (collectively, "LaunchDarkly Group") harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against LaunchDarkly and any member of LaunchDarkly Group, by a third party either (a) alleging that the Customer Data created and stored by Customer in the LaunchDarkly Service or otherwise provided to LaunchDarkly in connection with the Agreement violates any applicable law or regulation; or (ii) arising out of Customer's obligations under Section 3 (Customer Responsibilities).

7.3. <u>INDEMNIFICATION PROCEDURE.</u> Each indemnified party agrees to (a) promptly give written notice of the Claim to the other party (provided that the obligations under this Section 7 shall not be reduced by the failure to give such notice except to the extent the indemnifying party is materially prejudiced by such failure); (b) give the indemnifying party sole control of the defense and settlement of the Claim (provided that Customer may not settle any Claim unless it unconditionally releases the indemnified party of all liability and obligation); and (c) provide to the other party, at such party's cost, all reasonable assistance.

7.4. THE PROVISIONS OF THIS SECTION 7 SET FORTH LAUNCHDARKLY'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.

8. CONFIDENTIALITY

8.1. <u>DEFINITION.</u> As used herein, "Confidential Information" means all non-public information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential, including the terms and conditions of this Agreement, LaunchDarkly's technology and technical information, product designs, 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 confidentiality obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any confidentiality obligation owed to Disclosing Party or access to or reliance on Disclosing Party's Confidential Information; or (iv) is received from a third party without breach of any confidentiality obligation owed to Disclosing Party.

8.2. <u>OBLIGATIONS.</u> Receiving Party shall not disclose or use any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except as allowed by the terms of this Agreement or 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). LaunchDarkly represents and warrants that it will maintain the confidentiality of Customer Data and, except as required by

applicable law, will not disclose Customer Data to any third party for any purpose other than to provide the LaunchDarkly Service. However, LaunchDarkly may compile aggregate data related to Customer's usage of the LaunchDarkly Service and may use and/or disclose such aggregate data to third parties, to the extent that Customer is not identified as the source of such data and as long as the data does not reveal the identity, whether directly or indirectly, of any individual, or specific data entered by or relating to any individual. 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.

8.3. <u>COMPELLED DISCLOSURE</u>. If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with (a) prior written notice of such compelled disclosure (to the extent legally permitted) and (b) reasonable assistance in contesting the disclosure, at Disclosing Party's option and cost. Any actual disclosure shall be limited to the minimum amount of information necessary to comply with the disclosure demand as advised by legal counsel.

8.4. <u>REMEDIES</u>. If Receiving Party discloses (or threatens to disclose) any Confidential Information of Disclosing Party in breach of confidentiality protections hereunder, Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies are inadequate.

8.5. <u>EFFECT OF TERMINATION</u>. Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information and, upon request and to the extent practicable, return to the Disclosing Party or destroy (at the Disclosing Party's election) all materials containing such Confidential Information.

9. LIMITATION OF LIABILITY

9.1. <u>GENERAL</u>. EXCEPT (i) FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS; (ii) EITHER PARTY'S MATERIAL BREACH OF SECTION 8 (CONFIDENTIALITY) ((i) AND (ii) COLLECTIVELY, THE "EXCLUSIONS"), AND (iii) CLAIMS ARISING FROM A PARTY'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT, IN NO 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 FEES PAID OR PAYABLE TO LAUNCHDARKLY DURING THE (12) TWELVE MONTHS PRIOR TO THE DATE OF THE CLAIM.

9.2. <u>SUPERCAP</u>. NOTWITHSTANDING ANYTHING TO THE CONTRARY, EACH PARTY'S LIABILITY WITH RESPECT TO THE EXCLUSIONS SHALL NOT EXCEED THREE (3) TIMES THE FEES PAID OR PAYABLE TO LAUNCHDARKLY DURING TWELVE MONTHS PRIOR TO THE DATE OF THE CLAIM.

9.3. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS OR SUPPLIERS HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES 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.

10. TERM AND TERMINATION.

10.1. <u>TERM</u>. This Agreement commences on the Effective Date and unless terminated as otherwise provided herein, shall continue until all Orders entered into under this Agreement have expired or been terminated. The Term applicable to each Order commences upon the effective date of such Order.

10.2. <u>TERMINATION</u>. A party may terminate this Agreement for cause: (i) upon thirty (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; or (ii) immediately upon notice for an incurable material breach; (iii) immediately upon notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding.

10.3. <u>SURVIVAL</u>. The parties' rights and obligations under Sections 1, 4, 5, 7.3, and 8-12 shall survive termination of this Agreement.

10.4. <u>EFFECT OF TERMINATION</u>. Upon the effective date of termination of this Agreement Customer's authorization to access and use the LaunchDarkly Service will cease. Thirty (30) days following the termination of this Agreement LaunchDarkly will have no obligation to maintain any Customer Data and will not retain copies or records of Customer Data in its system or otherwise.

10.5. <u>REFUND OR PAYMENT UPON TERMINATION.</u> If this Agreement is terminated by Customer in accordance with 10.2 above, LaunchDarkly will refund Customer (or Partner if purchase was made through a Partner) any prepaid fees covering the remainder of the term of all Orders after the effective date of termination. If this Agreement is terminated by LaunchDarkly in accordance with the 10.2 above, Customer will pay any unpaid fees covering the remainder of the Term of all Orders to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to LaunchDarkly for the period prior to the effective date of termination.

11. TRIAL USE.

11.1. If Customer registers on LaunchDarkly's website for a free trial, LaunchDarkly will make the applicable Services available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Service(s), or (b) the start date of any Order for such Services; or (c) termination by LaunchDarkly in its sole discretion.

11.2. THE FREE TRIAL SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND LAUNCHDARKLY SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES DURING THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE LAUNCHDARKLY'S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED $1,000.00. WITHOUT LIMITING THE FOREGOING, LAUNCHDARKLY DOES NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION ABOVE, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO LAUNCHDARKLY AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

12. GENERAL

12.1. <u>INDEPENDENT CONTRACTORS</u>. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

12.2. <u>NOTICE REQUIREMENTS</u>. Notices shall be in writing and delivered as indicated below. Notice may be delivered by either (a) nationally recognized overnight delivery service or certified or registered U.S. Mail, or (b) electronic mail. Notices are effective upon receipt.

If to Launch Darkly:	If to Customer:
1999 Harrison Street, Suite 1100 Oakland, CA 94612	To the mailing address specified in Customer's Order Form.
legal@launchdarkly.com	

12.3. <u>ENTIRE AGREEMENT</u>. No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Customer and LaunchDarkly. To the extent of any conflict between this Agreement and any Order Form, the Order Form shall prevail. In the event of a conflict between this Agreement and any other Exhibit or document referenced herein, this Agreement shall prevail unless expressly stated otherwise. Notwithstanding any

LaunchDarkly ➔

language to the contrary therein, no terms stated in a purchase order or similar ordering document (other than a Statement of Work or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. If there is any conflict between the terms of this Agreement and any Order or similar ordering document with a Partner, the terms of this SaaS Agreement shall control. Where LaunchDarkly 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.

12.4. NO WAIVER. 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.

12.5. FORCE MAJEURE. Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to a natural disaster, pandemics, civil unrest, actions or decrees of governmental bodies or communications 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, or (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against ("**Force Majeure Event**").

12.6. ASSIGNMENT. Neither party may assign or transfer 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 either party may, upon notice to the other party, assign or transfer this Agreement in its entirety (including all Orders hereunder), in connection with a merger, reorganization, or sale of all or substantially all assets or equity with respect to this Agreement. 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.

12.7. EXPORT. Each party agrees to comply 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 provision and use of the LaunchDarkly Service.

12.8. GOVERNING LAW. This Agreement shall be governed exclusively by the internal laws of the state of California, without regard to its conflicts of laws rules. Any dispute arising hereunder shall be brought exclusively in the courts located in the Northern District of California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.