

METRIC INSIGHTS - MASTER SUBSCRIPTION AGREEMENT

1. **SCOPE OF AGREEMENT.** This Master Subscription Agreement (this “**Agreement**”) is entered into by and between Metric Insights, Inc., a Delaware corporation with an address at 44 Tehama Street, San Francisco, CA 94105 (“**Metric Insights**”), and you (“**Customer**”). This Agreement contains the terms and conditions that govern Customer’s access to and use of the Metric Insights software platform (the “**Product**”) and/or Professional Services delivered to Customer.

2. LICENSE.

2.1 **License Grant.** Customer will submit an Order to Metric Insights specifying (i) whether Customer wants a license to the Software or access to the Hosted Service, (ii) the number of named users or cores, and (iii) any other license parameters required by Metric Insights. Subject to acceptance of such Order by Metric Insights and receipt by Metric Insights of all fees owed by Customer in connection with such Order (including any fees associated with a renewal of the Term), Metric Insights grants Customer and its Affiliates, beginning on the Service Start Date and through the remainder of the Term, a worldwide, non-exclusive, and non-transferable license to the applicable Product as follows:

- (a) If the Order accepted by Metric Insights is for the Software, then such license consists of the rights to (i) install and use the Product specified in the Order for Customer’s and its Affiliates’ internal business purposes, subject to any limitations on the number of named users, cores, instances, data connectors, and any other license parameters set forth in the Order, and (ii) make a reasonable number of copies of the Software as necessary and appropriate for Customer’s back-up and archival purposes.
- (b) If the Order accepted by Metric Insights is for the Hosted Service, then such license consists of the right to access and use the Hosted Service for Customer’s and its Affiliates’ internal business purposes, subject to any limitations on the number of named users, cores, data connectors, and any other license parameters set forth in the Order.

2.2 **Responsibility for Affiliates.** If any Affiliates of Customer exercise any license rights under this Agreement, then: (a) Customer represents and warrants to Metric Insights that Customer has the full power and authority to act on behalf of and bind any such Customer Affiliate to all of the terms and conditions of this Agreement; (b) Customer is responsible for payment to Metric Insights, on a consolidated basis, of all fees triggered under this Agreement for any such Customer Affiliate’s use of the Product and/or Professional Services; (c) Customer is responsible for ensuring that each such Customer Affiliate complies with the terms and conditions of this Agreement, and (d) Customer is liable to Metric Insights for all acts or omissions of such Customer Affiliates in connection with any Customer Affiliate’s possession, access to, or use of the Product and/or Professional Services.

3. **RESTRICTIONS.** Customer will not, and will not permit any Affiliate or third party to:

- 3.1 copy, display, distribute, assign, sublicense, or otherwise use the Product in any manner or for any purpose not expressly authorized by this Agreement; or
- 3.2 exceed the parameters of the Product license for which Customer has paid (e.g., by exceeding the number of named users, cores, number of instances, type(s) of data connector, etc.) without promptly paying any incremental fees triggered by such usage; or

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- 3.3 attempt to create derivative works of the Product or otherwise adapt, modify, or translate the Product or the metadata created by the Product; or
 - 3.4 reverse engineer, decompile, translate, or disassemble the Product, the metadata created by the Product, or any other software used to power the Hosted Service; or
 - 3.5 rent or lend any part of the Product to any third party, or use the Product or the metadata created by the Product to provide services to a third party, or provide any access to the Product or the metadata created by the Product to a third party through a service bureau, time-sharing, or application service provider arrangement; or
 - 3.6 remove any copyright or proprietary rights notices from any copies of the Product or any documentation provided by Metric Insights; or
 - 3.7 attempt to circumvent, “crack,” or disable any license key or license reporting mechanism relating to the Product; or
 - 3.8 use the Product in any way that violates any law or any rights of any third party; or
 - 3.9 use the Product for purposes of benchmarking or as a model for the creation of a competitive product.
4. **OWNERSHIP.** Metric Insights and its licensors retain all ownership rights in and title to the Product and all intellectual property rights in and to the Product. The Product provided under this Agreement is licensed and not sold to Customer, and Metric Insights reserves all rights not expressly granted to Customer under this Agreement. Customer shall not at any time during or after the Term of this Agreement challenge or adversely affect Metric Insights’ ownership of such rights.
5. **PRODUCT FEEDBACK.** If Customer or a Customer Affiliate provides any Product Feedback to Metric Insights, Metric Insights owns all right, title and interest worldwide in and to such Product Feedback. Metric Insights may, but is not obligated to, incorporate such Product Feedback into its products and services that it provides to Customer and/or other customers. Product Feedback does not include information relating to Customer, Customer Affiliates, or their business plans and strategies.
6. **MAINTENANCE AND SUPPORT.** Subject to receipt by Metric Insights of all fees owed by Customer, Metric Insights shall provide Customer with the following maintenance and technical support for the applicable Product:
- 6.1 Metric Insights will provide all updates, bug fixes, and improvements to the Product that Metric Insights makes available to its other licensees of the same product(s) licensed under this Agreement.
 - 6.2 Metric Insights will provide e-mail, web, and phone support to answer questions relating to the operation and administration of the Product.
 - 6.3 Customer may notify Metric Insights of any errors or defects in the Product that Customer discovers during the Term that prevent the Product from functioning in accordance with the documentation provided by Metric Insights. Provided that Customer has reported the issue in sufficient detail to permit Metric Insights to reproduce and isolate the issue, then as

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Customer's exclusive remedy and Metric Insights' sole liability for such issue, Metric Insights will use commercially reasonable efforts to provide a correction or workaround within a reasonable period of time under the circumstances.

- 6.4 If Metric Insights provides the Hosted Service pursuant to this Agreement, then Metric Insights will treat all Customer Data as the Confidential Information of Customer, and will provide administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as described in service documentation available to Customer. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Metric Insights except as reasonably necessary (a) to provide the Hosted Service and related Professional Services to Customer, (b) as compelled by law in accordance with Section 13.4 (Compelled Disclosure), or (c) as Customer expressly permits in writing.
- 6.5 To the extent permissible by applicable law, Metric Insights shall, through the use of an authorized background checking service in connection with the hiring of applicable Metric Insights employees, perform commercially reasonable background checks (consistent with industry standards in the software industry) for Metric Insights employees who perform this Agreement for Metric Insights.

7. PROFESSIONAL SERVICES.

- 7.1 **Orders for Professional Services.** Metric Insights will perform the Professional Services and deliver the Work Product as set forth in fully executed Orders for Professional Services for the fees set forth in the Order. In the event of any conflict between the terms of this Agreement and any Order for Professional Services, the terms set forth in this Agreement will control; provided, however, that conflicting terms of an Order will control for purposes of the Professional Services described in that Order when the Order refers to provisions of this Agreement to be superseded by such Order.
- 7.2 **Schedule.** The parties expressly acknowledge and agree that each Order is based on understandings and expectations that apply at the time such Order is prepared and that the start and stop dates, if any, contained in such Order are not firm performance dates, are expected to be revised during the term of any engagement and are only to be regarded as estimated beginning and completion dates for the tasks and activities as of the date of such Order. Metric Insights will notify Customer promptly (via email or otherwise) if Metric Insights expects or encounters delays.
- 7.3 **T&M Engagements.** Unless otherwise specified in the applicable Order: (a) Professional Services will be provided on a time and materials ("**T&M**") basis (i.e., Customer will pay Metric Insights for the time spent performing such Professional Services at Metric Insights' hourly rates, plus materials, taxes, and expenses); and (b) any fee amount stated in an Order is an estimate for purposes of Customer's budgeting and Metric Insights' resource scheduling. If a fee limit in an Order is about to be exceeded, Metric Insights will promptly notify Customer, and the parties will cooperate to determine how Metric Insights can continue to provide Professional Services on a T&M basis.
- 7.4 **Incidental Expenses.** Customer will reimburse Metric Insights for reasonable and necessary out-of-pocket expenses (e.g., travel and living expenses) incurred by Metric Insights personnel in conjunction with its performance of Professional Services. Unless

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included as a line item in an Order, such expenses are not included in the fees stated in Statements of Work.

- 7.5 **On-Site Conduct.** If performance of the Professional Services requires Metric Insights to be on-site at Customer's premises, Metric Insights will ensure that while its personnel are on such premises, such personnel will obey all reasonable instructions, standards and procedures issued by Customer that are relevant to the provision of Professional Services.
- 7.6 **Customer's Obligations.** Metric Insights will not be liable for any failure to perform hereunder where such failure is the result of Customer's or a third-party vendor's failure to perform its obligations or to otherwise cooperate with Metric Insights in the provision of Professional Services. To facilitate Metric Insights' provision of the Professional Services, Customer will: (a) promptly render or obtain all decisions and approvals so as not to delay or impede the performance of Professional Services by Metric Insights; (b) promptly provide or obtain all reasonable cooperation, assistance, information, data, facilities, equipment, and suitably configured computer products that are necessary for performance of Professional Services; (c) notify Metric Insights of any issues, concerns or disputes with the Professional Services; and (d) undertake any other responsibility referred to in an Order as being a matter of Customer responsibility.
- 7.7 **Change Orders.** One or both parties may, from time to time, deem it necessary to make changes by altering, adding to or deducting from the Professional Services or Work Product described in an Order, including requests for changes in project plans, scope, specifications, schedule, designs or requirements. Any such request for a change must be in writing, and neither party will be bound by the changes until both Metric Insights' and Customer's authorized representatives have executed a written change order describing the changes.
- 7.8 **Customer-Provided Materials.** Customer will provide all Customer-Provided Materials necessary for the performance of the applicable Professional Services. As between Customer and Metric Insights, Customer owns all right, title, and interest in and to the Customer-Provided Materials. Customer represents and warrants that it has the necessary rights to provide the Customer-Provided Materials to Metric Insights for the purposes for which such materials are provided. Customer grants to Metric Insights a non-exclusive, non-transferable license and right to use, copy, and modify the Customer-Provided Materials as necessary and appropriate to perform the Professional Services.
- 7.9 **License to Work Product.** The Work Product is not a work-made-for-hire, and Metric Insights retains all intellectual property and proprietary rights in and to the Work Product, subject only to the licenses granted to Customer pursuant to this Agreement. Customer will not, and will not permit any Affiliate or third party to: (a) use, distribute, license or sublicense the Work Product except in connection with Customer's permitted use of the Product; (b) modify, alter, reverse engineer, decompile, translate, disassemble, or otherwise attempt to derive or discover the source code of the Work Product, in whole or in part; (c) write or develop any derivative software or any other software based on the Work Product; or (d) remove or destroy any copyright, trademark or other proprietary markings or notices or confidentiality legends placed upon or contained within the Work Product or any copies thereof. Metric Insights grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license and right to use the Work Product as necessary and appropriate in connection with Customer's permitted use of the Product.

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8. TERM AND TERMINATION.

- 8.1 **Term.** This Agreement is effective as of the Effective Date and will commence for a period determined as follows. The license granted under Section 2 has an initial term that begins on the Service Start Date and lasts for the period as agreed to by the parties in the applicable Order. After this initial term, the Term of the license automatically renews for additional periods equal to the initial term (or such other renewal period as set forth in the applicable Order), unless either party provides the other with written notice of its intent not to renew at least sixty (60) days prior to the end of the then-current term. Upon renewal, Customer must pay to Metric Insights the applicable fees for another renewal term. “**Term**” means the initial term and any renewal term, as described in this Section.
- 8.2 **Termination.** Either party may terminate this Agreement with written notice: (a) if the other party has substantially breached a material provision of this Agreement (including, without limitation, non-payment of any fees due under this Agreement) and failed to cure such breach within thirty (30) days after receiving written notice from the non-breaching party describing the nature of the breach; or (b) if the other party ceases to do business in the normal course, or has a receiver, administrative receiver, liquidator or similar official appointed to it or over any part of its business or assets or passes a resolution for its winding up (other than for the purpose of a bona fide scheme of solvent reorganization where the resulting entity assumes all of the liabilities of it), or is unable to pay its debts as they fall due, or makes an assignment for the benefit of creditors. In addition, Metric Insights may immediately terminate this Agreement with written notice if Customer materially breaches the provisions of Section 3 (Restrictions).
- 8.3 **Effect of Termination.** Upon expiration or termination of this Agreement for any reason: (a) Customer and its Affiliates shall immediately cease using the Product(s), and (b) at Metric Insights’ written request, Customer shall certify to Metric Insights within thirty (30) days after expiration or termination that Customer has destroyed all copies of the Software and any Metric Insights Confidential Information in the custody or control of Customer or its Affiliates. Expiration or termination of this Agreement shall not prevent either party from pursuing any other available remedies (including, if applicable, injunctive relief), nor shall such expiration or termination relieve Customer’s obligation to pay all fees that are owed. The parties’ rights and obligations under the following Sections survive expiration or termination of this Agreement for any reason: Sections 1 (Scope of Agreement), 2.2 (Responsibility for Affiliates), 3 (Restrictions), 4 (Ownership), 5 (Product Feedback), 8.3 (Effect of Termination), 9.3 (Disclaimer), 10 (Indemnification), 11 (Limitations of Liability), 12.3 (Payments) (with respect to any fees that remain due or payable at the time of expiration or termination), 13 (Confidentiality), and 14 (General Terms).

9. WARRANTIES.

- 9.1 **Warranties.** Metric Insights represents and warrants to Customer, and solely for the benefit of Customer, that: (a) the Product will perform in substantial conformance with the technical specifications set forth in the technical documentation provided by Metric Insights; and (b) if Metric Insights delivers the Software under this Agreement, then Metric Insights has used commercially reasonable efforts to detect and remove from the Software, as and when delivered by Metric Insights, any viruses or other harmful code that would interfere with Customer’s exercise of its rights under this Agreement; and (c) if Metric Insights

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delivers Professional Services under this Agreement, then Metric Insights will perform the Professional Services in a professional and workmanlike manner consistent with industry standards. These warranties are conditioned on payment by Customer of all fees as they become due under an Order that has been accepted by Metric Insights.

- 9.2 **Warranty Remedy and Limitations.** If Customer notifies Metric Insights of a breach of the foregoing warranties within ninety (90) days of the initial delivery of the Product or Professional Services, then, AS CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND METRIC INSIGHTS' SOLE LIABILITY FOR BREACH OF THE FOREGOING WARRANTIES, Metric Insights will promptly either correct or replace the defective Product or Professional Services free of charge. These warranties are null and void if and to the extent that the warranty breach was caused by: (a) an alteration or modification to the Product or Work Product from its original state by anyone other than Metric Insights, (b) use of the Product or Work Product in a manner inconsistent with this Agreement or the documentation or in a manner for which it was not intended; and/or (c) products or services not provided by Metric Insights. Metric Insights makes no warranty to any third party under this Agreement.
- 9.3 **Disclaimer.** EXCEPT FOR THE LIMITED WARRANTIES EXPRESSLY GRANTED IN THIS AGREEMENT, METRIC INSIGHTS MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR ARISING FROM ANY COURSE OF DEALING. TO THE MAXIMUM EXTENT PERMITTED BY LAW, METRIC INSIGHTS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. METRIC INSIGHTS DOES NOT WARRANT THAT USE OF THE PRODUCTS WILL BE ERROR-FREE OR THAT ANY PRODUCT WILL MEET CUSTOMER'S NEEDS OR REQUIREMENTS.

10. INDEMNIFICATION.

- 10.1 **By Metric Insights.** Metric Insights shall indemnify, defend, and hold harmless Customer, its Affiliates who use the Product under this Agreement, and their respective directors, officers, and employees (collectively, the "**Customer Indemnitees**") from and against any claim, suit, action, proceeding, cost, or damage (including attorneys' fees) arising from a third-party claim against a Customer Indemnitee to the extent that it alleges that a Product used by the Customer Indemnitee pursuant to the terms of this Agreement has infringed a United States intellectual property right or trade secret. The obligations in this Section 10.1 do not apply to the extent that the alleged infringement arises from or relates to: (a) the use of software or material other than a currently supported, unaltered Product release obtained directly from Metric Insights, where such Product release would have avoided the infringement; or (b) the use of a Product that has been modified, combined or merged with other products, processes, or materials, where the alleged infringement relates to such modification combination or merger and not the unaltered Product on its own; or (c) any software code or material that is made to comply with Customer designs, specifications, or instructions; or (d) software code, hardware, or material not provided by Metric Insights; or (e) continued allegedly infringing activity by Customer after being notified of the alleged infringement; or (f) use of the Product that is not strictly in accordance with this Agreement. In addition to the obligation to indemnify, if the Product (or any part of it) becomes the subject of an infringement claim for which a Customer Indemnitee has indemnification rights under this Section, Metric Insights will either: (i) procure for Customer the right to

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continue use of the Product as furnished; (ii) replace the Product with a non-infringing product that is substantially equivalent or superior in functionality; or (iii) modify the Product to make it non-infringing without loss of essential functionality. If an injunction is issued by a court of competent jurisdiction barring Customer's exercise of the rights granted under this Agreement and Metric Insights, after using commercially reasonable efforts, is unable to accomplish the foregoing remedies, Metric Insights may terminate this Agreement, and all licenses granted, immediately upon written notice. If such a termination occurs, Metric Insights will provide a pro-rated refund of the pre-paid fees for the Product representing the period of time for which fees were pre-paid for a terminated license. This Section 10.1 states the sole and exclusive liability of Metric Insights and its Affiliates, and the Customer Indemnitees' exclusive remedy, with respect to any claim or suit alleging infringement of third-party rights.

10.2 **By Customer.** Customer shall indemnify, defend, and hold harmless Metric Insights, its Affiliates, and their respective directors, officers, and employees (collectively, the "**Metric Insights Indemnitees**") from and against any claim, suit, action, proceeding, cost, or damage (including attorneys' fees) arising from a third-party claim against a Metric Insights Indemnitee to the extent that it alleges a failure by Customer or a Customer Affiliate to comply with applicable law and/or with the privacy policies, agreements, or other terms and conditions of Customer, Customer Affiliates, or third parties.

10.3 **Process.** In the event that a claim arises for which a party (as the "**Indemnified Party**") seeks indemnification from the other (as the "**Indemnifying Party**"):

(a) The Indemnified Party will:

- (i) Provide the Indemnifying Party with reasonably prompt notice of the claim;
- (ii) Provide the Indemnifying Party with the right to control the defense of the claim and any negotiations relating to the claim's settlement or compromise (provided that the Indemnifying Party promptly and diligently assumes such defense and/or negotiations with counsel reasonably acceptable to the Indemnified Party); and
- (iii) Provide the Indemnifying Party with reasonable information and assistance, at the Indemnifying Party's expense, to help the Indemnifying Party defend claims at its expense.

(b) Without limiting or modifying the provisions of paragraph (a) above, the Indemnified Party may employ separate counsel and participate in the defense of any Claim at its own expense.

(c) The Indemnifying Party will not stipulate, admit, or acknowledge any fault or liability on behalf of an Indemnified Party without prior written consent. The Indemnified Party will not settle any claim or publicize any settlement without the Indemnifying Party's prior written consent.

11. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OF ITS AFFILIATES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING ANY DAMAGES FOR LOSS OF DATA, LOSS OF PROFITS, LOSS OF USE, OR INTERRUPTION OF BUSINESS), AND WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF IT OR ANY OF ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF

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AN AGREED REMEDY FAILS OF ITS ESSENTIAL PURPOSE OR IS HELD UNENFORCEABLE FOR ANY OTHER REASON. IN NO EVENT WILL METRIC INSIGHTS' TOTAL AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT, FROM ALL CAUSES OF ACTION AND THEORIES OF LIABILITY, EXCEED THREE (3) TIMES THE AMOUNT PAID BY CUSTOMER TO METRIC INSIGHTS FOR PRODUCTS AND PROFESSIONAL SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE INITIAL NOTICE OF A CLAIM.

12. ORDERS AND PAYMENT.

- 12.1 **Orders.** Customer or an Affiliate may purchase Product licenses and/or Professional Services under this Agreement by submitting an Order to Metric Insights in a form acceptable to Metric Insights. All Orders, all access to and use of Products, and all provision of Professional Services shall be subject to the terms of this Agreement and the applicable Order.
- 12.2 **Order Acceptance by Metric Insights.** All Orders shall be subject to Metric Insights' acceptance. Metric Insights is not obligated to accept any Order. Metric Insights may indicate its acceptance of an Order by: (a) signing the applicable Order (via paper or electronic signature by an authorized representative of Metric Insights), or (b) delivery of the Product or Professional Services pursuant to the Order.
- 12.3 **Invoices and Payments.** Metric Insights will invoice Customer for fees for Products and Professional Services as set forth in the Order. If the Order does not include a separate schedule for invoicing and payments, then Metric Insights will invoice Customer for the full amount of fees in the Order upon acceptance of such Order. In addition, unless otherwise set forth in the Order, Metric Insights will invoice amounts due for renewal of a Product subscription license approximately thirty (30) days prior to the renewal date unless such subscription has been properly terminated. Customer will pay all fees within thirty (30) days of Customer's receipt of invoice. All fees are net of any taxes, which shall be the responsibility of Customer, except for taxes on Metric Insights' income or property. All prices and fees are in United States dollars, and all payments under this Agreement are non-refundable unless otherwise expressly provided. Amounts not paid when due are subject to interest at the rate of one percent (1.0%) per month or the maximum allowed by applicable law, if less, on the overdue balance.

13. CONFIDENTIALITY.

- 13.1 **Protection.** The Receiving Party will keep in strictest confidence all Confidential Information of the Disclosing Party, and will not disclose or make use of any such information, except as strictly necessary to perform the Receiving Party's obligations under this Agreement and will only permit access to the Disclosing Party's Confidential Information to those of the Receiving Party's employees, officers, directors and agents having a demonstrable need to know and who are bound by obligations of confidentiality at least as restrictive as those set forth herein. The Receiving Party will not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody the Disclosing Party's Confidential Information.
- 13.2 **Ownership, Return of Confidential Information.** All Confidential Information, unless otherwise specified in writing, remains the property of the Disclosing Party and may be

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used by the Receiving Party solely for the purposes of performing the obligations of this Agreement. No license of any proprietary rights of either party is granted by any disclosure of Confidential Information. Upon written request of the Disclosing Party, any and all written or electronic materials containing or referring to the Disclosing Party's Confidential Information (and all copies, extracts, and summaries thereof) in the Receiving Party's possession or control will be either promptly returned to the Disclosing Party, or promptly destroyed by the Receiving Party (with a certification of destruction transmitted to the Disclosing Party) at the Receiving Party's expense.

- 13.3 **Exceptions.** Confidential Information does not include any information that: (a) at the time of disclosure is generally known by the public or thereafter becomes public knowledge through no act or omission of or on behalf of the Receiving Party; (b) is disclosed to the Receiving Party by a third party who has rightfully disclosed the information without obligations of confidentiality; or (c) is rightfully known to the Receiving Party other than through direct or indirect disclosure by the Disclosing Party.
- 13.4 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information if required to do so pursuant to law or the order of a court or governmental authority, provided that: (a) the Receiving Party gives the Disclosing Party advance notice of such disclosure requirement, (b) the Receiving Party cooperates with the Disclosing Party in trying to seek a protective order in connection therewith, and (c) the scope of such disclosure is limited to the extent possible.
- 13.5 **Survival of Obligations.** The provisions of this Section 13 survive the expiration or termination of this Agreement for all Confidential Information disclosed until such information is no longer Confidential Information because it falls into one of the exceptions in Section 13.2 (Exceptions).

14. GENERAL TERMS.

- 14.1 **Governing Law.** The laws of the state of California, excluding its principles of conflicts of laws, shall govern this Agreement and all matters arising out of or relating to this Agreement.
- 14.2 **Exclusive Venue.** Metric Insights and Customer agree to submit to the exclusive personal jurisdiction of, and agree that venue is only proper in, the state or federal courts located in San Francisco, California in any legal action or proceeding relating to this Agreement.
- 14.3 **Injunctive Relief.** Certain breaches of this Agreement including, without limitation, breaches relating to a party's Confidential Information or intellectual property rights, could result in irreparable harm for which money damages would be an inadequate remedy. In the event of such a breach or threatened breach, the non-breaching party will be entitled to seek immediate equitable and other provisional relief, in addition to any other remedies available at law or in equity and without prejudice to any such other remedies.
- 14.4 **Attorneys' Fees.** In the event any proceeding or lawsuit is brought by either party in connection with this Agreement, the prevailing party in such proceeding is entitled to receive from the other party the prevailing party's costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

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- 14.5 **Independent Contractors.** Metric Insights and Customer are acting as independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.
- 14.6 **No Public Statements.** Except for any legally mandated disclosure or rules of the applicable stock exchange(s) on which the securities of the parties are traded, neither party shall issue any press release or announcements or any marketing, advertising or other promotional materials, or make any other public statement related to this Agreement or referencing the other party without the prior written approval of the other party.
- 14.7 **Waiver or Delay.** Any waiver of any kind by either party of a breach of this Agreement must be in a signed writing, will be effective only to the extent set forth in such writing, and will not operate or be construed as a waiver of any subsequent breach by the other party. No failure of either party to insist upon strict compliance with any obligation or provision hereunder, and no custom or practice of the parties at variance with the terms hereof, will constitute a waiver of any right to demand exact compliance with the terms of this Agreement. Neither party's delay or omission in exercising any right, power or remedy upon a breach or default by the other party will impair any such right, power or remedy.
- 14.8 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect if the essential provisions of this Agreement for each party remain valid, legal, and enforceable.
- 14.9 **Force Majeure.** If either party is unable to perform in whole or in part its obligations as set forth in this Agreement because of a labor dispute, strike, lockout, riot, war, act of terrorism or vandalism, widespread power outage, severing of communications lines by a third party, earthquake, flood, fire or other action of the elements, governmental restriction, appropriation or other cause beyond the control of a party hereto, then such party may provide the other party prompt written notice of such cause. Upon providing such notice, the party affected will be relieved of those obligations to the extent it is unable to perform for as long as such cause continues or for ninety (90) days, whichever is shorter. If after ninety (90) days the party affected by such cause is unable to continue performance, the other party may terminate this Agreement for the affected party's uncured breach pursuant to Section 8.2 (Termination). Neither party will be liable for any loss, injury, delay or damages suffered or incurred by the other due to the above causes or to the termination of the Agreement pursuant to this Section.
- 14.10 **Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given when (a) personally delivered; (b) upon confirmed receipt when sent by email with confirmed receipt; or (c) upon delivery when sent overnight by a commercial overnight courier that provides proof of delivery. All notices must be sent to the address set forth in the first paragraph of this Agreement to the attention of the party's legal department. Either party may change its designee or address for notices by providing notice to the other party in compliance with this Section. English is the official language of this Agreement, and all communications and notices must be in the English language.
- 14.11 **Assignment.** This Agreement and the rights and obligations arising under this Agreement are binding upon and inure to the benefit of the parties and to their respective successors and assigns. Neither party will transfer or assign any of its rights or delegate any of its

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obligations hereunder without the prior written consent of the other, which consent will not be unreasonably delayed or withheld; provided, however, that Metric Insights may assign its rights and delegate its obligations under this Agreement without Customer's consent in connection with a merger, acquisition, the sale of all or substantially all of its assets or similar transaction. Any unauthorized transfer, assignment, or delegation is null and void.

- 14.12 **Export Restrictions.** The Products and all related documentation and technical information are subject to the laws and regulations relating to export and re-export of the U.S. and other relevant jurisdictions. Each party agrees to comply with all such laws and regulations applicable to its performance under this Agreement. Neither party will export or re-export any products or technical information, directly or indirectly, without a license or other approval issued by the U.S. or other government, to the extent such license or other approval is required by law.
- 14.13 **Government Use.** If Customer or any Affiliate is an agency or instrumentality of the U.S. Government or a U.S. Government contractor, the Software and other software products used to power the Hosted Service are "commercial computer software" that has been developed at private expense, and all related documentation is "commercial computer software documentation." Pursuant to FAR 12.212 and/or DFARS 227.7202 and their successors, as applicable, the use, reproduction, and disclosure of any software and documentation provided under this Agreement is governed solely by the terms of this Agreement.
- 14.14 **Entire Agreement.** This Agreement and any executed Order(s) constitute the entire agreement, including all understandings, representations, conditions, warranties and covenants, between the parties concerning their subject matter. This Agreement supersedes, and the terms of this Agreement govern, any prior or collateral agreements or understandings between the parties, whether written or oral, with respect to the subject matter hereof. This Agreement may not be amended or modified except in writing signed by a duly-authorized representative of each party.

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Exhibit A - Definitions

When used in this Agreement or an Order, the following capitalized terms have the meanings given to them in this Exhibit:

1. **"Affiliate"** means an entity that is controlled, controlled by, or under common control with Customer or Metric Insights, as applicable, where "control" means ownership of a majority of the voting interest in such entity.
2. **"Confidential Information"** means any information in any form that one party discloses, directly or indirectly, to the other party concerning or relating to the disclosing party or its business operations, including proprietary technology or business plans. "Confidential Information" includes, without limitation, technical information, specifications, programming interfaces, ideas, discoveries, inventions, improvements, prototypes, data, financial information, developments, methods, techniques, engineering, know-how, trade secrets, systems, documentation, drawings, renderings, sales and marketing plans, and artwork, whether or not such information is protectable by patent, copyright, or any other form of protection and whether or not reduced to practice.
3. **"Customer"** means the person or entity that agrees to the terms of this Agreement to receive products and services from Metric Insights. If a person enters into this Agreement in connection with his or her work for a company or other entity, the Customer is the company or entity.
4. **"Customer Data"** means the data that Customer enters into the Hosted Service in the course of using such Hosted Service under this Agreement.
5. **"Customer-Provided Material"** means any information, software, hardware, electronic media, artwork, designs, tools, equipment, devices, drawings, patterns, proofs, specifications, notes, memoranda, documents, or other material furnished by Customer in connection with Professional Services to be performed by Metric Insights.
6. **"Disclosing Party"** means a party to this Agreement who discloses Confidential Information.
7. **"Effective Date"** means the earliest to occur of the following dates: (a) when Customer manifests assent to this Agreement (whether by signature or by electronic means such as clicking to accept or agree), or (b) when Customer first receives or accesses any Product, whether for commercial use or evaluation, or (c) when Customer submits an Order to Metric Insights.
8. **"Hosted Service"** means the service in which Metric Insights hosts the Software and provides access to such service to Customer via a web browser and an Internet connection.
9. **"Order"** means an ordering document (whether written or electronic, in the form provided by Metric Insights) in which Customer requests that Metric Insights provide a Product (or additional features or licensed units for such Products) or Professional Services. An Order for Products must specify the Product, license parameters (e.g., number of named users or other licensed units, type(s) of data connectors, number of instances, etc.), fees, Service Start Date, and initial term of the license. An Order for Professional Services must specify the nature or quantity of Professional Services to be performed and fees.
10. **"Product"** means the Software and/or the Hosted Service, as applicable.
11. **"Product Feedback"** means ideas, suggestions, and feedback specifically relating to Metric Insights' products and services.
12. **"Professional Services"** means the training, implementation assistance, consulting, or technical services provided by Metric Insights for Customer pursuant to an Order and this Agreement.
13. **"Receiving Party"** means a party to this Agreement who receives Confidential Information.
14. **"Service Start Date"** means the date on which Customer's license to a Product begins, as may be designated on the applicable Order.
15. **"Software"** means the Metric Insights Push Intelligence software programs, in object code form only, and any modifications, updates, and improvements to such software delivered by Metric Insights to Customer during the Term.
16. **"Term"** has the meaning given to it in Section 8.
17. **"Work Product"** means all computer code, customizations, creations, inventions, reports specifications and documentation that are first conceived, created or reduced to practice during the performance of Professional Services pursuant to this Agreement.

METRIC INSIGHTS - MASTER SUBSCRIPTION AGREEMENT

Exhibit B - Service Level Agreement

Priority Codes and Response Times

Level 1 - Critical: A Critical priority is given to an issue that renders the Software or Services inoperable or substantially degrades the performance thereof or adversely affects Customer's business operations or causes financial liability due to operational or informational deficiency. In the event that Metric Insights Resources are required to travel to Customer's location to fix a Critical issue, Metric Insights shall send such Resources at no additional out-of-pocket expense to Customer provided such problem is a result of the software, services, or actions of Metric Insights.

Level 2 - High: A High priority is given to an issue that is not adversely affecting Customer's business operations or causing financial liability but is repeatedly affecting Customer's usage of the Software or Services or data integrity or degrading performance of the Software or Services.

Level 3 - Medium: A Medium priority is given to an issue which results in substandard or erratic performance.

Level 4 - Low: A Low priority is given to an issue which does not impact Customer's operation or use of the Software or Services.

Metric Insights shall respond to requests from Customer for Software or Services support within the response time frames specified below:

- (a) **Level 1 - Critical:** Metric Insights will respond to a Critical priority within (1) hour after Customer has reported the problem to Metric Insights. Metric Insights will diligently work to resolve the problem and will follow up with Customer every hour until resolution of the problem, which shall be resolved within one (1) business day or as otherwise agreed to by the Parties. Metric Insights will, at Customer's request, provide qualified resources on-site at Customer's location to resolve the problem. Customer shall not be responsible for any out-of-pocket expenses incurred by Metric Insights to resolve such problem.
- (b) **Level 2 - High:** Metric Insights will respond to a High priority within (4) hours after Customer has reported the problem to Metric Insights. Metric Insights will work diligently to resolve the problem and will follow up with Customer every four hours or until the next scheduled contact time. High priority problems shall be resolved within (3) business days or as otherwise agreed to by the Parties.
- (c) **Level 3 - Medium:** Metric Insights will respond to a Medium priority issue within (12) hours after Customer has reported the problem to Metric Insights. Metric Insights will work diligently to resolve the problem and will follow up with Customer every (24) hours or until the next scheduled contact time. Medium priority problems shall be resolved within (5) business days or as otherwise agreed to by the Parties.
- (d) **Level 4 - Low:** Metric Insights will respond to a Low priority issue within the same business day after Customer has reported the problem to Metric Insights and will work diligently to resolve the problem. Metric Insights will follow up with Customer on the next scheduled contact time, unless otherwise agreed to by the Parties, Metric Insights will use commercially reasonable efforts to correct any low priority issues in the next Update of the Software.

The priority level of the problems reported by customer shall be determined by customer.

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Exhibit C – Service Availability

Service Availability Service Level. For the Hosted Service, Metric Insights will provide **99%** Service Availability over monthly periods. Service Availability will be calculated on a monthly basis as:

(Actual Availability divided by Scheduled Availability) multiplied by 100%

Definitions:

“Actual Availability” means Total Scheduled Availability minus Downtime, in minutes.

“Downtime” means the time (in minutes) that users of the Service are not able to: (a) access the Service; (b) perform ordinary functions to use or receive the Service in accordance with Documentation or (c) use the Service for normal business operations due to failure, defect, malfunction or delay, except, in each case, where the foregoing is due to Service Maintenance or a Force Majeure Event.

“Force Majeure Event” means an event beyond the reasonable control of a party, including acts of God, fire, flood, hurricane or other natural disaster, national emergency, insurrection, riot, act of terrorism, war laws, orders, regulations, directions or actions of governmental authority having jurisdiction over the subject matter of this Agreement, that, in each case, could not have been avoided, prevented or corrected through the exercise of reasonable diligence (including business continuity plans or measures or the implementation thereof).

“Service Maintenance” means time (in minutes) that the Service is not accessible to Authorised Users due to scheduled and unscheduled maintenance of the Service, which includes upgrades.

“Scheduled Availability” means 7 days per week, 24 hours per day, excluding Service Maintenance, in minutes.