

# Forethought Software as a Service Agreement

Last Updated: March 6, 2023

This Software as a Service Agreement (“**SaaS Agreement**”) constitutes a contract between Forethought Technologies, Inc. (“**Forethought**”) and the party named as Customer in the Order Form. The SaaS Agreement governs the provision by Forethought to the Customer of access to the software-as-a-service product(s) specified on the applicable Order Form, and any additional services relating to the implementation or other special support of Customer’s use of the Services as set forth in a Statement of Work (the “**Services**”).

This SaaS Agreement includes and incorporates the order form with which you purchased the Services and any subsequent order forms submitted in written or electronic form (“**Order Form**”), as well as any other attachments or additional terms referenced herein or amendments that are mutually agreed in writing. The effective date (“**Effective Date**”) of this SaaS Agreement is the date that is earlier of (a) the effective date of the first Order Form referencing this SaaS Agreement, and (b) Customer’s initial access to the Services through any online registration, provisioning or order process.

By accessing or using the Services, you agree to be bound by this SaaS Agreement. If you are entering into this SaaS Agreement on behalf of a company, organization, or other entity, you represent that you have such authority to bind such entity and are agreeing to this SaaS Agreement on behalf of such entity. If you do not have such authority to enter into this SaaS Agreement or do not agree with this SaaS Agreement, you may not use the Services.

To the extent that any conflict or inconsistency arises between the provisions in this SaaS Agreement, any Order Form, Statement of Work or the Documentation, the terms of this SaaS Agreement shall prevail. This SaaS Agreement constitutes the entire agreement between the parties with respect to the subject matter herein, and supersedes all prior discussions and agreements, whether written or oral, with respect to such subject matter.

Notwithstanding anything to the contrary in this SaaS Agreement, from time to time, Forethought may modify this SaaS Agreement with ten (10) days’ notice to Customer. Unless otherwise specified by Forethought, changes become effective for Customer upon posting of the modified SaaS Agreement. If Customer does not agree to such changes, Customer must notify Forethought of such disagreement within the ten (10) day notice period, and Forethought (at its option and as Customer’s exclusive remedy) may either: (i) permit Customer to continue under the prior version of this SaaS Agreement until the next renewal of the current Order Form, after which the modified SaaS Agreement will apply, or (ii) terminate this SaaS Agreement and provide to Customer a refund of any Fees that Customer already paid with respect to the terminated portion of the applicable Order Form. Forethought will use reasonable efforts to notify Customer of the changes through Customer’s account, email, or other means. Customer may be required to click to accept the modified SaaS Agreement before using the Services in a

renewal Term, and in any event continued use of the Services during the renewal Subscription Term will constitute Customer's acceptance of the version of the SaaS Agreement in effect at the time the renewal Subscription Term begins.

1. **DEFINITIONS.** For the purposes of this SaaS Agreement the definitions in this section shall apply.

1.1 **Triage** is a model-based software-as-a-service product offered by Forethought. Each model will have different capabilities and will tag, route, etc. tickets in a manner that will enable the Customer chosen models to perform effectively.

1.2 **Assist** is a user-based (agent-based), machine learning software-as-a-service product offered by Forethought that assists Users by finding and providing relevant content from internal data/knowledge sources.

1.3 **Solve** is a machine-learning software-as-a-service product offered by Forethought which will read End User inquiries through webform, or email, and use macros, templates, and/or knowledge articles to determine if an automatic response to an inquiry is available and to provide the automatic response to the End User.

1.4 **"Subscription Term"** means the period in which each subscription remains in effect. The initial term shall be for the Subscription Term specified in the Order Form, or in the event of multiple Order Forms, until the Subscription Term of all Order Forms has expired.

1.5 **"Confidential Information"** means all non-public information of a Party disclosed to the other Party, regardless of the form of disclosure, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including without limitation: trade secrets; technology and technical information (intellectual property, inventions, know-how, ideas, and methods); business, financial, and customer information (including Customer Content and Customer personal data); pricing, forecasts, strategies, and product development plans. However, Confidential Information shall not include any information that (i) is or becomes generally available to the public without any action by, or involvement of, the receiving party; or (ii) was in its possession or known by it prior to receipt from the disclosing party; or (iii) was rightfully disclosed to it without restriction by a third party; or (iv) was independently developed without use of any Confidential Information of the disclosing party.

1.6 **"Customer Content"** means all data, information, files or other materials and content that Customer submits to the Services or otherwise makes available to Forethought for the purpose of utilizing the Services, as well as the output of the Services that incorporates such content or data or is otherwise specific to Customer.

1.7 **"End User"** means the individual communicating through Customer Relationship Management software ("**CRM**") with a Customer's agent for the purposes of seeking customer support.

1.8 **“Ticket or Tickets”** as used herein, is the means through which an End User communicates with the Customer’s agent within the Customer’s CRM for the purpose of Customer Support. Tickets can originate from a number of channels, including but not limited to; email, Help Center, and/or chat. A Ticket is counted by its unique Ticket ID, and one Ticket can have multiple rounds of communication under one thread.

1.9 **“User”** means a member of the Customer’s support team who has authorized access to the Services.

1.10 **“Interactions”** shall mean a communication from an End User that has been processed through Solve Web Widget.

## 2. FORETHOUGHT OBLIGATIONS.

2.1 Forethought and Customer have executed one or more Order Forms pursuant to which Customer purchased a subscription for the term set forth therein. Forethought will provide Customer the Services for the fees listed on the applicable Order Form (**“Fees”**). Subject to and conditioned on Customer’s payment of Fees and full compliance with this SaaS Agreement, Forethought grants Customer a non-exclusive, non-sublicensable, non-transferable license during the Subscription Term to access and use the Services, in accordance with the documentation Forethought may update from time to time in connection with upgrades (**“Documentation”**). The Services are provided for Customer’s commercial use only, not for private use.

2.2 Forethought reserves the right to suspend Customer’s access to the Services immediately (i) in the event that Customer breaches Section 3 or Section 7 of this SaaS Agreement, or breaches any other provision of this SaaS Agreement and fails to correct that breach within the applicable cure period; or (ii) as it deems reasonably necessary to respond to any actual or potential security or availability concern that may affect Customer. In addition, Forethought may, without liability, suspend the Services to some or all of the Users (a) as necessary to prevent an attempted security breach or cyber-attack, (b) in order to protect Forethought’s or its customers systems; or (c) if required by a governmental entity or law enforcement agency. Customer shall receive notification of such suspension, to the extent and in the manner that Forethought provides a notification to its other affected customers.

2.4 Forethought may use Customer Content and data related to the use of the Services by Customer that (i) does not specifically identify Customer, Users or third parties, and (ii) is combined with the data of other customers, users or additional data sources (**“Aggregated Data”**) for the following purpose: (a) maintaining, analysing and improving the Services, including the algorithms underlying the Services, (b) complying with legal or contractual requirements, (c) analysing and mitigating security risks such as vulnerabilities or networking issues, and (d) developing, distributing and publishing measures and reports of the Services. Aggregated Data is not Confidential Information and will not be subject to any confidentiality restrictions or obligations under Section 6 (Data Protection).

## 3. CUSTOMER RESPONSIBILITIES.

3.1 Customer may only use the Services in accordance with the Documentation, applicable laws and government regulations and as explicitly set forth in this SaaS Agreement. Customer will cooperate with Forethought in connection with the performance of this SaaS Agreement as may be necessary, which may include making available such personnel and information as may be reasonably required to provide the Services or support. Customer is solely responsible for determining whether the Services are sufficient for its purposes, including, but not limited to, whether the Services satisfy Customer's legal and/or regulatory requirements.

3.2 Customer shall be solely responsible for the accuracy, integrity and legality of any content or data, including Customer Content and personal data as this term is defined under applicable data protection laws. Customer shall not provide any infringing, offensive, fraudulent, or illegal Customer Content in connection with the Services, and Customer represents and warrants that any content it provides will not violate the intellectual property or data protection rights, among other rights, of any User or third party. Forethought reserves the right, in its sole discretion, to delete or disable any Customer Content submitted by Customer that may be infringing, offensive, fraudulent, or illegal. As between the parties, Customer exclusively owns all right, title and interest in and to all Customer Content and Forethought claims no right, title or interest in the Customer Content.

3.3. Subject to the terms of this SaaS Agreement, Customer hereby grants Forethought a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, create derivative works of, and perform and display in Customer's account the Customer Content solely to the extent necessary to provide the Services to Customer. Further, Forethought may periodically access Customer's account and Customer Content to improve, support, and operate the Services (e.g., for quality assurance, benchmarking, technical support, or billing purposes).

3.4 Access to the Services may be made available on a per seat model, with each User having unique log-in credentials. Customer will ensure that Users maintain strict confidentiality of their log-in credentials. Customer shall use reasonable measures to prevent unauthorized access to or use of the Services and notify Forethought promptly upon Customer becoming aware of any such unauthorized access or use. Other than Forethought's express obligations under Section 6 (Data Protection), Forethought assumes no responsibility or liability for Customer Content and the consequences of collecting, submitting and using it within the Services.

3.5 Customer will not, and will not permit any Users or any third party to: reverse engineer, decompile, disassemble, decode, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Services, software, hardware tokens, or any data related to the Services (except to the extent such prohibition is contrary to applicable law that cannot be excluded by the agreement of the parties); modify, translate, or create derivative works based on the Services; share, rent, lease, loan, resell, sublicense, distribute, use, or otherwise transfer the Services for time-sharing or service bureau purposes or for any purpose other than its own use, except as expressly provided in an applicable Order Form; build a competitive product or service; attempt to gain unauthorized access to restricted aspects of the Service; publicly disseminate Services performance information or analysis, including without limitation benchmarks, except with Forethought's prior written consent; or use the Services other than in accordance with this SaaS Agreement and in compliance with applicable law.

3.6 Customer will be fully responsible for all use under Customer's account and for Users' compliance with this SaaS Agreement. Any breach of this SaaS Agreement by a User shall be deemed to be a breach by Customer. Forethought's relationship is with Customer and not individual Users or third parties using the Services through Customer. Customer will address all claims raised by its Users and third parties using the Services through Customer directly with Forethought. Customer must ensure that all third parties that utilize the Services through Customer agree (i) to use the Services in full compliance with this SaaS Agreement; and (ii) to the extent permitted by applicable law, to waive any and all claims directly against Forethought related to the Services.

#### **4. BILLING & PAYMENTS.**

4.1 Customer will pay Forethought all fees specified in Order Forms plus all applicable sales, use, and other purchase-related taxes (or provide Forethought with a valid certificate of exemption from the requirement of paying sales, use, or other purchase-related taxes) in accordance with the payment schedule and payment terms set forth on the applicable Order Forms. Except as otherwise indicated in the applicable Order Form, all fees and expenses shall be in U.S. dollars.

4.2 Except as expressly set forth herein, fees paid to Forethought are non-cancellable and non-refundable. Customer will be sent an invoice by email to the Billing Contact listed in the Order Form. The invoices will be issued annually in advance within thirty (30) days from the date Customer received Forethought's invoice, unless stated otherwise in the Order Form. Notwithstanding the foregoing, discounts listed on the applicable Order Form shall be applied to the initial Subscription Term only.

4.3 **Exceeding Volume.** In the event the Customer exceeds the allotted volume of Tickets and/or Interactions as stated in the Product Details of the applicable Order Form during the Term, a per ticket in excess fee ("Ticket Fee") may be charged. The Ticket Fee shall be the prorated per Ticket or Interaction cost of the annual Sale Price for the subject Product as listed in the Order Form. Ticket Fees shall be invoiced 30 days following the then-current Term, due Net 30.

4.4 Any payments more than thirty (30) days late or other unpaid amounts are subject to a finance charge of 1.5% for each thirty (30) days period on any outstanding balance, or the maximum amount as permitted by law, whichever is lower. In addition, Customer will reimburse Forethought for all costs of collection (including attorneys' fees).

4.5 Customer is solely responsible for payment of any and all taxes resulting from the use of the Services. If any such taxes are required to be withheld, Customer shall pay an amount to Forethought such that the net amount payable to Forethought after withholding of taxes shall equal the amount that would have been otherwise payable under this SaaS Agreement.

4.6 Customer agrees that it shall notify Forethought within thirty (30) days of receipt of an invoice from Forethought if it intends to dispute the amounts owed under such invoice, and that after thirty (30) days all undisputed invoices will be deemed to have been accepted.

## 5. INTELLECTUAL PROPERTY RIGHTS & RESTRICTIONS.

5.1 Forethought shall retain all intellectual property rights in the Services, including any and all derivatives, changes and improvements thereto, as well as any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Services. Customer agrees that it obtains no intellectual property rights or licenses by this SaaS Agreement except those expressly granted herein. Customer will not copy, distribute, reproduce, or use any of the foregoing except as expressly permitted under this SaaS Agreement. As between the parties, Forethought owns all Aggregated Data. This SaaS Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services, or any intellectual property rights.

5.2 Customer Content shall remain the sole property of Customer.

5.3 Customer hereby grants Forethought a worldwide, non-exclusive, royalty-free, license to use, copy, reproduce, distribute, prepare derivative works of, display and perform any and all Customer Content, to the extent required to perform the Services and in accordance with Section 2.4 above.

## 6. DATA PROTECTION.

6.1 The Parties acknowledge and agree that Customer Content may contain “personal data”, “personal information” or “personally identifiable information”, as this term is defined under applicable data protection law (“**Customer Personal Data**”), the extent of which is determined and controlled by Customer in its sole discretion.

6.2 As part of the provision of the Services, upon receiving the Customer Content from Customer, Forethought makes its best efforts to automatically redact and delete all or part of the Customer Personal Data. Redaction reduces or eliminates the Personal Data processed by Forethought. In particular, Forethought redacts the categories of Personal Data listed at Supported Entity Types – Private AI Docs (private-ai.com). Customer as the controller is responsible for confirming whether the redaction process facilitated by Forethought effectively reduces or eliminates the compliance risk based on the Customer Personal Data shared with Forethought. Forethought provides no warranty as to the accuracy and effectiveness of the redaction process.

6.3 If and to the extent that Forethought processes Customer Personal Data protected by data protection laws applicable to the European Economic Area, Switzerland, and/or the UK (including the General Data Protection Regulation (GDPR) or any successor legislation), then the terms of the Data Processing Addendum (DPA) <https://forethought.ai/dpa/> shall be incorporated into and form an integral part of this SaaS Agreement. The DPA sets out the parties obligations with respect to data protection and security when processing such Customer Personal Data on your behalf in connection with the Services.

6.4 Customer (including its Users) may enable integrations between the Services and certain third-party services (the “**Third-Party Services**” and each an “**Integration**”). By enabling an

Integration between the Services and Third-Party Services, Customer is expressly instructing Forethought to share the Customer Content and Customer Personal Data necessary to facilitate the Integration.

6.5 Customer shall be responsible for determining whether the Services are appropriate for the storage and processing of Customer Content (including Customer Personal Data) under applicable data protection law. Customer represents and warrants to Forethought that the Customer Personal Data provided to or otherwise collected by Forethought in connection with the Services, the means by which Customer acquired such Customer Personal Data, and the Customer's instructions for the processing of Customer Personal Data in connection with the Services shall comply with all applicable data protection laws.

## 7. CONFIDENTIALITY.

7.1 Each party (each a "**Receiving Party**") agrees that it shall use and reproduce the Confidential Information of the other party (the "**Disclosing Party**") only for purposes of exercising its rights and performing its obligations under this SaaS Agreement and only to the extent necessary for such purposes and shall restrict disclosure of such Confidential Information to the Receiving Party's employees, consultants, or advisors who have a need to know and who are bound by obligations of confidentiality and non-use and shall not disclose such Confidential Information to any third party without the prior written approval of the Disclosing Party. Each party understands that the Disclosing Party has or may disclose Confidential Information in connection with this SaaS Agreement, but that the Receiving Party shall receive no rights in, or licenses to, such Confidential Information. The foregoing obligations shall be satisfied by the Receiving Party through the exercise of at least the same degree of care used to restrict disclosure and use of its own information of like importance, but not less than reasonable care. Notwithstanding the foregoing, it shall not be a breach of this SaaS Agreement for the Receiving Party to disclose Confidential Information if compelled to do so under law, in a judicial or other governmental investigation or proceeding, provided that, to the extent permitted by law, the Receiving Party has given the Disclosing Party prior notice and reasonable assistance to permit the Disclosing Party a reasonable opportunity to object to and/or limit the judicial or governmental requirement to disclosure.

7.2 For the avoidance of doubt, Customer acknowledges that Forethought utilizes the services of, and Customer may request additional services from, certain third party service providers in connection with Forethought's provision of the Services and such third parties will have access to Customer's Confidential Information, including Customer Content and Customer Personal Data in accordance with this SaaS Agreement.

7.3 Notwithstanding anything to the contrary herein, neither party shall be liable for using or disclosing information that such party can prove: (i) was publicly known at the time it was disclosed or has become publicly known through no fault of the Receiving Party; (ii) was known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of the Confidential Information, as demonstrated by files created at the time of such independent

development; (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this SaaS Agreement by the Receiving Party and otherwise not in violation of the Disclosing Party's rights; or (vi) is disclosed generally to third parties by the Disclosing Party without restrictions similar to those contained in this SaaS Agreement.

7.4 Each party agrees that, upon the written request of the Disclosing Party, the Receiving Party will promptly return to the Disclosing Party, or provide written certification of the destruction of, all Confidential Information of the Disclosing Party, including all Confidential Information contained in internal documents, without retaining any copy, extract, or summary of any part thereof. Notwithstanding the foregoing, a Receiving Party may retain copies of Confidential Information solely to the extent necessary for purposes of such party's ordinary course of business internal document retention and backup requirements and procedures, provided that such Confidential Information shall remain subject to the terms and conditions of this SaaS Agreement for so long as it is retained.

7.5 Customer acknowledges that Forethought does not wish to receive any Confidential Information from Customer that is not necessary for Forethought to perform its obligations under this SaaS Agreement, and, unless the parties specifically agree otherwise, Forethought may reasonably presume that any unrelated information received from Customer is not Confidential Information, unless such information is marked as "Confidential."

## **8. WARRANTIES; DISCLAIMER.**

8.1 Each party represents and warrants that (a) this SaaS Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with the terms of this SaaS Agreement, and (b) its execution and delivery of this SaaS Agreement and its performance hereunder will not violate any applicable law, rule or regulation.

8.2 EXCEPT AS EXPRESSLY STATED HEREIN, FORETHOUGHT PROVIDES THE USE OF THE SERVICES TO CUSTOMER, ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT WHETHER ALLEGED TO ARISE BY LAW, BY USAGE IN THE TRADE, BY COURSE OF DEALING OR COURSE OF PERFORMANCE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, FORETHOUGHT DOES NOT WARRANT THAT (I) THE SERVICES WILL BE DELIVERED OR PERFORMED WITHOUT MISTAKE OR INTERRUPTION OR (II) THAT CUSTOMER WILL ACHIEVE ANY PARTICULAR BUSINESS RESULTS BY USE OF THE SERVICES.

## **9. INDEMNIFICATION**

9.1 Forethought shall defend, indemnify and hold harmless Customer and its officers, directors, consultants, employees, successors and permitted assigns, from and against all third party claims, actions and demands ("**Claim**") (and all resulting, to the extent payable to unaffiliated third parties: damages awarded, liabilities, fines, costs and expenses (including reasonable attorneys'



fee) arising out of an allegation that the Services (created and provided by Forethought) infringes any intellectual property right of a third party. For clarity, Forethought does not provide any indemnification with respect to portions or components of the Services (i) not created by Forethought; (ii) resulting in whole or in part from Customer specifications; (iii) that are modified after delivery by Forethought; (iv) combined with other products, processes, or materials where the alleged infringement relates to such combination; (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (vi) where Customer's use of Services is not strictly in accordance with this SaaS Agreement and all related Documentation.

9.2 Forethought's indemnity obligations are contingent on Customer providing Forethought with: (a) prompt written notice of such Claim; (b) sole control over the defence and settlement of such Claim; and (c) information as may be reasonably requested by the Forethought with respect thereto. The indemnifying Party shall not settle any such Claim in a manner that does not unconditionally release the indemnified Party without the indemnified Party's written consent. A settlement may require termination of this SaaS Agreement but, in such event, a refund will be provided in the same manner as set out below. In the event of any Claim, or where Forethought believes a Claim may arise, Forethought will (i) procure for Customer the right to continue using the Services, (ii) modify the Services such that they are no longer infringing, or (iii) if Forethought determines (in its discretion) that (i) and (ii) are not commercially impracticable, it terminate this SaaS Agreement and, in such case, Forethought will promptly refund to Customer all fees paid in advance for the remainder of the Term (as defined below).

### **9.3 THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT, MISAPPROPRIATION, AND/OR CLAIMS ALLEGING INFRINGEMENT OR MISAPPROPRIATION.**

9.4 Customer will indemnify Forethought from all damages, costs, settlements, attorneys' fees, and expenses related to any claim related to Customer's breach of Section 3 "Customer Responsibilities," Section 5 "Intellectual Property Rights & Restrictions," Section 6 "Data Protection," or Section 7 "Confidentiality." Without limitation, Customer shall defend and indemnify Forethought against any claim made or brought against Forethought by a User or a third party arising from Customer's provision or collection of Customer Content, including Customer Personal Data, in violation of applicable law or third party rights.

## **10.LIMITATION OF LIABILITY.**

10.1 EXCEPT FOR A BREACH OF SECTION 7, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, LOSS OF USE, LOSS OF DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, OR OTHERWISE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 EACH PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS SAAS AGREEMENT OR THE SERVICES SHALL NOT EXCEED THE TOTAL AMOUNT OF ACTUAL FEES PAID BY CUSTOMER TO FORETHOUGHT DURING THE TWELVE (12) MONTHS PRECEDING THE DATE THE LIABILITY FIRST ARISES (BUT, IF THE SERVICE IS PROVIDED ON AN EVALUATION, TRIAL, OR NO-FEE BASIS, THE LIABILITY CAP WILL BE US\$1,000). WITH RESPECT TO ANY BREACH OF INFORMATION SECURITY OBLIGATIONS (OR INFORMATION SECURITY ISSUES), AND WITH RESPECT TO INDEMNITY OBLIGATIONS, THE CAP IN THIS SECTION 10.2 IS HEREBY INCREASED BY THREE TIMES (3x).

## **11.TERMINATION.**

11.1 Each Order Form (except Order Forms that are on an evaluation, trial, or no-fee basis) and this SaaS Agreement shall automatically renew after the initial Subscription Term for successive 12-month terms unless a written notice of non-renewal is given by either party at least thirty (30) days prior to the end of the then-current Subscription Term.

11.2 Either party may terminate this SaaS Agreement (i) for the other party's material breach, if the breaching party does not cure the breach within thirty (30) days after receipt of written notice thereof, effective upon the expiration of such thirty (30) day period (provided that the written notice provides sufficient detail regarding the breach and expressly states the intent to terminate if not cured), or (ii) upon notice if the other party is judged bankrupt or insolvent, makes a general assignment for the benefit of its creditors, a trustee or receiver is appointed for such party or any petition by or on behalf of such party is filed under any bankruptcy or similar laws. If Customer fails to pay any Fees or other amounts in the applicable Order Form in accordance with the payment schedule, Forethought may terminate this SaaS Agreement prior to the end of the Term by giving five (5) business days prior written notice to Customer.

11.3 If this SaaS Agreement is terminated by Customer pursuant to Section 11.2, Forethought will promptly refund to Customer all fees paid in advance for the remainder of the term. If this SaaS Agreement is terminated for any other reason (and except as set forth in Section 9.2), all fees that but for termination would otherwise have been owed for the full term will be non-cancellable and non-refundable (and, if not paid, will become due). Upon termination of this SaaS Agreement, Customer shall cease use of the Services immediately. The following provisions shall survive termination of this SaaS Agreement: (i) the obligation of Customer to pay outstanding Fees; (ii) Section 5 (Intellectual Property Rights & Restrictions), (iii) Section 7 (Confidentiality); (iv) Section 8.2 (Disclaimer of Warranties); (v) Section 9 (Indemnification); (vi) Section 10 (Limitation of Liability); and (vii) Section 12 (Miscellaneous).

## **12.MISCELLANEOUS.**

12.1 This SaaS Agreement shall be amended by a fully executed written agreement signed by both parties only.

12.2 This SaaS Agreement is governed by the laws of the State of California, without regards to its conflict of laws principles. Except for claims for injunctive or equitable relief or claims

regarding intellectual property rights (which may be brought in any competent court), any dispute arising under this SaaS Agreement shall be finally settled in accordance with the Rules of the Judicial Arbitration and Mediation Service (“JAMS”) in accordance with such Rules. To the extent the JAMS streamlined rules are available – they shall apply. The arbitration shall take place in California, in the English language and the arbitral decision may be enforced in any court. To the extent a claim cannot legal be arbitrated (as determined by an arbitrator), the jurisdiction and venue for actions related to the subject matter hereof shall be the state and United States federal courts located in California and both parties hereby submit to the personal jurisdiction of such courts. The application of the United Nations Convention on Contracts for the International Sale of goods is expressly excluded.

12.3 Neither party may transfer or assign its rights or obligations under this SaaS Agreement to any third Party without the prior written approval of the other Party, except for an assignment to an affiliated company or to a successor in connection with a merger, acquisition, reorganization or sale of substantially all of its assets or voting securities. Any purported assignment contrary to this section shall be void. Subject to the foregoing, this SaaS Agreement will be binding upon, and inure to the benefit of the Parties and their respective successors and assigns.

12.4 All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when sent by email to the addresses provided below:

If to Forethought: [contracts@forethought.ai](mailto:contracts@forethought.ai)

If to Customer: Contact listed in the most recent Order Form

12.5 The parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other party. Neither party shall hold itself out as an agent of the other party. This SaaS Agreement will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind.

12.6 If any provision of this SaaS Agreement is held invalid or unenforceable, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the SaaS Agreement will remain in full force and effect.

12.7 Except for payment obligations under this SaaS Agreement, neither Party hereto shall be liable for any loss, damage, or penalty resulting from such Party’s failure to perform its obligations hereunder when such failure is due to events beyond its reasonable control, such as, without limitation, flood, earthquake, fire, acts of God, military insurrection, civil riot, or labor strikes.

12.8 Customer agrees that Forethought may use of Customer’s name and logo on Forethought’s website and in Forethought’s promotional materials as part of a general list of customers. Any other marketing or promotion use is subject to Customer’s written approval (email is sufficient).