Imply terms and conditions

Important- READ CAREFULLY BEFORE INSTALLING OR USING THE IMPLY PRODUCTS.

Effective Date: August 1, 2020

These terms and conditions (hereafter the "Agreement") is a binding, legal agreement between you (either an individual or an entity, if you are acting within the scope of your employment) ("you" "your" or "Customer") and Imply Data, Inc. a Delaware corporation with offices at 1633 Old Bayshore Hwy, Suite 232, Burlingame, CA, 94010 and its supplier and licensors ("Imply"), regarding the Imply Software which you have requested to access, download, and install which will include the software identified on your Order Form and any applicable Services related thereto.

BY CLICKING ON THE CHECKBOX THAT DEMONSTRATES ACCEPTANCE OF THIS AGREEMENT, OR BY DOWNLOADING OR USING THE SOFTWARE, CUSTOMER EXPRESSLY ACCEPTS AND AGREES TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER IS AN INDIVIDUAL AGREEING TO THE TERMS OF THIS AGREEMENT ON BEHALF OF AN ENTITY, SUCH AS YOUR EMPLOYER, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ENTITY AND "CUSTOMER" SHALL REFER HEREIN TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SOFTWARE OR RECEIVE SERVICES.

TERMS AND CONDITIONS

This Agreement sets forth the specific terms under which Imply may provide Customer with products and services as set forth on the Order Form.

1. ORDER PROCESS.

1.1 Order Form. Each Order Form shall incorporate by reference the terms of this Agreement as though such provisions were set forth therein. If the terms of the Order Form conflict with the terms of this Agreement, in which event, the terms of the Order Form shall prevail but only to the extent the term is expressly superseded in the Order Form.

1.2 Customer Affiliates. Customer Affiliates may License Imply's products and services by executing Order Forms. By entering into an Order Form with Imply, a Customer Affiliate agrees to be bound by the terms and conditions of this Agreement as if it were an original Party hereto, and the terms of this Agreement that apply to Customer shall apply to the Customer Affiliate.

1.3 Partner Order. Customer may procure Software and Services directly from a reseller or other Imply partner pursuant to a separate agreement that includes the partner order form and other commercial terms (a **"Partner Transaction"**). Imply will be under no obligation to provide Software and Services to Customer if it has not received the partner's order form for Customer. Partner is not authorized to make any changes to this Agreement or otherwise authorized to make any warranties, representations, promises or commitments on behalf of Imply or in any way concerning the Software and Services. If Customer procured the Software and Services through a Partner Transaction, then Customer agrees that Imply may share certain data and other information with partner related to Customer's access and use of the Software and Services.

2. FEES AND PAYMENT TERMS.

2.1 Fees. Customer shall pay all fees specified on the applicable Order Form. Except as otherwise specified in the Order Form, (i) fees are based on licensed Software and Services and not actual usage, and (ii) payment obligations are non-cancelable and fees paid are non-refundable, except as provided in this Agreement.

2.2 Invoicing and Payment. Imply will invoice Customer in advance and otherwise in accordance with the Order Form. Customer will be deemed to have received an invoice on: (i) the first business day after sending by electronic mail or, (ii) the second business day after mailing. Customer is responsible for providing complete and accurate billing and contact information and notifying Imply of any changes to such information. All payments are nonrefundable except as provided in this Agreement and are made without the right of setoff or chargeback. Imply reserves the right to charge a service fee in the amount of one percent (1%) per month on late payments. If Customer fails to pay fees in accordance with this section, Imply may suspend fulfilling its obligations under this Agreement until such payment is received by Imply.

2.3 Taxes. Unless otherwise stated on the applicable Order Form, the fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Customer is solely responsible for paying all applicable Taxes associated with its purchases hereunder. If Imply has the legal obligation to pay or collect Taxes for which Customer is responsible under this subsection, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Imply with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Imply is solely responsible for taxes assessable against it based on its income, property and employees.

2.4 Reimbursable Expenses. Imply will be reimbursed for expenses incurred that are reasonable and that have been approved in advance by Customer. All approved business expenses and pass-through charges will be reimbursed at cost without mark-up.

3. CONFIDENTIALITY.

3.1 Scope and Definition. "Confidential Information" means all information of a Party **("Disclosing Party")** disclosed to the other Party **("Receiving Party")**, whether orally or in writing, that is designated in writing or identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. The Software, logins, passwords and other access codes and any and all information regarding Imply's business, products and services are the Confidential Information of Imply. Customer Data is the Confidential Information of Customer. The Confidential Information of each Party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, pricing and business processes disclosed by such Party.

3.2 Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party will: (i) not use the Disclosing Party's Confidential Information for any purpose outside of this Agreement; (ii) not disclose such Confidential Information to any person or entity, other than its Affiliates, employees, consultants, agents and professional advisers who have a "need to know" for the Receiving Party to exercise its rights or perform its obligations hereunder, provided that such employees, consultants, and agents are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this section; and (iii) use the same degree of care as it uses to protect the confidentiality its own Confidential Information of like kind, but in no event less than a reasonable degree of care.

3.3 Compelled Disclosure. If the Receiving Party is required by applicable law or court order to make any disclosure of such Confidential Information, it will first give written notice of such requirement to the Disclosing Party (to the extent permitted by applicable law), and, to the extent within its control, permit the Disclosing Party to intervene in any relevant proceeding to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Further, this section 3 will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt from Disclosing Party; (ii) is or has become public knowledge or publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by the personnel of the Receiving Party without access to or use of Confidential Information of the Disclosing Party.

3.4 Equitable Relief. The Receiving Party acknowledges that unauthorized disclosure of the Disclosing Party's Confidential Information may cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient remedy and, therefore, that upon any such unauthorized disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or in equity.

3.5 Data Privacy and Security. Imply may process technical and related information about Customer's use of the Software and Services which may include internet protocol address, hardware identification, operating system, application software, peripheral hardware, and non-

personally identifiable Software usage statistics to facilitate the provisioning of updates, support, invoicing or online services and may transfer such information to its Affiliates from time to time. To the extent Imply processes Personal Data, each Party shall comply with the Customer Data Processing Addendum located at **www.imply.io/legal** (or such successor URL as may be designated by Imply) **("DPA")**, which is incorporated herein by this reference. By each Party's acceptance and agreement to the terms and conditions of this Agreement, each Party is deemed to have signed the DPA, including the Model Clauses as "Data exporter" in the case of Customer, and as "Data importer" in the case of Imply.

3.6 Customer Usage Data. Customer agrees that Imply is free to disclose anonymized aggregate measures of Customer's Software and Service usage and performance, and to reuse all general knowledge, experience, know-how, works and technologies (including ideas, concepts, processes and techniques) acquired during provision of the Software and Services **("General Knowledge")**, including that it could have acquired performing the same or similar services for another customer. Customer further agrees that Imply shall have the right to create anonymized compilations and analyses of Customer's Software and Service use that is combined with data from numerous other customers **("Aggregate Data")**, and to create reports, evaluations, benchmarking tests, studies, analyses and other work product from such Aggregate Data **("Analyses")**. Imply shall have exclusive ownership rights to, and the exclusive right to use and distribute, such Aggregate Data and Analyses for any purpose, including, but not limited to advertising, marketing, and promotion of networking opportunities to other clients and prospective customers of its Software and Services; provided, however, that Imply shall not distribute Aggregate Data and Analyses in a manner that identifies Customer.

4. SOFTWARE LICENSE GRANT.

4.1 License Grant. Subject to the terms and conditions of this Agreement, Imply hereby grants Customer a non-exclusive, non-transferable, non-sublicensable right to install, access and use the Software and Documentation during the license term for Customer's internal business purposes. Imply will deliver the Software and Documentation to Customer by providing Customer with access to Imply's Site to download the Software and access to the Documentation, and through email, the access keys, on or before the delivery date as specified in the applicable Order Form or as otherwise agreed to by the Parties. If Customer is unable to complete delivery of the Software by downloading the Software from Imply's website and utilizing the access keys provided by Imply, Imply will provide installation assistance **("Installation Services")** for an installation fee, as separately specified on an Order Form. The Software shall be deemed to be accepted upon delivery.

4.2 License Type. Except for Software licensed on an Evaluation, Pre-Release, or Free Tier basis, the license type **("License Type")** shall be as set forth on the applicable Order Form. The License Types are as follows:

(i) "Software-as-a-Service" ("SaaS") means the license for the software as a service offering of the Software which is hosted on Imply's servers.

(ii) "Hybrid License" means the on-premise Software, which is hosted on Customer's cloud provider's servers or otherwise on Customer's servers or in Customer's hosted environment. Imply may have access to Customer's cloud environment or servers at Customer's election.

(iii) "On-Premise License" means the on-premise offering of the Software, under which Imply has no access to Customer Data, and which is hosted solely in Customer's environment.

4.3 Evaluation License. If Customer licenses the Software for evaluation purposes, Customer's use of the Software is only permitted in a non-production environment and expires thirty days from initial download or access. Notwithstanding any other provision in this Agreement, an Evaluation License of the Software is provided "as is" without indemnification, support or warranty of any kind, expressed or implied.

4.4 Free Tier (Self Service) License. Software licensed at the free tier or self-service level is subject to monthly/annual usage or consumption limits which may be further limited or changed at any time at Imply's sole discretion and is subject to the terms as set forth in the applicable Documentation. Notwithstanding any other provision in this Agreement, the Free Tier (Self Service) License is provided "as is" without indemnification or warranty of any kind, expressed or implied.

4.5 Pre-Release License. From time to time, Imply may make available certain products, features, services, or software that are not yet generally available as "pre-release." These pre-release offerings are not at the level of performance of a commercially available product offering and may not operate correctly and may be substantially modified prior to first commercial release, or, at Imply's option, may not be released commercially in the future. Notwithstanding any other provision in this Agreement, access and use of the pre-release software is solely for the Party's internal evaluation purposes and is provided "as is" without indemnification, support, or warranty of any kind, expressed or implied.

4.6 Restrictions on Use. Except as otherwise expressly provided in this Agreement, Customer shall not (and shall not permit any third party to): (i) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any external commercial use of, outsource, use on a timeshare or service bureau, or use in an application service provider or managed service provider environment, or otherwise generate income from the Software; (ii) copy the Software onto any public or distributed network, except for an internal and secure cloud computing environment; (iii) cause the decompiling, disassembly, or reverse engineering of any portion of the Software, or attempt to discover any source code or other operational mechanisms of the Software (except where such restriction is expressly prohibited by law without the possibility of waiver, and then only upon prior written notice to Imply; (iv) modify, adapt, translate or create derivative works based on all or any part of the Software; (v) modify any proprietary rights notices that appear in the Software, Documentation, or components thereof; (vi) publish the results of any benchmarking tests run on the Software; or (vii) use any Software in violation of any applicable laws and regulations (including any export laws, restrictions, national security controls and regulations) or outside of the license scope set forth in Section 4.1.

4.7 Documentation. Imply will make available on its Site on the date the Software is delivered at no additional charge an online copy of all generally available Documentation for the Software. The Documentation shall be sufficient to enable Customer's personnel to use and to understand the use and operation of the Software, and shall conform to generally accepted industry standards for the use, operation and internal operating logic of software. Customer may make a reasonable number of copies of the Documentation for Customer's internal use, provided Customer reproduces copyright notices and any other legends of ownership on each copy.

5. SERVICES.

5.1 Support Services. "Support" is defined as the responsibilities with respect to the Software as set forth in the applicable Order Form. **"Maintenance"** means the provision of error corrections and bug fixes for the Software, as well as updates made generally commercially available by Imply in its sole discretion. Imply will provide Support Services for the Software in accordance with its Support Service terms and as further described in the applicable Order Form(s).

5.2 CONSULTING SERVICES. Customer may order Consulting Services which shall be subject to the terms of the Consulting Services Schedule.

6. REPRESENTATIONS AND WARRANTY.

6.1 Mutual Representations. Each Party represents and warrants that it has the right to enter into this Agreement and any Order Form, doing so will not interfere with its contractual obligations to any third party, and the executed Agreement or Order Form shall constitute a valid binding obligation of such Party.

6.2 Warranty Disclaimer. Except for the limited warranties provided in this Agreement and any statutory warranty requirements which may not be limited or excluded, the Software, Documentation and Services, provided hereunder are provided "as is" and Imply makes no warranties, whether express, implied or statutory regarding or relating to the Software, Documentation and Services provided to customer under this Agreement. Imply does not represent or warrant that the Software, Documentation and Services will be delivered free of any interruptions, delays, omission or errors or in a secure manner. The Software, Documentation and Services may be subject to limitations, delay and other problems inherent in the use of the internet and electronic communications. Imply is not responsible for any delays, delivery failures, or loss of data or damages resulting therefrom. THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND ALL SUCH WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

7. CUSTOMER OBLIGATIONS. Customer will: (i) provide Imply with all information and assistance required to provide the Software and Services and enable Customer's use thereof; (ii) immediately notify Imply of any unauthorized access, use, copying, distribution, or other suspected security breach in connection with the Software; (iii) not send to Imply or otherwise

use any Customer Data in connection with this Agreement that is otherwise protected by any Intellectual Property Rights or proprietary right of any third party, or for which Customer does not own or has not procured sufficient license, right, consent and permission to copy, disclose, store, broadcast, transmit, or otherwise use in connection with the Software or Services; (iv) not upload or transmit any Customer Data that contains unencrypted or unmasked: (a) bank, credit card or other financial account identification or login credentials, (b) social security, tax , driver's license or other government issued identification numbers, or (c) health records of a particular individual; and (v) be responsible for all activity that occurs in Customer's or its Users' accounts (and any transactions completed under Customer's accounts will be deemed to have been lawfully completed by Customer). Customer further agrees not to upload or otherwise make available to Imply any "protected health information" as defined by HIPAA unless Customer has entered into a Business Associate Agreement ("BAA") with Imply. Unless a BAA is in place, Imply will have no liability under this Agreement for "protected health information" as defined by HIPAA, notwithstanding anything to the contrary in this Agreement or in HIPAA or any similar federal or state laws, rules or regulations. If applicable, the mutually executed BAA shall be incorporated by reference into this Agreement and is subject to its terms.

8. INTELLECTUAL PROPERTY.

Imply and its suppliers own and shall retain all proprietary rights, including all copyright, patent, trade secret, trademark and all other Intellectual Property Rights, in and to the Software, Documentation, and the results of any Service deliverables, and any and all related and underlying technology and documentation; and any derivative works, modifications, or improvements to any of the foregoing, including any Feedback that may be incorporated. Notwithstanding anything to the contrary

9. INDEMNIFICATION; LIMITATION OF LIABILITY; AND DISPUTE RESOLUTION.

9.1 Imply Indemnification. Imply will indemnify, defend or settle any action brought against Customer to the extent that it is based upon a claim that the Software, as delivered under this Agreement and used within the scope of this Agreement, directly infringes any patent or copyright or misappropriates any trade secret, provided the misappropriation is not a result of Customer's actions, and will pay any damages that are finally awarded against Customer or agreed in settlement by Imply (including reasonable attorney fees) for such infringement or misappropriation, provided that Customer: (i) must promptly notify Imply in writing of the claim; (ii) reasonably cooperates with Imply and provides Imply, at Imply's expense, with all assistance, information, and authority reasonably required for the defense and settlement of the claim; and (iii) grants Imply the sole control of the defense and all related settlement negotiations.

9.2 Injunctive Relief. If an injunction is, or in Imply's opinion is likely to be, threatened, sought or obtained against Customer's use of the Software as a result of a third party infringement claim, Imply may, at its sole option and expense, (i) procure for Customer the right to continue using the affected Software, (ii) replace or modify the affected Software with functionally equivalent software so that it does not infringe, or, (iii) terminate the Software License and

refund any pre-paid but unused fees received from Customer for the then outstanding Software License term on a pro rata basis, if applicable.

9.3 Disclaimer of Liability. Imply shall have no liability or obligations for any third party claim, if (i) Customer is in breach of the Agreement; or (ii) if the claim of infringement based upon (a) modifications to the Software or Service results made by a party other than Imply, if a claim would not have occurred but for such modifications; (b) Customer's failure to use the then current, unaltered version of the applicable Software (including any maintenance release provided by Imply to avoid a claim); (c) any open source software or third party software; or (d) Customer's use of the Software or Service other than in accordance with this Agreement and the Documentation. The foregoing constitutes the entire liability of Imply, and Customer's sole and exclusive remedy, with respect to any third party claims of infringement of intellectual property rights of any kind.

9.4 Limitation of Liability. EXCEPT FOR A PARTY'S BREACH OF ITS DUTY OF CONFIDENTIALITY OBLIGATIONS (SET FORTH IN SECTION 3 EXCEPT FOR CLAIMS OR OBLIGATIONS RELATED TO CUSTOMER DATA WHICH SHALL BE ADDRESSED IN SECTION 9.4(III) BELOW); IMPLY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9.1; AND LIABILITY WHICH UNDER LAW CANNOT BE LIMITED, TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:

(I) NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE;

(II) SUBJECT TO SUBSECTION (III) BELOW, EACH PARTY'S AND ITS AFFILIATES' TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE), SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER TO IMPLY IN THE PRIOR 12 MONTHS UNDER THE APPLICABLE ORDER FORM(S) OR STATEMENT OF WORK TO WHICH SUCH LIABILITY RELATES **("GENERAL LIABILITY CAP")**;

(III) IN THE CASE OF "DATA PROTECTION CLAIMS," EACH PARTY'S AND ITS AFFILIATES' TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED TWO TIMES (2X) THE "GENERAL LIABILITY CAP";

(IV) IN NO EVENT SHALL EITHER PARTY (OR ITS RESPECTIVE AFFILIATES) BE LIABLE FOR THE SAME CLAIM OR EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE DATA PROTECTION CLAIMS CAP. IF A PARTY (AND/OR ITS AFFILIATES) HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE

MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE DATA PROTECTION CLAIMS CAP;

(V) THE PARTIES AGREE THAT THIS SECTION WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE; AND

(VI) THE APPLICABLE MONETARY CAPS SET FORTH IN THIS SECTION SHALL APPLY ACROSS THIS AGREEMENT AND ANY AND ALL SEPARATE AGREEMENT(S) ON AN AGGREGATE BASIS, WITHOUT REGARD TO WHETHER ANY INDIVIDUAL CUSTOMER AFFILIATES HAVE EXECUTED A SEPARATE AGREEMENT IN ACCORDANCE WITH SECTION 1.2 (CUSTOMER AFFILIATES).

9.5 Arbitration. Except as otherwise set forth in the last sentence at the bottom of this paragraph, any claim, controversy, or dispute between the Parties, arising out of or relating to this Agreement, shall be resolved by mandatory arbitration. Either Party may request arbitration. A single, neutral arbitrator agreeable to both parties from either the American Arbitration Association (AAA) or the Judicial Arbitration and Mediation Services, Inc. (JAMS) will conduct the arbitration proceedings. The neutral arbiter will conduct the arbitration in accordance with the United States Arbitration Act (Title 9, U.S. Code) and respective procedural rules of either AAA or JAMS. The arbitration will be conducted in either: New York City, New York or San Jose, California. The arbitrator shall make a reasoned decision based on the laws of the State of California and shall prepare a written opinion stating the reasoning behind his/her decision. The award rendered by the arbitrator will be binding on both Parties. The judgment upon the award rendered by the arbitrator may be entered in any court (state, federal, or foreign) having jurisdiction over the parties. The prevailing Party as determined by the arbitrator will be entitled to reimbursement for reasonable attorney's fees, expenses and costs of investigation, litigation, and arbitration from the other Party. This section shall not limit either Party's ability to seek an injunction or other equitable relief to preserve the status quo pending the completion of this arbitration process or prevent irreparable harm to a Party; or any other legal remedies to meet applicable statute of limitations requirements.

10. TERM AND TERMINATION.

10.1 Term. This Agreement shall commence as of the Effective Date designated above, and shall continue in effect thereafter unless terminated as provided in this section or by written agreement of the Parties. Each Order Form shall only become effective when duly signed on behalf of the Parties to be bound thereby, and shall continue in effect through the term set forth therein (taking into account any renewals of the Software License(s)), provided that the Order Form is not earlier terminated for cause.

10.2 Termination for Cause. Either Party shall have the right to terminate this Agreement and the license granted herein upon written notice in the event the other Party fails to perform or observe any material term or condition of this Agreement and such default has not been cured

within thirty (30) days after written notice of such default to the other Party. Imply may also terminate this Agreement immediately if the Customer: (i) terminates or suspends its business; (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute; (iii) becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or (iv) has wound up or liquidated, voluntarily or otherwise.

10.3 Effect of Termination. Upon termination of the Agreement: (i) all unfulfilled Order Forms will be terminated at Imply's discretion; (ii) any amounts owed to Imply under the Agreement prior to such termination will be immediately due and payable; (iii) Imply's obligation to provide Support Services will terminate; (iv) Customer shall cease all use of the Software and return or certify destruction of all copies of the Software from Customer's computers and, if requested, confirm such in writing. Upon request, each Party will destroy all Confidential Information obtained during the course of this Agreement. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 3 (Confidential Information), 8 (Ownership), 9.4 (Limitation of Liability), 10 (Termination), 11 (General), and 12 (Definitions).

11. GENERAL TERMS.

11.1 Assignment. Customer shall not assign or otherwise transfer this Agreement or any rights or obligations hereunder, in whole or in part, whether by operation of law or otherwise, to any third party without Imply's prior written consent. Any purported transfer, assignment or delegation without such prior written consent will be null and void and of no force or effect. Imply shall have the right to assign this Agreement to any successor to its business or assets, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Subject to this section, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and permitted assigns.

11.2 Audit. Imply may, upon written notice, during the Term set forth in the Order Form, and for one (1) year thereafter, request that Customer provide a signed written certificate certifying its compliance with the terms of this Agreement including Order Form(s) and/or permit Imply to audit Customer's systems to ensure its compliance with the terms of this Agreement or Order Form(s). Customer shall be liable for promptly remedying any underpayments revealed during the audit. If the audit reveals an underpayment discrepancy in excess of five percent (5%) of fees due, Customer will also be liable for the costs of the audit.

11.3 Force Majeure. A Party will be excused from a delay in performing, or a failure to perform, its obligations under this Agreement to the extent such delay or failure is caused by the occurrence of any major contingency beyond the reasonable control, and without any fault, of such Party, other than the failure to meet financial obligations. In such event, the performance times shall be extended for a period of time equivalent to the time lost because of the excusable delay. In order to avail itself of the relief provided in this Section for an excusable delay, the Party must act with due diligence to remedy the cause of, or to mitigate or overcome, such delay or failure.

11.4 Insurance. Imply shall take out and maintain the following minimum insurance at its expense covering locations where Imply is to perform Services on Customer's premises: (i) Workers' Compensation – as required by the statute of states where services are being performed; (ii) Comprehensive General Liability Insurance – $2,000,000 per occurrence/aggregate bodily injury and $2,000,000 per occurrence/aggregate property damage; and (iii) Automobile Liability Insurance – $1,000,000 per occurrence, bodily injury and property damage combined. Nothing in this Agreement shall be deemed to preclude Imply from selecting a new insurance carrier or carriers or obtaining new or amended policies at any time, as long as the above insurance coverage and limits are maintained. Imply will provide Customer with a certificate(s) of insurance evidencing such coverage within a reasonable time of the receipt of a written request for the same.

11.5 Relationship of the Parties. Nothing in this Agreement is to be construed as creating an agency, partnership, or joint venture relationship between the Parties hereto. Neither Party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other Party, whether express or implied, or to bind the other party in any respect whatsoever. Each Party may identify the other as a customer or supplier, as applicable, and place the other Party's logo on its website.

11.6 Notices. All notices permitted or required under this Agreement shall be in writing and shall be deemed to have been given when delivered in person (including by overnight courier), or three (3) business days after being mailed by first class, registered or certified mail, postage prepaid, to the address of the Party specified on the Order Form.

11.7 Compliance with Laws; Export Control; Government Regulations. Each Party shall comply with all laws applicable to the actions contemplated by this Agreement. The Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. Customer represents that (i) it is not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (ii) it will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and accompanying documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software and documentation by or for the U.S. Government shall be governed solely by the terms and conditions of this Agreement.

11.8 Entire Agreement; Modification; Waiver. This Agreement represents the entire agreement between the Parties, and supersedes all prior or contemporaneous agreements and understandings, written or oral, with respect to the matters covered by this Agreement, and is not intended to confer upon any third party any rights or remedies hereunder. No modification of or

amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing and signed by both Parties. The waiver of one breach or default or any delay in exercising any rights shall not constitute a waiver of any subsequent breach or default.

11.9 Governing Law. This Agreement will be governed by and construed under the laws of the State of California excluding choice of law principles, and in no event will this Agreement be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. In the event either Party brings any action at law or in equity against the other Party relating to this Agreement, the venue for such action shall be with a state court in Santa Clara County or a federal court in the Northern District of California.

11.10 Severability. If any provision of this Agreement is held invalid or unenforceable under applicable law by a court of competent jurisdiction, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect.

11.11 Construction. The titles and section headings used in this Agreement are for ease of reference only and shall not be used in the interpretation or construction of this Agreement. No rule of construction resolving any ambiguity in favor of the non-drafting Party shall be applied hereto. The word "including", when used herein, is illustrative rather than exclusive and means "including, without limitation."

12. DEFINITIONS.

Specific Words or Phrases. For purposes of this Agreement, each word or phrase listed below shall have the meaning designated. Other words or phrases used in this Agreement may be defined in the context in which they are used, and shall have the respective meaning there designated.

"Affiliate" means and includes any entity that directly or indirectly controls, is controlled by, or is under common control with a Party, where "control" means the ownership of, or the power to vote, at least fifty percent (50%) of the voting stock, shares or interests of such entity. An entity that otherwise qualifies under this definition will be included within the meaning of "Affiliate" even though it qualifies after the execution of this Agreement.

"Agreement" means the cover page, these terms and conditions, and Schedules, together with any terms attached hereto or incorporated herein by reference, and all Order Forms.

"Consulting Services" means the consulting, installation, implementation, training, technical service manager, and other services performed by or on behalf of Imply as described in the Order Form, including any statement of work mutually agreed and executed by the Parties, which shall be governed by the terms and conditions of this Agreement.

"Customer Data" means any data input into, processed by, and/or stored by the Software by or for Customer or Customer's Users.

"Documentation" means all technical manuals, end user documentation, and Training Materials (defined in Consulting Services Addendum) that are normally supplied by Imply via its website or otherwise to its commercial customers, as may be updated from time to time by Imply.

"Intellectual Property Rights" means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, moral rights know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

"Order Form" means a transactional document executed by Imply and Customer incorporating this Agreement which identifies the Software, License Term, License Type, and Services to be provided by Imply. A statement of work entered into by the Parties incorporating these terms and conditions shall also constitute an Order Form hereunder.

"Party" means either "Imply" or "Customer", individually as the context so requires; and "Parties" means "Imply" and "Customer", collectively.

"Services" means collectively the Support Services and Consulting Services as set forth in an the Order Form.

"Site" means the Imply website located at https://www.imply.io.

"Software" means the software, as set forth on the applicable Order Form provided by Imply through the Site or otherwise.

"Software License" means the subscription license to the Software.

"Support Services" are the support and maintenance services to be provided by Imply in connection with the Software License, Imply's terms are available at https://imply.io/subscription-support-maintenance-terms. Upon renewal, the terms will automatically update to Imply's then current Support Service terms available at the aforementioned website.

"User" means an employee, advisor, or agent of Customer that has been assigned a unique username- password combination to access and use the Software on Customer's behalf.

Imply Data, Inc

Consulting Services Schedule

This Consulting Services Schedule (**"Schedule"**) is made pursuant to and shall be governed by the Agreement and is effective as of the Agreement Effective Date. Capitalized terms used in this Schedule but not defined herein shall have the meanings given them in the Agreement.

1. CONSULTING SERVICE SCOPE. Imply will provide Customer the Consulting Services agreed by the Parties in applicable Order Form. Consistent with Imply's status as an independent contractor, Imply will retain the sole and exclusive right to supervise, control, and direct the

manner and means by which it conducts the Consulting Services. Each Order Form, will describe the Consulting Services to be performed by Imply, including, if and when applicable, the compensation and other consideration for such Consulting Services; a payment schedule or other custom payment terms; responsibilities on the part of the Customer, including Customer Requirements (as that term is defined below); any specifications; a schedule of deliverables; the term of the Order Form; a description of reimbursable expenses; and any other terms and conditions mutually agreed upon by the Parties in connection with Imply's performance of the Services. Consulting Services are only for Customer's internal use. Customer may not use the Consulting Services to supply any installation, consulting or training services to any third party. Subject to the Limited Services Warranty set forth below, all Consulting Services shall be accepted upon delivery.

2. CHANGE ORDERS. Customer may request that changes be made to the Consulting Services described in the Order Form (e.g., an addition, a deletion, or another modification to the applicable deliverables). If a change order recites changes that materially increase the scope of the Consulting Services or the time, effort, or expense required to perform the applicable Consulting Services, then within ten (10) business days after Imply's receipt of the requested changes, Imply will provide to Customer a summary of the modifications to be made to the applicable Order Form in order to effect the requested change. During the ten (10)-business-day period following Customer's receipt of Imply's estimate, the Parties will work together in good faith to prepare a revised Order Form. If, within such ten (10)-business-day period, the Parties are unable to agree on a revised Order Form, the then-existing Order Form will remain in full force and effect, and Imply will have no further obligation with respect to the applicable Change Order. If the Parties are able to agree on a revised Order Form, the mutually agreed- upon changes will be memorialized in an amendment to the Order Form, which will be attached to the then-existing Order Form and this Agreement. All notices pursuant to this section will be in writing (an email will suffice).

3. CUSTOMER REQUIREMENTS. Customer shall be responsible for providing Imply with the following: Customer's business requirements, technical data, computer facilities, network access, programs, software, files, lists, documentation, test data, sample output, feedback, or other information, equipment, materials, assistance, and resources in Customer's possession or control that it is necessary or advisable for Imply to have, or have access to, in order to effectively perform the Consulting Services set forth in the applicable Order Form (collectively **"Customer Requirements"**). Customer will make Customer Requirements readily available to Imply in a timely manner at no charge. Customer will be responsible for, and assumes the risk of any problems resulting from, the content, accuracy, completeness, and consistency of any and all Customer Requirements supplied by Customer, including being responsible for any fees, expenses, and other costs incurred or accrued during any resulting delay, or delays. Customer acknowledges that the timely provision of and access to the Customer Requirements may be essential to Imply's performance of the Services and that Imply's ability to complete the Services may be dependent upon the same. If Customer fails to provide the Customer Requirements necessary for Imply to fulfill an obligation hereunder, Imply is discharged from any such obligation until Customer provides such information and/or assistance.

4. TRAINING.

4.1 Location and Timing. Training shall be provided at the location set forth in the Order Form (the **"Location"**). If no location is specified, the training will be provided at a Location to be determined and confirmed in writing with the Customer. For onsite, virtual and e-learning training the Customer is responsible for testing all necessary facilities and systems prior to the scheduled training to enable Imply to provide the training unless otherwise specified in the Order Form. Unless otherwise advised, Customer training participants who attend public training should arrive at the classroom location no later than 15 minutes (and no later than 30 minutes to the virtual classroom) prior to the commencement of the training on the first training day . Where and when the length of a course is specified in a number of days, a "day" is not more than 7 hours of lecture with a one hour breakfast or lunch. Any onsite training will be agreed between the Parties, but shall not include more than 7 hours of lecture on any single day. Training is only valid for the number of courses, dates and times (including the start and end date), Locations, delivery mechanisms (i.e., onsite, virtual or other), and number of students (participants) specified in the Order Form. Training dates must be confirmed three or more weeks in advance of the training date. All confirmed training registrations will be subject to the postponement policy as detailed in Section 5.

4.2 Course Availability and Content. Training content will be substantially in line with the relevant training description set forth in Customer's Order Form. Imply reserves the right to withdraw or re- schedule training at any time prior to the training start date without any liability to the Customer. In the event that Imply is aware that there is a need to reschedule, then Imply will make a reasonable effort to notify the Customer at least one week in advance.

4.3 Training Participants. Customer may substitute training participants by giving forty-eight (48) hour written notice to Imply prior to the commencement of the scheduled training. Imply reserves the right to exclude training participants from the class who are, in its reasonable opinion, causing disruption to such class. In the event of such exclusion no refund of any associated fees will be made. Imply does not allow Customers to have additional participants "audit" its training courses. Customer agrees to pay for any and all participants that are in the classroom at the time of training, including last minute participants and drop-ins.

5. POSTPONEMENT OF SERVICES. No penalty will be assessed if Customer postpones a scheduled Consulting Service to be performed at Customer's site (hereafter a **"scheduled service"**) at least twenty business days or more before the start of the scheduled service. If Customer postpones a scheduled service at least ten (10) but less than twenty (20) business days before the start of the scheduled service, a penalty of 10% of the amount of the scheduled service fee may be assessed plus any nonrefundable travel or expense costs. If Customer postpones a scheduled service less than ten (10) business days before the start of the scheduled service, a penalty up to 25% of the scheduled service may be assessed plus any nonrefundable travel or expense costs.

6. LIMITED SERVICES WARRANTY. Imply shall provide qualified service providers who perform in a professional and workmanlike manner in accordance with industry standards. The warranty specified in this section shall apply only to failures or breaches of warranty which are reported to Imply by Customer within thirty (30) days after the date the Consulting Services are delivered to Customer. Imply's sole obligation for failure to meet the warranty specified above

shall be for Imply, upon receipt of written notice of such failure from Customer, to attempt to remediate the failure or cure the breach within thirty (30) days of Customer's written notice thereof. If Imply is unable to correct the failure or cure the breach, then Imply shall return any fees paid for the defective Consulting Services.