



## AETION EVIDENCE PLATFORM®

### END USER LICENSE AGREEMENT

This Aetion Evidence Platform End User License Agreement (the “**EULA**”, together with any applicable Purchase Order, attachments, exhibits and/or addendums hereto, and any applicable privacy or other policies, the “**Agreement**”) forms an agreement between Aetion, Inc., a Delaware corporation with an address at 5 Penn Plaza, 7th Floor New York, NY 10001 (“**Aetion**”), and the customer: (a) accessing, downloading, installing or otherwise using (the terms “**use**” and “**using**” will refer to any of the foregoing) the Software or the Services (each as defined below); or (b) set out in the applicable Purchase Order (such customer, the “**Customer**”). The Agreement is entered into on the earlier of (i) the date Customer first uses any part of the Software or the Services; or (ii) the Effective Date as set out in the applicable Purchase Order (the “**Effective Date**”). Aetion and Customer are referred to herein individually as a “**Party**” and collectively as the “**Parties**.” Customer may have another written agreement directly with Aetion that supplements or supersedes all or portions of this Agreement.

#### 1. DEFINITIONS

- 1.1. **Aetion Intellectual Property:** (i) the Platform, the Services, and the Documentation, (ii) any and all software, methodologies, tools, specifications, drawings, sketches, models, samples, records, documentation, works of authorship or creative works, ideas, knowledge, data or other materials received and/or accessed by Customer, (iii) any and all new Intellectual Property developed by Aetion or on behalf of Aetion in connection with this Agreement, excluding Customer Intellectual Property, (iv) any and all Customer input, responses to Aetion inquiries or surveys, suggestions, etc. with respect to the Platform, the Services, and the Documentation, (v) any and all improvements, enhancements, modifications and derivative works of any of the foregoing, and (vi) any and all Intellectual Property Rights in any of foregoing.
- 1.2. **Affiliate:** an affiliate of an entity means any entity that directly or indirectly controls, is controlled by, or is under common control with the entity.
- 1.3. **Authorized Users:** those employees of Customer who are designated by the Customer as a Primary Administrator or user authorized to use the Platform, the Services and the Documentation.
- 1.4. **Business Day:** any day which is not a Saturday or Sunday in the United States, or an Aetion company holiday.
- 1.5. **Confidential Information:** nonpublic information revealed by or through a Party (whether in writing, orally or by another means) (the “**Disclosing Party**”) to the other Party (the “**Recipient**”) in connection with this Agreement, including, without limitation, (i) information expressly or implicitly marked or disclosed as confidential, including, without limitation, all forms and types of financial, business, scientific, technical, economic, or engineering information including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing; (ii) information traditionally recognized as proprietary trade secrets; and (iii) all copies of any of the foregoing or any analyses, studies or reports that contain, are based on, or reflect any of the foregoing.
- 1.6. **Customer Data:** the content and other data inputted by Customer, Authorized Users, or Aetion on Customer's behalf into the Platform for the purpose of using the Services or facilitating Customer's use of the Services.
- 1.7. **Customer Intellectual Property:** (i) the Customer Data, (ii) any and all software, methodologies, tools, specifications, drawings, sketches, models, samples, records, documentation, works of authorship or creative works, ideas, knowledge, data or other materials that have been or are created, conceived or reduced to practice by Customer prior to or independently of this Agreement, (iii) results that Customer generates using Customer



Data on the Platform; (iv) New Customer Intellectual Property; and (v) any and all Intellectual Property Rights in any of foregoing.

- 1.8. **Documentation:** the document(s) made available to Customer by Aetion from time to time which sets out a description of the Platform, the Services and the user instructions for the Platform and the Services.
- 1.9. **Fees:** all fees payable by Customer under this Agreement as set out in the applicable Purchase Order, including but not limited to the Platform Fee and any Additional Fees.
- 1.10. **Intellectual Property or Intellectual Property Rights:** all inventions and/or works and any and all rights under U.S. and/or foreign patents, trade secrets, know-how, copyrights, and other industrial or intangible property rights of a similar nature; all rights pursuant to grants and/or registrations worldwide in connection with the foregoing and all other rights with respect thereto; all rights under applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all rights under amendments, continuations, divisions and continuations-in-part of such applications; and all rights under corrections, reissues, patents of addition, extensions and renewals of any such grant, registration and/or right.
- 1.11. **License Term:** the term set forth in an applicable Purchase Order of Customer's subscription and license to the Platform.
- 1.12. **Platform:** Customer's instance of the Aetion Evidence Platform<sup>®</sup> described herein.
- 1.13. **Platform Fee:** the Platform license fee set forth in a Purchase Order.
- 1.14. **Primary Administrator:** an employee of Customer who is designated by Customer as the primary administrator authorized to act as the sole liaison between Customer and Aetion for support and training with respect to the Services and to oversee Customer's fulfillment of the obligations set forth in this Agreement.
- 1.15. **Purchase Order:** a purchase order executed by Aetion and Customer, if applicable, which references this Agreement and is incorporated herein.
- 1.16. **Representatives:** the officers, directors, members, managers, partners, employees, agents or other persons of an entity.
- 1.17. **Services:** services outlined in a Purchase Order performed in connection with/or independently from the Platform.
- 1.18. **Term:** the term of this Agreement as set forth in Section 11.
- 1.19. **Third Party Products:** third party databases, operating systems, network applications, servers, peripherals and other software and hardware described in the Purchase Order or Documentation or otherwise required for proper use of the Platform.
- 1.20. **Virus:** Any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

## 2. PLATFORM LICENSE

- 2.1. **License.** During each License Term set forth in an applicable Purchase Order and subject to Customer's full payment of the Fees, Aetion hereby grants to Customer a limited, worldwide, non-exclusive, non-transferable, right and license, without the right to grant sublicenses, to access and use, and permit its Authorized Users to access and use, the Platform, the Services and the Documentation as further defined, and solely for the purpose set forth, in the applicable Purchase Order, and in accordance with the terms and conditions of this Agreement.



**2.2. Authorized Users.** During each License Term, Customer agrees and will ensure that: (a) the maximum number of Authorized Users that Customer authorizes to access or use the Platform, the Services and the Documentation shall not exceed the number of Authorized Users set forth in the applicable Purchase Order; (b) it will not allow any Customer or Authorized User account on the Platform to be accessed or used by more than one individual Authorized User; (c) each Authorized User shall keep a secure and confidential password for his/her use of the Platform that is personal to such Authorized User and not share the password with any other individual. Authorized Users shall change passwords when prompted by the Platform. Customer shall immediately notify Aetion if any third party gains or has the potential to gain access to any of Customer's or its Authorized Users' passwords, and shall be fully responsible for any and all activities that occur under any such password, whether conducted by an employee or a third party; (d) it shall maintain an up to date list of current Authorized Users, including names and email addresses, and provide such list to Aetion quarterly and at any time within 5 Business Days of Aetion's written request.

**2.3. Restrictions on Use.**

- (a) Customer shall not, and shall cause its Authorized Users not to, take any of the following actions: (i) creating or enabling the creation of derivative works, modifications, or adaptations of any Aetion Intellectual Property; (ii) decompiling, reverse engineering, disassembling or otherwise attempting to discern the source code, underlying ideas, algorithms, file formats or interface protocols of any Aetion Intellectual Property; (iii) distributing or disclosing any Aetion Intellectual Property to third parties, provided that nothing shall restrict Customer from using the results of its engagement with the Platform; (iv) removing or modifying any proprietary marking or restrictive legends placed any Aetion Intellectual Property; (v) using any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce any Aetion Intellectual Property; (vi) use any Aetion Intellectual Property in violation of any applicable law or regulation; (vii) access all or any part of the Platform or Documentation in order to build a product or service which competes with the Platform, the Services or the Documentation; (viii) license, sell, rent, lease, transfer or assign (except to Customer Affiliate), distribute, display, host, outsource, disclose, permit timesharing or service bureau use or otherwise commercially exploit, or otherwise make any Aetion Intellectual Property available to any third party except Authorized Users; or (ix) attempt to obtain, or assist third parties in obtaining, access to the Platform and/or Documentation, other than as provided under this Section 2.
- (b) Customer shall not access, store, distribute, upload or transmit any Viruses to or from the Platform or any material during the course of its use of the Platform that: (i) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (ii) facilitates illegal activity; (iii) promotes unlawful violence; (iv) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability; or (v) designed to, or capable of, disrupting, damaging or limiting the functionality or security of the Platform; or (vi) in a manner that is otherwise illegal or causes damage or injury to any person or property.
- (c) Aetion reserves the right, without liability or prejudice to its other rights under this Agreement, to disable Customer's access to any material that breaches the provisions of this Section 2.3; provided, however, Aetion shall have no obligation to screen, verify, censor or disable access to such material.
- (d) Customer shall be responsible for any unauthorized access to, or use of, the Platform, the Services and the Documentation and, in the event of any such unauthorized access or use, immediately notify Aetion and work with Aetion to remediate the situation as Aetion sees fit.

**3. SERVICES**

**3.1. Purchase Order(s).** Aetion will provide Customer with the Services described in a Purchase Order.



- 3.2. **Deliverables.** Aetion will provide Customer with the deliverables outlined in each Purchase Order (the “**Deliverables**”). Customer will own the rights in and to the results generated by Customer or its Authorized Users through use of the Platform, as well as the material defined as “Deliverables” in a Purchase Order (collectively, “**New Customer Intellectual Property**”), provided that all methods, measures, processes, templates, algorithms, analyses, etc. employed hereunder that Aetion uses or may use in the regular course of its business shall be Aetion Intellectual Property.

#### 4. REPRESENTATIONS & WARRANTIES; DISCLAIMERS

- 4.1. **Mutual Warranties.** Each Party warrants and represents that it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement.
- 4.2. **Aetion Warranties.** Aetion represents and warrants that (i) the Platform will be provided to Customer substantially in accordance with the applicable Purchase Order and the Documentation; and (ii) the Services will be performed in a professional and workmanlike manner and with reasonable skill and care.
- 4.3. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4: (A) CUSTOMER ACKNOWLEDGES AND AGREES THAT ALL OF THE AETION INTELLECTUAL PROPERTY IS PROVIDED TO CUSTOMER ON A STRICTLY “AS IS” AND “AS AVAILABLE” BASIS, AND THAT AETION DOES NOT WARRANT THAT THE RESULTS GENERATED FROM CUSTOMER’S USE OF THE PLATFORM AND/OR THE INFORMATION CUSTOMER OBTAINS THROUGH THE SERVICES WILL MEET ALL OF CUSTOMER’S GOALS OR OBJECTIVES; AND (B) AETION MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED BY STATUTE OR COMMON LAW, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, ARE EXPRESSLY EXCLUDED FROM THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW.

#### 5. CUSTOMER OBLIGATIONS

- 5.1. **Participation.** In order for Aetion to successfully provide the Platform and the Services described in each Purchase Order, Aetion requires that Customer timely and actively participates in the process with Aetion. Such participation includes, without limitation, timely delivery of and/or assistance with relevant coding schemes, subject matter expertise, provision of relevant data, and reasonable accommodation of onsite visits by Aetion during the Term as required. Additional details are described in the applicable Purchase Order.
- 5.2. **Data Licenses.** Customer is solely responsible for obtaining any licenses, consents, and permissions necessary for Aetion, its employees, contractors and agents to perform the Services and connect the applicable databases to the Platform as described herein (“**Data Licenses**”), and for arranging delivery of such databases to Aetion directly from the third party database provider. Specifically, if Customer wishes to connect a database that is a Third Party Product to the Platform, Customer acknowledges and agrees that it must have in place a valid agreement with the licensor of that database allowing Customer to use the database and related data in the ways set forth in this Agreement. Customer further acknowledges and agrees that without proper Data Licenses in place, Aetion may not be able to provide the Platform or perform the Services described herein. Under no circumstances will Aetion be held accountable for providing or facilitating any Data Licenses, nor will Aetion be required to enter into any agreements that Aetion determines, in its sole discretion, are detrimental to its interests.
- 5.3. **Platform Connectivity.** Customer further acknowledges and agrees that:
- (a) it will provide Aetion with: (i) all necessary access to such information, assets and services, including but not limited to Customer Data, security access information and configuration services; and (ii) all necessary review and approvals of submissions if any



on a timely basis, as may be reasonably required by Aetion in order to provide access to the Platform.

- (b) it will ensure that all Third Party Products are properly licensed, installed, configured and maintained;
- (c) it will be solely responsible for procuring and maintaining its network connections and telecommunications links as necessary to access and use the Platform and the Services, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet; and
- (d) each Authorized User shall keep a secure and confidential password for his/her use of the Platform and Documentation that is personal to such Authorized User and not share the password with any other individual. Authorized Users shall change passwords when prompted by the Platform. Customer shall immediately notify Aetion if any third party gains or has the potential to gain access to any of Customer's passwords. Customer shall be fully responsible for any and all activities that occur under any Authorized User password, whether conducted by an employee or a third party.

## 6. FEES & EXPENSES

- 6.1. Payments.** Customer shall pay the Fees to Aetion in accordance with this Section 6 and the applicable Purchase Order. Except as otherwise set forth in the applicable Purchase Order, Aetion shall invoice Customer on the date of last signature of a Purchase Order for all Fees payable under such Purchase Order. Customer shall pay each invoice within thirty (30) days after the date of such invoice. All amounts and Fees stated or referred to in this Agreement are non-cancellable, non-refundable, and in United States dollars. All amounts payable hereunder shall be paid in United States dollars.
- 6.2. Late Payments.** Any payment not received from Customer by the due date may at Aetion's sole discretion bear interest as of the day after the date such payment was due and payable which will continue to accrue until such past due payment is made. Such interest will accrue at the rate of one and a half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Customer will reimburse Aetion for all costs and expenses incurred collecting past due amounts, including but not limited to attorneys' fees.
- 6.3. Suspension of Service.** If Customer's late payment is thirty (30) days or more overdue, in addition to any of its other rights or remedies, Aetion reserves the right to suspend the Service(s), including Platform access, without liability to Aetion, until such amounts are paid in full; provided, however, that prior to any such suspension, Aetion shall provide Customer with at least five (5) days' prior written notice that payment is overdue and that the Services will be suspended.
- 6.4. Taxes.** Customer shall be responsible for all applicable taxes in connection with this Agreement imposed by any government or other taxing authority, including, but not limited to, sales, use, excise, value-added, goods and services, consumption, withholding and other similar taxes or duties. Each Party shall be responsible for its own business and franchise taxes, net income taxes, employment taxes for its own personnel, and for taxes on any property it owns or leases.
- 6.5. Expenses.** Customer shall be responsible for the following expenses incurred in connection with the Platform and Services, as well as any additional expenses incurred by Aetion that Customer approves in writing in advance: (a) travel and related expenses for the necessary Aetion personnel to visit Customer's premises; (b) account set-up and maintenance for an instance of Amazon Web Services to host the Platform, established according to Aetion's specifications; and (c) any costs associated with enabling Aetion to connect with and use, at Customer's request, any databases that are Third Party Products on the Platform.

## 7. PROPRIETARY RIGHTS





- 7.1. **Customer Intellectual Property.** Aetion acknowledges and agrees that Customer and its licensors are and shall remain the sole and exclusive owners of the Customer Intellectual Property. Except as set forth in this Agreement, nothing contained herein shall be construed to grant to Aetion any right, title, license or other interest in, to or under any Customer Intellectual Property (whether by estoppel, implication or otherwise). Aetion shall not challenge, or assist any person or entity in challenging, Customer's or its licensors' right, title, and interest in the Customer Intellectual Property.
- 7.2. **Aetion Intellectual Property.** Customer acknowledges and agrees that Aetion and its licensors are and shall remain the sole and exclusive owners of the Aetion Intellectual Property. Except for the rights granted to Customer in Section 2 above, nothing contained in this Agreement or otherwise shall be construed to grant to Customer any right, title, license or other interest in, to or under any Aetion Intellectual Property (whether by estoppel, implication or otherwise). Customer shall not challenge, or assist any person or entity in challenging, Aetion's or its licensors' right, title, and interest in the Platform, the Services or any Aetion Intellectual Property.
- 7.3. **Usage Data.** Aetion may, for internal use only, compile, use and disclose statistical information related to Customer's use of the Platform for the purpose of understanding which features or functions are being used and making changes or improvements to the Platform, provided that Aetion shall de-identify or aggregate any such information before disclosing it. Such statistical information shall be Aetion Intellectual Property.

## 8. CONFIDENTIALITY

- 8.1. **Confidentiality Obligation.** At all times, the Recipient shall protect and preserve the Confidential Information as confidential, using no less care than that with which it protects and preserves its own highly confidential and proprietary information (but in no event less than a reasonable degree of care), and shall not use the Confidential Information for any purpose except as necessary to carry out its obligations under this Agreement (the "**Limited Purpose**"). The Recipient may disclose, distribute or disseminate the Confidential Information to any of its Representatives provided that the Recipient reasonably believes that those Representatives have a need to know and such Representatives are bound by confidentiality obligations at least as restrictive as those contained herein. The Recipient shall not disclose, distribute or disseminate the Confidential Information to any third party without the prior written consent of the Disclosing Party. The Recipient shall at all times remain responsible for any violations of this Agreement by any of its Representatives.
- 8.2. **Exclusions.** Confidential Information does not include information which: (a) is or becomes generally available to the public other than as a result of disclosure by the Recipient or its Representatives (as defined below) (or any person to whom the Recipient or its Representatives disclosed such information); (b) was known by the Recipient prior to its disclosure by the Disclosing Party; (c) was independently developed by Recipient without use of the Confidential Information; or (d) becomes available to the Recipient on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not bound by a confidentiality agreement, confidentiality obligation or fiduciary duty which prohibits disclosure and the Recipient has no reason to believe that such source may be restricted from making such disclosure.
- 8.3. **Compelled Disclosure.** In the event the Recipient becomes or may become legally compelled to disclose any Confidential Information (whether by deposition, interrogatory, request for documents, subpoena, civil investigative demand or other process or otherwise), the Recipient shall, unless legally prohibited from doing so, provide to the Disclosing Party prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, the Recipient shall furnish only that portion of the Confidential Information which it is advised by counsel is legally required to be disclosed,



and shall use its best efforts to ensure that confidential treatment shall be afforded such disclosed portion of the Confidential Information.

- 8.4. Ownership.** The Recipient acknowledges and agrees that, as between the Recipient and the Disclosing Party, the Confidential Information, together with all Intellectual Property Rights embodied, are the sole and exclusive property of the Disclosing Party. The Disclosing Party shall retain all right and title to all proprietary rights in the Confidential Information and to any other Intellectual Property owned or otherwise provided by the Disclosing Party. The Recipient shall not have the right to use the Intellectual Property Rights embodied in the Confidential Information for any purpose other than the Limited Purpose.
- 8.5. Specific Performance; Injunctive Relief.** The Recipient acknowledges that in the event of a breach of this Section 8 by the Recipient or its Representatives, substantial injury could result to the Disclosing Party and money damages will not be a sufficient remedy for such breach. Therefore, in the event that the Recipient or its Representatives engage in, or threaten to engage in any act which violates any provision of this Agreement, the Disclosing Party shall be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the terms of this Agreement. The Disclosing Party shall not be required to post a bond or other security in connection with the granting of any such relief.
- 8.6. Return of Confidential Information.** Promptly following the earlier of (i) the expiration or earlier termination of this Agreement, or (ii) the request of the Disclosing Party, the Recipient and its Representatives shall return to the Disclosing Party, or, at the Disclosing Party's option, destroy all materials that are in written, electronic or other tangible form (including, without limitation, all written or printed documents, notes, memoranda, email, computer disks or tapes (whether machine or user readable), or computer memory, whether or not prepared by Recipient) that contain, summarize or abstract any portion of the Confidential Information, including, without limitation, all copies, extracts and derivations of such materials. In addition, upon the request of the Disclosing Party, the Recipient shall certify to the Disclosing Party in writing the Recipient's and its Representatives' compliance with its obligations pursuant to this Section 8.

## 9. INDEMNITY

- 9.1. Definition of Claim and Losses.** "Claim" means any demand, or any civil, criminal, administrative, or investigative claim, action, or proceeding (including arbitration) asserted, commenced or threatened against an entity or person. "Losses" means all judgments, awards, settlements, liabilities, damages, liens and claims, and all related costs, expenses and other charges suffered or incurred as a result of or in connection with a Claim, including reasonable attorneys' fees and disbursements, costs of investigation, litigation, settlement and judgment, and any taxes, interest, penalties and fines with respect to any of the foregoing.
- 9.2. Aetion's Indemnification of Customer.** Aetion shall, at its own cost, indemnify, defend, and hold harmless Customer and its officers, directors, members, agents and employees (the "Customer Indemnified Parties") from and against any Claims and related Losses, regardless of the merit of such Claim, brought by a third party against any Customer Indemnified Parties to the extent that it is based on any assertion arising out of: (a) any allegation that the Platform or Services provided by Aetion hereunder infringe or misappropriate any Intellectual Property Right, except to the extent that such Claim is caused by use of the Platform or Services other than in accordance with the terms of this Agreement, or modification of the product or service by Customer without Aetion's consent; (b) Aetion's breach or alleged breach of its confidentiality obligations under this Agreement; (c) the grossly negligent, willful or reckless acts or omissions, or fraud of or by Aetion or Aetion's Representatives; or (d) arising out of bodily injuries (including death, no matter when death occurs) or damage, loss, or destruction of real or tangible property to the extent caused by, arising out of, connected with or resulting from acts or omissions of Aetion or Representatives.



- 9.3. **Customer's Indemnification of Aetion.** Customer shall, at its own cost, indemnify, defend, and hold harmless Aetion and its officers, directors, members, agents, employees (the "**Aetion Indemnified Parties**") from and against any and all Claims and related Losses, regardless of the merit of such Claim, brought by a third party against any Aetion Indemnified Parties to the extent that it is based on any assertion arising out of: (a) Customer's or any Authorized Users' use of the Platform, Services or Documentation other than in accordance with this Agreement; (b) Customer's breach or alleged breach of its confidentiality obligations under this Agreement; (c) Customer's disclosure to a third party of the Platform, Services, Documentation, or results generated therefrom, or any portion thereof, or any use of, reliance on, or further disclosure by any third party who comes into possession directly or indirectly through Customer of such Platform, Services, Documentation, or results generated therefrom, or any portion thereof; (d) any allegation that the Customer Data or Aetion's use thereof infringes upon or misappropriates a patent, copyright, trademark, trade secret, or other proprietary right of any third party; or (e) grossly negligent, willful or reckless acts or omissions, or fraud of or by Customer or Customer's Representatives;
- 9.4. **Procedure for Handling Indemnification Claims.** In the event of any Claim for which indemnification is available, the Party eligible for indemnification (the "**Indemnified Party**") shall give prompt written notice of any such claim to the Party responsible for indemnification (the "**Indemnifying Party**"); provided, however, that the failure of the Indemnified Party to give timely notice hereunder will not affect its rights to indemnification hereunder, except to the extent that the Indemnifying Party can demonstrate actual, material prejudice as a result of such failure. Within thirty (30) days after receiving the Indemnified Party's notice of a Claim, but no later than ten (10) days before the date on which any formal response to the claim is due, the Indemnifying Party will notify the Indemnified Party in writing as to whether the Indemnifying Party acknowledges its indemnification obligation and elects to assume control of the defense and settlement of the Claim (a "**Notice of Election**"). Indemnifying Party shall have the right to control and direct the investigation, defense and settlement of each such Claim; provided, however, that if the Indemnifying Party does not deliver a timely Notice of Election, the Indemnified Party shall have sole control of the defense and settlement of such claim, and may defend and/or settle the Claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party, including payment of any settlement, judgment or award and the costs of defending or settling the Claim. The Indemnified Party may participate in the defense of the Claims by counsel of its own choosing at its own cost and expense, and such participation by the Indemnified Party shall not relieve the Indemnifying Party of its indemnification obligations hereunder. The Parties will fully cooperate with each other in the defense of any such Claim and will make available to each other any books or records useful for the defense of any such Claim. The Indemnifying Party shall not enter into any settlement or resolution of any Claim that would affect any of the Indemnified Party's rights or obligations, or that would constitute an admission of guilt or liability on the part of the Indemnified Party, without the Indemnified Party's express prior written consent. Provided that the Indemnified Party has elected to control the defense of a Claim, the Indemnified Party will not settle, or consent to any entry of judgment with respect to, any Claim without obtaining the prior, written consent of the Indemnifying Party.
- 9.5. **Remedies for Intellectual Property Infringement.** If all or any part of the Platform, Services or Documentation is, or in the opinion of Aetion's legal counsel may become, the subject of any claim or suit for infringement of the Intellectual Property Rights of a third party, or in the event of any adjudication that the Platform, Services or Documentation, or any part thereof, does infringe or if the use of the Platform, Services or Documentation, or any part thereof, is enjoined, Aetion will promptly, at its sole option and expense: (a) procure for Customer the right to continue to use the Platform, Services or Documentation; (b) modify the Platform, Services or Documentation so that it becomes noninfringing and nonviolative, without diminishing the form, features, functionality or performance of the applicable product; or replace the Platform, Services or Documentation with equipment, software, services and/or documentation that is noninfringing and nonviolative with equivalent form, features, functionality and performance. In the event that Aetion cannot, after using commercially reasonable efforts to do so within a





reasonable period of time, achieve any of the foregoing remedies, then either Party shall have the right to terminate this Agreement and Aetion shall provide Customer with a pro-rata refund for Fees paid by Customer but not yet earned without any additional liability or obligation to pay liquidated damages. Section 9.2 and this Section 9.5 state Customer's sole and exclusive remedy, and Aetion's sole and exclusive liability, regarding infringement of any intellectual property rights of a third party.

## 10. LIMITATION OF LIABILITY

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS OR LOST REVENUE, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. EXCEPT WITH RESPECT TO LIABILITY ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, CONFIDENTIALITY OR INDEMNITY OBLIGATIONS, OR CUSTOMER'S FAILURE TO PAY AMOUNTS DUE AND OWING UNDER THIS AGREEMENT, IN NO EVENT WILL THE LIABILITY OF EITHER PARTY FOR DAMAGES OR ALLEGED DAMAGES UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID BY CUSTOMER TO AETION UNDER THIS AGREEMENT IN THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM.

## 11. TERM & TERMINATION

- 11.1. Term.** The initial Term of this Agreement will begin on the Effective Date and continue for a period of three (3) years. Thereafter, this Agreement shall automatically renew for consecutive one (1) year terms unless either Party provides the other Party with written notice of its intention not to renew the Agreement within thirty (30) days of the expiration of the then current term.
- 11.2. License Term.** The License Term of each Purchase Order will begin on the date set forth in such Purchase Order and continue for License Term outlined in the Purchase Order.
- 11.3. Termination of the Agreement.** Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate this Agreement in the event that the other Party breaches any of its material obligations hereunder and fails to cure such breach within thirty (30) days of notice from the non-breaching party. In addition, either Party may immediately terminate this Agreement upon written notice to the other Party, if the other Party: (a) becomes subject to the control of a trustee, receiver or similar authority; (b) makes an assignment for the benefit of creditors; or (c) becomes subject to any bankruptcy or insolvency proceeding and such proceeding is not dismissed within sixty (60) days.
- 11.4. Termination of a Purchase Order.** Unless otherwise set forth in the applicable Purchase Order, either Party may terminate a Purchase Order in the event that the other Party breaches any of its material obligations under such Purchase Order and fails to cure such breach within thirty (30) days of notice from the non-breaching party. The termination of this Agreement or any Purchase Order, for any reason whatsoever, shall not affect any other Purchase Order then in effect, unless such Purchase Order is also explicitly terminated in accordance with Section 11.3 or 11.4.
- 11.5. Effect of Termination.** On expiration or termination of this Agreement: (a) except as otherwise expressed in this Agreement, all rights granted to Customer under this Agreement shall immediately terminate, and Customer shall immediately cease any use of the Platform, Services and Documentation upon such expiration or termination; (b) each Party shall return or destroy and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other Party; and (c) Customer shall promptly pay Aetion all outstanding amounts due and owing under this Agreement. This Agreement shall continue to govern any ongoing Purchase Order until it is terminated in accordance with this Agreement or performance has been completed by Aetion. If a Purchase Order is executed prior to the end of the Term, this Agreement shall be extended through the completion of the applicable License Term under such Purchase Order. Sections 4.3 (Disclaimers), 7 (Proprietary Rights), 8 (Confidentiality), 9 (Indemnity), 10 (Limitation of Liability), 12 (General



Provisions), and this Section 11.5 shall survive the expiration or earlier termination of this Agreement.

## 12. GENERAL PROVISIONS

- 12.1. Non-Solicitation.** During the Term of this Agreement, Customer (or its affiliates acting on its behalf and at its direction with respect to the matters contained in this paragraph) shall not, without Aetion's prior written consent, directly or indirectly, solicit for purposes of employment or hire any officer or employees of Aetion; provided, however, that this paragraph will not restrict Company from soliciting or hiring any person (i) resulting from generalized searches for employees through the use of bona fide public advertisements in the media, including, without limitation, job postings on Company's website and other third party job posting websites, that are not specifically targeted at such employees of Aetion, (ii) any recruitment efforts conducted by any recruitment agency, search firm or similar person so long as such persons were not directed by Company or its Representatives to specifically target such employees; (iii) if such employees approached Company on an unsolicited basis; or (iv) following the cessation of such employee's employment with Aetion without any solicitation or encouragement by Company, directly or indirectly, in breach of this paragraph.
- 12.2. Force Majeure.** No Party shall have liability under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, work stoppage, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, tornado, technological, computer hardware or software errors, delays or breakdowns, including those caused by attacks from unauthorized users who access the technological infrastructure, e.g., hackers, or default of a Party or subcontractors, provided that each Party is notified of such an event and its expected duration.
- 12.3. Notice.** All notices given by one Party to the other Party shall be in writing by hand, recorded delivery post, or registered or first-class mail addressed to the receiving Party as specified below. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Business Hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid registered, first-class or recorded delivery post shall be deemed to have been received the sooner of receipt or three (3) Business Days after having been posted. In addition, the Parties may send notices that are permitted or required under this Agreement via DocuSign or other electronic signature mechanism, and such notice shall be deemed received upon placement of the receiving party's electronic signature on the notice.

Such notices shall be addressed (a) if to Aetion, to the following address:

Aetion, Inc.  
5 Penn Plaza  
7th Floor  
New York, NY 10001

Attn: Legal Department  
Email: Legal@aetion.com

and (b) if to Customer, to the current postal or email address that Aetion has on file with respect to Customer. Customer is solely responsible for keeping its contact information on file with Aetion up-to-date at all times during the Term.

- 12.4. Independent Contractor Relationship.** Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or



otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power). This Agreement shall not prevent Aetion from entering into similar agreements with other parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

- 12.5. Governing Law and Jurisdiction.** This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of the State of New York. The parties irrevocably agree that the courts located in New York, New York have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 12.6. Assignment.** Neither Party shall assign, sub-contract or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. However, either Party may, without the consent of the other Party, assign or transfer this Agreement to any person or entity that is acquiring all or substantially all of its assets or which is a successor by merger, consolidation, acquisition of stock or assets, or other business combination to such Party. Such Party shall provide written notice to the other Party before any permitted assignment, sub-contract or transfer. The transferee shall expressly agree in writing to comply with the terms and conditions of this Agreement.
- 12.7. No Third Party Rights.** This Agreement shall be binding upon and inure solely to the benefit of the Parties. The Parties intend that there shall be no third party beneficiaries under this Agreement, and that no person or entity, except the Parties, shall have any rights or remedies under this Agreement, including the right to bring any action on account of its breach or in any relation to it whether in contract, in tort, or otherwise.
- 12.8. Waiver.** A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 12.9. Severability.** If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.
- 12.10. Entire Agreement.** This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover. No term, condition or other provision of any purchase order that references this Agreement will supersede any term, condition or other provision of this Agreement, and with respect to any inconsistency, conflict or ambiguity, this Agreement shall control. Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether Party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 12.11. Counterparts.** This Agreement may be executed in counterparts (which may be exchanged by facsimile or electronic mail), each of which shall be deemed an original, but which together shall constitute one and the same instrument.



## SCHEDULE 1

### AETION EVIDENCE PLATFORM®

#### Service Level Agreement

##### I. Definitions

1. **"Business Hours"** are 9am-5pm Eastern Standard Time, Monday through Friday, excluding Aetion company holidays.
2. **"Issue"** means a material failure of the Platform to function as described in Aetion's specifications and Documentation.
3. **"Planned Downtime Hours"** are the planned and published hours that the Platform is unavailable during a month due to routine maintenance or other planned outages. Planned Downtime shall not occur during Business Hours unless expressly agreed by the Customer. Notwithstanding the foregoing, Aetion may seek, and Customer may provide, written consent for additional Planned Downtime Hours that do not meet the publication or other requirements of this definition.
4. **"Platform"** means Customer's instance of the Aetion Evidence Platform®.
5. **"Platform Availability"** is measured as the number of hours in a month that Customer is able to access the Platform as a percentage of total hours in that month, less Planned Downtime Hours. The calculation of Platform unavailability shall not include the following, in addition to Planned Downtime Hours: (a) acts or omissions of Customer or any Authorized User of the Platform; (b) Customer device downtime as long as the Platform remains available; (c) server downtime related to connectivity issues resulting from Customer third-party-managed VPN access to hosted server or Customer internal network problems or Customer Internet connectivity issues (meaning Aetion staff can access the Platform properly, but Customer cannot); or (d) any other causes beyond Aetion's reasonable control.
6. **"Response"** means the contact between Aetion and Customer through which a representative of Aetion confirms the presence of an Issue and the Severity Level. Time to Response shall be measured as the time passing between Customer's report of the Issue and Response during Business Hours.
7. **"Resolution"** means the point in time in which Aetion has (i) determined the cause of the Issue, and (ii) removed the cause of the Issue from the Platform and/or corrected the Issue and any resulting data Issue(s) caused solely by Aetion, or implemented a workaround of the Issue sufficient to permit Customer's continued use of the Platform, in Customer's implementation(s) of the Platform. Time to Resolution shall be measured as the time passing between Customer's report of the Issue and Resolution during Business Hours.
8. **"Severity 1"** means complete loss of service or application outage impacting internal project timelines.
9. **"Severity 2"** means an Issue affecting multiple users or significant degradation of service to an individual user.
10. **"Severity 3"** means Lesser service degradation or general how-to-questions, with minimal impact on client.
11. **"Unplanned Downtime Hours"** are any downtime hours other than Planned Downtime Hours.



## II. Support & Maintenance

1. **Support.** Aetion shall make available, during Business Hours, a support desk for the Aetion Evidence Platform® (the “Platform”) staffed by trained technical support staff which shall be accessible to Customer by email at [support@aetion.com](mailto:support@aetion.com).
2. **Planned Downtime Hours.** Aetion shall carry out any necessary maintenance where it reasonably suspects that the Platform or any part thereof, has or may have developed a problem. Any such maintenance shall be carried out in such a manner and at such times designed to avoid (or where this is not possible so as to minimize) disruptions to Customer’s use of the Platform. Aetion shall give as much notice as is reasonably practicable to Customer prior to carrying out any ad hoc and unplanned maintenance when either Party reasonably suspects that the Platform has developed a problem and, in the case of Customer, Customer notifies Aetion of the same.

## III. Issue Response and Resolution

1. Customer shall initially notify Aetion of any Issue via email. Customer will provide a summary of the nature and circumstances of an Issue at the time of notification. Customer shall promptly provide to Aetion such additional information as is reasonably required by Aetion in relation to any issue.
2. Aetion shall assess each Issue and classify it according to severity in accordance with the Severity Levels defined above and provide a Response and Resolution to the Issue in accordance with the applicable Service Level (outlined below).
3. In the event that Customer disagrees with the Severity Level assigned to any problem, it shall be entitled to request that the Severity Level be changed and the Aetion may accept or reject any request at its reasonable discretion.

## IV. Service Levels

Aetion will use commercially reasonable efforts to:

1. Maintain a Platform Availability of 95% each month; and
2. Provide the initial Response and Resolution to any Issue based upon its Severity Level within the target timelines defined in the chart below.

### Service Levels

Severity Level	Target Response Time during Business Hours	Target Resolution Time during Business Hours
1	4 Business Hours	Commencing upon Aetion’s initial Response, Aetion shall use commercially reasonable and continuous efforts, both during and outside of Business Hours, until either a Resolution to the Severity Level 1 issue is provided, or a work around is established.
2	4 Business Hours	Commencing upon Aetion’s initial Response, Aetion shall use commercially reasonable and continuous efforts, during Business Hours, until either a Resolution to the Severity Level 2 issue is provided, or a work around is established.
3	1 Business Day	If no workaround is readily available and Resolution requires a programming correction, then such correction will be scheduled for a regular patch release to the Platform.





Response times run from the time at which Customer notifies Aetion of the Issue; provided that, where such notification is made outside of Business Hours or without sufficient Target Response Time remaining within Business Hours, Response times and target Resolution times shall run from the start of the next period of Business Hours. Aetion shall keep Customer reasonably informed as to the progress of resolving Issue via e-mail, Aetion's support tracking system, or other electronic means.

## **V. Issue Escalation Process**

In the event Aetion fails to successfully respond or resolve to an Issue as described herein, Customer may invoke the following process (the "Issue Escalation Procedure") by written demand to Aetion ("Escalation Notice") and Aetion agrees to perform as set out below.

Severity Level	Issue Escalation Process
1	Aetion shall notify the Aetion executives responsible for each of account service, customer support, and information technology functions that the Severity 1 Issue is reported and remains unresolved. Aetion shall form a team of Representatives (the "Team") and cause the Team to focus commercially reasonable efforts on Resolution of the Issue. In addition, Customer may call the Aetion Relationship Manager for updates on the status of the issue.
2	Aetion shall notify the Aetion executives responsible for each of account service, customer support, and information technology functions that the Severity 2 Issue is reported and remains unresolved. Aetion shall form a team of Representatives (the "Team") and cause the Team to focus commercially reasonable efforts on Resolution of the Issue. In addition, Customer may call the Aetion Relationship Manager for updates on the status of the issue.