

Terms and Conditions

EFFECTIVE DATE: 10/20/2021

Sections

1. [Orders](#)
2. [Access and Use](#)
3. [Availability](#)
4. [Support](#)
5. [APIs and Tools](#)
6. [Hosting and Other Providers](#)
7. [Security and Privacy](#)
8. [Customer Responsibilities and Restrictions](#)
9. [Compliance with Applicable Laws](#)
10. [Pricing and Fees](#)
11. [Order Renewal](#)
12. [Taxes](#)
13. [Ownership](#)
14. [Confidentiality](#)

15. [Disclaimers](#)
16. [Term and Termination](#)
17. [Indemnification](#)
18. [Limitations of Liability](#)
19. [Publicity](#)
20. [Notices](#)
21. [Assignment](#)
22. [Independent Parties; No Third-Party Beneficiaries](#)
23. [Force Majeure](#)
24. [Governing Law; Venue](#)
25. [Miscellaneous](#)
26. [Counterparts](#)

1. Orders

1.1. This Agreement sets forth the terms pursuant to which Customer may access and use Company's hosted Services in connection with one or more Orders. Subject to the terms of an Order, the Services will support Customer's collection, monitoring, management and analysis of data generated by systems, platforms, services, software, devices, sites and/or networks that Customer uses in its own internal business operations (collectively, but exclusive of the subscribed Services, "Customer's Environment").

2. Access and Use

2.1. Subject to the applicable Order and this Agreement, Company hereby grants to Customer the right to access and use the Services in accordance with the Documentation during the Order Term for Customer's Environment. Documentation refers to the standard user documentation for the Services, currently available at <https://whylabs.ai/>.

2.2. As between the Parties, Customer controls Customer's Environment and its individual components (each, a "Customer Component"), whether owned, leased or licensed by Customer, located on Customer's premises or cloud-based, used by Customer on a software-as-a-service basis or otherwise. Customer will be able to use the Services by establishing integrations or other connections to one or more Customer Components (each, a "Connection"). By implementing a Connection to a Customer Component, Customer hereby grants to Company the right, and is expressly instructing Company, to access and interoperate with that Customer Component during the Order Term in order to provide and support the Services. Customer is responsible for complying with all applicable third-party terms, policies and licenses governing its access and use of Customer Components and associated data (collectively, "Third-Party Terms").

2.3. Through Customer's configuration and use of Connections and Services, Customer has control over the types and amounts of data from Customer's Environment that are submitted for Processing by the Services (collectively, "Customer Data"). By submitting Customer Data to the Services, Customer hereby grants to Company the right, and is expressly instructing Company, to Process Customer Data during the Order Term in order to provide and support the Services and as otherwise provided in this Agreement.

2.4. All rights granted by each Party to the other under this Section 2 are limited, nonexclusive and, except as otherwise provided in this Agreement, non-transferable.

3. Availability

Company commits to make the Services Available at least 99% of the time, exclusive of any time the Services are not Available as a result of one or more Exceptions (the "Availability Standard"). If the actual Availability of the Services is less than the Availability Standard in any two consecutive months, Customer may terminate the applicable Order in the calendar month following such two-month period upon written notice to Company. In the event of such termination, Company will issue Customer a Pro-Rated Refund.

4. Support

Subject to this Agreement, Company will provide Technical Support to Authorized Users under the WhyLabs Support Service terms applicable to the selected Plan.

5. APIs and Tools

One or more APIs will be available to Customer to assist with Customer's implementation of Connections, and Company makes client libraries available to facilitate Customer's coding against the API(s). In addition, Authorized Users may install a Company-produced software agent on certain Customer Components to support Customer's collection of Customer Data. The code for these libraries and agents (collectively, "Ancillary Tools") are available in public repositories at <http://github.com/whylabs> and are subject to the applicable open source licenses referenced in those repositories. Customer determines and controls what APIs and Ancillary Tools (if any) to use in connection with the Services. By using an API or Ancillary Tool in connection with the Services, Customer hereby agrees to do so in accordance with the Documentation and, in the case of the Ancillary Tool, with the applicable open source licenses (provided that if an applicable open source license for an Ancillary Tool contradicts rights or restrictions in the Documentation, the license will take precedence). The Ancillary Tools are not "Services" or "Support" for purposes of this Agreement.

6. Hosting and Other Providers

Company uses third-party hosting providers, other service providers and Company Affiliates to support the provision of the Services and Support in the ordinary course of its business, i.e., not specifically for Customer (collectively, "Ordinary Course Providers"). Company reserves the right to engage and substitute Ordinary Course Providers as it deems appropriate, but shall: (a) remain responsible to Customer for the provision of the Services and Support and (b) be liable for the actions and omissions of its Ordinary Course Providers undertaken in connection with Company's performance of this Agreement to the same extent Company would be liable if performing the Services or Support directly. In no event shall providers of Customer Components be deemed Ordinary Course Providers for any purpose under this Agreement.

7. Security and Privacy

7.1. Each Party has obligations with respect to the security of the Services and Customer Data. Taking into account the nature and types of Customer Data, Company will employ administrative, physical and technical measures in accordance with applicable industry practice to protect the Services and prevent the accidental loss or unauthorized access, use, alteration or disclosure of Customer Data under its control during each Order Term.

7.2. Customer is responsible for properly configuring the Services in accordance with the Documentation, enabling single sign-on for Customer's accounts, and securing access passwords, keys, tokens or other credentials used by Customer in connection with the Services (collectively, "Customer Credentials"). Customer agrees to use reasonable efforts to prevent unauthorized access or use of the Services and to promptly notify Company if Customer believes (a) any Customer Credentials have been lost, stolen or made available to an unauthorized third party or (b) an unauthorized third party has accessed the Services or Customer Data.

7.3. Except for limited Personal Information in Account Data, Company does not require Personal Information for Customer's access and use of the Services. Customer shall limit Personal Information in Account Data to only that necessary for the creation and administration of its Company account. With regard to Customer Data, Customer shall not use the Services to Process any Sensitive Information and shall use reasonable efforts to restrict the inclusion of other Personal Information in Customer Data.

7.4. Company may Process information about Customer's configuration and use of the Services ("Usage Data"), Customer Data and Account Data: (a) to manage Customer's account, including to calculate Fees (as defined in Section 10.1); (b) to provide and improve the Services and Support, including to address Support Requests and troubleshoot other issues; and (c) to provide Customer and Authorized Users insights, service and feature announcements and other reporting. Company may also Process Usage Data that has been aggregated and/or anonymized (including, for clarity, that does not allow a third party to identify Customer as the source of the information): (i) to develop new services and features and (ii) to promote Company's services, including, for example, through analyses of patterns and trends. Company's Processing of Usage Data, Customer Data and Account Data shall at all times be subject to Company's obligations under this Agreement, including those of security under Section 7.1

and confidentiality under Section 14; the DPA (as defined in Section 9.1), if applicable; and, with respect to Account Data, the Privacy Policy.

8. Customer Responsibilities and Restrictions

8.1. Customer will be solely responsible for: (a) Customer's Environment, including as necessary to enable Authorized Users' access and use of the Services; (b) Account Data, Customer Data and Customer Credentials (including activities conducted with Customer Credentials), subject to Company's Processing obligations under this Agreement; (c) providing any required notices to, and receiving any required consents and authorizations from, Customer Component providers, Authorized Users and persons whose Personal Information may be included in Account Data, Customer Data or Customer Credentials; and (d) ensuring use of the Services is only for Customer's Environment and in accordance with the AUP, Documentation and applicable Third-Party Terms.

8.2. No provision of this Agreement includes the right to, and Customer shall not, directly or indirectly: (a) enable any person or entity other than Authorized Users to access and use the Services; (b) attempt to gain unauthorized access to any Service or its related systems or networks; (c) use any Service to access Company Intellectual Property Rights except as permitted under this Agreement; (d) modify, copy or create any derivative work based upon a Service or any portion, feature or function of a Service; (e) resell, distribute or otherwise make available any Service to any third party, including as part of a managed services offering; (f) except to the extent limited by Applicable Law, reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, the Services or access or use the Services or Documentation in order to (1) copy ideas, features, functions or graphics, (2) develop competing products or services, or (3) perform competitive analyses; (g) remove, obscure or alter any proprietary notice related to the Services; (h) send or store Malicious Code; (i) use or permit others to use the Services in violation of Applicable Law; or (j) use or permit others to use the Services other than as described in the applicable Order, Documentation and this Agreement.

8.3. Company reserves the right to investigate potential violations of the above provisions of this Section 8. In the event Company reasonably believes a violation has occurred, in addition to any other remedies available at law or in equity (including termination pursuant to Section 16.2), Company will have the

right to suspend Authorized Users suspected of the violation from accessing the Services for so long as is reasonably necessary to address the potential violation. Except where Company reasonably believes the violations are willful, or in urgent or emergency situations, Company will notify Customer of any such suspension in advance (each, a “Suspension Notice”) and work with Customer in good faith to resolve the potential violation. For clarity, Company reserves the right, but does not assume any obligation to Customer (except with respect to the Suspension Notice), to take any of the actions described in this Section 8.3.

9. Compliance with Applicable Laws

Each Party agrees to comply with all Applicable Laws with respect to its performance of its obligations and exercise of its rights under this Agreement. Without limiting the foregoing:

9.1. Each Party shall comply with Applicable Laws concerning the privacy and protection of Personal Information. Without limiting Section 8.1, Customer will be solely responsible for providing any notices required by Applicable Law to, and receiving any consents and authorizations required by Applicable Law from, persons whose Personal Information may be included in Account Data, Customer Data or Customer Credentials. Without limiting Section 7.3, if Customer believes Customer Data may include the Personal Information of natural persons located in the European Economic Area and wishes to execute a Data Processing Addendum (“DPA”) pursuant to the GDPR, Customer may do so by submitting a request by email to legal@whylabs.ai. Promptly following Company’s receipt of Customer’s request, Company will send Customer a DPA ready for execution.

9.2. Each Party shall comply with Applicable Laws concerning anti-bribery and anti-corruption, which may include the U.S. Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010. As of the date of this Agreement and the date of each Order, Customer represents that it has neither received nor been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any employee, agent or representative of Company or its Affiliates in connection with this Agreement. Customer agrees to promptly notify Company if it learns of any violation of the foregoing. This representation is not intended to include customary and reasonable gifts and entertainment provided in the ordinary course of business, to the extent such gifts and entertainment are permitted by Applicable Law.

9.3. Each Party shall (a) comply with Applicable Laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions (“Export Laws”), including designating countries, entities and persons (“Sanctions Targets”) and (b) not directly or indirectly export, re-export or otherwise deliver Services to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. Customer represents that it is not a Sanctions Target or prohibited from receiving Services pursuant to this Agreement under Applicable Laws, including Export Laws.

10. Pricing and Fees

10.1. Customer agrees to pay all fees charged by Company for Customer’s use of Services in accordance with this Agreement and applicable Order(s) and Service Plan(s) (collectively, “Fees”). Except as otherwise provided in an Order: (a) prices for Services are set forth on the Order Form; (b) The minimum fee is invoiced on an annual basis in advance but refundable on a prorated basis in the event of termination; (c) Incremental Fees are calculated on the basis of usage and invoiced monthly in arrears; (d) Fees must be paid in U.S. dollars and, subject to Section 10.2, within 30 days of invoice; and (f) Fees for Services include Support at no additional charge.

10.2. Unpaid Fees are subject to a finance charge of one percent (1.5%) per month, or the maximum permitted by law, whichever is lower, plus all expenses of collection, including reasonable attorneys’ fees. Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on Company's net income) unless Customer has provided Company with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Customer on account thereof.

11. Order Renewal

11.1. Unless either Party gives the other Party written notice of its intention not to renew an Order at least 30 days prior to the Order’s then current expiration date, the Order will automatically renew for additional periods of the same duration as the expiring Order Term (each, a “Renewal Order Term”).

11.2. Effective upon the one-year anniversary of this Agreement and up to one time per calendar year thereafter (or, if an Order Term is longer than one year, then up to one time during each Renewal Order Term), Company may increase then current pricing for the Services. If Customer objects to the increase, Customer must notify Company of its intention not to renew the Order within 30 days of Customer's receipt of notice of the increase from Company. Failure to timely notify Company shall be deemed to constitute consent to the applicable fee increase.

12. Taxes

All Fees are exclusive of taxes, levies, duties or charges imposed by government authorities (collectively, "Taxes"). Customer shall be solely responsible for all sales, service, value-added, use, excise, consumption and any other Taxes on amounts payable by Customer under the Orders and this Agreement (other than any Taxes on Company's income, revenues, gross receipts, personnel or assets). Without limiting the foregoing, if Customer is required to deduct or withhold any Taxes under Applicable Laws outside the United States, Customer shall remit such Taxes in accordance with those Applicable Laws and all Fees payable shall be increased so that Company receives an amount equal to the sum it would have received had no withholding or deduction been made.

13. Ownership

As between the Parties: (a) Customer owns all right, title and interest in and to Customer's Environment and Customer Data, including in each case all associated Intellectual Property Rights, and (b) Company owns all right, title and interest in and to the Services, Documentation and Feedback, including in each case all associated Intellectual Property Rights. Except for the rights expressly granted by one Party to the other in this Agreement, all rights are reserved by the granting Party.

14. Confidentiality

14.1 As used in this Agreement, "Confidential Information" means any information disclosed by one Party, its Affiliates, business partners or their respective employees, agents or contractors (collectively, the "Discloser") that is designated as confidential, either orally or in writing, or that, given the nature of the information or circumstances surrounding its disclosure, reasonably

should be understood to be confidential. Confidential Information includes without limitation: (a) Customer Data; (b) information relating to the Discloser's or its Affiliates' technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (c) third-party information that the Discloser is obligated to keep confidential; and (d) the terms of this Agreement and all Orders. However, Confidential Information does not include any information that: (i) was known to the Party that receives any Confidential Information (the "Recipient") prior to receiving the same from the Discloser in connection with this Agreement; (ii) is independently developed by the Recipient without reference to or use of the Discloser's Confidential Information; (iii) is acquired by the Recipient from another source without restriction as to use or disclosure; or (iv) is or becomes publicly available through no fault or action of the Recipient.

14.2. The Recipient shall not (a) use the Discloser's Confidential Information for any purpose outside the scope of this Agreement without the Discloser's prior written consent or (b) disclose the Discloser's Confidential Information to any person or entity, except to the Recipient's employees, agents, contractors and service providers who (i) are bound by non-use and non-disclosure obligations at least as protective as those contained in this Agreement and (ii) have a need to know the Confidential Information for the Recipient to exercise its rights or perform its obligations under this Agreement. Notwithstanding the foregoing, the Recipient may disclose the Discloser's Confidential Information to the limited extent any use or disclosure is required by Applicable Law or a valid and binding order of a governmental body (such as a subpoena or court order), provided that, to the extent permitted under Applicable Law, the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the protection of its Confidential Information. In the event of any breach or threatened breach by the Recipient of its obligations under this Section, the Discloser will be entitled to seek injunctive and other equitable relief to enforce such obligations.

15. Disclaimers

15.1. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY OR GUARANTEE OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF TITLE,

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

15.2. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL SERVICES, SUPPORT AND ANY OTHER MATERIAL ARE PROVIDED BY COMPANY ON AN “AS IS” AND “AS AVAILABLE” BASIS. COMPANY MAKES NO REPRESENTATION OR WARRANTY, AND HAS NO SUPPORT OBLIGATIONS OR LIABILITY, WITH RESPECT TO ANY CUSTOMER COMPONENT. WITHOUT LIMITING THE OTHER PROVISIONS OF THIS SECTION 15, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, DOCUMENTATION, ANCILLARY TOOLS OR ANY OTHER MATERIAL, OR RESULTS OF THE USE THEREOF, WILL: (a) MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS; (b) OPERATE WITHOUT INTERRUPTION; (c) ACHIEVE ANY INTENDED RESULT; (d) BE ERROR FREE OR (e) BE COMPATIBLE, WORK WITH OR CONTINUE TO WORK WITH CUSTOMER COMPONENTS. ANY CHANGES TO CUSTOMER COMPONENTS (INCLUDING THEIR UNAVAILABILITY) OR THIRD-PARTY TERMS DURING AN ORDER TERM DO NOT AFFECT CUSTOMER’S OBLIGATIONS UNDER THE APPLICABLE ORDER OR THIS AGREEMENT.

16. Term and Termination

16.1. The term of this Agreement will continue through the expiration or earlier termination of the last Order to be in effect.

16.2. Subject to Section 10.2, Company may terminate any Order upon written notice to Customer if Customer fails to pay any amount due under the Order, and such failure continues more than 15 days after Company’s delivery of written notice. In addition, either Party may terminate all Orders and this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach (if capable of cure) remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach.

16.3. Upon expiration or earlier termination of an Order: (a) subject to Section 16.5, all rights granted to Customer with respect to Services under such Order will terminate effective as of the effective date of termination; (b) subject to Section 16.5, Company will have no obligation to provide Services to Customer or Authorized Users after the effective date of the termination; and (c)

Customer will, subject to Section 16.4, pay to Company any Fees payable for Customer's and any Authorized User's use of Services through the effective date of the termination, together with all other amounts in accordance with the Order and this Agreement.

16.4. If an Order is terminated early by Customer pursuant to Section 3 or 16.2, or by Company pursuant to Section 17.2: (a) Customer shall not be obligated to pay any additional amounts specified in the Order following the effective date of termination and (b) Company will refund to Customer a pro rata share of any unused amounts prepaid by Customer under the applicable Order for the Services on the basis of the remaining portion of the current Order Term (a "Pro-Rated Refund"). In all other cases, and regardless of whether Customer uses the Services at the levels reflected in the Orders or otherwise, Customer will not be entitled to a refund of Fees paid and any unpaid Fees outstanding will become immediately due and payable.

16.5. Provided Customer has paid all amounts due under this Agreement, and subject to any applicable shorter Service Plan retention periods, for up to 30 days from the effective date of termination of this Agreement an Authorized User designated by Customer will be permitted to continue to access and download Customer Data that was accessible to Authorized Users through the Services immediately prior to termination. The designated Authorized User's access and use will continue to be subject to the terms of this Agreement, provided the Authorized User shall not access or use the Services other than to download Customer Data.

16.6. The provisions set forth in the following Sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: 7.4, 8.2, 9, 12 through 18, and 20 through 26.

17. Indemnification

17.1. Subject to Sections 17.2 and 17.4, Company agrees to defend, indemnify and hold harmless Customer, its Affiliates and their employees, contractors, agents, officers and directors (collectively, "Customer Indemnitees"), from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) (collectively, "Losses") arising out of or related to any legal claim, suit, action or proceeding (each, an "Action") by a third party alleging use of the Services as

permitted under this Agreement infringes such third party's United States patent or copyright, or misappropriates such third party's trade secrets (each, a "Customer Infringement Claim").

17.2. If the Services become, or in Company's opinion are likely to become, the subject of a Customer Infringement Claim, Company may in its discretion and at its own expense: (a) obtain for Customer the right to continue using the Services; (b) modify the Services so that they no longer infringe or misappropriate; or (c) terminate this Agreement and all Orders and issue a Pro-Rated Refund. Company will have no obligation to indemnify Customer for a Customer Infringement Claim to the extent it arises from any of the following (collectively, "Customer-Controlled Matters"): (i) Customer's Environment, including Connections to Customer Components, whether enabled through APIs, Ancillary Tools or otherwise; (ii) Account Data, Customer Data or Customer Credentials (including activities conducted with Customer Credentials), subject to Company's Processing obligations under this Agreement; or (iii) use of the Services by Customer or an Authorized User in a manner that breaches an Order, Service Plan or this Agreement. SECTIONS 17.1 AND 17.2 STATE COMPANY'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY CLAIM OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT OR MISAPPROPRIATION.

17.3. Subject to Section 17.4, Customer agrees to defend, indemnify and hold harmless Company, its Affiliates and their employees, contractors, agents, officers and directors (collectively, "Company Indemnitees"), from and against any and all Losses arising out of or related to any Action by a third party arising out of or relating to Customer-Controlled Matters.

17.4. A Customer Indemnitee or Company Indemnitee (each, an "Indemnitee") seeking indemnification shall promptly notify the other Party (each, an "Indemnifying Party"), in writing of any Action for which it seeks indemnification pursuant to Section 17.1 or 17.3 (as applicable) and cooperate with the Indemnifying Party at the Indemnifying Party's expense. The Indemnifying Party shall promptly take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party's expense. An Indemnitee may participate in and observe the proceedings at its own expense with counsel of its own choice. A Party's failure to perform any obligations under this Section 17.4 will not relieve the Indemnifying Party of its obligations under Section 17.1 or 17.3 (as applicable) except to the extent that the Indemnifying Party can demonstrate

that it has been materially prejudiced as a result of such failure. The Indemnifying Party shall not settle an Action without the Indemnitee's written consent if such settlement shall require action or payment by the Indemnitee.

Company represents and warrants that it will not knowingly include, in any Company software released to the public and provided to Customer hereunder, any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, Company fails to comply with the warranty in this Section, Customer may promptly notify Company in writing of any such noncompliance. Company will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement as its sole and exclusive remedy for such noncompliance.

18. Limitations of Liability

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 18: (a) IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES OR THEIR EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS OR DIRECTORS BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT; AND (b) IN NO EVENT SHALL EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE FEES PAID TO COMPANY BY CUSTOMER UNDER THE APPLICABLE ORDER(S), INCLUDING PRIOR ORDERS FOR THE SAME SERVICES, IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION (COLLECTIVELY, THE "EXCLUSIONS") APPLY WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER BASIS, EVEN IF THE NON-BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE EXCLUSIONS SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 17,

CUSTOMER'S BREACH OF SECTION 8.2, OR CUSTOMER'S PAYMENT OBLIGATIONS TO COMPANY UNDER THIS AGREEMENT. THE PROVISIONS OF THIS SECTION 18 ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE EXCLUSIONS IN DETERMINING TO ENTER INTO THIS AGREEMENT AND THE PRICING FOR THE SERVICES.

19. Publicity

Neither Party shall, except as otherwise required by Applicable Law or stock exchange requirements, issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other Party's marks or logos without the prior written consent of the other Party; provided, however, that Company may (subject its obligations of non-attribution under Section 7.4) include Customer's name and logo in its lists of Company customers, its public website and other promotional material. Company agrees to promptly cease such uses of Customer's name and logo following Customer's request sent to info@whylabs.ai.

20. Notices

Subject to change pursuant to this Section: (a) Company's physical address for notices is that of its Seattle, Washington, USA headquarters provided in the Order, Attn: Legal Notice, and its email address for notices is legal@whylabs.ai and (b) Customer's physical and email addresses for notices are those associated with its Order. Notices required or permitted to be given under this Agreement shall be in writing. Either Party may change its address(es) for notice by providing notice to the other in accordance with this Section.

21. Assignment

So long as Customer remains current in the payment of all amounts when due, Customer may assign this Agreement in connection with any merger, consolidation or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity), or a sale of all or substantially all of Customer's business or assets relating to this Agreement to an unaffiliated third party. Subject to the foregoing, Customer may not assign any of its rights or obligation under this Agreement, whether by operation of law or otherwise, without Company's prior written consent, and any purported assignment in

violation of this Section is void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

22. Independent Parties; No Third-Party Beneficiaries

The Parties expressly understand and agree that their relationship is that of independent contractors. Nothing in this Agreement shall constitute one Party as an employee, agent, joint venture partner or servant of another. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

23. Force Majeure

Neither Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments), when and to the extent such failure or delay is caused by acts of God; flood, fire or explosion; war, terrorism, invasion, riot or other civil unrest; embargoes or blockades in effect on or after the date of this Agreement; or national or regional emergency (each of the foregoing, a "Force Majeure Event"), in each case, provided the event is outside the reasonable control of the affected Party, the affected Party provides prompt notice to the other Party, stating the period of time the occurrence is expected to continue, and the affected Party uses diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

24. Governing Law; Venue

Except to the extent the issue arising under this Agreement is governed by United States federal law, this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Washington, without giving effect to the choice of law rules of that State. Any legal action or proceeding arising under or relating to this Agreement shall be brought exclusively in the state or federal courts located in King County, Washington, USA, and the Parties expressly consent to personal jurisdiction and venue in

those courts. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods are specifically excluded from application to this Agreement.

25. Miscellaneous

This Agreement, together with all Orders, is the complete and exclusive statement of the agreement between the Parties and supersedes all proposals, questionnaires and other communications and agreements between the Parties (oral or written) relating to the subject matter of this Agreement. Any terms and conditions of any other instrument issued by Customer in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement shall be of no force or effect.

Additionally, this Agreement supersedes any confidentiality, non-disclosure, evaluation or trial agreement previously entered into by the Parties with respect to Customer's or an Affiliate's evaluation of the Services or otherwise with respect to the Services. Except as otherwise provided in Section 27, this Agreement may be modified only by a written instrument duly executed by authorized representatives of the Parties. The failure of a Party to exercise or enforce any condition, term or provision of this Agreement will not operate as a waiver of such condition, term or provision. Any waiver by either Party of any condition, term or provision of this Agreement shall not be construed as a waiver of any other condition, term or provision. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall continue in full force and effect. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement. For purposes of this Agreement, the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; the word "or" is not exclusive; and the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole.

26. Counterparts

Any written Order may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Delivery of an executed counterpart of a signature page to an Order by fax or by email of a scanned copy, or execution and delivery through an electronic signature service (such as DocuSign), shall be effective as delivery of an original executed counterpart of the relevant Order.