

SOFTWARE AS A SERVICE (SAAS) AGREEMENT

This Software as a Service Agreement (this “**Agreement**”) is by and between Allstacks, Inc., a Delaware corporation (“**Provider**”), and the customer named on the applicable Service Order executed with Provider (“**Customer**”, together with Provider, the “**Parties**”, and each, a “**Party**”).

IF CUSTOMER EXECUTES A SERVICE ORDER WITH PROVIDER, OR IF CUSTOMER SELECTS “ACCEPT” WHEN THIS OPTION IS PRESENTED TO CUSTOMER, THEN ALL OF THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT AND IN THE SERVICE ORDER BECOME LEGALLY BINDING ON CUSTOMER. IF THE INDIVIDUAL EXECUTING OR SUBMITTING THE SERVICE ORDER ON BEHALF OF CUSTOMER (A) DOES NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, OR (B) IS NOT AUTHORIZED TO AGREE TO BE BOUND BY THIS AGREEMENT ON BEHALF OF CUSTOMER, SUCH INDIVIDUAL IS REQUIRED TO SELECT “DO NOT ACCEPT” OR TO NOT EXECUTE THE APPLICABLE SERVICE ORDER WITH PROVIDER, IN WHICH CASE CUSTOMER SHALL NOT BE PERMITTED TO ACCESS OR USE THE SERVICES.

The Parties hereby agree as follows:

1. **Definitions.** Capitalized terms have the meanings set forth or referred to in this **Section 1** or as otherwise defined in the applicable Service Order incorporated herein by reference:

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.

“**Action**” means any claim, suit, action or proceeding.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise/ownership of more than fifty percent (50%) of the voting securities of a Person.

“**Applicable Time Period**” means: (1) with respect to “Security”- or “High Severity”-level errors, within 10 business days, (2) with respect to “Medium Severity”-level errors, within 30 days, and (3) with respect to “Low Severity”-level errors, within 90 days. A “Security”-level error is one that has one or more of the following features: allows access to Customer Data from other, non-authorized parties; allows unauthorized parties’ access to any source, account or sensitive data; or weakens or removes encryption or other protections from Customer Data. A “High Severity”-level error is one that has one or more of the following features: substantial or total outage of the Allstacks Web App; substantial or total outage of the Allstacks Data processing pipeline; total loss of key features of the SaaS Software; prevents access to personal account management features, such as password reset or password authentication. A “Medium Severity”-level error is one that causes a partial outage of key features of the SaaS Software but that does not have any of the features of a “Security”-level or “High Severity”-level features. A “Low Severity”-level error is an error that is merely cosmetic in nature or that does not otherwise impact data processing or presentation.

“**Authorized User**” means each employee of the Customer that has been granted valid Access Credentials.

“**Business Day**” means a day other than a Saturday, Sunday or other day on which commercial banks in Raleigh, North Carolina are authorized or required by Law to be closed for business.

“**Contract Term**” has the meaning given to such term in the Service Order.

“**Customer Data**” means information and data that is collected, uploaded or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the Services.

“**Customer Systems**” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

“**Documentation**” means any and all manuals, instructions and other documents and materials that Provider provides or makes available to Customer in any form or medium which describe the functionality, components, features or requirements of the SaaS Software.

“**Effective Date**” means the date listed on the Service Order executed between Customer and Provider, or the date on which Customer submits its Service Order to Provider online, as applicable.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Services or Provider Systems as intended by this Agreement. Harmful Code does not include any Provider Disabling Device.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement or rule of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

“**Linked Assets**” means any Customer or third party digital assets, software tools, applications or databases, or other Third-Party Materials that Customer or its Authorized Users upload to or use in conjunction with the Services.

“Loss” means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Open-Source Components” means any software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other obligation, restriction or license agreement that substantially conforms to the Open Source Definition as prescribed by the Open Source Initiative or otherwise may require disclosure or licensing to any third party of any source code with which such software component is used or compiled.

“Permitted Use” means the internal requirements of Customer's business or activities in the ordinary course of such business or activities. Permitted use shall not in any case include the use of the SaaS Software by any Authorized User for any personal projects.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

“Provider Disabling Device” means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Provider or its designee to disable Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

“Provider Materials” means the SaaS Software, Documentation and Provider Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials includes any information, data or other content derived from Provider's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

“Provider Systems” means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Provider or through the use of third-party services.

“Raw Data” means the types of Customer Data that are described under the heading “What We Do Not Store” at the following webpage: <https://www.allstacks.com/data-security>.

“Representatives” means, with respect to a Party, that Party's and its Affiliates' employees, officers, directors, agents, independent contractors, subcontractors and legal advisors.

“SaaS Software” means the Provider software application or applications described in the Service Order, and all new versions, updates, revisions, improvements and modifications thereof, which Provider provides remote access to and use of as part of the Services.

“Service Hours” means between 9:00 a.m. and 5:00 p.m. (Eastern Time) on each Business Day.

“Service Order” means the Service Order executed between Provider and Customer or submitted online by Customer to Provider, as applicable, and which is incorporated herein by reference.

“Subscription Fees” has the meaning given to such term in the Service Order.

“Third-Party Materials” means materials and information, in any form or medium, that are not proprietary to Provider, including any third-party: (a) documents, data, content or specifications; (b) Open-Source Components or other software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

2. Services.

2.1 Services. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term, Provider shall use commercially reasonable efforts to provide to Customer and its Authorized Users the following services (collectively, the **“Services”**): (a) the hosting, management and operation of the SaaS Software and other services for remote electronic access and use by the Customer and its Authorized Users (**“Hosted Services”**); (b) the Support Services described in **Section 4.**; and (c) such other services as may be specified in the Service Order.

2.2 Changes. Provider reserves the right to make any changes to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Provider's services to its customers, (ii) the competitive strength of or market for Provider's services or (iii) the Services' cost efficiency or performance; or (b) comply with applicable Law. Without limiting the foregoing, either Party may, at any time during the Term, request in writing changes to the Services. No requested changes will be effective unless and until memorialized in a written change order signed by both Parties.

2.3 Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services (each, a **“Subcontractor”**), provided that Provider shall remain liable for any act or omission by its Subcontractors that would constitute a breach or violation of the terms of this Agreement.

2.4 Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Customer or any Authorized User has accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (b) Customer or any Authorized User is, or has been, involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; (c) Customer or any Authorized User has otherwise failed to comply with any material term of this Agreement, and has failed to cure such non-compliance within ten (10) days after written notice thereof from Provider; or (d) this Agreement expires or is terminated. This **Section 2.4** does not limit any of Provider's other rights or remedies, whether at law, in equity or under this Agreement.

3. Authorization and Customer Restrictions.

3.1 Authorization. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, Provider hereby authorizes Customer to access and use, during the Term, the Services and such Provider Materials as Provider may supply or make available to Customer solely for the Permitted Use by and through Authorized Users in accordance with the Documentation. This authorization is non-exclusive and, other than as may be expressly set forth in **Section 14.8**, non-transferable.

3.2 Authorization Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits: (a) copy, modify or create derivative works or improvements of the Services or Provider Materials; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Provider Materials or the underlying structure, ideas, know-how, algorithms, models or methodology relevant to the Services or Provider Materials, in whole or in part; (d) bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider Materials other than by an Authorized User through the use of its then valid Access Credentials; (e) share or permit any Authorized User to share any Access Credentials with any person other than an Authorized User; (f) input, upload, transmit or otherwise provide to or through the Services or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; (g) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Provider Systems or Provider's provision of services to any third party, in whole or in part; (h) remove, delete, alter or obscure any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof; (i) access or use the Services or Provider Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable Law; or (j) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials or the development, provision or use of a competing software service or product.

3.3 Linked Assets. Customer represents and warrants to Provider: (i) that it owns, or has the legal right to use, and permit Provider to access and use, the Linked Assets as contemplated under this Agreement, and (ii) that all Linked Assets (and their disclosure to, access by and use by Provider or the Services as contemplated under this Agreement) complies with all applicable federal, state and local laws, rules and regulations and third party license agreements. Provider acknowledges and agrees that, as between Provider and Customer, Customer (or its licensors) will retain sole and exclusive ownership of all Linked Assets provided by Customer to Provider in connection with this Agreement.

4. Support Services.

4.1 In General. As part of Customer's subscription to the Services, and for no additional fee, Provider will provide reasonable telephone, e-mail and chat support ("Support Services") to Customer during normal Service Hours. Provider reserves the right to charge Customer on a time-and-materials basis at Provider's then-current professional services rate for Support Services provided (i) outside of normal Service Hours, or (ii) in connection with a request Provider reasonably determines is not attributable to a failure of the Services to operate in all material respects in accordance with its Documentation. Customer shall provide all information and assistance reasonably requested by Provider in connection with providing such Support Services.

4.2 Exclusions. Notwithstanding anything to the contrary stated herein, Support Services exclude: (i) support for software or hardware that is not part of the Provider Systems; (ii) support for any part of the Customer Systems; (iii) on-site training assistance; (iv) on-site dispatch of Provider personnel; and (v) performance of any professional, consulting or advisory services.

5. Security.

5.1 Security Program. Provider shall develop, implement, maintain, and monitor a written data security program that contains commercially reasonable administrative, technical, and physical safeguards to protect against anticipated threats or hazards to the security, confidentiality or integrity of Customer Data, including the unauthorized or accidental acquisition, destruction, loss, alteration or use of, and the unauthorized access to, Customer Data. At a minimum, such program shall be consistent with Provider's Data Security policy, available online at <https://www.allstacks.com/data-security/>.

5.2 Review of Security Program. Provider shall review and, as appropriate, revise its data security program at least annually or whenever there is a material change in Provider's business practices that may reasonably affect the security or integrity of Customer Data.

5.3 Physical and Environmental Security. Provider shall ensure that its information processing facilities that handle, process, and store Customer Data are housed in secure areas and protected by perimeter security, such as barrier access controls that provide a physically secure environment from unauthorized access, damage, and interference.

5.4 Security Breaches.

(a) Provider shall promptly report to Customer any unauthorized acquisition, access, use or disclosure of Customer Data maintained on servers owned or otherwise licensed by Provider from a third party (e.g., AWS) (each, a "Security Breach"). Provider shall also use diligent efforts to remedy any such Security Breach in a timely manner and deliver to Customer a root cause assessment and future incident mitigation plan with regard to each Security Breach.

(b) If any such Security Breach results from Provider's material breach of this Agreement or any act or omission of Provider or any Provider personnel that constitutes gross negligence or willful or intentional misconduct, Provider shall reimburse Customer for all reasonable costs and expenses Customer may incur in providing any notification of such Security Breach required by applicable Law.

5.5 Data Backup and Disaster Recovery. Provider shall maintain or cause to be maintained commercially reasonable disaster avoidance procedures designed to safeguard the Customer Data, Provider's processing capability and the availability of the Hosted Services, in each case throughout the Term and at all times in connection with its actual or required performance of the Services hereunder. Without limiting the foregoing, Provider shall conduct or have conducted daily backups of Customer Data and perform or cause to be performed other periodic backups of Customer Data and store such backup Customer Data in a commercially reasonable location and manner; provided, that Customer acknowledges and agrees

that as part of the ordinary course operation of the SaaS Software, all Raw Data is processed, filtered out and discarded prior to being stored (written to disk) in Provider's live or backup systems associated with the SaaS Software, and therefore no backups will be made of (and no backups will be available for) any Raw Data. Upon expiration or termination of this Agreement, Provider shall provide Customer with a copy of the backed up Customer Data in such machine readable format as is mutually agreed upon by the Parties.

5.6 Reputable Hosting Provider. During the Term Provider may provide the Hosted Services using Amazon EC2 – Virtual Server Hosting (“AWS”) or such other hosting provider that implements and maintains commercially reasonable security programs, policies, procedures, controls and technologies. Customer hereby consents to Provider using AWS to provide the Hosting Services and acknowledges and agrees that AWS’ (a) security programs, policies, procedures, controls and technologies, and (b) data backup and disaster recovery policies and procedures, are consistent with industry best practices thereby resulting in compliance with the requirements of this **Section 5**.

6. Confidentiality.

6.1 Confidential Information. In connection with this Agreement each Party (as the “**Disclosing Party**”) may disclose or make available to the other Party (as the “**Receiving Party**”) Confidential Information. Subject to **Section 6.2**, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology (including source code), trade secrets, know-how, business operations, plans, strategies, customers, pricing information, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing: (a) all Provider Materials are the Confidential Information of Provider; and (b) the terms and existence of this Agreement are the Confidential Information of Provider.

6.2 Exclusions and Exceptions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

6.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted under the terms and conditions of **Section 6.4**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 6**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 6**; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its confidential information and in no event less than a reasonable degree of care; (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and (e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 6**.

6.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 6.3**; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 6.4**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

7. Fees and Payment.

7.1 Fees. Customer shall pay to Provider the Subscription Fees and such other fees and charges as set forth in the Service Order (collectively, the “**Fees**”) in accordance with the terms of the Service Order and this **Section 7**. All payment obligations are non-cancelable and all Fees paid are non-refundable (except as expressly provided in **Sections 10.3(c)**, **10.3(d)** and **11.4(c)** below). Payment of the Subscription Fees in accordance with the terms of this Agreement shall entitle Customer to the number of Authorized Users set forth in the applicable Service Order. Customer may purchase access for additional Authorized Users for an additional fee per additional Authorized User per month.

7.2 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, service, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

7.3 Payment. Subscription Fees for the Initial Term and for each subsequent Contract Term will be billed according to the schedule set forth in the Service Order. Customer shall make all payments hereunder in US dollars. Customer shall, upon the written request from Provider, establish and maintain valid and updated credit card information or a valid ACH auto debit account (in each case, the “Automatic Payment Method”). Upon establishment of such Automatic Payment Method, Provider is hereby authorized to charge the Fees using such Automatic Payment Method. If Provider does not require Customer to establish and maintain an Automatic Payment Method, Provider shall invoice Customer in advance for the applicable Fees. Except as set forth in this Agreement, invoiced amounts are due net 30 days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Provider and notifying Provider of any changes to such information.

7.4 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available to Provider: (a) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the

highest rate permitted under applicable Law; and (b) if such failure continues for ten (10) calendar days following written notice that such payment is past due, Provider may suspend performance of the Services until all past due amount and interest thereon have been paid. The remedies specified in this **Section 7.4** are in addition to, and no in lieu of, Provider's right to terminate this Agreement under **Section 9.2(a)**.

7.5 **Rate Increases.** Provider may increase the Subscription Fees specified in the applicable Service Order once per year on each anniversary of the Effective Date of the Service Order; provided that (a) it provides written notice to Customer (which may be provided via e-mail) at least thirty (30) days prior to such price increase taking effect, and (b) any such price increase shall not exceed the greater of: (i) five percent (5%) or (ii) any increase to the consumer price index (CPI) in the preceding year plus two percent (2%).

8. **Intellectual Property Rights.**

8.1 **Services and Provider Materials.** All right, title and interest in and to the Services and Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and the respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Services or Provider Materials (including Third-Party Materials), except as expressly set forth in **Section 3.1** or the applicable third-party license, in each case subject to **Section 3.2**. All other rights in and to the Services and Provider Materials (including Third-Party Materials) are expressly reserved by Provider and the respective third-party licensors.

8.2 **Customer Data.** As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 8.3**.

8.3 **Consent to Use Customer Data.** Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to Provider, its Subcontractors and the Provider personnel during the Term as are necessary or useful to perform the Services; (b) to Provider, its Subcontractors and the Provider personnel during the Term and thereafter to use the Customer Data in aggregated and anonymized form only (not including any Customer Confidential Information or any information that identifies or could reasonably be used to identify Customer, its personnel, its customers or clients, or any other individual or entity) for internal research purposes, for benchmarking purposes to create (in aggregated form) statistical comparisons among users of the SaaS Software, and to improve its products, improve the quality of its analytics and improve ("train") its artificial intelligence algorithms and machine learning models associated with the SaaS Software, and (c) to Provider as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

8.4 **AI Model Improvements.** For the avoidance of doubt, to the extent Provider makes any improvements to its algorithms and models ("**Improvements**") based upon the SaaS Software's processing of Customer Data and the resulting "machine learning" or "training" of its algorithms and models as described above, Customer acknowledges and agrees that Provider shall exclusively own all right, title and interest in and to the Improvements, including all related Intellectual Property Rights.

9. **Term and Termination.**

9.1 **Term.** Unless otherwise terminated in accordance with this Agreement, the initial term of this Agreement shall be as set forth in the Service Order (the "**Initial Term**"). Thereafter, this Agreement will automatically renew for successive Contract Terms (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**") unless:

(a) a Party notifies the other Party in writing that it has elected not to renew this Agreement at least ninety (90) days prior to the end of the then-current Initial Term or Contract Term

(b) this Agreement is earlier terminated pursuant to any of this Agreement's express provisions

9.2 **Termination.** In addition to any other express termination right set forth elsewhere in this Agreement, this Agreement may be terminated at any time:

(a) by Provider, effective on written notice to Customer, if Customer fails to pay any amount when due under this Agreement, where such failure continues more than ten (10) calendar days after Provider's delivery of written notice thereof;

(b) by either Party, effective on written notice to the other Party, if the other Party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; and

(c) by either Party, effective immediately, if the other Party: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

9.3 **Effect of Termination or Expiration.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses and authorizations granted by either Party to the other hereunder will immediately terminate;

(b) Provider may disable all Customer and Authorized User access to the Hosted Services and Provider Materials;

(c) Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) promptly destroy or, at Customer's written request and upon payment of a fee mutually agreed-upon by the Parties, return, all documents and tangible materials containing, reflecting, incorporating or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Provider directly or indirectly controls, provided, however, that Provider may retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course (but will remain subject to all confidentiality, security and other applicable requirements of this Agreement); and

(d) Customer shall immediately cease all use of any Services or Provider Materials and (i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Provider Materials or Provider's Confidential Information, and (ii) permanently erase all Provider Materials and Provider's Confidential Information from all systems Customer directly or indirectly controls.

9.4 Surviving Terms. The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 1** (Definitions), **Section 3.2** (Authorization Limitations and Restrictions), **Section 6** (Confidentiality), **Section 8** (Intellectual Property Rights), **Section 9.3** (Effect of Termination or Expiration), this **Section 9.4** (Surviving Terms); **Section 10.4** (Disclaimer), **Section 11** (Indemnification), **Section 12** (Limitations of Liability) and **Section 14** (Miscellaneous).

10. Representations and Warranties.

10.1 Mutual Representations and Warranties. Each Party represents, warrants and covenants to the other Party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth on the Service Order has been duly authorized by all necessary corporate or organizational action of such Party; (d) when executed and delivered by both Parties, this Agreement (including the Service Order) will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (e) it shall comply with all applicable federal and state laws, statutes, rules and regulations in the performance of its obligations hereunder.

10.2 Services Warranty. Provider warrants to Customer that it will perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

10.3 SaaS Software and Hosted Services Warranty.

(a) Subject to the limitations and conditions set forth in **Section 10.3(b)**, Provider warrants to Customer that the SaaS Software and Hosted Services will substantially conform in all material respects to the specifications set forth in the Documentation.

(b) Notwithstanding the foregoing, the warranty set forth in **Section 10.3(a)** does not apply to errors arising out of or relating to: (i) any operation or use of, or other activity relating to, the SaaS Software and/or Hosted Services other than as specified in the Documentation; (ii) the operation of, or access to, Customer's or a third party's system or network; (iii) any Open-Source Components; or (iv) Customer's breach of any material provision of this Agreement.

(c) If Provider breaches, or is alleged to have breached, any of the warranties set forth in **Section 10.3**, Provider may, at its sole option and expense, take any of the following steps to remedy such breach: (i) modify, fix or correct the SaaS Software and/or Hosted Services to remedy such non-conformity; (ii) replace the non-conforming portion of the SaaS Software and/or Hosted Services, as applicable, with functionally equivalent software (which software will, on such replacement, constitute SaaS Software hereunder); and/or (iii) terminate this Agreement and promptly refund to Customer, on a pro rata basis, the share of any Fees prepaid by Customer for the future portion of the Term that would have remained but for such termination.

(d) If Provider does not cure a warranty breach or terminate this Agreement as permitted by Section 10.3(c) within the Applicable Time Period after Provider's receipt of written notice of such breach, Customer shall have the right to terminate this Agreement and Provider shall promptly refund to Customer, on a pro rata basis, the share of any Fees prepaid by Customer for the future portion of the Term that would have remained but for such termination. THE REMEDIES SET FORTH IN SECTION 10.3(c) AND THIS SECTION 10.3(d) SET FORTH THE CUSTOMER'S SOLE REMEDY AND THE PROVIDER'S ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THE WARRANTIES PROVIDED IN THIS SECTION 10.3.

10.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN **SECTION 10.2** AND **10.3**, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

11. Indemnification.

11.1 Provider Indemnification. Provider shall indemnify, defend and hold harmless Customer and Customer's officers, directors, employees, agents, successors and permitted assigns (each, including Customer, a "**Customer Indemnitee**") from and against any and all Losses incurred by the Customer Indemnitee arising out of or relating to any Action by a third party (other than an Affiliate of a Customer Indemnitee) to the extent that such Losses arise from any allegation in such Action that Customer's use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this Agreement (including the Documentation) infringes any U.S. Intellectual Property Right. The foregoing obligation does not apply to the extent that such Action or Losses arise from any allegation of or relating to any:

(a) access to or use of the Services or Provider Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Documentation or otherwise in writing by Provider;

(b) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Provider; or

(c) Action or Losses for which Customer is obligated to indemnify Provider pursuant to **Section 11.2**.

11.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless Provider and its Affiliates, and each of its and their respective officers, directors, employees, agents, subcontractors, successors and assigns (each, including Provider, a "**Provider Indemnitee**") from and against any and all Losses incurred by the Provider Indemnitee in connection with any Action by a third party (other than an Affiliate of a Provider Indemnitee) to the extent that such Losses arise out of or relate to any:

(a) Customer Data or Linked Assets, including any processing of Customer Data by or on behalf of Provider in accordance with this Agreement or access to any Linked Assets by or on behalf of Provider in accordance with this Agreement; or

(b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Provider.

11.3 Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to **Section 11.1** or **Section 11.2**. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately 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 Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this **Section 11.3** will not relieve the Indemnitor of its obligations under this **Section 11** except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

11.4 Mitigation. If any of the Services or Provider Materials are, or in Provider's opinion is likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

(a) obtain the right for Customer to continue to use the Services and Provider Materials as contemplated by this Agreement;

(b) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing substantially similar features and functionality, and such modified or replacement software will constitute Services and Provider Materials, as applicable, under this Agreement; or

(c) if the remedies in **Section 11.4(a)** and **11.4(b)** are not reasonably practicable, as determined by Provider, Provider may terminate this Agreement and require Customer to immediately cease any use of the Services and Provider Materials, and Provider will refund to Customer, on a *pro rata* basis, the share of any Fees prepaid by Customer for the future portion of the Term that would have remained but for such termination.

11.5 Sole Remedy. THIS **SECTION 11** SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND DOCUMENTATION) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

12. Limitations of Liability.

12.1 EXCLUSION OF DAMAGES. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN **SECTION 12.3**, IN NO EVENT WILL PROVIDER, OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.2 CAP ON MONETARY LIABILITY. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN **SECTION 12.3**, IN NO EVENT WILL THE AGGREGATE LIABILITY OF PROVIDER AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AGGREGATE AMOUNT PAID TO PROVIDER HEREUNDER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST CLAIM AGAINST PROVIDER HEREUNDER. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12.3 Exceptions to Limitations of Liability. The exclusions and limitations in **Section 12.1** and **Section 12.2** do not apply to Provider's obligations under **Section 11** (Indemnification) or liability for Provider's fraud, gross negligence or willful or intentional misconduct.

13. Force Majeure.

13.1 No Breach or Default. In no event will either Party be liable or responsible to the other Party, or 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 payment obligation), when and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority. Either Party may terminate this Agreement if a Force Majeure Event affecting the other Party continues substantially uninterrupted for a period of 30 days or more.

13.2 Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected Party shall give prompt written notice to the other Party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

14. Miscellaneous.

14.1 Further Assurances. On a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

14.2 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

14.3 Public Announcements. Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld; provided, however, that Provider may, without Customer's consent, include Customer's name, trademarks and/or logos on Customer's website and/or in other sales and marketing materials in order to factually identify Customer as a current or former customer (as the case may be) of Provider.

14.4 Notices. All notices, instructions, requests, authorizations, consents, demands and other communications hereunder shall be in writing and shall be delivered by one of the following means, with notice deemed given as indicated in parentheses: (a) by personal delivery (when actually delivered); (b) by overnight courier (upon written verification of receipt); or (c) by certified or registered mail, return receipt requested (upon verification of receipt). In each case, such notices shall be addressed to a party at such party's address set forth on the Service Order (or such other address as updated by such party from time-to-time by giving notice to the other party in the manner set forth in this **Section 14.4**).

14.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and *vice versa*; and (e) words denoting any gender include all genders. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

14.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

14.7 Entire Agreement. This Agreement and the Service Order, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments and appendices and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments and appendices; (b) second, the exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date specified in the Service Order; and (c) third, any other documents incorporated herein by reference.

14.8 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without Provider's prior written consent, which consent shall not unreasonably be delayed or withheld, provided that Customer shall have the right, without Provider's consent, to assign or otherwise transfer this Agreement in its entirety: (a) to any of its Affiliates, provided that all such rights, obligations and performance hereunder shall revert to Customer automatically and immediately at such, if any, time as such affiliated Person ceases to be an Affiliate of Customer, and provided further that Customer shall remain responsible for all acts and omissions of such Affiliate in the performance of this Agreement; or (b) 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 of good financial standing. Any purported assignment, delegation or transfer in violation of this **Section 14.8** is void. This Agreement is binding on and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

14.9 No Third-party Beneficiaries. 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.

14.10 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14.11 Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. On such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14.12 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of North Carolina without giving effect to any choice or conflicts of law provision or rule thereof. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of North Carolina, in each case located in Raleigh, North Carolina, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such Party's address set forth herein will be effective service of process for any suit, action or other proceeding brought in any such court.

14.13 Equitable Remedies. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under **Section 3** (Use Restrictions), **Section 6** (Confidentiality), **Section 8** (Intellectual Property Rights) or **Section 11** (Indemnification) of this Agreement would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.