

STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions, together with the Order Form (hereafter referred to as the "Agreement"), are entered into as of the Effective Date by and between the Company and the Customer.

1. DEFINITIONS

- 1.1 “**Customer Systems**” means the systems and devices that Customer uses to access the Hosted Service.
- 1.2 “**Documentation**” means any manuals, instructions or other documents or materials that Company provides or makes available to Customer that describe the functionality, features or requirements of the Services.
- 1.3 “**Hosted Service**” means Company’s proprietary software-as-a-service application platform to be provided under this Agreement pursuant to an Order.
- 1.4 “**Improvements**” means all updates, enhancements, error corrections, fixes, release notes, upgrades and other changes to the Services and Documentation, including derivative works thereof, developed by Company without the use or incorporation of Customer Confidential Information.
- 1.5 “**Intellectual Property Rights**” means all rights, title and interest to or in patent, copyright, trademark, service mark, trade secret, business or trade name, know-how and rights of a similar or corresponding character.
- 1.6 “**Materials**” means the Services and the Documentation.
- 1.7 “**Order**” means a mutually agreed and executed order form referencing and incorporating the terms of this Agreement, setting forth the additional terms applicable to the particular Services provided pursuant to this Agreement.
- 1.8 “**Professional Services**” means the implementation, training, or other professional services, if any, identified in an Order.
- 1.9 “**Report**” means the results of the analysis of the Input Data generated through the Hosted Service.
- 1.10 “**Services**” means the Hosted Service, [Support Services,] and Professional Services, collectively, to be provided under this Agreement pursuant to an Order.
- 1.11 “**Input Data**” means data submitted by Customer to the Hosted Service’s web-accessible user interfaces.
- 1.12 “**Subscription Term**” means the subscription term(s) for the Services as set forth in the applicable Order.
- 1.13 “**Summary Data**” means Input Data that has been combined by Company with other Company customer data for the purposes set forth in Section 5.5 that has been rendered de-identified by Company in accordance with applicable law.
- 1.14 [“**Support Services**” means the technical support services regarding the Hosted Services specified in Exhibit A.]
- 1.15 “**Third Party Content**” means all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material that are obtained or derived from third party sources outside of

Company and made available to Customer through or in conjunction with Customer’s use of the Materials.

2. SERVICES

- 2.1 Hosted Services. Subject to Customer’s ongoing compliance with the terms of this Agreement (including any additional limitations or restrictions set forth in the applicable Order and timely payment of all applicable fees), Company hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, internal right during the applicable Subscription Term to allow its employees and approved agents (who have registered with Company) (“Authorized Users”) to access and use the Hosted Service, solely for the Customer to manage its online rates, inventory, blackouts, and reservations across channels such as SpotHero and ParkWhiz (the “Authorized Purpose”). Customer and Company agree to cooperate in good faith to review Customer’s use of the Hosted Service in compliance with this Section 2.2 and Customer will promptly pay any additional reasonable fees charged in connection with such verified excess usage. Customer will promptly notify Company in the event that Customer undergoes any changes that could lead to a material increase in its use of the Hosted Service (including as a result of any merger, acquisition or similar event affecting Customer). Company has and will retain sole control over the operation, provision, maintenance, and management of the Hosted Service.
- 2.2 Authorized Users. Company is responsible for approving access by all Authorized Users to the Services. Customer is responsible for (a) using commercially reasonable efforts to prevent unauthorized access by Authorized Users, (b) maintaining the confidentiality of usernames, passwords and account information, and (c) using commercially reasonable efforts to control all activities that occur under its and its Authorized Users’ usernames, passwords or accounts as a result of Customer’s or Customer’s Authorized Users’ access to the Materials. By associating Customer and its Authorized Users’ usernames, passwords, and accounts with Company, Customer accepts responsibility for the timely and proper termination of user records in the Customer Systems. Company is not responsible for any harm caused by Customer’s Authorized Users, including individuals who were not authorized to have access to the Materials but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in Customer Systems. Each party shall notify the other promptly upon discovery of any unauthorized use.
- 2.3 Documentation. Company grants customer a non-exclusive, non-sublicensable, nontransferable license to use the Documentation during the Subscription Term solely for Customer’s internal business purposes in connection with its use of the Services.
- 2.4 Professional Services. Subject to Customer’s timely payment of all applicable fees, Company will use

commercially reasonable efforts to provide to Customer the Professional Services, if any, set forth in each Order. Company will own and retain all right, title and interest, including all intellectual property and proprietary rights, in and to any work product or deliverables created in connection with the Professional Services. Nothing in this Agreement or any Order or attachment to this Agreement may be understood to prevent Company from developing similar work product or deliverables for other customers.

2.5 **Restrictions.** Customer may not, directly or indirectly, and may not authorize any third party to: (a) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code, structure, ideas, algorithms, or associated know-how of, the Hosted Service, or reconstruct, or discover, any hidden or non-public elements of the Hosted Service or results provided in connection with Professional Services (except to the extent expressly permitted by applicable law notwithstanding this restriction); (b) translate, adapt, or modify the Hosted Service, any results of any Professional Services, or any portion of any of the foregoing; (c) write or develop any program based upon the Hosted Service, or any portion or software applications thereof, or otherwise use the Services in any manner for the purpose of developing, distributing or making accessible products or services that compete with any or all of the Services; (d) sell, sublicense, transfer, assign, lease, rent, distribute, or grant a security interest in the Services or any rights thereto; (e) use the Services, or export, sell or distribute any content or other portion thereof, for the benefit of, or allow access to the Services (or any content or other portion thereof) by, any third persons; (f) use the Services for any purpose other than the Authorized Purpose; (g) permit the Services to be used by any persons other than Authorized Users; (h) transmit unlawful, infringing, harmful, or other data or code to which Customer is not authorized to transmit, either to or from the Hosted Service; (i) alter or remove any trademarks or proprietary notices contained in or on the Hosted Services; (j) circumvent or otherwise interfere with any authentication or security measures of the Hosted Service, or otherwise interfere with or disrupt the integrity or performance thereof; or (k) otherwise use the Services or any Company IP (defined below) except as expressly permitted in this Agreement. Customer acknowledges that Company may, but is under no obligation to, monitor Customer's use of the Hosted Service. Company may suspend Customer's access to the Hosted Service for any period during which Customer is, or Company has a reasonable basis for alleging Customer is, in noncompliance with any of the prohibited actions in this Section.

2.6 **Third-Party Components.** Customer is solely responsible for obtaining all third-party technologies and connectivity necessary to access and use the Hosted Services. In particular, Customer acknowledges that a high-speed Internet connection is required at all times in order to use the Hosted Service properly, and Customer agrees that it will maintain such a high-speed connection throughout the Subscription Term and that Company may not be obligated to provide certain services to the extent that such high-speed connection is not in operation. Customer acknowledges that

Company engages third party solutions and services in connection with the hosting and operating of the Hosted Service and Company will have no warranty or other obligation with respect to such third party solutions and services.

3. [SUPPORT SERVICES;] SERVICE LEVELS

3.1 **Support Services.** Subject to Customer's ongoing compliance with the terms of this Agreement (including timely payment of all applicable fees), Company agrees to provide the Support Services and such other technical support as are specified in the applicable Order (if any). It is Customer's responsibility to ensure that all Authorized Users and prospective Authorized Users attend training session(s). Customer must appoint at least one suitably-trained Authorized User to act as the sole support contact between Customer and Company.]

3.2 **Fixes.** Customer is required to accept all patches, bug fixes, updates, maintenance and service packs (collectively, "Fixes") necessary for the proper function and security of the Services, as such Fixes are generally released by Company.

3.3 **Service Levels.** Company will use commercially reasonable efforts to (i) keep an up-to-date disaster recovery plan intended to restore service within 24 hours after any interruption of the Hosted Service; and (ii) implement commercially reasonable measures to secure the Hosted Service against unauthorized access to or alteration of Submitted Data (defined below); provided that Customer is solely responsible for using commercially reasonable efforts to maintain the security and operability of the Customer Systems and ensure timely transmission of, and the accuracy, quality, integrity, and reliability of, all Submitted Data.

4. FEES; PAYMENT

4.1 **Fees.** For each Subscription Term, Customer will pay Company all fees of the type, amount and payment schedule set forth in the applicable Order ("Fees"), which may include, without limitation, Hosted Services fees ("Subscription Fees"), and fees for Professional Services ("Professional Services Fees"), in each case as set forth in the applicable Order. If Professional Service Fees are not set forth on an Order, such fees will be paid for Professional Services to be rendered at Company's then prevailing time and material rates. Customer agrees to promptly reimburse Company upon invoice for any actual, out-of-pocket travel and lodging expenses incurred by Company in connection with any on-site training or implementation services set forth on an Order. Except as otherwise expressly set forth in an applicable Order, all Fees are non-cancellable and non-refundable and non-recoupable.

4.2 **Payment Terms.** Unless otherwise set forth in the applicable Order, all Subscription Fees will be billed monthly in advance, and all invoices for Fees are due and payable in United States dollars within 30 days after the invoice date, without deduction or setoff. Interest accrues from the due date at the lesser of 1.5% per month or the highest rate allowed by law.

4.3 Taxes. Customer is responsible for all federal, state, local, sales, use, value added, excise, or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement (other than taxes based on Company's net income).

5. PROPRIETARY RIGHTS; DATA ACCESS AND USE

5.1 Reservation of Rights. Customer acknowledges that Company owns and retains all rights, title and interest, including all Intellectual Property Rights, in and to all technology, software, algorithms, user interfaces, trade secrets, techniques, designs, inventions, works of authorship and other tangible and intangible material and information pertaining to the Services, and all Improvements thereto, in each case excluding Input Data and other Customer Confidential Information (“**Company IP**”). Nothing in this Agreement will preclude or restrict Company from using or exploiting any concepts, ideas, techniques or know-how of or related to the Company IP or otherwise arising in connection with Company's provision of the Services. Other than as expressly set forth in this Agreement, no license or other rights in or to the Company IP are granted to Customer, and all such rights are expressly reserved to Company.

5.2 Input Data. All right, title and interest in and to all Input Data is and shall remain the sole and exclusive property of Customer, including all Intellectual Property Rights relating thereto. Company may process Input Data for the purpose of performing the Services pursuant to this Agreement. Notwithstanding anything to the foregoing, Customer grants Company the right to use Input Data to provide the Services to the Customer, to improve the Services, and to create and use Summary Data in accordance with the Agreement.

5.3 Results. All right, title and interest in and to all Results is and shall remain the sole and exclusive property of Customer, including any Intellectual Property Rights relating thereto and any Input Data; provided, however, that Customer hereby grants to Company a non-exclusive, perpetual, irrevocable, sub-licensable license to use and disclose the Results.

5.4 Summary Data. Company may process Summary Data for analytical, statistical and quality improvement purposes related to the services it provides to its customers and other third parties, provided that (i) Summary Data will only be made available as aggregated and/or de-identified form; and (ii) Summary Data will not disclose the identity of Customer or any individual customer or third party. All right, title and interest in and to all Summary Data is and shall remain the sole and exclusive property of Company, including all Intellectual Property Rights thereto.

5.5 Feedback. Any ideas, suggestions, guidance or other information disclosed by Customer to Company related to the Services, and any Intellectual Property Rights related thereto, excluding any Input Data, shall be collectively deemed “**Feedback**.” Company shall own all Feedback, and Customer agrees to assign and hereby assigns to Company all

of its right, title and interest in and to such Feedback. To the extent that the foregoing assignment is ineffective for whatever reason, Customer agrees to grant and hereby grants to Company a nonexclusive, perpetual, irrevocable, royalty-free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform and otherwise exploit such Feedback without restriction.

5.6 Third Party Content. As part of the Services, Company may provide Customer with access to Third Party Content. The third party owner, author or provider of any such Third Party Content retains all ownership and intellectual property rights in and to that content, and Customer's rights to use such Third Party Content are subject to, and governed by, the terms applicable to such content as specified by such third party owner, author or provider. All Third Party Content is provided on a “as is” and “as available” basis without any warranty of any kind. Company is not responsible for, and under no obligation to control, monitor, or correct Third Party Content, and may remove any Third Party Content in its discretion.

6. TERM AND TERMINATION

6.1 Term. This Agreement will start on the Effective Date and, continue from month-to-month until all Orders have expired or been terminated in writing with thirty (30) day written notice. The term of each Order will begin on the date of last signature and continue, unless otherwise terminated in accordance with this Agreement, until the end of the last-to-expire Subscription Term of such Order.

6.2 Termination. Either party may terminate this Agreement or any Order upon 30 days' written notice to the other party. This Agreement may be terminated by either party with immediate effect upon the occurrence of a Bankruptcy Event regarding the other party. “**Bankruptcy Event**” means the occurrence of any one or more of the following events in respect of such party: (a) it ceases to carry on its business; (b) a receiver or similar officer is appointed for its business, property, affairs or revenues; (c) it becomes insolvent, admits in writing its inability to pay debts generally as they come due, is adjudicated bankrupt, or enters composition proceedings, makes an assignment for the benefit of its creditors or another arrangement of similar import; or (d) proceedings under bankruptcy or insolvency laws are commenced by or against it.

6.3 Effect of Termination. Upon the effective date of expiration or termination of this Agreement for any reason: (a) all outstanding Orders and access to the Services will automatically terminate; and (b) all outstanding payment obligations of Customer will become due and payable immediately. The following provisions will survive the expiration or termination of this Agreement for any reason: Sections 1, 2.5, 4 (with respect to Fee amounts due), 5, 6.3, 7, 9, 10, 11, and 13.

7. CONFIDENTIALITY

7.1 **Definition.** “**Confidential Information**” means (a) any information disclosed, directly or indirectly, by or on behalf of one party (“**Discloser**”) to the other party (“**Recipient**”) pursuant to this Agreement that is designated as “confidential,” or in some other manner to indicate its confidential nature, and (b) any information that otherwise should reasonably be expected to be treated in a confidential manner based on the circumstances of its disclosure or the nature of the information itself. Without limiting the foregoing, the Company IP is Company’s Confidential Information, and Input Data is Customer’s Confidential Information. The terms (but not the existence) of this Agreement are each party’s Confidential Information. However, Confidential Information does not include any information which (i) is or becomes generally known and available to the public through no act of the Recipient; (ii) was already in the Recipient’s possession without a duty of confidentiality owed to the Discloser at the time of the Discloser’s disclosure, as shown by the Recipient’s contemporaneous records; (iii) is lawfully obtained by the Recipient from a third party who has the express right to make such disclosure; or (iv) is independently developed by the Recipient without breach of an obligation owned to the Discloser.

7.2 **Use; Maintenance.** Neither party may use the other party’s Confidential Information for any purpose except to exercise its rights and perform its obligations under this Agreement. Neither party may disclose, or permit to be disclosed, either directly or indirectly, any Confidential Information of the other party, except: (a) to its advisors, or prospective investors or purchasers, in each case subject to written obligations of confidentiality, or (b) where the Recipient becomes legally compelled to disclose Confidential Information, notwithstanding the Recipient’s having given the Discloser’s prior notice of such legally compelled disclosure and a reasonable opportunity to seek a protective order or other confidential treatment for such Confidential information (if permitted by applicable law). Each party will take at least reasonable measures and care to protect the secrecy of, and avoid disclosure and unauthorized use of, the Confidential Information of the other party, and will take at least those measures that it takes to protect its own most highly confidential information.

8. DATA PROTECTION

8.1 In performing the Services, Company and Customer will comply with all state and federal privacy laws applicable to the use and disclosure of personal data, as applicable. Company further acknowledges and agrees that it will comply with the Business Associate Agreement, if applicable.

8.2 Customer has and will retain sole responsibility for all Input Data, all information, instructions and material provided by or on behalf on Customer or any Authorized User in connection with the Services and Customer’s Systems. Company may remove Input Data from Company systems that support the Hosted Services, including if Company believes such data may violate applicable law, if the source of

such data becomes unavailable, or if a third party brings or threatens legal action against Company or a third party in which event Company shall notify Customer of such removal.

9. REPRESENTATIONS AND WARRANTIES

9.1 **Mutual.** Each party represents and warrants to the other party: (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, consents, and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth on the Order has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

9.2 **By Customer.** Customer represents, warrants and covenants to Company that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Input Data so that, as received by Company and used in accordance with this Agreement, it does not and will not infringe, misappropriate, or otherwise violate any intellectual property rights or privacy rights of any third party or violate any applicable laws.

10. INDEMNIFICATION

10.1 **By Company.** Company may (a) defend, or at its option settle, any claim brought against Customer by a third party to the extent it alleges that Customer’s use (as authorized in this Agreement) of a Service for which there is an active Subscription Term at the time of the claim constitutes a direct infringement of any intellectual property or proprietary rights of any third party (a “**Claim**”), and (b) pay any damages awarded in a final judgment (or amounts agreed in a monetary settlement) in any such Claim defended by Company; provided that Customer provides Company (i) prompt written notice of, (ii) sole control over the defense and settlement of, and (iii) all information and assistance reasonably requested by Company in connection with the defense or settlement of, any such Claim. If any such Claim is brought or threatened, Company may, at its sole option and expense: (w) procure for Customer the right to continue to use the applicable Service; (x) modify the Service to make it non-infringing; (y) replace the affected aspect of the Service with non-infringing technology having substantially similar capabilities; or (z) if none of the foregoing is commercially practicable, terminate the Orders related to the applicable Service or this Agreement. Notwithstanding the foregoing, Company will have no liability to Customer (1) for any use of the Services in combination with software, products or services not provided by Company; to the extent that the Services would not be infringing but for such combination or modification; (2) for Customer’s failure to use the Services in accordance with this Agreement; or (3) for any claims related to Input Data unless said Input Data was incorrectly input or altered by Company..

10.2 Disclaimer. SECTION 10.1 STATES THE ENTIRE LIABILITY OF COMPANY, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY COMPANY, THE SERVICE OR OTHER COMPANY IP, OR ANY PART THEREOF.

10.3 By Customer. Notwithstanding anything to the contrary in Section 10.1, Customer will defend or, at its option, settle, any claim brought against Company by a third party alleging that the use by or on behalf of Company of the Input Data and/or any Company data obtained pursuant to a request from Customer in accordance with this Agreement infringes or misappropriates any third party's rights or violates any laws, unless said Input Data was incorrectly input or altered by Company; provided, that Company provides Customer with (1) prompt written notice of; (2) sole control over the defense and settlement of; and (3) all information and assistance reasonably requested by Customer in connection with the defense or settlement of, any such claim. Customer will pay all damages finally awarded against Company (or the amount of any settlement Customer enters into) with respect to such claim defended by Customer. Company may appear in connection with such claims, at its own expense, through counsel reasonably acceptable to Customer.

11. **DISCLAIMER; LIMITATION OF LIABILITY**

11.1 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT (INCLUDING ANY ORDERS STILL IN EFFECT), COMPANY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, LOSS OF DATA, ACCURACY OF RESULTS, OR OTHERWISE ARISING FROM A COURSE OF DEALING OR RELIANCE. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, THAT THE SERVICES WILL BE COMPATIBLE WITH ANY PARTICULAR DEVICE, THAT ANY DATA PROVIDED BY OUR THROUGH THE SERVICE WILL BE ACCURATE, OR THAT ITS SECURITY MEASURES WILL BE SUFFICIENT TO PREVENT THIRD PARTY ACCESS TO INPUT DATA OR CUSTOMER'S DEVICES. COMPANY SPECIFICALLY DISCLAIMS ALL RESPONSIBILITY FOR ANY THIRD-PARTY SOFTWARE, PRODUCTS, OR SERVICES PROVIDED WITH THE COMPANY SERVICES AND FOR THE AVAILABILITY OR CUSTOMER'S USE OF ANY DATA OR INFORMATION STORED ON THE SERVICE.

11.2 Limitation of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, TREBLE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, DATA, OR ECONOMIC ADVANTAGE, AND COSTS OF

SUBSTITUTE GOODS OR SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS TERMINATION IN ACCORDANCE WITH SECTION 6.2, HOWEVER CAUSED, AND BASED ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF THE OTHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CUSTOMER'S PAYMENT OBLIGATIONS, NEITHER PARTY'S TOTAL LIABILITY (INCLUDING ATTORNEYS' FEES) ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER UNDER THE ORDERS GIVING RISE TO THE CLAIM DURING THE SUBSCRIPTION PERIOD PRIOR TO THE DATE THE CLAIM AROSE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED OR EXCLUSIVE REMEDY.

12. **TOOLS; ANALYSES**

12.1 Company may use tools, scripts, software, and utilities ("**Tools**") to monitor and administer the Services and help resolve any service requests. The Tools will not collect or store any Input Data, except as necessary to provide the Services or troubleshoot service requests or other problems in the Services. Information collected by the Tools (excluding Input Data) may also be used to assist in managing Company's product and service portfolio, to help Company address deficiencies in its product and service offerings, and for license and Services management.

12.2 Company may audit Customer's use of the Services to assess whether Customer's use of the Services is in accordance with the Order. Customer agrees to cooperate fully with Company's audit and provide reasonable assistance and access to information. Any such audit will not unreasonably interfere with Customer's normal business operations. Customer will pay within 30 days of written notification any fees applicable to Customer's use of the Services in excess of its rights. If Customer does not pay, then Company may end the Services and/or cancel Customer's Order. Company will have no responsibility for any costs incurred by Customer in cooperating with the audit.

13. **GENERAL PROVISIONS**

13.1 Changes. Company may make changes or updates to the Services during the Term, including to reflect changes in technology, industry practices, patterns of system use, and availability of Third Party Content; however any such changes will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer during the Term.

13.2 Assignment. Neither party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party, except that Company may assign this Agreement without the consent of Customer as part of a corporate

reorganization, or upon a change of control, consolidation, merger, sale of all or substantially all of its business or assets related to this Agreement, or a similar transaction or series of transactions. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

13.3 Force Majeure; Delays. Except for obligations incurred prior to the Force Majeure event to pay money, neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation an act of war, terrorism, act of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, epidemic or pandemic (including COVID 19), governmental act or failure or degradation of the Internet. The delayed party must give the other party notice of such cause and use commercially reasonable efforts to correct such failure or delay in performance. Company is not responsible for liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform any of its obligations under the Agreement.

13.4 Governing Law. This Agreement will be governed by and construed under the laws of the State of California without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. The parties will be subject to the exclusive jurisdiction of the state and federal courts located in Los Angeles, California, and the parties agree and consent to the exclusive jurisdiction and venue of such courts.

13.5 Publicity. Company may use Customer's name and non-confidential documentation, logos, marks and trademarks as a reference for marketing or promotional purposes on Company's website and in other communication with existing or potential Company customers, subject to any written trademark policies Customer may provide Company in writing, with reasonable advanced notice. Neither party will issue any press release or publish or disseminate any white papers, case studies describing the activities taking place under this Agreement without the other party's prior written consent, not to be unreasonably withheld.

13.6 Miscellaneous. Each Order and all Exhibits attached to this Agreement are incorporated by reference into this Agreement. In the event of a conflict between the terms of this Agreement and an Order, the conflicting terms of the Order will prevail. This Agreement (together with any Orders) is the sole agreement of the parties concerning the subject matter hereof, and supersedes all prior agreements and understandings with respect to said subject matter. The following order of precedence applies: this Agreement, then the applicable Orders. Except as provided in Section 2, Customer may not subcontract or delegate any rights or obligations granted to it under this Agreement to any third parties, including its consultants or contractors, without Company's prior written consent. No terms of any purchase order, acknowledgement, or other form provided by Customer will modify this Agreement, regardless of any failure of Company to object to such terms. Any ambiguity in this Agreement will be interpreted without regard to which party drafted this Agreement or any part thereof. There are no third party beneficiaries to this Agreement, and Customer acknowledges that Company will have no obligations or liability whatsoever with any third parties with which Customer does business. This Agreement may only be amended by a writing signed by both parties. This Agreement may be executed in counterparts. The headings in this Agreement are inserted for convenience and are not intended to affect the interpretation of this Agreement. Any required notice will be given in writing by customary means with receipt confirmed at the address of each party set forth above, or to such other address as either party may substitute by written notice to the other. Notices will be deemed to have been given at the time of actual delivery in person, 1 day after delivery to an overnight courier service, or 3 days after deposit in certified mail. The relationship between the parties is that of independent contractors. Waiver of any term of this Agreement or forbearance to enforce any term by either party shall not constitute a waiver as to any subsequent breach or failure of the same term or a waiver of any other term of this Agreement. Any provision found to be unlawful, unenforceable or void shall be severed from the remainder of this Agreement, and the remainder of this Agreement will continue in full force and effect without said provision. Customer agrees to comply with all applicable export control laws and regulations related to its use of Company IP.

EXHIBIT A
SUPPORT SERVICES

1. Support Services Generally.

1.1 As used in this Exhibit A:

- 1.1.1 “Bug” means an error, flaw, failure or fault in a computer program or system that may cause it to produce an incorrect or unexpected result, or to behave in unintended ways.
- 1.1.2 “Incident” means a failure of the Hosted Service to operate in a material respect with the Documentation and which is not part of the standard operation of the Hosted Service and which causes, or may cause, interruption to, or a reduction in the quality of the Hosted Service.
- 1.1.3 “Maintenance Release” means a release to solve minor problems that does not add new features or content to the Hosted Service.
- 1.1.4 “Next Scheduled Full Release” means a release that includes major functionality updates, including new features and changes to content.

1.2 Company shall supply the following maintenance and Support Services:

1.2.1 remote diagnostic assistance, and, where possible, problem resolution with regard to the Hosted Service;

1.2.2 online advice and training resources;

1.2.3 where possible, updates, bug fixes, and improvements to the Hosted Service and/or documentation as and when required in Company’s absolute discretion or generally released to Company’s Customers.

1.3 Customer acknowledges that updates and upgrades may require the use of new versions of third party software or operating systems. Company shall notify the Customer of any such requirements and Customer shall be solely responsible for any costs or expenses incurred by Customer in connection with such upgrade.

1.4 Company shall have no obligation to provide Support Services where faults arise from:

1.4.1 any failure by Customer or its Authorized Users to comply with any reasonable advice or instructions given by Company with regard to the use of the Hosted Service;

1.4.2 any failure by Customer or its Authorized Users to be trained on the use of the Hosted Service;

1.4.3 any corruption of the data associated with the Hosted Services caused by the failure of third party software or equipment or Customer’s equipment; or

1.4.4 operator error.