



TERMS OF SERVICE

This Subscription Agreement constitutes a binding agreement by and between Winning By Design, LLC. ("Licensor"), and the customer ("Customer") signing up via any order form, purchase order or other similar document mutually agreed by the parties (e.g., when signed if a physical document, or when entered into online via a Licensor controlled website or app online) (collectively, each, an "Order Form"), and is effective as of the date on the initial Order Form between the parties (the "Effective Date"). These Subscription License Terms together with any Order Form(s), are collectively, referred to as the "Agreement".

WHEREAS, Licensor has developed certain proprietary revenue enablement, go-to-market, and related training modules, webinars, and informational content ("Content") located on Licensor's content portal ("Content Portal"), and offers advisory services to provide content support ("Advisory Services") in connection with the same,

WHEREAS, Licensor desires to license access to the Content through the Content Portal and provide the Advisory Services on a subscription basis as described on the applicable Order Form and as further described more fully herein (collectively, the "Service(s)"); and

WHEREAS, Customer would like to subscribe to and access the Service(s) on the terms and conditions herein;

NOW THEREFORE, in consideration of the foregoing premises and the mutual undertakings of the parties set forth herein, and intending to be legally bound hereby, the parties do hereby agree as follows:

1. Services.

1.1. Service(s) License Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Customer a limited, nonexclusive, non-transferable license to access and use the Service(s) described on the Order Form during the Term, solely by the number of authorized users ("Authorized Users") as set forth on the applicable Order Form, and solely for internal and non-commercial purposes as explicitly set forth herein. Customer shall comply with all official documentation, technical manuals, functional manuals, operator and user guides and manuals (collectively, the "Documentation"). The foregoing license is limited to (i) accessing the Content within the Content Portal; downloading the Content, and, if included in Order Form, creating derivative works of the same, and (iii) leveraging the Content through Customer's own learning management system ("LMS"), in all cases for Licensee's internal business use only. To the extent Customer downloads or creates derivatives of the Content as permitted herein, Customer shall provide visible attribution of the Content and all templates used in connection therewith to Licensor. The foregoing rights are expressly limited to the Term and shall automatically terminate upon expiration of termination of the Agreement for any reason.

1.2. Advisory Services. If included in Order Form, Customer may schedule advisory calls with a Licensor advisor ("Advisor") to provide the Advisory Services. Calls may only be scheduled by the Primary User, who shall be specified in the Order Form. While other Authorized Users of Customer may participate in such calls, the Primary User must be present during the entire call and actively participate. All information provided by an Advisor shall only be used in conjunction with use of the Content and for no other purpose. Customer shall be limited to no more than one call per week per distinct Advisor. All information and recommendations provided by each Advisor is expressly provided "as is" with no warranty of any kind and Licensor shall have no liability for any such information or recommendations provided by each Advisor. Customer shall be solely responsible for its use of any such information or recommendations.

1.3. Training and Consulting Services. If and as mutually agreed by the parties in a subsequent written and executed Professional Services Agreement and Statement of Work ("SOW"), Licensor may also provide certain consulting or training services or other similar professional services ("Consulting Services") in addition to the Service(s). Consulting Services may include, without limitation, the provision of private or public training courses, workshops, process or organizational design, and/or other training, except for any of the foregoing that may already be included in the Content Portal or specifically identified in the Order Form as provided as part of the Service(s). All Training Consulting Services must be separately identified in an SOW with all applicable Fee set forth therein. Customer shall reimburse Licensor for actual and reasonable travel and travel-related expenses incurred by Licensor in connection with the Consulting Services provided hereunder.

2. Proprietary Rights.

2.1. Customer Data. Licensor acknowledges and agrees that Customer shall own all title to and ownership of the Customer Data (defined below) and that Licensor shall have no rights thereto except the limited right to use the same on an 'as needed' basis in connection with

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Licensor's performance hereunder and as otherwise expressly permitted herein. As used herein, "Customer Data" shall mean any proprietary raw data owned by Customer independent of this Agreement, which Customer may input into the Service(s). Customer Data expressly excludes any data to the extent processed by, or resulting as an output of, the Service(s), which shall be considered Licensor Data (defined below). If and to the extent necessary for operation of the Service(s) by Customer, Customer hereby grants to Licensor a limited, non-exclusive license, during the Term, to access, use, modify and create derivative works of the Customer Data within the Service(s) in order to perform its obligations herein.

2.2. **Licensor Data and Content.** Customer acknowledges and agrees that, subject only to the limited rights expressly granted to Customer under Section 1, Licensor owns and shall at all times retain all rights in and to the Services, including without limitation, all Content, the Content Portal, including all software, features, technology, and functionality therein, all trade secret, copyright, patent, trademark, trade name, and other intellectual and proprietary rights in the Service, Content, Content Portal, and the Documentation, and all Licensor Data (defined below), and in the technology embodied in or reflected by the foregoing (in each case including any extensions, derivatives, translations, reformulations or developments of the foregoing) (collectively, "Licensor Intellectual Property"). Subject only to Section 2.1 above, Licensor shall own all rights to (i) any data input into the Services by or on behalf of Licensor, and (ii) any aggregated and anonymized data extracted or derived from the Service, including all aggregated and anonymized usage data, statistical data, transactional data, metadata, market data, and data related to the provision use and performance of the Services and related systems and technology, and other aggregated and anonymized data collected from Customer Data and files (collectively, "Licensor Data"). Without limiting the generality of the foregoing, Licensor reserves the right to (i) create and market public indexes, analysis or insights created from such Licensor Data, (ii) use such Licensor Data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Licensor offerings, and (iii) disclose such Licensor solely in aggregate or other de-identified form in connection with its business. Nothing contained in this Agreement or in the parties' performance or failure to perform hereunder, or in any Services provided by Licensor, shall be construed as granting or conferring to Customer, by implication, estoppel, or otherwise, any such rights in or to any Licensor Intellectual Property.

3. **Fees; Payment Terms.** Customer shall pay to Licensor in immediately available US dollars, the applicable subscription and other fees in the amounts and timing as specified in any Order Form (the "Fees"). If no payment schedule is specified in the applicable Order Form, then all amounts are due and payable upon Customer's execution of this Agreement. The Fees, and any fees for any additional services, or subscription extensions which may be purchased hereunder, are exclusive of all applicable taxes, duties or other governmental assessments, which are the responsibility of Customer. Unless otherwise stated in this Agreement, invoices will be stated in United States dollars and shall be due and payable within 10 days following invoice date unless otherwise specified herein or agreed upon in writing by the parties. Late payments shall be subject to a service charge equal to the lesser of, 1.5% per month or the maximum amount allowed by law, with respect to the overdue amount. Licensor may not raise the Fees during the Initial Term unless otherwise mutually agreed (or if the Customer elects to subscribe to additional Services or purchase additional Consulting Services), but does reserve the right to increase the Fees at the end of the Initial Term or during any Renewal Term, by delivering written notice to Customer.

4. **Term; Termination.** The initial term length shall be as specified the initial Order Form; provided that if no initial term length is specified in any Order Form then the initial term shall be one year (the "Initial Term"). After such initial term, this Agreement shall automatically be renewed for successive one-year renewal terms (each, a "Renewal Term" and together with the Initial Term, the "Term"), unless either party opts out by giving written notice to the other party at least 30 days prior to the end of the then current term. Either party may terminate this Agreement (a) upon 30 days prior written notice if the other party has materially breached this Agreement and has not cured the same within the 30 day notice period, or (b) immediately upon written notice in the event of the filing of a petition for bankruptcy or reorganization by or against the other party or the dissolution or liquidation of the other party. Upon any termination of this Agreement, (a) Customer shall promptly: (i) discontinue all use of the Service and Documentation; (ii) erase or destroy any electronic copies or partial copies of the Documentation and all Content, including any derivative works thereof, including removal from Customer's LMS, and return to Licensor or destroy any tangible copies or partial copies of the Documentation and Content, in its possession or control; and (iii) certify in writing to Licensor that Customer has complied with these requirements; (c) Licensor shall disengage Customer's access to the Service, and (d) both parties shall promptly return to the other or destroy the other party's Confidential Information. Any payment obligations of Customer, provisions providing for limitations on liability, and those terms which by their nature were intended to survive any termination of this Agreement shall so survive including Section 2 and Sections 5 - 10.

5. **Warranty.**

5.1. Licensor warrants to Customer that, during the Term, the Service shall operate in substantial conformity with the Documentation, and that the Consulting Services, if any, will be performed in a professional and workmanlike manner. THE FOREGOING WARRANTY SHALL NOT APPLY IF THE NON-CONFORMANCE IS NOT REPLICABLE OR RESULTS FROM THIRD PARTY SYSTEMS OR COMPONENTS USED BY CUSTOMER TO ACCESS THE SERVICE, INCLUDING ANY LACK OF INTEROPERABILITY WITH SUCH THIRD-PARTY SYSTEMS OR COMPONENTS. LICENSOR DOES NOT WARRANT THAT OPERATION OF OR ACCESS TO THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL REPORTED DEFECTS WILL BE CORRECTED. LICENSOR'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH ABOVE SHALL BE, IN LICENSOR'S SOLE DISCRETION, TO (I) USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE AN ERROR-CORRECTION OR WORK-AROUND FOR THE REPORTED NON-CONFORMITY, OR (II) TERMINATE THIS AGREEMENT AND REFUND TO CUSTOMER THAT PORTION OF ANY PREPAID FEE ASSOCIATED WITH ANY UNUSED BALANCE OF THE TERM.

5.2. Licensor shall have no obligation with respect to a warranty claim unless notified of such claim promptly and within the Term. Customer is solely responsible for maintaining its own connectivity and connection to the Service via any necessary hardware, software, telecommunications and internet connections, at its own cost and expense, and Licensor is not responsible for any interruptions thereto, and Customer expressly agrees that Licensor shall not be liable in any manner for any interruption in or failure of access to the Service, nor shall any such interruption or failure of access be deemed a breach of the terms of this Agreement. If and to the extent the Service includes, integrates or links to any third party content, data or software ("Third Party Content"), Customer acknowledges and agrees that (a) Licensor is not responsible for any Third Party Content and it is provided as is; and (b) any Third Party Content may be subject to additional terms and conditions (including applicable terms of use, privacy policies, end user license terms, etc.), for which Customer shall be responsible for agreeing to and complying with. Without limiting the generality of the foregoing, Licensor is not responsible for end user error, errors in inputs or for errors in any Customer Data; Licensor does not independently verify the truthfulness or accuracy of any data or content input into the Service and is not responsible for the fraud, misrepresentation, negligence or misconduct of any Authorized User or other third party. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by us or by third-party providers, or because of other causes beyond our reasonable control. We do not make any warranty as to the results that may be obtained from use of the Services.

5.3. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5, THE SERVICE IS PROVIDED "AS IS". LICENSOR EXPRESSLY DISCLAIMS ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES IMPLIED BY USAGE OF TRADE OR CUSTOM OF DEALING AND DOES NOT REPRESENT OR WARRANT THAT: (A) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED, ERROR-FREE OR VIRUS FREE, OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS.

6. Third Party Claim Defense and Indemnification.

6.1 Intellectual Property Infringement. Licensor shall (a) indemnify and hold harmless Customer from any costs, expenses, claims, liabilities, judgments, damages or losses, in each case arising out of any third party claim that the Content or Content Portal infringes a United States patent, copyright, trademark, or other US intellectual property right of such third party, and (b) pay directly or indemnify Customer with respect to any judgment or settlement amount awarded in connection with such claim. The foregoing obligations are contingent upon Customer providing Licensor with: (i) prompt notice of such claim (and in any event notice in sufficient time for Licensor to respond without prejudice); (ii) the exclusive right to control, direct, and perform the investigation, defense, or settlement of such claim (provided such settlement does not result in an liability to, or admission of Customer); and (iii) such assistance as may be reasonably requested by Licensor at Licensor's expense. If Customer's use of the Service is, or in Licensor's opinion is likely to be, enjoined, or if required by settlement, or if commercially advisable, Licensor may: (x) substitute for the infringing element of the Service functionally similar software or content as the case may be; (y) procure for Customer the right to continue using the Service; or, (z) terminate this Agreement and refund to Customer that portion of any prepaid Service Fee associated with any unused portion of the Term. The foregoing defense and indemnification obligations of Licensor shall not apply to the extent the alleged infringement arises out of the alteration or modification of the Services, use or combination of the Service, including any Content, with other non-Licensor products, services, hardware, software or processes, or any unauthorized use of the Service. In addition, Licensor's obligations and liabilities under this Section shall be governed by the limitations on liability set forth in Section 8 below and shall be capped at and included within any calculation of direct damages under that Section. THIS SECTION 6 SETS FORTH LICENSOR'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT BY THE SERVICE.

6.2 Customer Indemnification Obligations. Customer shall indemnify and hold Licensor harmless from any costs, expenses, claims, liabilities, judgments, damages or losses, in each case arising out of (i) any breach by Customer of this Agreement, including any representation, warranty or obligation herein; (ii) the Customer Data or any other content, data or other materials input into the Service, or otherwise provided, by or on behalf of Customer; (iii) any actual or alleged non-compliance by Customer with applicable laws and regulations; (iv) Customer's actual or alleged violation of third party privacy rights, including without limitation any breach of the scope of the license granted herein; (v) Customer's violation of Licensor's intellectual property rights, including without limitation any violation of Sections 2 or 9.1, or (vi) Customer's use of the output or results of the Services or the Content, including any permitted derivative works thereof, whether alone or in connection with Customer's LMS.

7. **Limitation of Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, BASED ON ANY THEORY OF LAW, EQUITY, TORT, CONTRACT OR OTHERWISE, FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF DATA, OR COSTS OF COVER, IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT FOR THE EXPRESS INDEMNIFICATION OBLIGATIONS HEREIN, AND EXCEPT FOR BREACHES OF SECTIONS 2, 8 OR 9 HEREOF, EACH PARTY'S TOTAL LIABILITY UNDER THIS AGREEMENT OF ANY KIND, WITH ALL CLAIMS, DAMAGES AND LIABILITIES AGGREGATED, AND BASED ON ANY THEORY OF LAW, EQUITY, TORT, CONTRACT OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF THE SERVICE AND LICENSE FEES PAID OR PAYABLE BY CUSTOMER DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING

THE EVENTS GIVING RISE TO THE CLAIM (IN ADDITION TO ANY FEES PAID BY CUSTOMER). ANY CLAIM BY CUSTOMER SHALL BE BROUGHT WITHIN 12 MONTHS FOLLOWING THE EVENT GIVING RISE TO THE SAME. ALTHOUGH INFORMATION THAT USERS SUBMIT MAY BE PASSWORD PROTECTED, LICENSOR DOES NOT GUARANTEE THE SECURITY OF ANY INFORMATION TRANSMITTED TO OR FROM THE SERVICE AND CUSTOMER AGREES TO ASSUME THE SECURITY RISK FOR ANY INFORMATION, DATA OR CONTENT IT PROVIDES THROUGH THE SERVICE EXCEPT AS OTHERWISE SET FORTH IN THIS AGREEMENT. CUSTOMER IS RESPONSIBLE FOR ALL USE OF THE SERVICES AND BY ALL END USERS, INCLUDING, WITHOUT LIMITATION, AS APPLICABLE, ANY EMPLOYEES, AGENTS AND CUSTOMERS. CUSTOMER IS RESPONSIBLE FOR COMMUNICATING THE TERMS AND LIMITATIONS IN THIS AGREEMENT TO ANY AND ALL SUCH END USERS, INCLUDING WITHOUT LIMITATION, ANY WARRANTY LIMITATIONS AND ANY LIMITS ON LICENSOR'S LIABILITY. Customer may use the Services for informational purposes and must use proper due diligence and its own business judgment when making any decisions based on any information, analytics or reports derived from the Services.

8. Confidentiality.

8.1. Confidential Information. Each party acknowledges that by reason of the relationship created between the parties by this Agreement, it may have access to certain non-public information of substantial value concerning the other party's business, operations, strategic plans, customers, suppliers, technology, competition and employees ("Confidential Information"), which value would be impaired if such Confidential Information were disclosed to third parties or used other than for purposes expressly authorized hereunder. Without limiting the foregoing, but for avoidance of doubt, the terms of this Agreement, and any performance, warranty and like information relating to the Service (by whomsoever generated or communicated) will be considered Confidential Information of Licensor. Accordingly, each party agrees (a) to maintain all Confidential Information received from the other, in whatever form disclosed, in strict confidence, using at least a reasonable standard of care, (b) not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of the disclosing party, and (c) not to use the Confidential Information of the other party except as required in the performance of its obligations or the exercise of its rights hereunder. The foregoing obligations shall not apply to Confidential Information of a disclosing party that, as can be reasonably demonstrated with admissible evidence by the receiving party: (i) is or becomes a matter of public knowledge though no action or omission of the receiving party; (ii) was rightfully in the receiving party's possession without restrictions on use or disclosure prior to its disclosure by the disclosing party; (iii) is rightfully obtained by the receiving party without an obligation of confidentiality from a third party who has no obligation of confidentiality, direct or indirect, to the disclosing or any third party; or (iv) is independently developed by the receiving party without reference to the disclosing party's Confidential Information.

8.2. Legally Required Disclosure. If the receiving party becomes legally compelled to disclose any the disclosing party's Confidential Information, the receiving party shall provide: (x) prompt written notice of such requirement so that the disclosing party may seek a protective order or other remedy; and (y) reasonable assistance, at the disclosing party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the receiving party remains legally required to disclose any of the disclosing party's Confidential Information, the receiving party shall disclose no more than that portion of the Confidential Information which, on the advice of the receiving party's legal counsel, the receiving party is legally required to disclose and, upon the disclosing party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

8.3. Return of Confidential Information. Upon the written request of the disclosing party (subject to each party's rights to retain the other's Confidential Information solely for purposes of performing its obligations and exercising its rights hereunder) or upon any termination of this Agreement, the receiving party shall (a) promptly return to the disclosing party or destroy all copies and partial copies of the Confidential Information, whether maintained in tangible, electronic or other form (including permanently erasing any portions thereof from computers and systems) and (b) provide the disclosing party with written certification of its compliance with the terms of this Section. Any Confidential Information permitted to be retained under this Agreement after termination, shall continue to be subject to the terms of this Section 8 for so long as retained notwithstanding such termination.

8.4. Remedies. Each party acknowledges that any breach of any of its obligations with respect to the other party's Confidential Information may cause or threaten irreparable harm to such party. Accordingly, each party agrees that in such event, the aggrieved party shall be entitled to seek equitable relief in any court of competent jurisdiction without the necessity of posting bond and in addition to such other remedies as may be available to the aggrieved party under law or in equity.

9. License Restrictions.

9.1 General Restrictions. Customer shall not, and shall not attempt to (and shall not authorize or allow any third party to or attempt to): (a) download or otherwise obtain a copy of the Service software or any software in any form; (b) reverse engineer or otherwise derive the source code of the Service or the Content Portal, or software or otherwise modify, reverse compile, disassemble, or translate the Service, including the Content Portal, or software or create any derivative works thereof; or (c) use the Service on behalf of any third party or for any purpose other than as described in this Agreement; (d) sell, lease, license, sublicense, distribute or otherwise transfer in whole or in part the Service or Content or use it as a service bureau, or record, photograph, or live stream any Content, including any webinars provided therein; (e) post, send, process

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or store infringing, obscene, threatening, libelous, inappropriate, or otherwise unlawful or tortuous material, including material violating of third party rights; (f) post, send, process or store material containing software viruses, worms, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (g) interfere with or disrupt the integrity or performance of the Service or attempt to gain unauthorized access to the Service or related systems or networks; (h) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of the IP Rights and/or Licensor's rights and ownership thereof, whether such notice or indications are affixed on, contained in or otherwise connected to the Content Portal or on any copies made in accordance with this Agreement; (i) use the Service for purposes of: (1) benchmarking or competitive analysis of the Service; (2) developing, using, or providing a competing software product or service, or to promote Customer's or any third-party's products or services; or (3) any other purpose that is to Licensor's detriment or commercial disadvantage; (k) use the Service to perform any activity which is or may be, directly or indirectly, unlawful, harmful, threatening, abusive, harassing, tortuous, or defamatory, nor to perform any activity which breaches the rights of any third party; (l) use the Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person. The Service may be used only by Customer (i) for its internal business purposes and only for the direct benefit of Customer; (ii) only by the number of persons for whom a license fee has been paid, and all such use may only be by those persons using the Service for the benefit of Customer in the course and scope of their employment, subject to the terms hereof; (iii) only in its original form without alteration or combination with other products, services or software except as expressly authorized in any applicable Documentation; and (iv) in compliance with all applicable laws, rules, regulations and industry standards, and in compliance with all Documentation and instructions provided by Licensor. In order to access some features of the Service, Customer may have to register or create an account. Customer may never use another's account without permission and authorized users may not share or disclose any passwords or other security credentials. Customer is solely responsible for the activity that occurs on its account, for keeping its account password secure, and for notifying Licensor immediately of any breach of security or unauthorized use of its account. Customer agrees not to circumvent, disable or otherwise interfere with security-related features of the Service, or features that prevent or restrict use or copying of any content or enforce limitations on use of the Service, or the content therein.

9.2. Evaluation License. If the Service is licensed or leased on an evaluation trial basis, the term of such license or lease is thirty (30) days from the earlier of installation (if applicable) or first use unless a longer period is specified in writing, or as otherwise set forth on the Order Form, after which time the evaluation license ceases. Evaluation use of the Service is intended solely for Customer to determine the compatibility of the Service with Customer's business needs, and only to be used in a non-production test environment. Licensor has no obligation to provide support, maintenance, upgrades, modifications or new releases during the evaluation period, and any Service provided for beta and/or evaluation purposes is provided "as is" and without any warranties, notwithstanding anything to the contrary herein.

9.3 Internet Access and Equipment. You are responsible for maintaining your own access to the internet, and for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like, and for maintaining the security thereof.

10. General.

10.1. Notices. All notices required or permitted under this Agreement shall be in writing and shall be sent by hand, overnight courier or by United States Postal Services, certified or registered mail, return receipt requested (in each case with confirmation of receipt). Notices shall be deemed delivered on the date of delivery, if delivery occurs within normal business hours or on the next business day if delivery occurs outside of normal business hours. All communications will be sent to the respective addresses first set forth above or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section.

10.2. Assignment. Neither party may assign this Agreement or any of its licenses, rights or duties under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party, provided however, either party may assign this Agreement, and delegate the licenses, rights and duties hereunder in the case of a change of control of such party, whether by merger, sales of assets or equity, re-organization, operation of law, or otherwise. Subject to the previous sentence, the rights and liabilities of the parties hereto will bind and inure to the benefit of their respective successors and assignees. The Services shall at all times be hosted by or on behalf of Licensor on a server environment of its choosing. Licensor reserves the right to change the server environment from time to time as it may deem fit, or outsource hosting or other aspects of the Service in its sole discretion, so long as the Service continues to comply with the express requirements of this Agreement. Any attempted assignment in violation of the foregoing shall be null and void.

10.3. Publicity. Customer expressly grants Licensor the right to include Customer in a list of customers on Licensor's website or other promotional material in relation to the Services for marketing purposes. Customer can deny Licensor this right at any time by submitting a written notice, requesting to be excluded from promotional material.

10.4. Waiver. A waiver shall only be deemed to have been made if expressed in writing by the party granting such waiver and shall not be construed as a waiver of future performance of any such term.

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10.5. Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement (or the performance of or access to the Service), other than payment obligations, due to causes that are beyond its reasonable control, including, but not limited to, an act of God, act of civil or military authority, fire, epidemic, pandemic, flood, earthquake, riot, war, terrorism, sabotage, and governmental action. The delayed party shall: (i) give the other party written notice of such cause promptly; and (ii) use its reasonable efforts to correct such failure or delay.

10.6. Entire Agreement; Construction. This Agreement and its exhibits and schedules, if any, constitute the entire understanding between the parties, and supersede all prior discussions, representations, understandings, or agreements (including any pre-existing nondisclosure agreement, except as to its surviving terms and with respect to information disclosed under that agreement), whether oral or in writing, between the parties with respect to the subject matter of this Agreement. If any provision of this Agreement shall be held by a court of law of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect and, to the extent allowed and practicable, the unenforceable provision shall be modified so as to be enforceable consistent with its original intent and economic effect. The headings and captions used in this Agreement are for convenience only, and shall not affect the interpretation of the provisions of this Agreement. The word "including" shall be construed non-exclusively, to mean "including but not limited to." The word "or" shall be construed inclusively, to mean that one or more of the options may occur. This Agreement and any amendment hereto may be executed in counterparts, each of which shall be deemed an original and both of which together shall constitute one instrument.

10.7. Independent Contractors. The relationship of Licensor and Customer established by this Agreement is that of independent contractors, and nothing contained in the Agreement will be construed to constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking.

10.8. Recruiting Fee. It is agreed and acknowledged by the parties, that it is the intent of the parties that neither party shall during the Term of this Agreement and for a period of twelve (12) months immediately following the termination of this Agreement for any reason, directly or indirectly solicit, induce, recruit or encourage any of the other party's employees or consultants to terminate their relationship with such party, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the other party, either for itself or for any other person or entity. However, if a party elects to hire any employee or consultant of the other party, then such party agrees to pay the other party a recruiting fee equal to thirty percent (30%) of the amount (calculated on an annualized basis) such employee or consultant receives, or is targeted to receive, including through bonus or other incentive compensation, from their new service relationship or, if that amount cannot be reasonably ascertained, thirty percent (30%) of the annualized cash compensation such employee or consultant received from the prior employing party immediately prior to such employee's or consultant's termination of its relationship with the same. The foregoing shall not apply to any hiring resulting from an employee or consultant of a party responding to a general recruiting advertisement or posting.

10.9. Governing Law and Jurisdiction; Attorneys' Fees. This Agreement shall be governed by and construed under the laws of the State of California without regard to conflict of laws provisions. The federal and state courts sitting in Santa Clara County, California shall have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement, and each party hereto expressly consents to the personal jurisdiction of such courts and waives any objection to venue, including the objection of forum non conveniens. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

10.10. Modifications to Terms. Any modification or amendment to this Agreement must be in writing and signed by each party's authorized representatives. No terms in any purchase order or other document delivered by Customer shall be deemed to amend the terms of this Agreement and any such additional or inconsistent terms shall be deemed unacceptable to and rejected by Licensor.