

BRAINGU SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (the "**Agreement**"), effective as of **X** November 2023 (the "**Effective Date**"), is by and between BrainGu, LLC, a Michigan limited liability company with offices located at 934 Scribner Ave NW, Grand Rapids, Michigan 49504 ("**Provider**"), and **(Company/Agency)** with offices located at **(Address)** ("**Customer**") (Provider and Customer each a "**Party**").

WHEREAS, Provider provides access to any of its software-as-a-service offerings, such as Big Bang-as-a-Service and Mission Apps-as-a-Service, to its customers; and

WHEREAS, Customer desires to access certain software-as-a-service offerings described herein, and Provider desires to provide Customer access to such offerings, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions.

"**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 Services.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"**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.

"**Agreement**" has the meaning set forth in the preamble.

"**Authorized Users**" means Customer's employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

"**Availability Requirement**" has the meaning set forth in Section 5.1.

"**Available**" has the meaning set forth in Section 5.1.

"Backup Policy" has the meaning set forth in **Error! Bookmark not defined.****Error! Reference source not found..**

"Confidential Information" has the meaning set forth in Section 8.1.

"Customer" has the meaning set forth in the preamble.

"Customer Data" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Customer or an Authorized User by or through the Services. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User.

"Customer Failure" has the meaning set forth in Section 4.2.

"Customer Indemnitee" has the meaning set forth in Section 11.1.

"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.

"Disclosing Party" has the meaning set forth in Section 8.1.

"Documentation" means any manuals, instructions, or other documents or materials listed in **Exhibit C** that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

"Effective Date" has the meaning set forth in the preamble.

"Exceptions" has the meaning set forth in Section 5.1.

"Fees" has the meaning set forth in Section 7.1.

"Force Majeure Event" has the meaning set forth in Section 14.9.

"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.

"Indemnitee" has the meaning set forth in Section 11.3.

"Indemnitor" has the meaning set forth in Section 11.3.

"Initial Term" has the meaning set forth in Section 13.1.

"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 of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"Losses" means any and all losses, damages, 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.

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

"Personal Information" means information that Customer provides or for which Customer provides access to Provider, or information which Provider creates or obtains on behalf of Customer, in accordance with this Agreement that: (i) directly or indirectly identifies an individual; or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers). Customer's business contact information is not by itself Personal Information.

"Process" means to take any action or perform any operation or set of operations that the SaaS Services are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. **"Processing"** and **"Processed"** have correlative meanings.

"Provider" has the meaning set forth in the preamble.

"Provider Indemnitee" has the meaning set forth in Section 11.2.

"Provider Materials" means the Services, Specifications, 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 include Resultant Data and 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 Personnel" means all individuals involved in the performance of Services as employees, agents, or independent contractors of Provider or any Subcontractor.

"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.

"Receiving Party" has the meaning set forth in Section 8.1.

"Renewal Term" has the meaning set forth in Section 13.2.

"Representatives" means, with respect to a party, that party's and its Affiliates' employees, officers, directors, and legal advisors.

"Resultant Data" means data and information related to Customer's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

"Scheduled Downtime" has the meaning set forth in Section 5.3.

"Sensitive Personal Information" means an individual's (i) government-issued identification number, including Social Security number, driver's license number, or state-issued identification number; (ii) financial account number, credit report information, or credit, debit, or other payment cardholder information, with or without any required security or access code, personal identification number, or password that permits access to the individual's financial account; or (iii) biometric, genetic, health, or health insurance data.

"Service Credit" has the meaning set forth in Section 5.2.

"Service Level Failure" has the meaning set forth in Section 5.1.

"Service Period" has the meaning set forth in Section 5.1.

"Services" means the software-as-a-service offering described in **Exhibit A**.

"Specifications" means the specifications for the Services set forth in **Exhibit**

C.

"**Subcontractor**" has the meaning set forth in Section 2.7.

"**Support Exhibit**" has the meaning set forth in Section 5.4.

"**Support Services**" has the meaning set forth in Section 5.4.

"**Term**" has the meaning set forth in Section 13.2.

"**Territory**" means the United States of America.

"**Third-Party Materials**" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Provider.

2. Services.

2.1 Access and Use. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, Provider hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 14.8) right to access and use the Services during the Term, solely for use by Authorized Users for Customer's internal business purposes, in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the Access Credentials within a reasonable time following the Effective Date. The total number of Authorized Users will not exceed the number set forth in **Exhibit B**, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the Fees payable hereunder.

2.2 Documentation License. Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 14.8) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

2.3 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:

(a) Provider has and will retain sole control over the operation, provision, maintenance, and management of the Provider Materials; and

(b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Provider; (ii) results obtained from any use of the Services or Provider Materials; and (iii) conclusions, decisions, or actions based on such use.

Notwithstanding anything to the contrary in this Agreement, all Services, including all Processing of Customer Data by or on behalf of Provider shall be provided solely from within, and on computers, systems, networks, and other infrastructure located in, the United States.

2.4 Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Provider Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Provider Materials, and the Third-Party Materials are and will remain with Provider or the respective rights holders in the Third-Party Materials, as applicable.

2.5 Service Management. Each Party shall, throughout the Term, maintain within its organization a service manager to serve as such Party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such Party. Each Party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. The parties' initial service managers are: John Spencer-Taylor, Chief Executive Officer, BrainGu and (Company Manager). Each party shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. If either party's service manager ceases to be employed by such party or such party otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party.

2.6 Changes. Provider reserves the right, in its sole discretion, 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) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with the change procedure set forth in **Exhibit D**. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

2.7 Subcontractors. Provider may from time to time in its discretion engage third parties to perform Services (each, a "**Subcontractor**").

2.8 Suspension or Termination of Services. Provider may, directly or indirectly, and by use of 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) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its good faith and reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement

of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this Agreement expires or is terminated. This Section 2.8 does not limit any of Provider's other rights or remedies, whether at law, in equity, or under this Agreement.

3. Use Restrictions; Service Usage and Data Storage.

3.1 Use 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, hack, decode, adapt, or otherwise attempt to derive or gain access to the source code of 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 his or her own then valid Access Credentials;

(e) 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;

(f) damage, destroy, disrupt, disable, impair, hack, 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;

(g) remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;

(h) 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 (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Provider customer), or that violates any applicable Law;

(i) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage;

(j) access or use the Services or Provider Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; or

(k) otherwise access or use the Services or Provider Materials beyond the scope of the authorization granted under this Section 3.1.

4. Customer Obligations.

4.1 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; and (b) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2 Effect of Customer Failure or Delay. Provider is not responsible or 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 this Agreement (each, a "**Customer Failure**").

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3.1, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

4.4 Non-Solicitation. During the Term and for two (2) years after, Customer shall not, and shall not assist any other Person to, directly or indirectly, recruit or solicit (other than by general advertisement not directed specifically to any Person or Persons) for employment or engagement as an independent contractor any Person then or within the prior twelve (12) months employed or engaged by Provider or any Subcontractor. In the event of a violation of this Section 4.4, Provider will be entitled to liquidated damages equal to the compensation paid by Provider to the applicable employee or contractor during the prior twelve (12) months.

5. Service Levels and Credits.

5.1 Service Levels. Subject to the terms and conditions of this Agreement, Provider will use commercially reasonable efforts to make the Services Available at least ninety-nine percent (99.0%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement. "**Available**" means the Services are available for access and use by Customer and its Authorized Users over the Internet and operating in material accordance with the Specifications. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) act or omission by Customer or any Authorized User, or using Customer's or an Authorized User's Access Credentials, that does not strictly comply with this Agreement and the Specifications; (b) Customer Failure; (c) Customer's or its Authorized User's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Provider pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension, or termination of the Services pursuant to Section 2.8.

5.2 Service Level Failures and Remedies. In the event of a Service Level Failure, Provider shall issue a credit to Customer in the amount of one percent (1%) of the monthly Fees for the Services due for the Service Period the Service Level Failure occurred (each a "**Service Credit**"), subject to the following:

(a) Provider has no obligation to issue any Service Credit unless: (i) Customer reports the Service Failure to Provider immediately on becoming aware of it; and (ii) requests such Service Credit in writing within five (5) days of the Service Level Failure; and

(b) in no event will a Service Level Credit for any Service Period exceed one percent (1%) percent of the total Fees that would be payable for that Service Period if no Service Level Failure had occurred.

Any Service Credit payable to Customer under this Agreement will be issued to Customer in the calendar month following the Service Period in which the Service Level Failure occurred. This Section 5.2 sets forth Provider's sole obligation and liability and Customer's sole remedy for any Service Level Failure.

5.3 Scheduled Downtime. Provider will: (a) schedule downtime for routine maintenance of the Services between the hours of two (2:00) a.m. and four (4:00) a.m., Eastern Time; and (b) give Customer at least twelve (12) hours prior notice of all scheduled outages of the Services ("**Scheduled Downtime**").

5.4 Service Support. The Services include Provider's standard customer support services ("**Support Services**") at the support levels Customer purchases in accordance with

the Provider service support schedule, a current copy of which is attached as **Exhibit E** (or a successor website address) (the "**Support Exhibit**"). Customer may purchase enhanced support services separately at Provider's then current rates.

6. Security.

6.1 Information Security. Provider will employ security measures in accordance with Provider's Authorization to Operate granted by an agency of the United States.

6.2 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Provider Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

6.3 Access and Security. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

7. Fees and Payment.

7.1 Fees. Customer shall pay Provider the fees set forth in **Exhibit A ("Fees")** in accordance with this Section 7.

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, 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. Customer shall pay all Fees within thirty (30) days after the date of the invoice therefor. Customer shall make all payments hereunder in United States Dollars by bank wire or ACH. Customer shall make payments to the address or account specified in **Exhibit A** or such other address or account as Provider may specify in writing from time to time.

7.4 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a) Provider may charge interest on the past due amount at the rate of one and one-half percent (1.5%) per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees (which shall include appellate and paralegal fees), court costs, and collection agency fees; and

(c) if such failure continues for ten (10) days following written notice thereof, Provider may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

7.5 No Deductions or Setoffs. All amounts payable to Provider under this Agreement shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to Section 5.2 or any deduction or withholding of tax as may be required by applicable Law).

7.6 Fee Increases. Provider may increase Fees for any contract year after the first contract year, including any contract year of any Renewal Term, by providing written notice to Customer at least ninety (90) days prior to the commencement of that contract year, and **Exhibit A** will be deemed amended accordingly.

7.7 Audits.

(a) Audit Procedure. Provider or its nominee (including its accountants and auditors) may, on thirty (30) days' notice, inspect and audit Customer's use of the Services under this Agreement at any time during the Term and for two (2) years following the termination or earlier expiration of this Agreement. All audits will be conducted during regular business hours and no more frequently than once in any twelve (12)-month period, and in a manner that does not unreasonably interfere with Customer's business operations. Customer shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Provider with respect to such audit.

(b) Cost and Results of Audit. If the audit determines that Customer's use of the Services exceeded the usage permitted by this Agreement by more than five percent (5%), Customer shall pay to Provider all amounts due for such excess use of the Software, plus interest on such amounts, as calculated pursuant to Section 7.4. If the audit determines that such excess use equals or exceeds ten percent (10%) of Customer's permitted level of use, Customer shall also pay to Provider all reasonable costs incurred by Provider in conducting the audit. Customer shall make all payments required under this Section 8.8 within thirty (30) days of the date of written notification of the audit results. If no excess usage is found, Provider shall reimburse Customer for any

reasonable costs incurred by Customer in cooperating with the audit within thirty (30) days of the date of written notification of the audit results.

8. Confidentiality.

8.1 Confidential Information. In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 8.2, "**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, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential". Without limiting the foregoing: all Provider Materials are the Confidential Information of Provider and the financial terms of this Agreement are the Confidential Information of each of the parties.

8.2 Exclusions. 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) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

8.3 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 by and subject to its compliance with Section 8.4, 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 8.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 8;

(c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its most sensitive 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 8.

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 8 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

8.4 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 8.3; 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 8.4, 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, on the Disclosing Party's request, 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.

9. Intellectual Property Rights.

9.1 Provider Materials. All right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the Provider Materials are expressly reserved by Provider. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Provider an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

9.2 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 9.3.

9.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Provider, its Subcontractors, and the Provider Personnel to enforce this Agreement and exercise Provider's, its Subcontractors', and the Provider Personnel's rights and perform Provider's, its Subcontractors', and the Provider Personnel's obligations hereunder.

10. Representations and Warranties.

10.1 Mutual Representations and Warranties. Each party represents and warrants 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, 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 at the end of this Agreement 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.

10.2 Additional Provider Representations, Warranties, and Covenants. Provider represents, warrants, and covenants to Customer that Provider will perform the Services using personnel of required skill, experience, and qualifications and 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 Additional Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to Provider that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

10.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10.1 AND SECTION 10.2, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS." 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, a "**Customer Indemnitee**") from and against any and all Losses incurred by Customer Indemnitee resulting from any Action by a third party (other than an Affiliate of a Customer Indemnitee) that Customer's or an Authorized User's use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this Agreement (including the Specifications) infringes or misappropriates such third party's United States intellectual property rights in the Territory. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

- (a) Third-Party Materials or Customer Data;
- (b) access to or use of the Provider Materials in combination with any hardware, system, software, network, or other materials or service not provided by Provider or specified for Customer's use in the Documentation;
- (c) modification of the Provider Materials other than: (i) by or on behalf of Provider; or (ii) with Provider's written approval in accordance with Provider's written specification;
- (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Provider; or
- (e) act, omission, or other matter described in Section 11.2(a), (b), (c), or (d), whether or not the same results in any Action against or Losses by any Provider Indemnitee.

11.2 Customer Indemnification. Customer shall indemnify, defend, and hold harmless Provider and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee resulting from any Action by a third party (other than an Affiliate of a Provider Indemnitee) [to the extent that such Losses/that] arise out of or result from, or are alleged to arise out of or result from:

(a) Customer Data, including any Processing of Customer Data by or on behalf of Provider in accordance with this Agreement;

(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;

(c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or

(d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

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, as the case may be. The party seeking indemnification (the "**Indemnatee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnatee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnatee without the Indemnatee's prior written consent. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnatee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnatee may deem appropriate. The Indemnatee's failure to perform any obligations under this Section 12.3 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 prejudiced as a result of such failure.

11.4 Mitigation. If any of the Services or Provider Materials are, or in Provider's opinion are 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 materially 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 materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or

(c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and Provider Materials, and require Customer to immediately cease any use of the Services and Provider Materials or any specified part or feature thereof.

11.5 Sole Remedy. THIS SECTION 12 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

12. Limitations of Liability.

12.1 EXCLUSION OF DAMAGES. EXCEPT AS 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 OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5.2; (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, 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 OTHERWISE PROVIDED IN SECTION 12.3, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PROVIDER AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED TWO (2) TIMES THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

12.3 Exceptions. The exclusions and limitations in Section 12.1 and Section 12.2 do not apply to Provider's obligations under Section 11.1 or liability for Provider's gross negligence or willful misconduct.

13. Term and Termination.

13.1 Initial Term. The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect through (date) (the "**Initial Term**").

13.2 Renewal Term. This Agreement will automatically renew for successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

13.3 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than fifteen (15) days after Provider's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.1, Section 6.2, or Section 8;

(b) either party may terminate this Agreement, 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 thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

13.4 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, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b) Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) promptly return to Customer, or at Customer's written request destroy, 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 that, for

clarity, Provider's obligations under this Section 14.4(b) do not apply to any Resultant Data;

(c) 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; (ii) permanently erase all Provider Materials and Provider's Confidential Information from all systems Customer directly or indirectly controls; and (iii) certify to Provider in a signed written instrument that it has complied with the requirements of this Section 14.4(c)];

(d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; and (ii) Provider may retain Customer Data, in the case of each of subclause (i) and (ii) in its then current state and solely to the extent and for so long as required by applicable Law; (iii) Provider may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (iv) all information and materials described in this Section 14.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

(e) Provider may disable all Customer and Authorized User access to the Provider Materials;

(f) if Customer terminates this Agreement pursuant to Section 13.3(b), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Provider will: (i) refund to Customer Fees paid in advance for Services that Provider has not performed as of the effective date of termination; and (ii) pay to Customer any unpaid Service Credits to which Customer is entitled; and

(g) if Provider terminates this Agreement pursuant to Section 13.3(a) or Section 13.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees on receipt of Provider's invoice therefor.

13.5 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3.1, Section 8, Section 10.4, Section 11, Section 12, Section 13.4, this Section 13.5, and Section 14.

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 consent shall not be unreasonably withheld, provided, however, that Provider may, without Customer's consent, include Customer's name and other indicia in its lists of Provider's current or former customers of Provider in promotional and marketing materials.

14.4 Notices. Any notice, request, consent, claim, demand, waiver, or other communications under this Agreement have legal effect only if in writing and addressed to a party as follows (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.4):

If to Provider:

If to Customer:

Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, (in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third (3rd) day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

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. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the

sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. 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, 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 (other than an exception expressly set forth as such therein) 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; 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, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Provider's prior written consent. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Provider's prior written consent is required. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 15.8 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

14.9 Force Majeure.

(a) 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 obligations to make payments), 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 (i) acts of God; (ii) flood, fire, earthquake, epidemic, pandemic, or explosion; (iii) war, invasion, hostilities (whether war is

declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and [(viii) shortage of adequate power or transportation facilities. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more.

(b) 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.

14.10 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 upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

14.11 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by 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 will 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.

14.12 Severability. If any term or 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. Upon 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.

14.13 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Michigan without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Michigan. 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 Michigan in each case located in the city of Grand Rapids and County of Kent, 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 shall be effective service of process for any suit, action, or other proceeding brought in any such court.

14.14 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

14.15 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 8 or, in the case of Customer, Section 3.1, Section 4.3, or Section 6.2, 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 a restraining order, an injunction, specific performance, and any other relief that may be available from any court, 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.

14.16 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to this Agreement, the prevailing party is entitled to recover its actual attorneys' fees (which shall include appellate and paralegal fees and costs) and court costs from the non-prevailing party.

14.17 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

BrainGu, LLC

By: _____

Name: Stephen J. Yuter

Title: VP, Contracts, Risk & Compliance

(COMPANY)

By: _____

Name: _____

Title: _____

EXHIBIT A
SERVICES AND FEES

TERMS AND CONDITIONS TBD

EXHIBIT B
AUTHORIZED USERS AND SERVICE MANAGERS

TBD

EXHIBIT C
SPECIFICATIONS

[RESERVED]

EXHIBIT D
CHANGE ORDERS

TERMS AND CONDITIONS TBD

EXHIBIT E

SUPPORT

BrainGu realizes that our code services critical production requirements 24/7. These production environments consist of a variety of tech stacks for customers ranging from DoD, to law enforcement, to major non-profit donation processing. BrainGu's ability to deliver high-quality code comes from our deliberate approach and a standard, basic Service Level Agreement that includes access to Structsure technical support via email, application architecture support and connections to third-party software and system support where necessary and needed. The Structsure Basic Service Level Agreement is included with every Structsure DevSecOps Platform purchase and provides customers with the basic support necessary to get started.

Structsure Basic Service Level Agreement	
Unit	Description
Technical Support	Purchaser will have Business hours access to Structsure Support via email.
Case Severity/ Response Times*	General guidance: < 3 business days System impaired: < 1.5 business days
Application Architecture Support	General guidance.
Third-Party Software & System Support	Available through Professional Services Partners
Operations Support	Available through Premium Service Agreement
Proactive Guidance	Available through Premium Service Agreement

BrainGu's Enhanced Support offering enhances in-house capability with BrainGu DevSecOps Engineers who are available to support your Structsure DevSecOps Platform. Enhanced also gives customers access to Third Party Software & System Support, Operations Support, and Proactive Guidance to advise and assist with operational questions and supporting the operations and maintenance of the Platform.

Structsure Enterprise Enhanced Support Service Level Agreement	
Unit	Description
Technical Support	Purchaser will have Business hours access to Structsure Support via email, phone and VTC.
Case Severity/ Response Times*	General guidance: < 3 business days System impaired: < 1.5 business days System Outage: < 30 minutes
Application Architecture Support	General guidance. Access to BrainGu's DevX practitioners to advise and assist on Application Architecture and system design for up to 100 hours per month - with additional blocks of hours available for purchase

Third-Party Software & System Support	Access to BrainGu's DevX practitioners to advise and assist on Third-party software and Systems Integrations to Structsure platform for up to 100 hours per month - with additional blocks of hours available for purchase
Operations Support	Team of up to 6 Operations Support Engineers to provide enhanced support SLA along with support for operational questions, instruction, and guidance on platform operations.
Proactive Guidance	Rotation of on-site Operations Support Engineers and DevX practitioners to provide enhanced platform support along with the ability to advise on operational questions, instruction, and guidance on platform operations.