



SENTRYX™ SOFTWARE AS A SERVICE TERMS

These Software as a Service Terms ("**Terms**") are by and between **MUELLER SYSTEMS, LLC**, a Delaware limited liability company with offices located at 1200 Abernathy Rd, NE, Suite 1200, Atlanta, GA 30328 ("**Provider**"), and you ("**Customer**"). Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Provider and its Affiliates provide a complete portfolio of water infrastructure and flow control products, as well as a comprehensive water data intelligence software services platform;

WHEREAS, Customer has entered into a separate agreement with Provider and/or its Affiliate(s) for products and/or services ("**Agreement**"), which reference and incorporate these Terms as if fully set forth therein; and

WHEREAS, Customer desires to access the Software Services, and Provider desires to provide Customer access to the Software Services, subject to the terms and conditions of these Terms.

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.

- (a) "**Affiliate(s)**" means any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a party.
- (b) "**Affiliate Product(s)**" means Provider Affiliate product(s) which may work in combination with the Software Services.
- (c) "**Aggregated Statistics**" means data and information related to Customer's use of the Software 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 Software Services.
- (d) "**Authorized User**" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Software Services under the rights granted to Customer pursuant to these Terms and (ii) for whom access to the Software Services has been purchased.
- (e) "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Software Services.
- (f) "**Documentation**" means Provider's user manuals, handbooks, and guides relating to the Software Services provided to Customer upon its access to the Software Services.
- (g) "**Provider IP**" means the Software Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Provider IP includes Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Software Services, but does not include Customer Data.
- (h) "**Software Services**" means the online SENTRYX™ software-as-a-service offering for use and operation by Customer and its Authorized User(s). For avoidance of doubt, the Software Services do not include any Provider-managed services.
- (i) "**Third-Party Products**" means third-party products which may work in combination with the Software Services.

2. Access and Use.

- (a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of these Terms, Provider hereby grants Customer a non-exclusive, non-transferable right to access and use the Software Services during the period for which Customer has procured the Software Services, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the necessary passwords and network links, mobile device application download links, or connections to allow Customer to access the Software Services.
- (b) Documentation License. Subject to the terms and conditions contained in these Terms, Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use the Documentation solely for Customer's internal business purposes in connection with its use of the Software Services.
- (c) Use Restrictions. Customer shall not use the Software Services for any purposes beyond the scope of the access granted in these Terms. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Software Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Software Services, in whole or in part; (iv) remove any proprietary notices from the Software Services or Documentation; or (v) use the Software Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.
- (d) Reservation of Rights. Provider reserves all rights not expressly granted to Customer in these Terms. Except for the limited rights and licenses expressly granted under these Terms, nothing in these Terms grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Provider IP.
- (e) Suspension. Notwithstanding anything to the contrary in these Terms, Provider may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Software Services if: (i) Provider reasonably determines that (A) there is a threat or attack on any of the Provider IP; (B) Customer's or any Authorized User's use of the Provider IP disrupts or poses a security risk to the Provider IP or to any other customer or vendor of Provider; (C) Customer, or any Authorized User, is using the Provider IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Provider's provision of the Software Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Provider has suspended or terminated Provider's access to or use of any third-party services or products required to enable Customer to access the Software Services; or (iii) in accordance with Section 5(a)(iii) ("Fees") (any such suspension described in subclause (i), (ii), or (iii), a "**Service Suspension**"). Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Software Services following any Service Suspension. Provider shall use commercially reasonable efforts to resume providing access to the Software Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.
- (f) Aggregated Statistics. Notwithstanding anything to the contrary in these Terms, Provider may monitor Customer's use of the Software Services and collect and compile Aggregated Statistics. As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Software Services. Customer agrees that Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information unless otherwise approved in writing by Customer.

3. Customer Responsibilities.

- (a) General. Customer is responsible and liable for all uses of the Software Services and Documentation resulting by Customer, directly or indirectly, whether such access or use is permitted by or in violation of these Terms. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of these Terms if taken by Customer will be deemed a breach of these Terms by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of these Terms' provisions as applicable to such Authorized User's use of the Software Services, and shall cause Authorized Users to comply with such provisions.
- (b) Customer Systems. Customer is responsible for (i) the acquisition, set-up and maintenance of its own mobile device and/or desktop computer equipment, as applicable, and the competent operation thereof in accordance with the Documentation; (ii) providing Provider with such access to its computer systems as is necessary for Provider to provide the Software Services; and (iii) providing all cooperation and assistance as Provider may reasonably request to enable Provider to provide the Software Services.
- (c) Third-Party Products and Affiliate Products. Provider may from time to time allow Third-Party Products or Affiliate Products to work in combination with or to be supported by the Software Services. For purposes of these Terms, such Third-Party Products and/or Affiliate Products are subject to their own terms and conditions and must be procured by Customer separately from the Software Services.

4. Service Levels and Updates.

- (a) Service Levels. Subject to the terms and conditions of these Terms, Provider shall use commercially reasonable efforts to make the Software Services available in accordance with the service levels set forth below:

Provider shall ensure that, in each calendar month from the start date of the Software Services ("Availability Period"), each of the Software Services will have an average availability of 99.5% of the Availability Period as measured from within Provider's infrastructure environment (the "Availability Target"), as calculated in accordance with the following formula:

$$\text{Software Services Availability} = (\text{System Time} - \text{Disregarded Downtime}) * 100 / \text{System Time}$$

"System Time" means the number of hours in the relevant Availability Period. "Disregarded Downtime" means the number of hours of non-availability of the Software Services as measured from within Provider's infrastructure environment, excluding non-availability caused by:

- i. Planned maintenance or outages for which Provider has provided the Customer at least five (5) days' prior notice;
- ii. Any device failure including, without limitation, non-availability or reduced availability of mobile network cover;
- iii. Any problem with the internet or the Customer's internet connection (including any Wi-Fi connection where one is being used);
- iv. Any act or omission by the Customer, or any person acting on behalf of the Customer, which prevents or delays the availability of the hosted services; and/or
- v. Any Force Majeure event, including any failure of the internet or an occurrence of another major circumstance or event outside of Provider's control.

Provider reserves the right to take the Software Services offline in order to carry out emergency maintenance, but shall use commercially reasonable efforts to provide the Customer with as much notice as is reasonably possible.

Contractor cannot guarantee the availability of the mobile phone networks on which data communications depend.

(b) Updates. Customer acknowledges that the Software Services may from time to time include updates, upgrades and other enhancements which Provider in its sole discretion will make available. Customer will have no right hereunder to require specific customization of the Software Services, such as access to a prior version level or unique user interface. Customer will have no right hereunder to require specific customization of the Software Services, such as access to a prior version level or unique user interface.

5. Fees and Payment.

(a) Fees. Customer shall pay Provider the fees ("**Fees**") as set forth in any schedule / exhibit / attachment / task order or other ordering document pursuant to the Agreement ("**Order**") without offset or deduction, according to the payment terms set forth therein. If Customer fails to make any payment when due pursuant to the Order, without limiting Provider's other rights and remedies: (i) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 60 days or more, Provider may suspend Customer's and its Authorized Users' access to any portion or all of the Software Services until such amounts are paid in full.

(b) Taxes. All Fees and other amounts payable by Customer for the Software Services under these Terms are exclusive of taxes and similar assessments. 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.

(c) Auditing Rights and Required Records. During the Term and for up to two (2) years after the expiration of the Agreement, Provider may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by these Terms, provided that if such inspection and audit reveals that Customer has underpaid Provider with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with **Section 5(a)**.

6. Confidential Information and Data Privacy.

(a) From time to time during the Agreement, either Party may disclose or make available to the other Party non-public, proprietary information about its business affairs, products, services, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other tangible form, that is reasonably understood from the context of the disclosure, or is affirmatively marked, designated, or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; (d) independently developed by the receiving Party; or (e) disclosed under legal compulsion. The receiving Party shall use the Confidential Information solely for the performance of the Software Services and shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights, including to make required court filings. On the expiration or termination of the Software Services, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five (5) years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of the Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

(b) Data Privacy and Security.

- i. By Provider. Without limiting Provider's obligation of confidentiality as further described herein, Provider will use commercially reasonable efforts to establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; (c) protect against unauthorized disclosure, access to, or use of the Customer Data; (d) ensure the proper disposal of Customer Data; and, (e) ensure that all employees, agents, and subcontractors of Provider, if any, comply with all of the foregoing.
- ii. Data Protection. Each Party shall comply with all laws and regulations applicable to the processing of personal data in connection with any transactions related to the Agreement, such as the General Data Protection Regulation (EU) 2016/679 (the "**GDPR**"), including any implementation act(s) related thereto, or any other applicable laws regulations and other legal requirements related to (a) privacy and data security, and (b) the use, collection, retention, storage, security, disclosure, transfer, disposal and other processing of personal data ("**Privacy Laws**"). Each Party is responsible for obtaining any necessary authorizations and consents prior to disclosing personal data to the other Party or to any third party. The terms "controller", "personal data" and "processing" used in this section shall have the meaning set out in the applicable Privacy Laws. Either Party may use personal data consisting of ordinary business contact data (e.g., name, phone number, email address, etc.) in its capacity as a controller strictly in accordance with applicable Privacy Laws in the normal course of business but only for the purpose of administration of the Party's business relationship and performance of their obligations under the Agreement.

7. Intellectual Property Ownership; Feedback.

- (a) Provider IP. Customer acknowledges that, as between Customer and Provider, Provider owns all right, title, and interest, including all intellectual property rights, in and to the Provider IP, and with respect to Third-Party Products or Affiliate Products, the applicable third-party or Affiliate owns all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products or Affiliate Products.
- (b) Customer Data. Provider acknowledges that, as between Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Provider to provide the Software Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.
- (c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Provider by mail, email, telephone, or otherwise, suggesting or recommending changes to the Provider IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

8. Limited Warranty.

- (a) Provider warrants that the Software Services will conform in all material respects to the service levels set forth in Section 4(a) when accessed and used in accordance with the Documentation. Provider does not make any representations or guarantees regarding uptime or availability of third party networks such as but not limited to datacenter hosting or cellular or other connectivity. Any failure by Provider to meet the Availability Period shall entitle Customer to a term extension of Software Services for the period of time the Availability Period was not achieved. The remedy set forth in in this Section 8(a) is Customer's sole remedy and Provider's sole liability, and no Provider failure to maintain the Availability Period at any time shall be deemed a breach of these Terms. THE FOREGOING WARRANTY DOES NOT APPLY, AND PROVIDER STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS OR AFFILIATE PRODUCTS.

- (b) EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND ON A "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMISSIBLY BY LAW, PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT AND SYSTEM INTEGRATION, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 8(a), PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PROVIDER IP, 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. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE SOFTWARE SERVICES IS AT CUSTOMER'S RISK. PROVIDER DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR ANY THIRD-PARTY PRODUCTS OR SERVICES OR AFFILIATE PRODUCTS OR SERVICES.

9. Indemnification.

(a) Provider Indemnification.

- (i) Provider shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Software Services, or any use of the Software Services, infringes or misappropriates such third party's intellectual property rights, patents, copyrights, or trade secrets, provided that Customer promptly notifies Provider in writing of the claim, cooperates with Provider, and allows Provider sole authority to control the defense and settlement of such claim.
- (ii) If such a Third-Party Claim is made or appears possible, Customer agrees to permit Provider, at Provider's sole discretion, to (A) modify or replace the Software Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Provider determines that neither alternative is reasonably available, Provider may terminate use of the Software Services, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer, and refund Customer any pre-paid Fees on a pro rata basis as of the time of termination.
- (iii) This Section 9(a) will not apply to the extent that the alleged infringement arises from: (A) use of the Software Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; (B) modifications to the Software Services not made by Provider; (C) Customer Data; or (D) Third-Party Products.

- (b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Provider's option, defend Provider from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data, infringes or misappropriates such third party's intellectual property rights, and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Software Services in a manner not authorized by these Terms; (iii) use of the Software Services in combination with data, software, hardware, equipment, or technology not provided by Provider or authorized by Provider in writing; or (iv) modifications to the Software Services not made by Provider, provided that Customer may not settle any Third-Party Claim against Provider unless Provider consents to such settlement, and further provided that Provider will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

- (c) Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability. IN NO EVENT EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, LIQUIDATED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY, OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF

REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR CUSTOMER'S ACTUAL DAMAGES, WHICHEVER IS LESS.

11. Term and Termination.

- (a) Term. The initial term of these Terms begins on the Effective Date of the applicable Order, unless terminated earlier pursuant to these Terms' express provisions, will continue in effect until one (1) year from such date (the "**Initial Term**"). The Initial Term will automatically renew for additional successive one (1) year periods unless earlier terminated pursuant to these Terms' express provisions or either Party gives the other Party written notice of non-renewal at least 90 days prior to the expiration of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").
- (b) Termination. In addition to any other express termination right set forth in these Terms or the Agreement:
- (i) Provider may terminate these Terms, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due under the Order, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (B) breaches any of its obligations under Section 2(c) or Section 6;
 - (ii) either Party may terminate these Terms, effective on written notice to the other Party, if the other Party materially breaches these Terms, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; or
 - (iii) either Party may terminate these Terms, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) 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; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) 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.
- (c) Effect of Expiration or Termination. Upon expiration or earlier termination of these Terms as provided herein or pursuant to the Agreement, Customer shall immediately discontinue use of the Provider IP and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Provider IP and certify in writing to the Provider that the Provider IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.
- (d) Survival. This Section 11(d) and Sections 1, 5, 6, 7, 8(b), 9, 10, and 12 survive any termination or expiration of these Terms or the Agreement.

12. Miscellaneous.

- (a) Entire Agreement. These Terms, together with any other documents incorporated herein by reference and all related Orders, constitute the sole and entire agreement of the Parties with respect to the subject matter of the Software Services and supersedes all prior and contemporaneous understandings, agreements, and 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 these Terms, the Agreement, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, these Terms; (ii) second, the applicable Order; and (iii) third, the Agreement.
- (b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth in, and in accordance with, the Agreement.

- (c) Force Majeure. In no event shall Provider be liable to Customer, or be deemed to have breached these Terms, for any failure or delay in performing its obligations to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control, including but not limited to acts of God, any natural disaster, epidemic, pandemic (including, but not limited to, COVID-19), explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances such as but not limited to failures or fluctuations in electrical power, telecommunications equipment or hosting services, or passage of law, order, regulation or any action taken by a governmental or public authority, including imposing an embargo.
- (d) Amendment and Modification; Waiver. These Terms may not be amended or modified orally but only through a written amendment that is signed by each Party. No waiver of any right or duty under these Terms will be effective, and no course of dealing will be binding on either Party, unless set forth in writing and signed by both Parties.
- (e) Severability. If any provision of these Terms is void or unenforceable: (i) the Parties agree to replace such void or unenforceable provision with a replacement provision that most nearly approximates the outcome intended by the void or unenforceable provision, and (ii) such invalidity or enforceability will not affect the validity or enforceability of any other provision hereof.
- (f) Governing Law; Submission to Jurisdiction. Notwithstanding the Agreement, these Terms are governed by and construed in accordance with the internal laws of the State of Delaware, United States, 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 Delaware. In the event of a dispute the Parties may mutually agree to resolve the dispute by direct negotiation, mediation, or non-binding arbitration. Any legal suit, action, or proceeding arising out of or related to these Terms or the licenses granted hereunder will be instituted in the federal courts of the United States or the courts of the State of Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The Parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to these Terms, regardless of where the Parties do business or are incorporated.
- (g) Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Provider provided, however, that each Party may assign its rights and obligations hereunder to an Affiliate. Any purported assignment or delegation in violation of this Section will be null and void. These Terms are binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.
- (h) Compliance with Laws/Export Regulation. The Parties will comply with all applicable laws, regulations and codes, including procurement of permits and licenses, when needed, of their respective states, territories, provinces, and/or countries, provided such is not in violation of the U.S. Government's Export and Anti-boycott Rules and Regulations. The Software Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and other applicable laws. Customer will (a) comply strictly with all legal requirements established under these controls; (b) cooperate fully with Provider in any audit or inspection that relates to these controls; and (c) not export, re-export, divert or transfer, directly or indirectly, any such item to any country or person who or which is embargoed by Executive Order or any applicable law, including any rules, regulations or policies promulgated thereunder.
- (i) US Government Rights. Each of the Documentation and the software components that constitute the Software Services is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor thereof, Customer only receives those rights with respect to the Software Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.
- (j) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees 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.

- (k) Publicity. Neither Party may release any information to third parties, make any public statements about these Terms or the Agreement or otherwise use the other Party's name, logo or trademarks without the other Party's express written consent.
- (l) Conflicts. In the event any provision in the Terms conflicts with the Agreement with respect to the Software Services, the provision of these Terms shall govern.