

**SOFTWARE SERVICE AGREEMENT**

This Software Service Agreement (“**Agreement**”) between Seismic Software, Inc. and its Affiliates (collectively “**Seismic**”), and the company purchasing the Services (“**Customer**”) is entered into as of the date of the last signature below (the “**Effective Date**”) and governs Customer’s access to, use of, and receipt of the Services (as defined below). Seismic and Customer may each be referred to herein individually as a “**Party**” and collectively as the “**Parties**”. This Agreement includes and incorporates any and all Service Order Form(s). There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the Parties after the date hereof. Each Party’s acceptance of this Agreement is expressly conditional upon the other’s acceptance of the terms contained in the Agreement to the exclusion of all other terms.

**1. DEFINITIONS**

- 1.1. “**Account**” means the Customer portal through which Customer will have access to the Services through the internet. As part of the Account registration process, Customer will identify a master User name and password for the company portal, through which the master User name can be used to create additional Users, each with a unique User name and password.
- 1.2. “**Affiliate**” means, with respect to Seismic, any entity that directly or indirectly is controlled by, controls, or is under common control with Seismic.
- 1.3. “**Claim**” means any and all claims, actions, demands, lawsuits, or proceedings of any kind brought by an unaffiliated third party.
- 1.4. “**Customer Content**” means all text, multimedia, graphics, audio, video, data, and other information provided by Customer to Seismic for use with and display through the Services.
- 1.5. “**Documentation**” means any information whether in printed, electronic, or oral form, that is provided to or otherwise accessed by Customer relating to the Services, including user manuals or other materials, and as may be updated from time to time.
- 1.6. “**Fees**” means the then-applicable charges for the Services and as set forth in a Service Order Form.
- 1.7. “**IP Rights**” means any and all current and future intellectual property rights including, but not limited to, all worldwide patents, inventions, trademarks, service marks, copyrights, trade secrets, designs, logos, domain names and mask works.
- 1.8. “**Product Support**” means support services provided by Seismic via email or telephone for all Services under the Agreement.
- 1.9. “**Professional Services**” means professional services that may be performed outside the scope of the Services, that may include services such as implementation services, consulting services, and software development. Professional Services, if any, shall be set forth in a separate SOW that will be executed by both Parties.
- 1.10. “**Seismic Technology**” means and includes: (i) the proprietary software services and third party software applications provided by Seismic to Customer for use with the Services; (ii) all technology, technical information, discoveries, ideas, theories, improvements, tools, designs, original works of authorship, processes, algorithms, software, inventions, know-how, techniques, and other information, including all intermediate and partial versions thereof, related to the Services; (iii) all Documentation, program materials, flowcharts, notes, outlines, and the like developed in association with any of the foregoing; and (iv) all IP Rights related to any of the foregoing.
- 1.11. “**Services**” means, collectively, the proprietary, integrated, web-based software as a service or other cloud-based solution and the Product Support services made available by Seismic to Customer.
- 1.12. “**Service Order Form**” means a written order form that references and incorporates this Agreement and is executed by the Parties that describes the Services, the User quantities, the Term, and the Fees.
- 1.13. “**Statement of Work**” or “**SOW**” means any written document executed by both Parties that outlines the Professional Services to be provided by Seismic to Customer, and the applicable fees for such Professional Services.
- 1.14. “**Term**” means the term of this Agreement, commencing on the Effective Date and continuing as long as a Service Order Form or a SOW is in effect, unless terminated pursuant to Section 9 of this Agreement. The term of each Service Order Form shall be as specified in each Service Order Form.

- 1.15. “User” means a Customer employee, contractor, or other party that is authorized by Customer to use the Services in accordance with the terms of this Agreement or a Service Order Form.

## 2. SCOPE OF SERVICES

- 2.1. Subject to the terms and conditions of this Agreement, Seismic will provide to Customer, and Customer shall purchase from Seismic, access to the Services through the internet. Customer may use the Services solely in connection with Customer’s internal business purposes and as set forth in an applicable Service Order Form. Seismic shall use commercially reasonable efforts to provide the Services pursuant to Seismic’s standard Service Level Agreement, the current version of which can be viewed here: [Seismic Service Level Agreement](#).
- 2.2. Unless otherwise agreed to in writing by the Parties, each Service Order Form shall be independent from, and have no impact upon, any other Service Order Form. Each Service Order Form is enforceable according to the terms and conditions contained in such Service Order Form and, if a conflict occurs between this Agreement and any Service Order Form, the applicable provisions of such Service Order Form shall prevail.
- 2.3. Subject to the terms of this Agreement, and payment of all applicable Fees, Seismic will use commercially reasonable efforts to provide Customer with Product Support, in accordance with Seismic’s then-current Product Support Policy, the current version of which can be viewed here: [Seismic Product Support Policy](#).
- 2.4. Customer will not provide or otherwise use the Services in connection with, and acknowledges that Seismic reserves the right to remove from the Services, any content (including Customer Content) that is (as determined by Seismic, in its sole discretion, to be): (i) illegal, libelous, defamatory, obscene, pornographic or profane, or may cause harm to any individuals; or (ii) contains a bug, virus or other similar attribute or code that may infect, disable or otherwise impair the systems, software, and services operated by Seismic (in the case of (i) or (ii) above, the “Affected Content”); provided that Seismic shall use good faith efforts to notify Customer (including by sending Customer a message through Customer’s Account) of any such action taken by Seismic. Seismic shall have the right to suspend Customers’ access to Seismic Technology due to the Affected Content or as may be required by law. Customer shall reasonably cooperate with Seismic, at Seismic’s request, to minimize any adverse impact by the Affected Content to Customer’s or another Seismic customer’s use of the Services.

## 3. PROFESSIONAL SERVICES

- 3.1. Seismic may from time to time perform Professional Services pursuant to a separate SOW. A SOW shall include the scope of implementation or consulting services, the anticipated schedule, the fee structure, and the deliverables (if any) to be provided as part of the Professional Services. All SOWs must be signed by authorized representatives of both Parties and shall be deemed incorporated herein and be subject to the terms and conditions of this Agreement. Any change to the scope of any deliverable, milestone or payment obligation contained in a SOW shall be made only in writing and signed by authorized representatives of both Parties.
- 3.2. Unless otherwise agreed by the Parties in writing, Seismic shall have no obligation to provide Professional Services beyond the scope of matters expressly described in a SOW. Customer shall provide Seismic with (i) one (1) designated contact for all correspondence relating to Professional Services; (ii) access to Customer’s facilities and support as may be reasonably requested by Seismic; and (iii) the services of qualified Customer personnel as may be reasonably necessary to enable Seismic to perform the Professional Services. All work product created under a valid SOW shall be considered part of the Services as defined in this Agreement.
- 3.3. Each SOW is enforceable according to the terms and conditions contained in such SOW and, if a conflict occurs between this Agreement and any SOW, the applicable provisions of such SOW shall prevail.

## 4. SECURITY AND PRIVACY

- 4.1. Seismic will implement and maintain commercially reasonable measures to secure and protect the Services and Customer Content generated by, or processed through, the Services consistent with Seismic’s obligations under this Agreement and applicable industry best practices.
- 4.2. Seismic will implement and maintain industry best practices through procedures and technologies, including use of current virus scanning technologies with the most current virus signature, to ensure that the Services do not contain any programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs, time bombs, shut-down devices, keys, authorization codes, or passwords allowing Contractor access), intended to damage, interrupt, interfere with or hinder the operation of the Services.

- 4.3. Seismic will implement and maintain a vulnerability management program aligned with industry best practices to discover vulnerabilities in the Service. Seismic will address discovered vulnerabilities using commercially reasonable techniques and based upon the risk to the Services provided.
- 4.4. Seismic will conduct penetration testing of the Services no less than once each calendar year. Seismic will address discovered findings using commercially reasonable techniques and based upon the risk to the Services provided.
- 4.5. Seismic shall implement and maintain a business continuity management program designed to ensure its ability to provide access to, and to support the Services. Seismic shall (i) maintain backup and redundant systems that are located in a secure location different from the primary system location; and (ii) establish and maintain procedures for transmitting backup data and systems to the backup location.
- 4.6. Seismic shall notify Customer promptly of any actual security incidents that occur to the Services that result in the unauthorized access or loss of any Customer data to an unauthorized third-party.
- 4.7. Once per calendar year, and upon Customer's written request, Seismic will provide Customer with a copy of its recent SOC2 Type 2 Report.
- 4.8. The Parties acknowledge that Seismic is a service provider for the purposes of the California Consumer Privacy Act ("CCPA") and is receiving personal information from Customer pursuant to the Agreement for a business purpose. Seismic shall not sell any such personal information. Seismic shall not retain, use or disclose any personal information provided by Customer pursuant to the Agreement except as necessary for the specific purpose of performing the Services for Customer pursuant to the Agreement, or otherwise as set forth in the Agreement or as permitted by the CCPA. The terms "personal information", "service provider", "sale", and "sell" are as defined in Section 1798.140 of the CCPA. Seismic certifies that it understands the restrictions of this Section 4.8.

## 5. RESTRICTIONS

Customer will not, and will not permit any third-party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any Seismic Technology (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable statutory law); (ii) modify, translate, or create derivative works based on the Services or Seismic Technology; (iii) use the Services or Seismic Technology for timesharing or service bureau purposes or for any purpose other than its own use for the benefit of its end users and customers; or (iv) use the Services or Seismic Technology other than in accordance with this Agreement and in compliance with all applicable laws and regulations including but not limited to any applicable communication "opt out" laws, intellectual property, consumer and child protection, obscenity or defamation laws.

## 6. CUSTOMER OBLIGATIONS

- 6.1. Customer shall be responsible for maintaining the security of its own network connections, the Account passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer's Account with or without Customer's knowledge or consent.
- 6.2. Customer will cooperate with Seismic in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required and taking such other actions as Seismic may reasonably request. Customer will also cooperate with Seismic in establishing a password or other procedures for verifying that only designated employees of Customer have access to the Services.
- 6.3. Customer will maintain in full force and effect any third-party software licenses reasonably necessary for use and display of the Services (e.g., Microsoft Word, Microsoft PowerPoint, Microsoft Excel).

## 7. CONFIDENTIALITY

- 7.1. "**Confidential Information**" shall mean any data or information disclosed by the Disclosing Party in writing or orally and not generally known to the public, including but not limited to finances, concepts, marketing proposals, branding strategies, creative designs, technical data, web designs, trade secrets and know-how, research, product plans, products, customer technical requirements, software, programming techniques, algorithms, services, suppliers, supplier lists, customers, employee lists, customer lists, markets developments, inventions, processes, technology, designs, drawings, engineering, apparatus, techniques, hardware configuration information, marketing, forecasts, business strategy, finances, or other business information that would be reasonably understood to be confidential.

- 7.2. For the purposes of this section the “**Disclosing Party**” shall mean the Party or Party’s employees, subcontractors, officers, directors, representatives, agents and Affiliates that has given control or possession of Confidential Information to the Receiving Party, and the “**Receiving Party**” shall mean the Party or the Party’s employees, subcontractors, officers, directors, representatives, agents and Affiliates that has received Confidential Information from the Disclosing Party.
- 7.3. The Receiving Party understands that the Disclosing Party has disclosed or may disclose Confidential Information relating to the Disclosing Party’s business. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, (ii) not to divulge to any third person any such Confidential Information; and (iii) advise each party to whom the Receiving Party provides Confidential Information under the terms of this Agreement that it is to be kept strictly confidential.
- 7.4. **Exclusions.** The Disclosing Party agrees that the foregoing shall not apply with respect to any Confidential Information after three (3) years following the disclosure thereof or any Confidential Information that the Receiving Party can document: (i) is or becomes a part of the public domain through no act or omission of the non-disclosing Party; (ii) was lawfully in its possession or known by it prior to receipt from the Disclosing Party with no obligations of confidentiality; (iii) was rightfully disclosed to it by a third-party without continuing restrictions on its use or disclosure; (iv) was independently developed by the Receiving Party without the use of any Confidential Information of the Disclosing Party; or (v) is required by court order or government requirement, provided that the Disclosing Party is given prompt written notice of such court order or government requirement and an opportunity to obtain a protective order to prohibit or restrict such disclosure.
- 7.5. In any event, Seismic may use for development, diagnostic and corrective purposes any data and information it collects relating to the Services, provided that such data is anonymized and aggregated such that it would not be possible to identify any particular individual or identify Customer as the source of such data or information.
- 7.6. Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such Party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.
- 7.7. Seismic shall return or dispose of all Customer Content and Confidential Information upon completion of the Services, termination of this Agreement, or as requested by Customer in writing. Upon written request, Seismic will certify to Customer in writing that the Customer Content and Confidential Information has been disposed. Obligations under this Section shall expire on the earlier of: (i) the date upon which the Disclosing Party consents in writing to disclosure of its Confidential Information by the Receiving Party; (ii) the date upon which the Disclosing Party formally announces, releases, or otherwise discloses its Confidential Information to the public; or (iii) the date upon which the Receiving Party returns or disposes of all of the Disclosing Party’s Confidential Information pursuant to the foregoing.

## 8. PAYMENT OF FEES

- 8.1. Seismic will invoice Customer and Customer will pay to Seismic all Fees annually in advance. Payment must be received by Seismic no later than thirty (30) days after receipt of the invoice. In the event that the service term is longer than one year, Customer will pay the Fees for the first year of the Services in advance and pay the Fees for each subsequent year of the service term on each subsequent renewal date. Customer agrees that it will issue a purchase order to Seismic for each subsequent years’ Fees no later than thirty (30) days prior to the end of the then-current service term.
- 8.2. Unless otherwise specified in advance, Seismic will bill all additional fees (e.g., Professional Services fees) through an invoice and full payment for invoices issued in any given month must be received by Seismic thirty (30) days after Customer’s receipt of the invoice. Unpaid Fees are subject to a finance charge of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.
- 8.3. Fees are exclusive of all applicable taxes and Customer is responsible for the payment of all taxes that may now or in the future be associated with this Agreement or Customer’s use of the Services (other than U.S. taxes based on Seismic’s net income); Customer may not withhold from or otherwise reduce the amounts paid to Seismic hereunder on account of any such taxes.
- 8.4. If Customer has a good faith dispute in an invoice, Customer must contact Seismic no later than thirty (30) days after Customer’s receipt of the disputed invoice. Once Seismic receives notification of the disputed invoice, Seismic will review the disputed invoice and if Seismic determines, at its sole discretion, that an error was made, Customer will receive an adjustment or credit. Disputes or inquiries must be directed to Seismic’s customer support department.

## 9. TERMINATION

- 9.1. **Termination for Breach.** In addition to any other remedies it may have, either Party may terminate this Agreement, in whole or in part, effective upon thirty (30) days' written notice to the other Party, in the event the other Party commits a material breach of this Agreement, which breach is not cured within such thirty (30) day period. Notwithstanding the foregoing, in the event of a failure to pay, the cure period shall be ten (10) days from the date on which such payment was due. Seismic reserves the right to terminate or suspend Customer's access to any Services, or suspend Seismic's performance of this Agreement if any sum owed is not paid within the cure period set forth in the preceding sentence. If Seismic is required to proceed with legal actions due to Customer's payment breach and Seismic is successful, Customer shall promptly reimburse Seismic for all costs of collection (including, without limitation, reasonable attorney's fees) incurred in connection with pursuing payments due to Seismic under this Agreement. In the event this Agreement is terminated by Customer due to Seismic's material breach, then Seismic shall refund to Customer a pro-rata portion of the prepaid but unused Fees applicable to the portion of the Term remaining after the termination date.
- 9.2. **Termination for Bankruptcy.** Either Party may terminate this Agreement, without notice, (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings which are not dismissed within ninety (90) days, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business without a successor.
- 9.3. **Effect of Termination.** Upon termination of this Agreement, any and all unpaid Fees will become due and payable for the Services up to and including the last day on which the Services are provided. Further, upon termination of this Agreement, all rights of use granted to Customer under this Agreement shall immediately cease. All provisions of this Agreement which by their nature should survive termination will survive termination.

## 10. WARRANTY AND DISCLAIMER

- 10.1. Seismic warrants that it (i) has the corporate power and right to enter into this Agreement; (ii) owns, has acquired, or has the legal right to offer the Services; (iii) shall use commercially reasonable efforts consistent with generally accepted industry standards to maintain the Services in a professional and workmanlike manner which minimizes errors and interruptions in the Services; and (iv) shall perform any Professional Services in a professional and workmanlike manner consistent with generally accepted industry standards and pursuant to the terms of the relevant SOW. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Seismic or by third-party providers, or because of other causes beyond Seismic's reasonable control. Seismic shall use commercially reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Seismic does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services.
- 10.2. **Disclaimer of Warranty.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 ABOVE, THE SERVICES ARE PROVIDED "AS IS" AND SEISMIC DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES AND GUARANTEES WITH RESPECT TO THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.
- 10.3. In the event of a breach of any warranty provided in Section 10.1(iii), as Seismic's sole liability and Customer's exclusive remedy, Seismic shall correct any defective Service or, if not practicable, Seismic shall terminate the affected Service and provide Customer with a pro rata refund of any paid but unused Fees. In the event of a breach of any warranty provided in Section 10.1(iv), as Seismic's sole liability and Customer's exclusive remedy, Seismic shall re-perform any affected Professional Service or, if not practicable, Seismic shall terminate the affected SOW and provide Customer with a refund of the amount paid by Customer for any affected Professional Services.

## 11. INDEMNIFICATION

- 11.1. **Seismic Indemnity.** Subject to Section 11.4 below, Seismic will indemnify and hold Customer and its officers, employees and agents harmless from all damages, liabilities, settlements, and costs payable to unaffiliated third-parties as a result of any Claim that the Services infringe the United States IP Rights of such third party.
- 11.2. **Exclusions.** Seismic's obligations hereunder do not apply with respect to any Claim(s) that arise as a result of (i) combination of the Services with anything not provided to Customer by Seismic; (ii) modification of the Services by anyone other than a Seismic employee or representative; (iii) Customer's continued use of the Services after being notified that the Services may be infringing; (iv) Customer's use of the Services in any manner not permitted by this Agreement; or (v) Customer's failure to use any updates, modifications, corrections, bug-fixes, or enhancements to the Services made available by Seismic.

- 11.3. **Customer Indemnity.** Subject to Section 11.4 below, Customer will indemnify and hold Seismic and its officers, employees and agents harmless from all damages, liabilities, settlements, and costs payable to unaffiliated third-parties as a result of any Claim that Customer Content infringes on or violates the IP Rights or any other rights of a third-party or otherwise arising from Customer's use of the Services in violation of this Agreement.
- 11.4. **Conditions.** The indemnity obligations hereunder are conditioned upon the Party seeking indemnification: (i) giving the indemnifying Party prompt written notification of any potential Claim; (ii) sole control of the defense and settlement of any Claim; and (iii) reasonable assistance, at the indemnifying Party's request and expense, in the defense and settlement of any Claim.
- 11.5. **Infringement Remedies.** If an infringement Claim occurs alleging that the Services are or may be infringing, Seismic shall, at its sole option and expense, either (i) procure for Customer the right to continue using the allegedly infringing component of the Services; or (ii) replace or modify such allegedly infringing component so that it becomes non-infringing, so long as functionality of the Services will not be materially and adversely affected. If neither alternative is reasonably available, the Service Order Form affected by the allegedly infringing component of the Services will be terminated and Seismic shall provide Customer with a pro rata refund based upon the unused portion of any prepaid Fees for such allegedly infringing component on an equitable basis. The indemnity provided in Section 11.1 and the foregoing remedies constitute Seismic's sole liability and Customer's exclusive remedy in the event of any infringement by the Services.

## 12. LIMITATION OF LIABILITY

- 12.1. Except as expressly provided in this Agreement, Customer acknowledges that: (i) Seismic is in no way responsible for any action or inaction of any third party not under its direct or indirect control; and (ii) Seismic does not and cannot control the flow of data through the internet, and such flow depends in large part on the performance of third parties whose actions or inaction can at times produce situations in which connections to the internet (or portions thereof) may be impaired or disrupted. ACCORDINGLY, SEISMIC DISCLAIMS ALL LIABILITY RELATED TO EVENTS OUTSIDE OF SEISMIC'S CONTROL AND/OR IN THE CONTROL OF THIRD PARTIES AND CUSTOMER SHALL HAVE NO RIGHT TO RELY UPON ANY REPRESENTATION OR WARRANTY OF ANY THIRD PARTY IN RESPECT TO THE SERVICES. Further, Customer acknowledges that, in providing Services, Seismic will necessarily rely upon information, instructions, and services from Customer, its employees, and agents, and other third parties providing computer and communications hardware, software and services. Except as expressly provided in this Agreement, Customer fully assumes the risk associated with errors in such information, instructions, and services.
- 12.2. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST BUSINESS OR LOST SALES, OR LOST DATA, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 12.3. The total liability of each Party, whether based in contract, tort (including negligence), strict liability or otherwise, will not exceed the Fees paid or payable to Seismic hereunder in a twelve (12) month period. Neither Party may institute an action in any form arising out of or in connection with this Agreement more than one (1) year after the cause of action has arisen.
- 12.4. The limitations set forth in this Section 12 (Limitation of Liability) shall not apply to limit: (i) Customer's liability for any breach of Section 5 (Restrictions) or Section 6 (Customer Obligations), or (ii) either party's liability for such party's breach of Section 7 (Confidentiality).

## 13. OWNERSHIP

- 13.1. **Ownership by Seismic.** As between the Parties, Seismic alone (and its licensors, where applicable) owns and retains all rights, title, and interest in and to (a) the Services; (b) the Seismic Technology; and (c) any other technology or materials developed and/or supplied by Seismic under this Agreement and all related IP Rights. To the extent any suggestions, ideas, enhancement requests, feedback, recommendations or other information (collectively "Feedback") is provided by Customer relating to the Services and/or the Seismic Technology, Seismic is hereby granted a worldwide, perpetual, royalty-free, irrevocable, transferable, sublicensable license and right to utilize or exploit such Feedback for its internal business purposes. Customer will not copy, distribute, reproduce or use any of the foregoing except as expressly

permitted under this Agreement. Except as expressly provided in this Agreement, nothing in this Agreement shall be interpreted as granting to Customer or any other entity any right, title, or interest in or to any Seismic Technology or other technology materials as referenced above.

- 13.2. **Ownership by Customer.** The Parties acknowledge that Customer Content will be provided by Customer. Customer will at all times retain all rights, title, and interests in and to all Customer Content. Customer hereby grants Seismic a world-wide, non-exclusive, royalty-free license during the Term to use, reproduce and electronically distribute the Customer Content for the purposes of providing the Services. Seismic will not be liable for any failure to perform the Services when such failure is caused by Customer's delay in or failure to provide Customer Content. Customer represents and warrants that it owns all right, title and interest in and to the Customer Content.
- 13.3. If Seismic receives any notice or claim that any Customer Content, or activities hereunder with respect to any Customer Content, may infringe or violate rights of a third-party, Seismic shall notify Customer and Customer shall take all action necessary to address such Claim to Seismic's reasonable satisfaction within two (2) days of receiving notice of such Claim. If Customer fails to resolve the Claim during such time-period, or fails to respond to Seismic's notice, Seismic may (but is not required to) suspend activity hereunder with respect to that Customer.

#### 14. MISCELLANEOUS

- 14.1. **Severability.** If any provision of this Agreement is found to be unenforceable or invalid by a court of competent jurisdiction, in whole or in part, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
- 14.2. **Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party without the prior written consent of the other, which shall not be unreasonably withheld, provided that such consent is not required in case of an asset sale, merger, change of control or operation of law where the acquiring entity assumes all liabilities, responsibilities and obligations of the assigning entity. Any other assignment or attempted assignment shall be void. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.
- 14.3. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the mutual understanding of the Parties with respect to the subject matter hereof, and supersedes and cancels all prior or contemporaneous written and oral agreements, communications and other understandings relating to the subject matter hereof.
- 14.4. **Waiver; Amendment.** All waivers and modifications must be reduced to writing and signed by both Parties, except as otherwise provided herein. All amendments or modifications of this Agreement are binding upon the Parties so long as such amendments or modifications are in writing and signed by both Parties.
- 14.5. **Relationship.** No agency, partnership, joint venture, or employment, whether express or implied, is created as a result of this Agreement and neither Party has any authority of any kind to bind the other Party in any respect whatsoever. Neither Party is authorized as an agent or legal representative of the other Party.
- 14.6. **Costs.** In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and reasonable attorneys' fees.
- 14.7. **Marketing.** Upon execution of this Agreement, Customer agrees to participate in at least one of the following Seismic marketing activities: (i) Speaking on Seismic's behalf at an industry event; (ii) Press release announcing Customer as a Seismic customer; (iii) Video testimonial; (iv) Customer-written blog post; (v) Customer case study; or (vi) other mutually agreed to marketing activities.
- 14.8. **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
- 14.9. **Counterparts.** This Agreement (including any Service Order Form or SOW may be executed in counterparts, each of which will be deemed to be an original, but all of which when taken together will constitute one and the same agreement.
- 14.10. **Governing Law.** This Agreement and any dispute arising out of or in connection with this Agreement shall be governed by the laws of the State of California without regard to its conflicts of law provisions. For all purposes of this Agreement, the Parties consent to exclusive jurisdiction and venue in the Supreme Court of the State of California, San Diego County, and/or if applicable the United States District Court located in the Southern District of California.



**Seismic Software, Inc.**  
12390 El Camino Real  
San Diego, CA 92130

**THIS AGREEMENT IS NOT EFFECTIVE UNTIL SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF EACH PARTY THAT HAS AUTHORITY TO BIND THAT PARTY TO THIS AGREEMENT.**