

Cultivate Master Customer Agreement

Last Updated August 28, 2020

This Cultivate Master Customer Agreement (“Agreement”) governs Customer’s acquisition and use of Cultivate products and services. It is effective between Customer and Cultivate Technology Inc., a Delaware corporation with its principal place of business at 326 Ritch Street, San Francisco California 94107 (“Cultivate”) as of the date Customer accesses or uses Cultivate products and services or the effective date of the first Order referencing this Agreement. Capitalized terms have the definitions set forth herein.

By accepting this Agreement, by (1) clicking a box indicating acceptance, (2) executing an order form that references this Agreement, or (3) using trial services, Customer agrees to the terms of this Agreement. If the individual accepting this Agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its affiliates to these terms and conditions, in which case (i) the term “Customer” shall refer to such entity and its affiliates and (ii) Customer will ensure its affiliate’s compliance with this Agreement and will be responsible for its affiliate’s acts and omissions hereunder, in each case as if its affiliates were Customer hereunder.

The Cultivate products and services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Cultivate’s direct competitors are prohibited from accessing Cultivate’s products and services, except with Cultivate’s prior written consent.

GENERAL TERMS AND CONDITIONS

The terms and conditions that follow apply to all products and services procured or otherwise received from Cultivate. Additional terms and conditions applicable to SaaS Services and Licensed Product are contained in the appendices “SAAS SERVICES TERMS” and “LICENSED PRODUCT TERMS”, respectively.

1. DEFINITIONS. The following capitalized terms shall have the meaning ascribed to them below:

Confidential Information. Any non-public information, technical data, or know-how, including, without limitation, that which relates to: **(i)** research, product plans, products, pricing, services, customers, personnel, markets, software, software code, software documentation, developments, inventions, lists, trade secrets, data compilations, processes, designs, drawings, engineering, hardware configuration information, marketing or finances, which is designated in writing to be confidential or proprietary at the time of disclosure if provided in tangible form, or if provided in non-tangible form, shall be identified by the disclosing party at the time of disclosure as confidential or proprietary, or which the receiving party knew or should have known was confidential information of the disclosing party **(ii)** with respect to Cultivate, information concerning any products and services provided hereunder and/or materials resulting from services, and any derivatives thereto, the terms and conditions of this Agreement, and AI Learnings and **(iii)** with respect to Customer, any Customer Data. Notwithstanding the foregoing, Confidential Information does not include information, technical data or know-how that is: **(a)** in the public domain or becomes available to the public and not as a result of the act or omission of the receiving party; **(b)** without restriction on disclosure, rightfully obtained by the receiving party from a third party; **(c)** without restriction on disclosure, lawfully in the possession of the receiving party at the time of disclosure; or **(d)** approved for release by written authorization of the disclosing party.

Cultivate Intellectual Property. All Intellectual Property Rights in the products and services provided by Cultivate, and all other Confidential Information provided by Cultivate hereunder.

Customer Data. All data either provided by Customer or entered on Customer's behalf through use of the products and services provided by Cultivate, or collected or generated by those products and services on behalf of Customer, but expressly excluding any Feedback.

Customer Environment. The computing environment (excluding any software expressly provided by Cultivate on an Order) separately procured, prepared and maintained by Customer for the access and use of the products and services, where such computing environment meets Cultivate's then-current minimum requirements for the applicable products and services.

Data Subject. An individual who **(a)** uses the products or services provided by Cultivate and/or **(b)** about which information is collected or generated as a part of the products or services provided by Cultivate.

DPA. The Cultivate Data Protection Addendum [here](#).

Designated Employees. A reasonable number of Customer Personnel (including Customer's system administrator(s)), who have received training from Cultivate. Designated Employees may be changed by notice to Cultivate.

Documentation. Cultivate's documentation describing the specifications and use of the products and services provided by Cultivate, as updated from time to time.

Error. A failure of the products or services provided by Cultivate to substantially conform to the Documentation that Cultivate can replicate or Customer can duplicate.

Error Correction. Revisions, modifications, alterations, and additions to the products or services provided by Cultivate to Customer as bug fixes or workarounds to resolve Errors, or installed by Cultivate in the Hosted Environment as bug fixes or workarounds, each to resolve Errors.

Feedback. Any suggestions, comments or other feedback provided to Cultivate concerning Cultivate's products and services, including, but not limited to, the design, features, functionality, operation and release strategies of Cultivate's products and services.

Hosted Environment. Cultivate or its third party's technical environment required to operate and provide access to the relevant Cultivate service.

Intellectual Property Rights. Any and all tangible and intangible rights, title and interest in and to: **(i)** works of authorship, including but not limited to copyrights, neighboring rights, moral rights, and mask works, and all derivative works thereof, **(ii)** trademarks and trade names, **(iii)** Confidential Information, trade secrets and know-how, **(iv)** patents, designs, algorithms and other industrial property, **(v)** all other intellectual and industrial property rights whether arising by operation of law, contract, license, or otherwise, and **(vi)** all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force.

Normal Business Hours. Monday through Friday, 8AM to 5PM Pacific.

Order. The details of an order by Customer for products and services provided by or through Cultivate **(i)** on an order form or schedule provided by Cultivate and signed by Customer, or **(ii)** on Customer's purchase order provided to and accepted by Cultivate.

Other Online Services. Except with respect to SaaS Services, all online access to information, services, support, training, or other informational sites or portals provided by Cultivate.

Personal Data. In respect of each Data Subject means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

Personnel. With respect to Customer, each of Customer's employees or independent contractors (not a competitor of Cultivate) under obligations of confidentiality and nondisclosure, and other individuals with access to components of the products and services provided by Cultivate designated for external use, which Customer authorize to use the products and services procured hereunder; with respect to Cultivate, each Cultivate employee or subcontractor under obligations of confidentiality and nondisclosure which performs on behalf of Cultivate hereunder.

Privacy Laws. Laws, as applicable to Personal Data, concerning the regulation of the collection, processing, data security, and transborder data flows, use of web-site cookies, email communications, use of IP addresses and meta-data collection.

Support. The maintenance and/or support provided for a Licensed Product(s) and any on-premise component(s) .

Updates. Periodic improvements or additions to the products and services provided by Cultivate, including Error Corrections and other changes to those products and services, that may be provided hereunder, but excluding any new feature or substantial additional functionality available for those products and services, which, in Cultivate's sole discretion, is subject to additional fees.

2. CUSTOMER DATA.

2.1 Ownership. Cultivate acknowledges it receives no ownership or, except to the extent specified herein, other rights in any Customer Data, and all rights, title and interest in such Customer Data remain with Customer.

Customer grants Cultivate a non-exclusive, worldwide right to use, copy, store, transmit, display, modify, and create derivative works of the Customer Data, to the extent necessary to manage, improve, and provide the products and services (and related products and services), as well as to provide support to Customer. Customer agrees that Cultivate will receive and has the right to collect, record and obtain, and the right to freely use, exploit, and disclose in aggregate, anonymous and de-identified form, information derived from Customer Data (including but not limited to any data or information regarding performance or use of the products and services (and Software therein) provided by Cultivate, such as to system performance logs) where the resulting information does not in any way identify or allow the identification of Customer or its Personal Data ("Aggregated Data"). Cultivate shall own all right, title and interest to the Aggregated Data and any derivative works thereof. Additionally, Customer acknowledges that in connection with the processing of Customer Data pursuant to this Agreement, Cultivate may share Customer Data with its affiliates for the purposes of performing its obligations under this Agreement.

2.2 Customer Responsibilities. Customer agrees that Customer is solely responsible for: **(i)** obtaining any Customer Data and other information Customer provides while using Cultivate's products and services, **(ii)** providing any required notifications to Data Subjects, and obtaining all rights and consents necessary to collect, retain, use and/or disclose the Customer Data, **(iii)** ensuring the collection, retention and processing of Personal Data in connection with the use and delivery of the products and services does not violate the rights of Data Subjects or the Privacy Laws, and **(iv)** the accuracy, completeness, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data. The terms of the DPA are incorporated herein by reference and shall apply to the extent Cultivate processes any Customer Data that contains Personal Data. By providing any Customer Data or other information such as Customer's name or logo, Customer represents and warrants that such information does not **(x)** violate any intellectual property rights, publicity rights, confidentiality or trade secret rights, or any other legal or equitable rights; **(y)** violate any law, rule, order, judgment or regulation to which Customer or the Customer Data may be subject, or **(z)** violate in any way Customer's obligations in this Agreement. Customer acknowledges and agrees that Cultivate is not responsible or liable for any unlawful, harassing, defamatory, privacy invasive, abusive, threatening, offensive, harmful, vulgar, obscene, tortuous, hateful, racially, ethnically or otherwise objectionable information contained in Customer's Customer Data, or content, or information or content contained in Customer Data that infringes or may infringe any copyright, patent, moral right, trade secret, confidential information, trademark right or any other right of a third party. Customer, at Customer's sole

expense, shall defend, indemnify and hold harmless Cultivate from any action based upon a claim resulting from any breach of Customer's obligations in this Section 2, and shall reimburse Cultivate for all damages, costs, and expenses (including reasonable attorneys' fees) incurred by Cultivate pursuant to any such actions.

3. INTELLECTUAL PROPERTY; CONFIDENTIALITY.

3.1 Ownership. Customer acknowledges Cultivate owns or has the right to license the products provided by Cultivate hereunder, and that all Intellectual Property Rights in and to the Cultivate Intellectual Property, and modifications, improvements, and derivatives thereto, are and shall remain vested in Cultivate or its licensor(s). Except for the limited license and use rights granted hereunder, Customer shall not assert any right, title, or interest in or to the products or services provided by Cultivate hereunder, or any other Cultivate Intellectual Property. The products and services provided by Cultivate may include or utilize artificial intelligence, machine intelligence, machine learning or similar technologies. The use and operation of the products and services (and Software therein) provided by Cultivate may give rise to additional learnings, insights, ideas or improvements with regard to or related to such products and services (including the Software therein) or derivative works or improvements thereto ("AI Learnings"). Cultivate will exclusively own such AI Learnings, and Customer hereby assigns any rights, title, or interest it may have or acquire to such AI Learnings.

3.2 Cultivate Intellectual Property Protection. In no event shall this Agreement, or any rights or privileges hereunder, be an asset of Customer under any bankruptcy, insolvency, or reorganization proceedings, or in any other manner whatsoever; however, this Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, and permitted transferees, successors, and assigns. Customer shall comply with all applicable (including, all U.S. and applicable foreign) laws and administrative regulations relating to the control of exports of commodities and technical and/or personal data, and all laws directly or indirectly applicable to its activities hereunder or otherwise pursuant to or in connection with this Agreement, the license or use of any product, and the delivery of any services. Except as otherwise specified in this Agreement, expressly permitted in writing by Cultivate, or otherwise cannot be precluded under mandatory applicable law, Customer shall not, and shall not permit any other party to:

- a. Disassemble, decompile, decrypt, or reverse engineer, or in any way attempt to discover or reproduce source code for, any part of the products or services; adapt, modify, or prepare derivative works based on any of the Cultivate Intellectual Property; or use any of the Cultivate Intellectual Property to create any computer program or other material that performs, replicates, or utilizes the same or substantially similar functions as the products and services provided hereunder;
- b. Disclose the products or services or its operation to third parties, or use the products or services in a service bureau or time sharing environment;
- c. Alter, remove, or suppress any copyright, confidentiality, or other proprietary notices, marks or any legends placed on, embedded or otherwise appearing in or on any Cultivate Intellectual Property; or fail to ensure that all such notices and legends appear on all full or partial copies of Cultivate Intellectual Property or any related material;
- d. Sell, sublicense, lease, rent, make available, assign, delegate, transfer, distribute, encumber or otherwise transform any Cultivate Intellectual Property or any of the rights or obligations granted to or imposed on Customer hereunder.

3.3. Confidentiality. The unauthorized disclosure or use of Confidential Information of a disclosing party or of a disclosing party's third party licensors, and all information and services related thereto, would cause great injury and harm to the owner thereof. Therefore, each party agrees to take all appropriate action to ensure the confidentiality and security of the other party's Confidential Information, but in any event use no less than a commercially reasonable standard of care. Without limiting the generality of the foregoing, Customer and Cultivate each agree that it: **(i)** shall maintain the other's Confidential Information in the strictest confidence; **(ii)** shall not disclose, display, publish, transmit, or otherwise make available such Confidential Information or take the benefit thereof, in whole or in part, except in confidence to its own

Personnel on a need-to-know basis; and **(iii)** except as expressly permitted hereunder, shall not use, copy, duplicate, replicate, transform, or reproduce such Confidential Information. Notwithstanding anything to the contrary in this Section, neither party shall be liable to the other for damages resulting from disclosure of any Confidential Information required by law, regulation or valid court order; provided, to the extent legally permitted, prior written notice is provided to the other party sufficiently in advance of such required disclosure to allow the other party to respond and take reasonable and lawful action to avoid and/or minimize the degree of such disclosure or seek appropriate protective orders. Additionally, Customer must not publish or disclose to any third party the results of audits or ethical hacks related to Cultivate products and services, except as may be authorized by Cultivate in writing.

3.4. Feedback. Customer may from time to time provide Feedback to Cultivate. Customer acknowledges and agrees that any such Feedback is provided on a voluntary basis only and Customer will not seek or be entitled to receive any compensation in any form for such Feedback. Cultivate has no obligation to respond to Feedback or to incorporate Feedback into its products and services. Customer agrees that all Feedback, even if designated as confidential by the Customer, shall not create any confidentiality obligation for Cultivate, and agrees that Cultivate is free to disclose and use such Feedback, and any derivatives thereto, without restriction. By submitting Feedback to Cultivate, Customer agrees to assign and hereby does assign to Cultivate all right, title and interest in and to such Feedback, and agrees to perform all acts reasonably requested by Cultivate, at Cultivate's cost, to perfect and enforce such rights.

3.5. Third Party Products. Customer's receipt or use of any third-party products or services is subject to a separate agreement between Customer and the third-party provider. If Customer enables or uses third-party products or services in connection with Cultivate products and services, Customer acknowledges that the third-party providers may access or use Customer Data as required for the interoperation of their products and services with the Cultivate products and services and Cultivate is not responsible for any access to or use of Customer data by third-party providers or their products or services, or for the security or privacy practices of any third-party provider or its products or services. Customer is solely responsible for Customer's decision to permit any third-party provider or third-party product or service to use Customer Data. Cultivate disclaims all liability and responsibility for any third-party products or services (whether support, availability, security or otherwise) or for the acts or omissions of any third-party providers or vendors.

4. WARRANTY.

4.1. Limited Performance Warranty.

For SaaS Services: Cultivate warrants to Customer that during any Access Term, the SaaS Services will perform substantially in accordance with the Documentation. Customer's exclusive remedy for a breach of the foregoing shall be for Cultivate to use commercially reasonable efforts to correct any Errors.

For Licensed Product: Cultivate warrants to Customer that for a period of ninety (90) days after its initial delivery, the Software shall operate in a Customer Environment substantially in accordance with the Documentation. Customer's exclusive remedy for a breach of the foregoing shall be for Cultivate to use commercially reasonable efforts to either correct any verifiable material nonconformity or to replace the materially nonconforming Software.

Notwithstanding the foregoing, Cultivate shall have no obligations under this Section unless Cultivate receives Customer's notice during the applicable warranty period.

4.2. Warranty Disclaimer. THE LIMITED WARRANTIES AND EXCLUSIVE REMEDIES SET FORTH IN SECTION 4.1 ARE MADE FOR THE BENEFIT OF CUSTOMER ONLY, AND ARE EXPRESSLY SUBJECT TO: (I) SATISFACTION OF ANY PAYMENT OBLIGATIONS TO CULTIVATE, AND (II) SECTION 4.2 IN THE "LICENSED PRODUCT TERMS". EXCEPT AS EXPRESSLY SET FORTH IN SECTION 4.1, CULTIVATE MAKES NO AND DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS AND OTHER TERMS, WRITTEN OR ORAL, OR EXPRESS, IMPLIED, STATUTORY, COLLATERAL OR OTHERWISE, INCLUDING BUT NOT LIMITED

TO ANY IMPLIED WARRANTIES AND TERMS OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, TITLE, INTEROPERABILITY, DATA ACCURACY, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY PRODUCTS, SERVICES, SUPPORT, OR ANY COMPONENTS THEREOF. WITHOUT LIMITING THE FOREGOING, CULTIVATE DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF ANY PRODUCTS OR SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE. FOR THE AVOIDANCE OF DOUBT, SECTION 4.1 SHALL NOT APPLY TO ANY BETA, PILOT OR OTHER TRIAL SUBSCRIPTIONS, NON-PRODUCTION ENVIRONMENTS, OR OTHER ONLINE SERVICES, EACH OF WHICH ARE PROVIDED 'AS IS' AND WITHOUT WARRANTY OF ANY KIND.

5. PAYMENT.

5.1. Orders, Invoicing and Payment. All Orders placed hereunder are subject to Cultivate's acceptance of that Order. Prior to accepting an Order, Cultivate shall have the right to perform any credit and other checks required by Cultivate. Cultivate shall invoice Customer for all fees in accordance with the applicable annex terms and conditions. Time is of the essence with respect to payment terms. All payments shall be due within thirty (30) days after the applicable invoice date, without deduction. All amounts due Cultivate hereunder are net amounts, exclusive of, and Customer is responsible for paying all taxes, duties and tariffs of any kind (except with respect to Cultivate's income) whether payable directly by or indirectly through Cultivate in compliance with applicable law, and all costs of shipment. Customer agrees to pay Cultivate all costs of collection resulting from Customer's failure to pay any amounts due Cultivate hereunder, and Cultivate shall have the right to charge Customer interest at the maximum legal rate allowable under applicable law for any amount not paid to Cultivate when due and payable until payment is received. Cultivate shall have the right to withhold performance under this Agreement **(i)** to the extent it has knowledge that any governmental approvals required under then-current applicable laws and/or regulations have not been properly obtained by the respective party(ies), or **(ii)** if Customer is in delinquent on any payments or is otherwise in breach of this Agreement.

5.2. Accurate Records; Audit. Customer shall keep complete and accurate records of all its obligations hereunder. Customer shall allow Cultivate or its agent reasonable access to audit Customer's records and systems solely to verify general compliance with the terms and conditions of this Agreement, including, without limitation, Customer and/or Cultivate running Cultivate provided utilities to determine actual usage. Cultivate shall conduct such audits during Customer's normal business hours with reasonable notice, or as otherwise reasonably requested by Customer.

6. CULTIVATE INDEMNITY.

Cultivate shall defend, indemnify and hold harmless Customer from any action brought during the term of this Agreement to the extent such action is based upon a claim that the products or services provided by Cultivate, used as permitted, infringes any valid third-party patent, copyright, trade secret, or other proprietary right arising under the laws of the United States, and shall reimburse Customer for all damages, costs, and expenses (including reasonable attorneys' fees) awarded against Customer pursuant to any such actions, provided that: Customer (i) promptly gives Cultivate written notice of any such claim after learning of it, (ii) gives Cultivate the opportunity to assume sole control of the defense and settlement of the claim (provided that Cultivate may not settle any claim against Customer in a manner that does not release Customer from liability with respect to such claim without Customer's written approval), and (iii) provides to Cultivate all reasonable assistance requested by Cultivate, at Cultivate's expense.

If the products or services become, or in Cultivate's opinion is likely to become, subject of such a claim of infringement, Cultivate shall be entitled, at Cultivate's sole option, to (i) procure the right for Customer to continue to use the product or service, (ii) replace or modify it so that it becomes non-infringing, or (iii) terminate the product licenses and/or services and refund to Customer a pro rata refund any remaining prepaid fees for the infringing product or services. Cultivate shall have no obligation or liability hereunder for any claim resulting from: **(i)** modification of the product or service **(a)** by any party other than Cultivate, or **(b)** by Cultivate in accordance with Customer's designs, specifications, or instructions; **(ii)** use of the product or service other than as granted in this Agreement; or **(iii)** use of the product or service in

conjunction with other products or services not provided by Cultivate or necessary for the operation of the SaaS Service, where such infringement would not have occurred but for such use; or **(iv)** use of a version of the product or service other than the then-current version.

7. LIMITATION AND CAP ON LIABILITY.

THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF ESSENTIAL PURPOSE, CONSIDERATION, OR OF AN EXCLUSIVE REMEDY.

EXCEPT WITH RESPECT TO A PARTY'S INDEMNITY OBLIGATIONS PROVIDED FOR IN THIS AGREEMENT, OR A BREACH OF OBLIGATIONS WITH RESPECT TO CULTIVATE INTELLECTUAL PROPERTY OR EITHER PARTY'S CONFIDENTIAL INFORMATION, THE FOLLOWING LIMITATIONS SHALL APPLY TO EACH PARTY'S LIABILITY UNDER THIS AGREEMENT.

EACH PARTY'S MAXIMUM LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL BE IN THE AGGREGATE AND LIMITED TO THE OTHER PARTY'S DIRECT ACTUAL DAMAGES NOT TO EXCEED THE ACTUAL FEES PAID AND DUE AND PAYABLE TO CULTIVATE HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO WHEN THE CLAIM OR SERIES OF CLAIMS AROSE. IN NO EVENT SHALL A PARTY, ANY PARENT, SUBSIDIARY, AFFILIATE OR LICENSOR OF THAT PARTY, OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, OR REPRESENTATIVES, BE LIABLE (I) TO ANY THIRD PARTY FOR DAMAGES OF ANY KIND OR NATURE OR IN ANY MANNER WHATSOEVER, OR (II) TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, INCIDENTAL, OR SPECIAL DAMAGES OR COSTS (INCLUDING ATTORNEYS' FEES OR LOST PROFITS, TIME, SAVINGS, PROPERTY, DATA OR GOODWILL) REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH THE USE, MISUSE, OR INABILITY TO USE ANY PRODUCTS OR SERVICES, REGARDLESS OF THE CAUSE OF ACTION, EVEN IF ADVISED OF THE POSSIBILITY THEREOF. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL CULTIVATE BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES.

8. TERM; TERMINATION. This Agreement shall be effective upon the earlier of the date Customer indicates assent to the terms and conditions of this Agreement through a digital signature process, the date that Cultivate accepts the initial Order hereunder (as may be evidenced by Cultivate's performance), or the date of Customer's first installation or use of an applicable product or service contemplated hereunder, and shall continue so long as Customer continues to abide by the terms and conditions of this Agreement. Cultivate hereby reserves the right to terminate this Agreement and any rights provided hereunder, upon ten (10) day notice and failure to cure Customer's breach of any of the terms contained in this Agreement. Upon termination of this Agreement, and except to the extent specified herein, **(i)** all fees due to Cultivate shall be immediately paid, and **(ii)** all of Customer's rights to access and use any of services provided hereunder shall immediately terminate without right of refund. Provisions herein which by their context and content are intended to survive termination or expiration hereof shall so survive, including Sections 1, 2, 3, 4.2, and 5 to 17 in these "General Terms and Conditions", Sections 1 and 4 in the "SaaS Services Terms", Sections 1 and 2 in the "Licensed Product Terms".

For SaaS Services: Upon termination of this Agreement, Customer shall immediately delete all copies of any on-premise components licensed hereunder, return to Cultivate all other Cultivate Intellectual Property. Within thirty (30) days of termination of this Agreement ("**Return Period**"), Customer may request in writing that Cultivate either delete or return to Customer available Customer Data. At the expiry of the Return Period, if Customer has not elected either of the foregoing, Cultivate may delete and destroy all Customer Data without notice or liability to Customer. Where Customer requests Cultivate return available Customer Data, Cultivate may fulfil this request by making available functionality that enables Customer to retrieve available Customer Data without additional processing by Cultivate.

For Licensed Product: Upon termination of this Agreement, **(a)** all rights and licenses granted hereunder shall immediately terminate and any uses by or on behalf of Customer must immediately cease, and **(b)** Customer shall immediately delete all copies of any Licensed Product licensed hereunder, and return to Cultivate all other Cultivate Intellectual Property.

On request by Cultivate, Customer shall provide to Cultivate certification of the foregoing, as applicable to Customer.

9. GOVERNING LAW; FORUM. This Agreement is governed exclusively by the laws of the state of California, without giving effect to its conflict of law rules. With respect to any dispute or any action, litigation, or proceeding against the other party arising from or relating to this Agreement, each party irrevocably and unconditionally submits and agrees to the exclusive jurisdiction and venue of the US District Court for the Northern District of California or, if such court does not have subject matter jurisdiction, the courts of the State of California sitting in San Francisco, California, and any appellate court from any thereof, and each party agrees to bring any such action and resolve any such dispute only in such courts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or the parties. The parties further agree that the place of contract and performance of this Agreement is San Francisco, California.

10. REMEDIES. Customer acknowledges that remedies at law may be inadequate to provide Cultivate with full compensation in the event of Customer's material breach of this Agreement, and that Cultivate shall therefore be entitled, without bond or other security obligation, to seek injunctive relief in the event of any such material breach. Customer agrees to cooperate with Cultivate, and to obtain all required consents, in the event a third party seeks to compel Cultivate to disclose Customer Data through any legal process. Cultivate shall be entitled to charge Customer for all costs and expenses (including reasonable attorney fees) incurred complying with or defending against such legal process, and on a time and material basis for any work performed to produce such Customer Data. To the extent legally permitted, Cultivate shall provide Customer with advanced notice to allow Customer to take reasonable and lawful action to minimize the degree of such disclosure or to seek appropriate protective orders. Notwithstanding any other terms in this Agreement, Cultivate shall not be liable to any party for damages resulting from disclosure of Customer Data under such legal process.

11. WAIVER. The failure of Cultivate to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.

12. SEVERABILITY. If any provision of this Agreement is for any reason held unenforceable or invalid, then this Agreement shall be construed as if such provision were not contained in this Agreement.

13. PUBLICITY. Except as provided herein or required by law, Customer shall not publicize or disclose the existence or terms of this Agreement to any third party without the prior written consent of Cultivate. Cultivate may use Customer's name and logo (so long as in accordance with any mark guidelines provided by Customer to Cultivate) in Cultivate's promotional materials, including, without limitation, press releases, customer lists, and presentations to third parties.

14. FORCE MAJEURE. Except for obligations of confidentiality, payment, and compliance with laws, neither party shall be liable for any delay or failure in performing hereunder if caused by any factor beyond the reasonable control of the party, including force of nature, war, riot, civil action, terrorism, labor dispute, malicious acts or denial of service by a third party, or failure of telecommunication systems or utilities. Performance shall be deferred until such cause of delay is removed, provided that the delayed party promptly notified the other party after having actual knowledge of any such occurrence.

15. ASSIGNMENT. Except to the extent such rights cannot be restricted by applicable law, Customer cannot assign, sublicense, or transfer this Agreement without the prior written consent of Cultivate, and any such attempt by Customer to sublicense, assign or transfer any rights, duties, or obligations hereunder is null and void, and subject to Cultivate's right to immediately terminate this Agreement. Cultivate may assign this Agreement in connection with a merger, acquisition or other transfer of all or substantially all of its business, stock or assets.

16. ENTIRE AGREEMENT / MODIFICATIONS. Except as otherwise specified in this Section, this Agreement, plus the terms on any Order signed by both Customer and Cultivate, comprises the entire agreement between Customer and Cultivate, and supersedes any other agreement or discussion, oral or

written, with respect to the subject matter of this Agreement, and may not be changed except by a written agreement between the parties. Preprinted, additional or conflicting provisions on Customer's purchase order or on either party's acknowledgement forms, whether presented before or after the terms of this Agreement, and including any integration clauses contained therein, shall not apply unless agreed to by both parties in writing. Customer agrees that Customer's use of the products and services provided by Cultivate signifies Customer's agreement to all terms and conditions of this Agreement. In the event the parties to this Agreement have executed, in hardcopy form, a separate agreement, or other electronically signed agreement covering the same subject matter, that separate agreement shall remain in effect, govern and control for that subject matter, and this Agreement shall govern and control for all other subject matters contemplated herein. Any reference to a law or statute in this Agreement shall be deemed to include any amendment, replacement, reenactment thereof for the time being in force and to include any by-laws, statutory instruments, rules, regulations, orders, notices, directions, consents, or permissions (together with any conditions attaching to any of the foregoing) made in respect thereof. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, (2) this Agreement, and (3) the Documentation.

17. NOTICES. Any notice under this Agreement must be given in writing. Cultivate may provide notice to Customer via email or through Customer's account. Customer agrees that any such electronic communication will satisfy any applicable legal communication requirements, including that such communications be in writing. Cultivate's notices to Customer will be deemed given upon the first business day after Cultivate sends it. Customer will provide notice to Cultivate by first-class mail to Cultivate Technology Inc., 326 Ritch Street, San Francisco, CA, USA 94107, Attn: General Counsel; with a copy to legal@cultivate.com. Customer's notices to Cultivate will be deemed given upon Cultivate's receipt.

SAAS SERVICES TERMS

1. DEFINITIONS.

Access Term. The term for which Cultivate has contractually agreed to provide Customer with access to the SaaS Services in accordance with the Order.

Overage. Measured on a monthly basis, any actual usage of the SaaS Service which exceeds the SaaS Access Rights subscribed to by Customer under any Order(s) applicable to the SaaS Service.

SaaS Services. The Software, operating in the online services offered by Cultivate, as more fully described in the Documentation, and all SaaS Access Rights, each as specified on an Order, but expressly excluding any Other Online Services, which shall be governed by the applicable Cultivate terms and conditions specified in such Other Online Services.

SaaS Access Fees. The fees due to Cultivate, as further specified in the Order, for use of the SaaS Services to the extent of the SaaS Access Rights, and fees for any Overage calculated at a monthly pro rata amount.

SaaS Access Rights. The type and quantity of SaaS access rights granted to Customer for use during the applicable Access Term.

Scheduled Downtime. Any downtime scheduled to perform system maintenance, backup and upgrade functions for the Hosted Environment, and any other downtime incurred as a result of a Customer request.

Service Levels. The service level commitments from Cultivate with respect to the maintenance and support of the Hosted Environment and SaaS Services.

2. ACCESS RIGHTS. During the Access Term, and solely for Customer's internal business use, Cultivate grants to Customer a nonexclusive, revocable, nontransferable, nonassignable, personal right to use the SaaS Services specified in the Order through internet access, up to the extent of the SaaS Access Rights specified in the Order. With regards to the on-premise components and related Documentation, Cultivate grants to Customer, and Customer accepts, a nonexclusive, revocable, nonsublicensable, nonassignable,

and nontransferable limited license during the Access Term, to use the on-premise components and related Documentation solely in conjunction with the SaaS Services for Customer's internal business purposes, and subject to the terms and conditions of this Agreement. With respect to the Documentation, Customer may make a reasonable number of copies of the Documentation applicable to the SaaS Services solely as reasonably needed for Customer's internal business use in accordance with the express use rights specified herein. Without limiting the terms and conditions in Section 3 of the "General Terms and Conditions", Customer acknowledges and agrees that no rights or any other interests are provided to Customer with respect to: **(i)** rights in or to the Hosted Environment or SaaS Services beyond those rights specified in the Order, **(ii)** rights to provide access to or use of the Hosted Environment, SaaS Services and on-premise components to any other party, including, without limitation, any uses in the nature of a service bureau or application services provider, **(iii)** rights to obtain possession of copies of any component of the Hosted Environment or any software used to provide or perform the SaaS Services, except with respect to on-premise component(s) and then only as expressly provided for in this Section, or **(iv)** representations, warranties or other third party beneficiary rights from any Cultivate third party vendor.

3. CULTIVATE RESPONSIBILITIES.

3.1. Support. As part of the SaaS Services, during any Access Term and subject to payment of all fees, Cultivate shall, either directly, or through its applicable third party vendor(s), provide support for the Hosted Environment and SaaS Services in accordance with the terms and conditions of this Section.

3.2. Updates. In addition to establishing and maintaining the Hosted Environment, Cultivate shall maintain the components of the Hosted Environment with all current Updates that Cultivate deems necessary for the SaaS Services. Cultivate shall use commercially reasonable efforts to implement any required Error Corrections. Access to the SaaS Services and maintenance of the Hosted Environment shall be in accordance with the Service Levels specified in this Section 3. Customer's Designated Employees shall have access to Cultivate technical support Personnel through Cultivate's standard telephone, email and/or web support services during Cultivate's Normal Business Hours.

3.3. On-Premise Components. With respect to any on-premise components, Customer shall be responsible for the installation and configuration of the on-premise components in the Customer Environment. Cultivate shall provide technical support for on-premise components through Cultivate's standard telephone, email and/or web support services during Cultivate's Normal Business Hours.

3.4. Uptime. Cultivate will use commercially reasonable efforts to ensure that the Hosted Environment will be available 24 hours per day, 7 days per week, excluding any Scheduled Downtime.

3.5. Backup and Recovery of Data. As a part of the SaaS Services, Cultivate shall maintain a backup of all Customer Data that Cultivate is required to retain as a part of the SaaS Services. In the event the Customer Data becomes destroyed or corrupt, Cultivate shall use commercially reasonable efforts to restore all available data from backup, and remediate and recover such corrupt data.

4. CUSTOMER RESPONSIBILITIES.

4.1. Use of SaaS Services. Customer shall be solely responsible for the actions of its Personnel while using the SaaS Services and the contents of its transmissions through the SaaS Services (including, without limitation, Customer Data), and any resulting charges. Customer agrees to: **(i)** abide by all local, state, national, and international laws and regulations applicable to Customer's use of the SaaS Services, including without limitation all laws and administrative regulations (including, all U.S. and applicable foreign) relating to the control of exports of commodities and technical and/or Personal Data, and shall not allow any of its Personnel or Data Subjects to access or use the SaaS Service in violation of any export embargo, prohibition or restriction, including but not limited to any party on a U.S. government restricted party list; **(ii)** provide any required notifications to Data Subjects, and obtain all rights and requisite consents from Data Subjects in accordance with all applicable Privacy Laws and other laws in relation to the collection, use, disclosure, creation and processing of Personal Data in connection with this Agreement and the use and delivery of the SaaS Services; **(iii)** not use the SaaS Services for illegal purposes; **(iv)** not

knowingly upload or distribute in any way files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of the Hosted Environment, SaaS Services or another's computer; **(v)** not knowingly interfere with another customer's use and enjoyment of the SaaS Services or another entity's use and enjoyment of similar services; **(vi)** not knowingly engage in contests, chain letters or post or transmit "junk mail," "spam," "chain letters," or unsolicited mass distribution of email through or in any way using the SaaS Services; **(vii)** not to interfere or disrupt networks connected to the Hosted Environment or SaaS Services; **(viii)** not to post, promote or transmit through the SaaS Services any unlawful, harassing, defamatory, privacy invasive, abusive, threatening, offensive, harmful, vulgar, obscene, tortuous, hateful, racially, ethnically or otherwise objectionable information or content of any kind or nature; and **(ix)** not to transmit or post any material that encourages conduct that could constitute a criminal offense or give rise to civil liability. Cultivate may remove any violating content posted on the SaaS Services or transmitted through the SaaS Services, without notice to Customer.

4.2. Indemnity. Customer, at Customer's sole expense, shall defend, indemnify and hold harmless Cultivate from any action based upon a claim resulting from any breach of Sections 4.1 by Customer, Customer's affiliates or Personnel of either, and shall reimburse Cultivate for all damages, costs, and expenses (including reasonable attorneys' fees) incurred by Cultivate pursuant to any such actions.

4.3 Customer Environment. Customer is responsible for the establishment of the Customer Environment necessary for Customer's use of the SaaS Services, and for the installation and configuration of the on-premise components in that Customer Environment, each as Cultivate may specify in the Documentation. Additionally, Customer acknowledges and agrees that Cultivate is not responsible for obtaining, licensing or selling any hardware, peripherals or third-party software or interfaces needed to prepare or maintain the Customer Environment, or backing up such Customer Environment.

5. INVOICING. For any Orders placed on Cultivate directly by Customer, Cultivate shall invoice Customer for the SaaS Access Fee for the initial Access Term upon Cultivate's receipt and acceptance of the Order. As applicable, Cultivate may invoice Customer **(a)** in advance for each subsequent renewal Access Terms, **(b)** for Overages in arrears on a quarterly basis, and **(c)** for all other fees, assessments and expenses provided for under this Agreement as performed and/or incurred.

LICENSED PRODUCT TERMS

1. DEFINITIONS.

License Fee. The fees identified at the time of and on each Order for licensing Licensed Product as specified on that Order.

License Term. The permitted license term for the Licensed Product, as set forth in an Order.

Licensed Product. Collectively, the Software and Documentation licensed to Customer as identified in an Order or Orders hereunder, and all permissible copies of the foregoing.

Software. Computer application programs (including, if applicable, any Updates and other developments provided to Customer hereunder) developed and owned by Cultivate or its licensor(s) and licensed hereunder.

2. LICENSE. Cultivate grants to Customer, and Customer accepts, a nonexclusive, revocable, nonsublicensable, nonassignable, and nontransferable limited license during the License Term, to install and use the Software and Documentation as specified in an applicable Order solely by Customer's Personnel for Customer's internal business purposes, and subject to the terms and conditions of this Agreement. Use of the Software by Customer, Customer's Personnel or any other party authorized hereunder shall at no time exceed the total use rights granted in applicable Orders. Customer may change the location of a site designated in an Order; provided Customer complies with all applicable laws, and provides Cultivate with notice, including information regarding the current site, new site and Licensed Product and quantity of licenses. Customer may make a reasonable number of copies of the Software

solely as needed for back-up and archival purposes, and of the Documentation solely as needed for Customer's internal business purposes as set forth herein.

3. CUSTOMER ENVIRONMENT. Prior to the installation of a Licensed Product, Customer shall ensure the establishment of a Customer Environment at each site for use and operation of the Licensed Product. Customer acknowledges and agrees that, except as otherwise expressly specified on an Order, Cultivate is not responsible for obtaining, licensing or selling any hardware, peripherals or third-party software or interfaces needed to prepare or maintain the Customer Environment. Customer is responsible for backing up Customer's systems and data prior to providing Cultivate with access to the Customer Environment.

4. SUPPORT.

4.1. Support. Cultivate's Support includes the following:

a. Support Access. Customer's Designated Employees shall have direct access via standard telephone, email and/or web support services to Cultivate's support center during Cultivate's Normal Business Hours. Cultivate shall use commercially reasonable efforts to provide Error Corrections.

b. Updates; Versions. In addition to Error Corrections, Cultivate shall provide Customer with other Updates that Cultivate generally offers to customers. All such Updates become part of the Licensed Product for all purposes hereof.

4.2. Exclusions. Notwithstanding Cultivate's support obligations hereunder, Cultivate shall have no responsibility or liability of any kind arising or resulting from:

a. Customer's failure to: **(i)** correctly install Updates or other modifications to the Licensed Product provided by Cultivate, **(ii)** prepare a computing environment that meets the specified Customer Environment prior to Licensed Product installation or to maintain such Customer Environment and Licensed Product thereafter, **(iii)** grant access and security authorization, or **(iv)** provide necessary communications mechanisms;

b. Errors resulting from misuse, abuse, negligence, or improper use of all or any part of the Licensed Product; or problems to or caused by products or services not provided by Cultivate;

c. Product modification, amendment, revision, or change by any party other than Cultivate or Cultivate's authorized representatives; or

d. Electrical failure, Internet connection problems, or data or data input, output, integrity, storage, back-up, and other external and/or infrastructure problems, which shall be deemed under Customer's exclusive control, and Customer's sole responsibility.

5. INVOICING. All Software is considered delivered when made available to Customer for installation. For any Orders placed on Cultivate directly by Customer, Cultivate shall invoice Customer one hundred percent (100%) of (as applicable to an Order) License Fees applicable to such Order upon Cultivate's receipt and acceptance of the Order. As applicable, Cultivate may invoice Customer for all other fees, assessments and expenses provided for under this Agreement as performed and/or incurred.