

APPLICABLE TERMS AND CONDITIONS

These APPLICABLE TERMS AND CONDITIONS (these “Applicable Terms and Conditions”) supplement the Commercial Terms executed between Customer and Canary, and form an integral part of the Agreement between Customer and Canary.

ARTICLE 1 OVERVIEW

1.1 Definitions. The capitalized terms not defined elsewhere in the text of the Agreement shall have the following meanings:

- (a) “**Canary Platform**” means Canary’s offered hosted software platform.
- (b) “**Canary Solution**” means, as agreed in the Commercial Terms and any applicable SOWs and Work Orders, (i) access to the Canary Platform as set forth on the Commercial Terms, and (ii) related hosting, implementation, and other Professional Services.
- (c) “**Confidential Information**” means (i) any business or technical information of Customer or Canary, including any information relating to either Party’s products, services, finances, product pricing, marketing plans, business opportunities, trade secrets or personnel; (ii) any information of Customer or Canary that is specifically designated by the disclosing Party as confidential or proprietary; (iii) any information that is known to the receiving Party, or should be known to a reasonable person given the facts and circumstances of the disclosure as being treated as confidential or proprietary by the disclosing Party; and (iv) the terms and conditions of this Agreement; *provided, however*, Confidential Information excludes information that: (A) is in or enters the public domain without breach of this Agreement; (B) the receiving Party was demonstrably in possession of prior to first receiving it from the disclosing Party; (C) the receiving Party can demonstrate was developed independently and without use of or reference to the disclosing Party’s Confidential Information; or (D) the receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation. Canary hereby designates the Canary Solution, including the Canary Platform and Documentation, as Canary Confidential Information.
- (d) “**Customer Data**” means all data and information provided by Customer or its Licensed Users to Canary in connection with the Services, including any information and/or data provided by or on behalf of Customer and its Licensed Users for inclusion in, or access from, the Customer Portal of the Canary Platform.
- (e) “**Documentation**” means the Canary Platform’s then-current written product documentation, technical information, or user manuals provided to Customer in connection with the Canary Platform.
- (f) “**Licensed Users**” means Customer’s and its affiliates’ employees and contractors who need access to the Canary Platform to fulfill their obligations to the Customer.

(g) “**Professional Services**” means the implementation, training, development, configuration, and integration services provided, or to be provided, pursuant to the Commercial Terms, a SOW, or Work Order.

(h) “**Services**” means (i) the provision by Canary of access to the Canary Platform to Customer and its Licensed Users; (ii) the Professional Services, and (iii) such additional services as described in the Commercial Terms.

(i) “**Term**” means the period from the Effective Date through the end of the Initial Term and any Additional Term(s), unless earlier terminated pursuant to the terms of this Agreement, in which case it shall be the date of termination.

(j) “**Travel Expenses**” means all reasonable out-of-pocket travel and travel-related expenses which are incurred by Canary in connection with Canary’s performance of the Services.

ARTICLE 2 TERM AND TERMINATION

2.1 Term. The Agreement shall commence on the Effective Date and continue as specified for the initial term as specified in the Commercial Terms (the “Initial Term”), unless terminated earlier pursuant to Section 2.2. Upon the expiration of the Initial Term, the Agreement shall automatically renew on a month-to-month basis, unless either Party (a) gives written notice to the other not fewer than sixty (60) days prior to the expiration of the Initial Term; or (b) terminates this Agreement earlier pursuant to Section 2.2.

2.2 Termination. This Agreement may be terminated by either Party by providing written notice to the other Party (a) upon the material breach by the other Party of any of its obligations hereunder, which breach has not been cured within sixty (60) days after the breaching Party has received notice thereof; or (b) if all or a substantial portion of the assets of the other Party are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the other Party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or the other Party is adjudged. This Agreement may be immediately terminated by Canary upon written notice if (i) any Fees (as defined below) are past due under this Agreement, or (ii) if Customer or its Licensed Users violate or breach the license grants and restrictions in Article 4. If Customer rightfully terminates for breach, Canary shall refund to Customer a ratable share of any fees actually paid by Customer for the Services for periods subsequent to the termination date.

2.3 Effect of Termination. Upon termination of the Agreement for any reason, all rights granted to Customer under this Agreement with respect to the Canary Platform, Documentation, and Services will cease, and Customer will promptly pay to Canary all amounts that are due pursuant to this Agreement.

ARTICLE 3 SERVICES

3.1 Canary Platform Access. During the Term, Canary shall host (or have hosted) the Canary Platform for the Customer and its Licensed User, in order for Customer and its Licensed Users to utilize the functionality of the Canary Platform.

3.2 Password Access. Customer and its Licensed Users may access the Canary Platform, including Customer's configured area within the Canary Platform (the "Customer Portal"), via password. Customer shall be responsible for causing its Licensed Users to maintain the confidentiality and security of password(s), including, but not limited to, properly logging out of the Customer Portal. Customer shall immediately notify Canary of any loss, or any unauthorized use of, Licensed User's password(s) or account(s) or any other breach of security that is known or suspected by Customer. Canary cannot and will not be liable for any loss or damage arising from Customer's failure to comply with this section, notwithstanding any language elsewhere in the Agreement.

3.3 Implementation and Training. Canary will perform the consulting, training, configuration, development, and/or integration Services as expressly set forth in the Commercial Terms or a separate SOW, if applicable ("Start-Up Service"). Any additional consulting, training, development, configuration, development, and/or integration services are out of scope and subject to Canary agreeing to provide such services pursuant to a SOW or Work Order. Such additional services may be subject to additional fees. Unless otherwise agreed, if Canary provides these services, such work will be subject to this Agreement. For clarity, unless otherwise expressly specified in the Commercial Terms, any reports, configuration, or customization modifications requested that are not included in the Start-Up Service are out-of-scope and subject to additional fees.

3.4 Professional Services. Canary may provide certain consulting, training, development and/or integration services required by and described in a statement of work which the Parties may mutually agree to in writing from time to time (each, a "SOW"). Canary may also prepare certain reports, analyses or otherwise prepare deliverables for Customer pursuant to a work order which the Parties may mutually agree to in writing from time to time (each, a "Work Order"). Customer will pay Canary any fee(s) as mutually agreed to and set forth in a SOW and Work Order, as well as any Travel Expenses, unless expressly agreed otherwise in the applicable SOW or Work Order.

3.5 Customer Data; Data Security. Customer hereby grants to Canary a perpetual, irrevocable, royalty-free, transferable, sublicensable, worldwide right and license to access, copy, modify, display, and use Customer Data (a) to perform the Services, (b) in aggregated form for market analysis, research, and commercialization of such aggregated data, and (c) for improvements to the Canary Platform. Canary represents, warrants, and covenants that, during the Term, it shall use commercially reasonable efforts to protect the security and integrity of the Customer Data provided by Customer to Canary, including through implementing and maintaining an information security program that includes administrative, technical, and physical safeguards, procedures, and controls designed to reasonably: (i) protect against anticipated threats or hazards to the security or integrity of the Customer Data, and (ii) protect against unauthorized access to, or disclosure or use of, the Customer Data.

3.6 Customer Input Data. Customer acknowledges that the Services do not include, and Canary has no responsibility or liability with respect to verifying any Customer Data input into the Canary Platform. In providing the Services, Canary shall be entitled to rely upon and act in accordance with any instructions, guidelines, data, or information provided by Customer and its Licensed Users, and shall incur no liability in doing so. Customer shall indemnify and hold harmless Canary and its third-party vendors, shareholders, directors, officers, and employees (collectively, the “Canary Indemnitees”) from any and all claims, losses, actions, suits, proceedings or judgments, including, without limitation, costs and reasonable attorneys’ fees incurred by or assessed against such parties resulting, in whole or in part from (a) any action or failure to act by a Canary Indemnatee in reliance on any instruction, approval, election, decision, action, inaction, omission, or nonperformance by Customer, its officers, directors, shareholders, employees, and agents relating to the Services; or (b) any information or data provided to Canary in connection with the Services.

3.7 Cooperation with Customer’s Other Vendors. From time to time, Customer may request that Canary provide information or data relating to the Services, and if Canary provides such information or data to such third party vendor, Customer represents, warrants, and agrees that it has obtained all rights, consents, waivers and approvals (including, but not limited to, any rights, consents, waivers and approvals with respect to Personal Information) for Canary to share the information or data with such vendors, and Customer shall indemnify, defend, and hold Canary Indemnitees harmless from any claims, losses, actions, suits, proceedings or judgments arising as result of Customer’s breach of this section.

ARTICLE 4 LICENSE

4.1 License Grant. Subject to the limitations set forth in this Agreement, including any restrictions specified in the Commercial Terms, Canary hereby grants Customer (up to the number of Licensed Users as set forth in the Commercial Terms) a non-exclusive, non-transferable, non-sublicensable license to access and use the Canary Platform and Documentation for the sole purpose of receiving, using, and accessing the Canary Platform for Customer’s internal business purposes. Access and use of the Canary Platform shall be web-enabled access only, and nothing herein this Agreement shall entitle Customer or Licensed Users to the object code or source code of the Canary Platform.

4.2 License Restrictions. Customer shall not, nor allow or authorize its License Users nor any third party to: (a) reproduce, allow use of, or access the Canary Platform, or sell, rent, lease, use in a service bureau, sublicense or otherwise transfer or assign its rights to access and use the Canary Platform, in whole or in part, to a third party; (b) alter, enhance or otherwise modify or create derivative works of or from the Canary Platform; (c) disassemble, decompile, reverse engineer or otherwise attempt to derive the source code of the Canary Platform; (d) remove or destroy any proprietary markings, confidential legends or any trademarks or trade names of Canary or its licensors placed upon or contained within the Canary Platform or the Documentation; or (e) upload, post or transmit into or via the Canary Platform any viruses or unlawful, threatening, abusive, libelous, defamatory, obscene, pornographic, profane or offensive information of any kind. Use, duplication or disclosure by the U.S. Government or any of its agencies is subject to restrictions set forth in the Commercial Computer Software and Commercial Computer Software

Documentation clause at DFARS 227.7202 and/or the Commercial Computer Software Restricted Rights clause at FAR 52.227.19(c).

4.3 Use of Customer Marks. Customer hereby agrees that Canary may use and display, and grants Canary the right to use and display the Customer's name(s), its products and service offerings names, and its and their service marks, trademarks and other indicia of ownership or use ("Customer Marks") as Customer may provide from time-to-time within the Canary Platform for purposes of branding the Customer Portal. Canary shall observe any reasonable policies communicated to Canary when using the Customer Marks. Customer represents, warrants, and covenants that Canary's use of the Customer Marks shall not infringe or misappropriate any intellectual property, proprietary, or privacy rights of any person or entity.

4.4 Return of Customer Data. Subject to a request by Customer during the Term or within thirty (30) days from the end of the Term, Canary shall provide Customer, pursuant to a SOW subject to Canary's then-current rates, with a copy of the Customer Data provided to Canary in either a .csv file extract or such other file format as the Parties mutually agree. Canary shall have no obligation to maintain, store, or provide any Customer Data to Customer after such thirty (30) day period. If the Agreement is terminated for Customer's breach, the SOW for delivery of the Custom Property will require Customer to pay such amounts three (3) business days in advance of the delivery of the Services based on an estimation of cost, with the balance to be paid in full at the time of delivery of the Customer Data.

4.5 Ownership of Canary Platform. All trademarks, service marks, patents, copyrights, trade secrets, and other proprietary rights in the Canary Platform, the Documentation, the Services, any third-party software (including any Third Party Solutions), or any other contents within the Canary Platform (other than Customer Marks and Customer Data), and/or copies or portions of any of the foregoing (collectively the "Delivered Solution") are and will remain the exclusive property of Canary or its licensors, whether or not specifically recognized or perfected under applicable law. If Customer or its Licensed Users make any comments, suggestions, designs, features, or other ideas for improving the Delivered Solution submitted by Customer or its Licensed Users through the Canary or in connection with the Services ("Submissions"), Canary shall own all rights to the Submissions and Canary shall be entitled to use such Submissions for any commercial or other purpose whatsoever without compensation to Customer or anyone else. Customer will not take any action that jeopardizes Canary's or its licensor's proprietary rights or acquire any right in the Delivered Solution, except the limited license rights specified herein. Canary or its licensor will own all rights in any copy, translation, modification, adaptation, or derivation of the Delivered Solution, including any improvement or development thereof and/or any ideas first reduced to practice. If Customer or any third party engaged by Customer is deemed to have any ownership interest or rights in the Delivered Solution, Customer shall assign and/or cause such third party to assign, and Customer does hereby irrevocably assign, without royalty, all of such ownership interest and rights to Canary.

4.6 Third Party Solutions. To the extent the Agreement requires the provisioning of third party proprietary hosted solutions or software applications ("**Third Party Solutions**"), the following terms and conditions apply together with the other terms and conditions of the Agreement, notwithstanding any language elsewhere to the contrary elsewhere in the Agreement:

(a) Canary provides no rights to access or use the Third Party Solutions other than those granted by the applicable third party provider of the Third Party Solution(s) (“**Third Party Provider**”). As required by the applicable Third Party Provider relating to Third Party Solutions, and the support, access and use thereof, Customer shall execute and agree to, and shall cause end users to execute and agree to, any applicable terms and conditions for the access, use, maintenance, and support of the Third Party Solutions (“**Solution Provider Agreement**”).

(b) Customer shall access and use the Third Party Solutions strictly in accordance with the Solution Provider Agreement. Canary provides the Third Party Solutions solely on an “AS IS” and “AS AVAILABLE” basis, and while Canary may be available or offer to try to facilitate and help Customer resolve issues relating to the Third Party Solutions, Customer acknowledges and agrees that its sole remedies exclusively shall be with the Third Party Providers pursuant to the Solution Provider Agreements.

ARTICLE 5 PAYMENT TERMS

5.1 Fees and Expenses. Canary will provide the Services and licenses for the Subscription Fees set forth in the Commercial Terms and any other fees set forth in a SOW and Work Order (collectively, “**Fees**”). In addition to the Fees, Customer shall also reimburse Canary for Travel Expenses, if any, agreed upon in advance by Customer.

5.1 Invoices and Payment. Unless expressly agreed otherwise in the Commercial Terms or the applicable SOW or Work Order, (a) all amounts invoiced will be due and payable in U.S. dollars; and (b) Customer shall pay all Fees owed through recurring automatic payments billed on a monthly basis via ACH or by credit/debit card (unless the Parties agree on another payment method in writing). Customer agrees that it is expressly authorizing all amounts owed to be charged through ACH or such payment card. Credit and debit card payments are subject to the approval of the card issuer, and Canary will not be liable in any way if a card issuer refuses to accept a credit or debit card charge for any reason. Customer is responsible for any credit card chargeback or similar fees for refused or rejected payments that Canary is entitled to charge under this Agreement. If the ACH payment method or payment card provided by Customer is declined or fails for any reason, Canary will send Customer a notice in accordance with Section 10.5 of these Applicable Terms and Conditions. Canary may continue to attempt to charge Customer’s ACH payment method or payment card for outstanding charges and additional fees along with any other rights and remedies available to Canary under this Agreement, at law or in equity. At the election of Canary, any amount not paid when due shall thereafter bear interest until paid at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by applicable law. In addition, if Customer fails to pay any undisputed Fees within five (5) days after receiving written notice from Canary specifying that such Fees are overdue, Canary may suspend performance of the Services. Any such suspension will not relieve Customer of its obligation to pay late Fees. If collection procedures are required, Customer shall pay all expenses of collection and all reasonable attorneys’ fees and costs incurred by Canary in connection with such collection proceeding, regardless of whether or not a suit is filed. These remedies are in addition to all other remedies available to Canary.

5.2 Taxes. The Fees do not include transfer, gross receipts, value-added, sales, use, import, withholding, excise, customs, or other similar taxes, imports or duties applicable to or imposed on

or as a result of the transactions contemplated by this Agreement under any applicable law or taxing jurisdiction (collectively, “Transaction Taxes”). Regardless of the Party on whom Transaction Taxes are imposed under applicable law, Customer shall be solely responsible for and shall pay all Transaction Taxes. If at any time Canary determines that Canary should collect Transaction Taxes from Customer and remit such Transaction Taxes to a taxing jurisdiction under the laws of such jurisdiction, Canary may separately charge Customer, and Customer shall pay to Canary, the amount of such Transaction Taxes. If any tax jurisdiction formally asserts that Canary is liable for any Transaction Taxes, Customer agrees to indemnify and hold harmless the Canary Indemnitees from and against such claims, and shall immediately pay all such Transaction Taxes to the applicable jurisdiction on Canary’s behalf, plus any corresponding interest, penalty interest, and penalties. If any tax jurisdiction asserts that Canary is liable for Transaction Taxes, Customer agrees to promptly reimburse Canary for the amount thereof plus any related interest and penalties paid by Canary to such jurisdiction. If any amount payable by Customer to Canary is subject to withholding or other deduction, charge or tax, then the amount payable to Canary by Customer shall be increased so that after such withholding, deduction, charge or tax the net amount paid to Canary equals the full amount invoiced by Canary.

5.3 Acknowledgement. Customer and Canary acknowledge (a) the Fees set forth in the Commercial Terms and other charges contemplated under this Agreement are based on the limited warranty, disclaimers and limitation of liability specified in Sections 7.1, 7.2, 9.1 and 9.2; and (b) such charges would be substantially higher if any of these provisions were unenforceable.

ARTICLE 6 INFRINGEMENT INDEMNITY

6.1 Infringement Indemnity. Canary agrees to defend, indemnify, and hold Customer harmless from any and all third-party claims, losses, actions, suits, proceedings or judgments, including costs and reasonable attorneys’ fees, incurred by or assessed against such Parties resulting, in whole or in part, from allegations the Canary Platform, as used within the scope of this Agreement, infringes a U.S. patent issued as of the Effective Date, copyright, or trademark and will pay all final judgments awarded or settlements entered into on such claims. The foregoing indemnity obligations shall not extend to (a) modifications of the Canary Platform by anyone other than Canary; (b) the incorporation into the Canary Platform of any information provided by or requested by Customer or its Licensed Users; (c) the use of a combination of the Canary Platform with any third-party software (including Third Party Solutions) or equipment or Customer Data; or (d) if Customer has not adhered to its obligations under or in connection with this Agreement. THIS SECTION 6.1 STATES CANARY’S ENTIRE LIABILITY AND CUSTOMER’S SOLE REMEDY FOR INFRINGEMENT CLAIMS.

6.2 Opportunity to Cure. In the event the Canary Platform is held or is believed by Canary to infringe intellectual property rights, Canary may, at its sole option and expense, (a) modify the Canary Platform so that it is non-infringing; (b) replace the Canary Platform with non-infringing software which is functionally equivalent; (c) obtain a license for Customer to continue using the Canary Platform as provided herein; or (d) terminate the Agreement by written notice to Customer.

6.3 Indemnification Procedure. Canary’s obligations under this Article 6 are conditioned upon Customer (a) giving prompt notice of the claim to Canary (*provided, however*, that failure of

Customer to provide such notice will not release Canary from any of its indemnity obligations, except to the extent that Canary's ability to defend such claim is materially prejudiced thereby); (b) granting sole control of the defense or settlement of the claim or action to Canary; and (c) providing reasonable cooperation to Canary and reasonable assistance in the defense or settlement of the claim, at Canary's request and expense. Customer may, at its option, participate in such defense and/or settlement with its own counsel at its own expense.

ARTICLE 7 WARRANTY AND DISCLAIMER

7.1 Canary Warranties. Canary warrants that the (a) Services will be performed with reasonable skill and care in accordance with industry practices; and (b) the Canary Platform shall perform materially in accordance with the then-current Documentation therefor. As Customer's sole and exclusive remedies and Canary's sole obligation for breach of the foregoing warranties, (i) Canary shall use commercially reasonable efforts to correct such defective Services, *provided that* Customer gives Canary specific written notice of the defective Services within thirty (30) days after such Services are performed; and (ii) Customer may terminate this Agreement following notice and the opportunity to cure pursuant to Customer's rights under Section 2.2.

7.2 Exclusion of Certain Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, INDEMNITIES, AND GUARANTEES WITH RESPECT TO THE CANARY PLATFORM, DOCUMENTATION, DELIVERABLES AND SERVICES, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, PRIOR ORAL OR WRITTEN STATEMENTS BY CANARY, ITS AGENTS, OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, SATISFACTION, FITNESS FOR PARTICULAR PURPOSE OR NONINFRINGEMENT) ARE HEREBY OVERRIDDEN, EXCLUDED, AND DISCLAIMED. THE CANARY PLATFORM, DELIVERABLES, AND SERVICES BEING PROVIDED ARE NOT WARRANTED BY CANARY TO BE ERROR-FREE OR FREE FROM INTERRUPTION.

ARTICLE 8 CONFIDENTIALITY

8.1 Strict Confidence. Each Party shall maintain the Confidential Information of the other Party in strict confidence, and shall at all times exercise no less than reasonable care with respect to the handling and protection of such Confidential Information.

8.2 Limited Access. Each Party shall limit the use and access of Confidential Information solely to such Party's bona fide employees, agents (including independent auditors and required government agencies) and Licensed Users who have a need to know such information for purposes of conducting the receiving Party's business and who are obligated to maintain the confidentiality of and refrain from using such Confidential Information under terms at least as protective as those set forth herein and only after the receiving Party has notified such employees, agents and Licensed Users that such information is the Confidential Information of the disclosing Party.

8.3 Required Disclosure. Notwithstanding the foregoing, the receiving Party may disclose Confidential Information of the disclosing Party pursuant to the valid order or requirement of a court, *provided* that the receiving Party first gives reasonable written notice to the disclosing Party in order to timely contest such order or requirement. Any such disclosure by the receiving Party of the Confidential Information of the disclosing Party, shall, in no way, be deemed to change, affect or diminish the confidential and proprietary status of such Confidential Information.

ARTICLE 9 LIMITATION OF REMEDIES AND DAMAGES

9.1 Excluded Liabilities. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, SUFFERED BY THE OTHER PARTY OR ANY THIRD PARTY, INCLUDING LOST PROFITS, BUSINESS INTERRUPTIONS OR OTHER ECONOMIC LOSS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY USE OF OR FAILURE TO BE ABLE TO USE THE CANARY PLATFORM, CANARY SOLUTION, OR THE SERVICES. CANARY SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO (a) THE ACCURACY OR COMPLETENESS OF ANY CUSTOMER PROPERTY, OR (b) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES OR PERSONNEL.

9.2 Liability Cap. Canary's total aggregate liability for any damages arising out of or related to this Agreement will not exceed the Fees paid hereunder for the Service during the twelve (12) month period preceding the initial claim. The existence of one or more claims will not enlarge this limit.

9.3 Exclusions to the Limits on Liability. The exclusions and limits set forth in Section 9.1 and Section 9.2 shall not apply to any claim relating to a breach of (a) either Party's obligations as set forth in Article 8; (b) Customer's obligations as set forth in Article 4 and Article 5; and (c) either Party's obligations to defend, indemnify, and hold harmless as expressly set forth in this Agreement.

ARTICLE 10 GENERAL TERMS

10.1 Force Majeure. All other terms of this Agreement notwithstanding, Canary shall not be liable for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any contingency beyond the reasonable control of Canary (a "Force Majeure Event"), including, but not limited to, widespread Internet outage, denial of service attack, war, act of terrorism, insurrection, multi-day power outage, acts of God or acts of civil or military authority. In the event of such a Force Majeure Event, time for delivery or other performance under this Agreement shall be as soon as practicable following such Force Majeure Event.

10.2 Non-solicitation. Customer agrees that it will not, during the Term and for one (1) year after termination of this Agreement, directly or indirectly, recruit, solicit, employ or engage any employee, contractor or other personnel of Canary, or induce any such individual to leave the employ of Licensor or terminate its independent contractor relationship with Canary.

10.3 Compliance with Laws. The Parties each agree to comply with all applicable federal, state, and local laws, rules, regulations and ordinances applicable to its business as it may impact this Agreement. All provisions required by law to be included in this Agreement are incorporated by reference.

10.4 Nature of the Relationship. In performing hereunder, both Parties are acting as independent contractors and neither Party undertakes to perform any obligation of the other, whether regulatory or contractual, or to assume any responsibility for the other's business or operations. Canary may perform similar services for third parties and license same or similar products to third parties. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between Canary and Customer. Neither Party shall hold itself out as having any authority to enter into any contract or create any obligation or liability on behalf of or binding upon the other Party.

10.5 Notices. Any notice required or permitted to be given under the terms of this Agreement shall be deemed given when reduced to writing and delivered by (a) certified mail, return receipt requested, (b) overnight national courier with a tracking system, or (c) solely with respect to notice provided by Canary to Customer, electronic mail or electronic notification via the Canary Platform or to the address set forth for Customer on the Commercial Terms. Notices to Canary shall be sent to Canary Analytics, Attn: President/CEO, 719 Galapago Street, Denver, CO 80204, or to such other address as may be provided by Canary to Customer using notice consistent with this section.

10.6 Survival. Termination of this Agreement shall not impair either Party's then-accrued rights, obligations, liabilities or remedies. Notwithstanding any other provisions of this Agreement to the contrary, the terms and conditions of Sections 1.1, 2.3, 4.3, 4.5, and 7.2 and all of Article 5, Article 8, Article 9, and Article 10, and any other terms which by their reading are intended to survive beyond the Term, shall survive termination of this Agreement.

10.7 Construction and Interpretation. The language in all parts of this Agreement shall, in all cases, be construed simply, as a whole, and in accordance with its fair meaning and not strictly for or against any Party. The Parties hereto acknowledge and agree that this Agreement has been negotiated by the Parties and has been the subject of arms'-length and careful negotiation over a considerable period of time, that each Party has been given the opportunity to independently review this Agreement with legal counsel and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the Party preparing it. The captions of the articles, sections and subsections herein are inserted solely for convenience and under no circumstances are they to be treated or construed as part of this instrument. In the event of a direct conflict between this Agreement and a SOW or Work Order, the terms and conditions of this Agreement shall prevail to the extent of such conflict.

10.8 Governing Law and Venue. This Agreement is made under and will be construed in accordance with the laws of the State of Colorado, other than such laws, rules, regulations, and case law that would result in the application of the laws of a jurisdiction other than the State of Colorado. Except as permitted under Section 10.9, any suit to enforce any provision of this Agreement, or arising out of or based upon this Agreement, shall be brought exclusively in the

state courts of the State of Colorado and the federal courts of the United States, located in Denver, Colorado. Each Party hereby agrees that such courts shall have *in personam* jurisdiction and venue with respect to such Party, and each Party hereby submits to the *in personam* jurisdiction and venue of such courts and waives any objection based on inconvenient forum.

10.9 Irreparable Harm. The Parties agree that any breach of a Party's obligations under Article 4 or Article 8 shall result in irreparable injury to the other Party for which there may be no adequate remedy at law. Therefore, notwithstanding Section 10.8, in the event of any breach or threatened breach of such obligations, the non-breaching Party will be entitled to seek equitable relief, in addition to its other available legal remedies in a court of competent jurisdiction.

10.10 Export. Customer acknowledges that the Canary Platform and its Documentation and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations and other applicable laws. Customer will comply strictly with all legal requirements established under these controls.

10.11 Integration. The Agreement, including the Commercial Terms, these Applicable Terms and Conditions, and any SOW(s) and Work Order(s) which are incorporated into this Agreement, constitutes the complete and entire statement of all conditions and representations of the Agreement between Canary and Customer with respect to its subject matter and supersedes all prior writings and understandings. This Agreement may not be modified, altered, or amended, including by the addition of a SOW or a Work Order, except by written instrument duly executed by both Customer and Canary. Notwithstanding the Parties' need to agree upon an implementation project plan and other related activities, the Parties expressly agree that this Agreement includes all essential terms.

10.12 Assignment. If a Party wishes to assign this Agreement to anyone, such Party must obtain the other's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed; *provided* that it shall be reasonable to withhold consent if the assignee is a competitor of the non-assigning Party. Notwithstanding the foregoing, each Party consents to the assignment of this Agreement in its entirety by the other Party in connection with any change in control, or a sale or transfer of all or substantially all of the assets of the assigning Party, *provided* (a) such assignee is not a direct competitor of the other Party; (b) such assignment does not interfere with the performance of obligations under this Agreement; (c) such assignment does not change the scope of usage and the intent contemplated by the Parties under this Agreement; and (d) such assignment is not pursuant to bankruptcy proceedings involving the Customer. This Agreement will be binding on the Parties, their successors, and permitted assigns.

10.13 Counterparts and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement. A document signed and transmitted by .pdf or other electronic means shall have the same binding effect as an original "wet-ink" signature.