



LICENSE AGREEMENT

This License Agreement (this “**Agreement**”) is entered into between the Customer (“The Customer”) and MachineMetrics, Inc. (“**MM**”).

1. DEFINITIONS

1.1 “Access Credentials” means login information, passwords, security protocols, and policies through which Users access the MM Services.

1.2 “Client” means the end user executing the agreement to use the MM platform with the terms agreed to in this document

1.3 “Customer Data” means the data and content: (a) uploaded or submitted into the MM Services by or on behalf of Customer, and (b) collected by the MM Devices and MM Services related to the Machines.

1.4 “Customer Devices” means the Customer devices, if any, provided by the Customer to connect to the MM Services to monitor Machines and other conditions and gather data, as specified in an SOW (as defined in Section 2.1).

1.5 “Confidential Information” means all written or oral information, disclosed by one party (the “**Disclosing Party**”) to the other (the “**Recipient**”), related to the business, products, services or operations of the Disclosing Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including, without limitation: (i) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (ii) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, employees, suppliers and agents; and (iii) information regarding the skills and compensation of the Disclosing Party’s employees, contractors, and other agents.

1.6 “Documentation” means the documentation, user manuals, help files and videos, and other materials that describe the features, functions and operation of the MM Services.

1.7 “Effective Date” Means 5 business days from the date of purchase.

1.8 “Integration Date” shall mean the mutually agreed upon integration date by the parties if a MM integration team is needed and pricing is agreed upon.

1.9 “Machine” means any asset or machine of Customer that is analyzed using the MM Services.

1.10 “MM Devices” means the devices, if any, ordered by Customer, and provided by MM to monitor Machines and other conditions and gather data, as set forth in an SOW.

1.11 “MM Services” means any MM software-as-a-service manufacturing analytics platform identified in the SOW that allows Users to access certain features and functions through a web interface. References to any MM Services include the Documentation.

1.12 “Professional Services” means any professional services provided by MM to Customer as described in an SOW (as may be further elaborated in any statement of work agreed to by the parties), including implementation, integration services, support and maintenance, and training services.

1.13 “Services” means the MM Services, the Professional Services and any other services set forth in an SOW.

1.14 “User” means each of Customer’s employees and independent contractors who are provided Access Credentials by Customer or MM.

2. FEES

2.1 Subscription Fees: The first year Subscription Fees shall be invoiced on the Effective Date and due within 30 days of receipt of such invoice. All Subscription Fees for any Renewal Terms will be invoiced on the effective date of such Renewal Term, and due within thirty (30) days following Customer's receipt of such invoice

2.2 Device Fees: Payment Terms for MM Devices: Payment for all MM Devices specified in this SOW will be invoiced upon the Effective Date, and due within thirty 30 days following Customer's receipt of such invoice. Additional hardware fees may apply if Machine conditions and Customer responsibilities are not met.

3. MM DEVICES

3.1 MM Device Ordering. Subject to the terms and conditions of this Agreement, MM hereby sells to Customer, and Customer hereby purchases, the MM Devices identified in written statements of work executed by the parties (each, a "SOW"). The initial SOW No. 1 between the parties is attached hereto as Exhibit A. No SOW will be valid unless signed by representatives of both parties (other than Statement of Work No. 1, which is attached hereto, dated as of the Effective Date and is hereby incorporated by reference). Additional MM Devices may be purchased by Customer by executing a SOW. All purchases of MM Devices will be subject to the terms and conditions of the Agreement. In the event of a conflict between any of the terms, or conditions of this Agreement and any SOW, the applicable term, condition or provision of the Agreement will prevail.

3.2 Delivery. Shipping terms are FOB Origin, MM's place of business. Title and risk of loss of the MM Devices will pass from MM to Customer upon delivery to the when MM makes the MM Devices available to a shipping carrier selected by MM or Customer (with the consent of the other party). Delivery will be deemed made upon transfer of possession to the carrier. MM will have no obligation to deliver the MM Devices until the applicable Subscription Fees (as defined below) have been paid in accordance with an SOW. MM accepts risk of loss associated with any and all elements of the MM Devices until such time as title to such elements of the MM Devices have passed to Customer in accordance with this Section. Customer will accept risk of loss associated with any and all elements of the MM Devices at any time thereafter.

4. ACCESS, RIGHTS, RESTRICTIONS AND SECURITY

4.1 Access Grant to MM Services. Subject to Customer's compliance with the terms and conditions contained in this Agreement, MM grants to Customer a non-exclusive, non-transferable, non-sublicenseable, revocable right to access and use the MM Services for the number of Machines set forth in the SOW during the Term (as defined below) solely for Customer's internal business purposes.

4.2 Access Credentials. Customer will safeguard, and ensure that all Users safeguard the Access Credentials. Customer will be responsible for all acts and omissions of Users. Customer will notify MM immediately if it learns of any unauthorized use of any Access Credentials or any other known or suspected breach of security.

4.3 Responsibility of MM. MM shall, at its own expense, provide for the hosting of the MM Services on servers operated and maintained by or at the direction of MM, provided that nothing herein shall be construed to require MM to provide for, or bear any responsibility with respect to any: (a) telecommunications, computer hardware, software, and Internet connectivity required by Customer or any Authorized User to provide access from the Internet to the MM Services; or (b) Customer Devices or Machines. Subject to Customer's payment of the Fees (as defined below) set forth in the SOW, MM shall provide new releases and updates to the MM Services that it generally provides to its other customers, provided that MM shall not be obligated to provide to Customer any new release or update to the MM Services, or any module thereof, for which MM generally charges a separate fee, unless otherwise agreed to by the parties in the SOW.

4.4 Security. MM will maintain a comprehensive information security program consistent with industry standards that contains appropriate administrative, technical and physical safeguards reasonably designed to protect Customer Data from unauthorized disclosure. Such information security program will include business continuity and disaster recovery plans that are consistent with industry standards and are designed to protect against loss of Customer Data. In the event that MM has reason to believe that there has been any unauthorized access to, or loss of, Customer Data from its systems or premises, then it will promptly notify Customer according to MM's policies and protocols aligned with the data type and nature of the event.

4.5 Customer Restrictions. During the Term and thereafter, Customer shall not, and shall not permit any of its employees, contractors or Users to, directly or indirectly: (a) act as a reseller or distributor of, or a service bureau for, the Services or otherwise use, exploit, make available or encumber any of the Services to or for the benefit of any third party other than Customer's customers; (b) use or demonstrate the Services in any other way that is in competition with MM; (c) reverse engineer, disassemble or decompile the MM Services or attempt to derive the source code or underlying ideas or algorithms of any part of the MM Services (except to the limited extent applicable laws specifically prohibit such restriction); (d) remove any notice of proprietary rights from the Services; (e) copy, modify, translate or otherwise create derivative works of any part of the Services; (f) use the Services in a manner that interferes or attempt to interfere with the proper working of the Services or any activities conducted on the Services, including bypassing or attempting to bypass any privacy settings or measures used to prevent or restrict access to the Services; (g) use manual or automated software, devices, robot, spider, or other processes to "crawl" or "spider" or to retrieve, index, "scrape", "data mine" or in any way gather information, content or other materials from the Services in an unauthorized manner or reproduce or circumvent the navigational structure or presentation of the Services; (h) use the Services in a manner which interferes with or disrupt its integrity or performance; (i) use or allow the transmission, transfer, export, re-export or other transfer of any software, technology or information forming a part of the Services in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction; or (j) use the Services to share or store inappropriate materials, including (i) materials containing viruses or other harmful or malicious code; (ii) unsolicited mail (spam); (iii) copyrighted materials to which Customer does not have sufficient rights; (iv) harassing, tortious, or defamatory materials; or (v) other materials prohibited by applicable international, federal, state, or local laws and regulations.

4.6 Customer Obligations. Customer will be responsible for obtaining and maintaining, at Customer's expense, all of the necessary telecommunications, computer hardware, software, and Internet connectivity required by Customer or any User to access the Services from the Internet. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify MM promptly of any such unauthorized use known to Customer. In addition, Customer shall use the Services and MM Devices in accordance with the Documentation.

4.7 Proprietary Rights and Confidential Information

(a) Confidential Information

(i) Use and Disclosure. During this Agreement, each party will have access to the other party's Confidential Information. Except as otherwise expressly permitted, and without limiting each party's obligations, under this Agreement, each Recipient agrees as follows: (A) it will not disclose the Confidential Information of the Disclosing Party to anyone except its employees and independent contractors who have a need to know and who have been advised of and have agreed to treat such information in accordance with the terms of this Agreement (each a "**Representative**") and (B) it will not use or reproduce the Confidential Information disclosed by the Disclosing Party for any purpose other than exercising its rights and performing its obligations as described herein. Each Recipient will be liable for the acts and omissions of its Representatives with respect to the Disclosing Party's Confidential Information.

(ii) Exceptions. The provisions of Section 3.6(a)(i) will not apply to Confidential Information that: (A) becomes generally available to the public through no fault of the Recipient; (B) is lawfully provided to the Recipient by a third party free of any confidentiality duties or obligations; (C) Recipient can prove, by clear and convincing evidence, was already known to the Recipient without restriction at the time of disclosure; or (D) Recipient can prove, by clear and convincing evidence, was independently developed by employees and contractors of Recipient who had no access to the Confidential Information.. Notwithstanding Section 3.6(a)(i), each party may disclose Confidential Information to the limited extent required by a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order will first have given written notice to the other party and made a reasonable effort to obtain a protective order.

(b) MM Services. Except for the limited access grant provided to Customer in this Agreement, MM reserves all right, title and interest in its intellectual property and business, including the Services, Documentation, and MM trademarks. Unless otherwise expressly set forth in an SOW, and except for any Customer Data, all work product or services provided or developed pursuant to this Agreement or any SOW (including any modifications and improvements to any Services pursuant subsection (d) or any intellectual property developed pursuant to subsection (e) below), and all intellectual property and other proprietary rights derived therefrom, will be the sole and exclusive property of MM.

(c) Continuous Development. Customer acknowledges that MM may continually develop, deliver and provide to Customer on-going innovation to the MM Services in the form of new features, functionality, and efficiencies. Accordingly, MM reserves the right to modify the MM Services, from time to time. Some modifications will be provided to Customer at no additional charge. In the event MM adds additional functionality to a particular MM Service, MM may condition the implementation of such modifications on



Customer's payment of additional fees provided Customer may continue to use the version of the MM Services that MM makes generally available (without such features) without paying additional fees.

(d) Feedback. MM in its sole discretion, may utilize all comments and suggestions, whether written or oral, furnished by Customer to MM, including such comments and suggestions of Users, in connection with its access to and use of the Services (all comments and suggestions provided by Customer hereunder constitute, collectively, the "**Feedback**"). Customer hereby grants MM, on behalf of itself and its Users, a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into MM products and services.

5. PROFESSIONAL SERVICES; IMPLEMENTATION; TRAINING AND SUPPORT.

5.1 Professional Services Generally. MM shall use commercially reasonable efforts to provide certain Professional Services related to Customer's use of the MM Services as indicated on an SOW. Excluding those agreed between the parties in the SOW or a separate statement of work, MM will have no obligation to provide or perform such services for or on behalf of Customer.

5.2 Integration Services. Subject to the terms of this Agreement, and if specified in an SOW, MM shall provide the on-site integration services (the "**Integration Services**") described in an SOW. Customer agrees to complete all pre-integration tasks identified in Exhibit B and Exhibit C prior to the date that MM commences any Integration Services ("**Pre-Integration Tasks**").

5.3 Service Charges. In the event Customer: (a) does not complete the Pre-Integration Tasks prior to the scheduled commencement of the Integration Services; or (b) cancels Integration Services or other Professional Services less than ten (10) business days prior to MM's deployment of personnel to Customer's facility, Customer shall pay a service charge in the amount of \$2,500.00 per day for days in subsequent SOWs (the "**Service Charges**").

5.4 Support Services. Subject to the terms of this Agreement, MM shall provide Customer with the support services in accordance with the service level terms set forth in an SOW. Unless specified in an SOW, MM will have no obligation to perform any support services for or on behalf of Customer. MM will not provide support services when a problem is caused by (a) Customer's unauthorized relocation, movement, improper operation, neglect or misuse of the MM Devices; (b) Customer's failure to maintain proper site or environmental conditions; (c) any attempts at configuration, repairs, support, or modifications to the MM Devices not performed by a MM authorized representative or authorized by MM; (d) discontinued systems or software; (e) casualty, act of God, the unauthorized acts of third parties; and (f) failure or interruption of electrical power, telephone or communication line or like cause (collectively, the "**Support Exclusions**"). In the event support services are requested due to one of the Exclusions, Customer shall pay MM the Service Charge.

6. CUSTOMER DATA

6.1 Ownership. As between the parties, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all intellectual property rights therein and thereto, subject to the license granted herein to MM. Customer hereby grants to MM a nonexclusive, worldwide, transferable, sublicensable (to its subcontractors and service providers), irrevocable, royalty-free, fully paid-up license to: (a) process and use the Customer Data in order to provide the Services to Customer; (b) use the Customer Data to enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services; (c) disclose the Customer Data to third parties as authorized by Customer and (d) collect and use the Content in accordance with Section 5.2.

6.2 Collection and Use of Data and Other Information. Except as otherwise set forth in any SOW, MM may (a) compile statistical and other information related to the performance, operation, and use of the Services, (b) use Customer Data from the Service to form and create statistical analyses and algorithms, improve the Services for research and development purposes, and (c) provide Customer Data to Customer or other users for benchmarking purposes ((a), (b) and (c) collectively, "**Service Analyses**"). MM may make Service Analyses publicly available and use Service Analyses for any of its business purposes; however, Service Analyses will not incorporate Customer Data in a form that could serve to identify Customer or any individual. Service Analyses do not constitute Customer Data, and MM will retain all right, title, and interest in and to Service Analyses, including all intellectual property rights therein and thereto.

7. CONSIDERATION.

7.1 Invoicing. Except as otherwise set forth in any SOW, all fees related to Customer's subscription access to the MM Services will be invoiced by MM in accordance with the SOW ("**Subscription Fees**"). Unless otherwise set forth in any SOW, all fees for Professional Services set forth in an SOW will be invoiced in arrears within ten (10) days of the end of the month in which such services were rendered ("**Professional Services Fees**"). Except as otherwise set forth in any SOW, all fees for MM Devices will be invoiced upon shipment of the MM Devices (the "**MM Device Fees**"). The Subscription Fees, Professional Services Fees, MM Device Fees and all other fees set forth in the SOW will be referred to herein as "**Fees**".

7.2 Fees. Customer will pay the Fees to MM in accordance with the payment schedule set forth in the applicable SOW. Unless otherwise specified in any SOW, all invoices issued by MM will be due and payable thirty (30) days after receipt by Customer. All Fees will be paid in U.S. dollars and exclude all applicable sales, use, and other taxes. Any portion of the Fees that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. The Fees exclude, and Customer will be solely responsible for, all sales, use, excise, withholding and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity in connection with the Services (excluding taxes based solely on MM's income).

7.3 Expenses. If pre-approved by Customer in an SOW, Customer shall reimburse MM for reasonable out-of-pocket expenses (including travel and living) incurred in performing its obligations for specific Services under such SOW in accordance with the [MM Travel Policy]. All costs and expenses incurred by Customer in connection with the Agreement are the sole responsibility of Customer.

8. WARRANTIES; DISCLAIMERS; LIMITATIONS ON LIABILITY

8.1 General Representations. Each party represents and warrants that: (a) as of the Effective Date and throughout the Term, it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that the execution and performance of the Agreement, or use of the Services, will not conflict with or violate any provision of any law having applicability to such party; and (c) that the Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms.

8.2 Customer Data. Customer represents and warrants that it has obtained and will maintain throughout the Term, all rights, consents and permissions for Customer to make available the Customer Data to MM and for MM to use the Customer Data as contemplated herein.

8.3 Compliance with Laws. Customer will use the Services in accordance with all applicable laws, rules and regulations.

8.4 Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. MM DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE SERVICES WILL BE ACCURATE, WITHOUT INTERRUPTION, OR ERROR-FREE.

8.5 Disclaimer of Indirect Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL MM BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES.

8.6 Limitations on Liability. EACH PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY MM UNDER THE APPLICABLE SOW DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION ON LIABILITY WILL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS.

8.7 Exceptions. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN LIABILITY, IN SUCH JURISDICTIONS THE LIABILITY OF MM WILL BE LIMITED TO THE MAXIMUM EXTENT

PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 7 WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED, ANY LIMITED REMEDY HEREIN IS HELD TO FAIL OF ITS ESSENTIAL PURPOSE OR THE FORM OF THE CLAIM OR CAUSE OF ACTION, WHETHER IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE).

9. INDEMNIFICATION

9.1 MM Indemnity. MM will indemnify, defend and hold Customer, its directors, officers, and employees (each a “**Customer Indemnified Party**”) harmless from and against any and all losses, damages, liability, costs and expenses awarded by a court or agreed upon in settlement, as well as all reasonable and related attorneys’ fees and court costs (collectively “**Losses**”) arising out of any third party claim to the extent alleging that the MM Services infringe any U.S. patent, copyright, trademark or trade secret.

9.2 Exclusions. Section 8.1 will not apply if the alleged claim arises, in whole or in part, from: (a) a use or modification of the Services by Customer or any User in breach of this Agreement, (b) a combination, operation or use of the Services with other software, hardware or technology not provided by MM, including Customer Devices, if the claim would not have arisen but for the combination, operation or use, or (c) the Customer Data (any of the foregoing circumstances under clauses (a), (b) or (c) will be collectively referred to as a “**Customer Indemnity Responsibility**”).

9.3 Customer Indemnity. Customer will indemnify, defend and hold harmless MM, its directors, officers, and employees (each a “**MM Indemnified Party**”) from and against any and all Losses arising out of any third party claim (a) alleging a Customer breach of any Customer representation or warranty in Section 7, (b) any failure to install the MM Devices in accordance with the Documentation; and (c) arising out of any Customer Indemnity Responsibility.

9.4 Indemnification Process. The foregoing indemnification obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, (b) reasonably cooperating and assisting in such defense and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying party with the understanding that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party, without consent.

9.5 Infringement. If the MM Services are, or in MM’s opinion, are likely to become, the subject of any infringement-related claim, then MM will, at its expense and in its discretion: (a) procure for Customer the right to continue using the MM Services; (b) replace or modify the infringing technology or material so that the MM Services become non-infringing and remain materially functionally equivalent; or (c) terminate the SOW pursuant to which the MM Services are provided and give Customer a refund for any pre-paid but unused Fees.

9.6 THE PROVISIONS OF THIS SECTION 8 STATE MM’S ENTIRE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDIES FOR ANY CLAIM THAT THE SERVICES INFRINGE A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHT.

10. CUSTOMER SUPPORT

The following support is available to The Customer to support the use of the MM platform

- Unlimited access to the MM Knowledge Base
- Unlimited remote access to Support
- One, 45 minute. Kickoff call
- 3 Onboarding Calls with regional CSM (1-1.5 hours) - system config, goal setting/foundational value, product & report training
- Monthly recurring CSM calls (1 hour can be used toward training, data review, system reconfig, etc)

11. TERM AND TERMINATION

11.1 Term. The term of this Agreement will commence on the Effective Date and shall remain in effect for the term period purchased. Thereafter, this Agreement shall automatically renew for successive one (1) year terms (each a “**Renewal Term**”), unless either party provides notice to the other of its intention not to renew at least thirty (30) days prior to expiration of the Initial Term or the then-current Renewal Term. The Initial Term and all Renewal Terms will collectively be referred to as the “**Term**”.

11.2 Termination. Either party may terminate this Agreement or any SOW, at its discretion, effective immediately upon written notice to the other if the other party materially breaches any provision of this Agreement and does not substantially cure the breach within thirty (30) days after receiving written notice.

11.3 Suspension of Service(s). At any time during the Term, MM may, immediately upon notice to Customer, suspend access to any Service for the following reasons: (a) a threat to the technical security or technical integrity of the Services; (b) any amount due under this Agreement is not received by MM within fifteen (15) days after it was due, or (c) breach or violation by Customer of any laws, rules, or regulations.

11.4 Return of Customer Data. Upon termination or expiration of the Agreement for any reason, MM reserves the right to permanently and definitively delete the Customer Data.

11.5 Effects of Termination. Upon termination or expiration of this Agreement for any reason, (a) any amounts owed to MM prior to such termination or expiration and all completed but unpaid Professional Services fees will be immediately due and payable and (b) all licensed and access rights granted will immediately cease to exist. Sections 1, 3.3, 3.7, 4, 7, 8, 9.4, 9.5 and 10 will survive any expiration or termination of this Agreement.

12. GENERAL

12.1 Assignment. This Agreement may not be assigned by Customer without the prior written consent of MM; provided, however, that Customer may assign this Agreement in connection with a sale of all or substantially all of its assets. Any attempted assignment or delegation in violation of this Section 8.1 will be null, void and of no effect.

12.2 Publicity. During the Term and thereafter, MM may refer to Customer as a MM customer, orally and in writing (including in promotion or marketing materials and on MM's website and social media postings).

12.3 Notices. All notices, consents, and approvals under this Agreement must be delivered via email or in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth in the SOW and will be effective upon receipt. Either party may change its address by giving notice of the new address to the other party.

12.4 Governing Law; Disputes. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without reference to its conflicts of law principles. The United Nations Convention for the International Sale of Goods will not apply to this Agreement. Any dispute, controversy or claim arising out of or relating to this Agreement, will be made exclusively in the state or federal courts located in Boston, Massachusetts and both parties submit to the jurisdiction and venue of such courts.

12.5 Remedies. Customer acknowledges that any actual or threatened breach of Section 3 will constitute immediate, irreparable harm to MM for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its reasonable attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

12.6 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

12.7 Severability. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

12.8 No Third Party Beneficiaries. The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity (including any User or any Employee) other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

12.9 Construction. The parties negotiated this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the



drafting party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”

12.10 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a natural disaster, war, act of terror, or any other event beyond the reasonable control of such party. The affected party will use reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

12.11 Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties

