

AgencyKPI, Inc.

**MASTER SUBSCRIPTION AGREEMENT**

This Master Subscription Agreement (the “Agreement”), together with any Order Form (as defined herein) referencing these Terms by and between the party detailed below with the address as set forth on the Order Form (“Subscriber,” “You” or “Your”) and AgencyKPI (as defined herein) contain the terms and conditions that govern access to and use of our Services. Subscriber and AgencyKPI are sometimes referred to herein individually as a “Party” and together as the “Parties.” In consideration of the mutual promises and upon the terms and conditions herein, the Parties agree as follows:

Each Party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such Party’s execution, delivery or performance of the Agreement; and (c) the execution, delivery and performance of the Agreement does not and will not violate the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound, or any applicable law or regulation.

The purpose of this Agreement is to establish the terms and conditions under which Subscriber may purchase AgencyKPI’s Services as described in an Order Form signed by You. This Agreement, including all Exhibits and Order Forms, constitutes the entire agreement between You and AgencyKPI with regard to the Services to be provided and/or Consulting Services to be performed by AgencyKPI and supersedes all prior agreements, understandings, statements, proposal and representations, whether written or oral, between the Parties. In the event of any inconsistency or conflict between the terms of the Agreement and the terms of any Order Form or Statement of Work the terms of the Order Form or Statement of Work shall control.

The following Exhibits are incorporated as a part of this Agreement:

**Exhibit A: General Terms and Conditions**

**Exhibit B: Supplemental Terms and Conditions**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized officers or representatives as of the last date of execution below (“Effective Date”):

## EXHIBIT A: GENERAL TERMS AND CONDITIONS

### 1. DEFINITIONS.

When used in this Agreement with the initial letters capitalized, in addition to the terms defined elsewhere in this Agreement, the following terms have the following meanings:

**1.1 Account:** means any accounts or instances created by or on behalf of Subscriber or its Users within the Services.

**1.2 AgencyKPI:** means AgencyKPI, Inc., a Delaware corporation, or any of its successors or assignees.

**1.3 AgencyKPI Group:** means AgencyKPI, Inc., a Delaware Corporation together with all its Affiliates.

**1.4 Affiliate:** means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, whereby “control” (including, with correlative meaning, the terms “controlled by” and “under common control”) means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

**1.5 Agency:** means an insurance agency that serves as an agent to sell insurance and insurance-related products and services

**1.6 Agency Data:** means data owned by and provided by an Agency.

**1.7 Agreement:** means the Master Subscription Agreement together with any and all Exhibits, Supplemental Terms, Additional Features, the Data Security Addendum, and Order Forms.

**1.8 Analytics:** means the analyses, compilations, derivations, derivative works, results and similar outputs that AgencyKPI creates from the Service Data, Agency Data, Network Data and/or Carrier Data, as appropriate.

**1.9 API:** means the application programming interfaces developed and enabled by AgencyKPI that permit Subscribers to access certain functionality provided by the Services, including, without limitation, the REST API that enables the interaction with the Services automatically through HTTP requests and the application development API that enables the integration of the Services with other web applications.

**1.10 Applicable Data Protection Law:** means the Financial Services Modernization Act (Gramm-Leach-Bliley Act) (15 U.S.C. §§6801-6827) (the “GLB Act”) and any other applicable data protection laws.

**1.11 Beta Services:** means a product, service or functionality provided by AgencyKPI that may be made available to You to try at Your option at no additional charge which is clearly designated as beta, pilot, limited release, non-production, early access, evaluation or by a similar description.

**1.12 Carrier:** means an insurance carrier or provider (other than You) who provides or may provide insurance products to an Agency

**1.13 Carrier Data:** means data owned by and provided by a Carrier.

**1.14 Confidential Information:** Service Data and the Analytics. For purposes of this Agreement, this Agreement shall be deemed Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that (a) was already known to the receiving Party at the time of disclosure by the disclosing Party; (b) was or is obtained by the receiving Party from a third party not known by the receiving Party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of this Agreement or another valid agreement between the Parties; (d) was or is independently developed by the receiving Party without use of the disclosing Party’s Confidential Information; or (e) Syndicated Data, or components thereof.

**1.15 Consulting Services:** means consulting and professional services (including any training, success or implementation services) provided by AgencyKPI or its authorized subcontractors as indicated on an Order Form or other written document such as a statement of work “SOW” (defined below).

**1.16 Documentation:** means any written or electronic documentation, images, video, text or sounds specifying the functionalities of the Services provided or made available by AgencyKPI to You

**1.17 Network:** means an association or similar business entity comprised of member Agencies.

**1.18 Network Data:** means data owned by and provide by a Network.

**1.19 Order Form:** means any of Our generated service order forms executed or approved by You with respect to Your subscription to or purchase of a Service, which form may detail, among other things, the number of Users authorized to use a Service under Your subscription to a Service and the Service Plan applicable to Your subscription to a Service.

**1.20 Personal Data:** means any information relating to an identified or identifiable natural person where an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity.

**1.21 Personnel:** means employees and/or non-employee service providers and contractors of the AgencyKPI Group engaged by the AgencyKPI Group in connection with performance hereunder.

**1.22 Service(s):** means the products and services that are ordered by You via an Order Form referencing this Agreement, whether on a trial, test, or paid basis, which may be made available online by Us, via the applicable subscriber login link and other web pages designated by Us, including, individually and collectively, the applicable Software, updates, API, Documentation, that You have purchased or deployed or to which You have subscribed (“Deployed Associated Services”)

that are provided under this Agreement. “Services” exclude Third Party Services as that term is defined in this Agreement. From time to time the names and descriptions of the Services or any individual Service may be changed. To the extent Subscriber is given access to such Service as so described by virtue of a prior Order Form or other prior acceptance of this Agreement, this Agreement shall be deemed to apply to such Service as newly named or described.

**1.23 Service Data:** means electronic data, data compilations, files, or other materials received or collected by AgencyKPI from You through the Services but excluding Agency Data, Network Data or Carrier Data.

**1.24 Site:** means a website operated by the AgencyKPI Group, including www.AgencyKPI.com, as well as all other websites that the AgencyKPI Group operates.

**1.25 Software:** means software provided by AgencyKPI (either by download or access through the internet) that allows Users to use any functionality in connection with the applicable Service.

**1.26 Subscription Term:** means the period during which You have agreed to subscribe to a Service with respect to any individual User.

**1.27 Supplemental Terms:** means the additional terms and conditions that are (a) contained in this Agreement under the Section entitled, “Supplemental Terms and Conditions” which apply and are incorporated into this Agreement with certain Services, features, or functionality; (b) included or incorporated on an Order Form (e.g. when a Deployed Associated Service is purchased); or (c) applicable to Consulting Services when purchased by You.

**Syndicated Data:** means aggregated and anonymized data compiled with various data sources not attributable to source data.

**1.28 Third Party Services:** means third party products, applications, services, software, products, networks, systems, directories, websites, databases and information obtained separately by You which a Service links to, or which You may connect to or enable in conjunction with a Service, including, without limitation, Third Party Services which may be integrated directly into Your Account by You or at Your direction.

**1.29 “User:”** means an individual authorized to use a Service through Your Account as an agent and/or administrator as identified through a unique login.

**1.30 “We,” “Us” or “Our”:** means AgencyKPI as defined above.

**1.30 Wholesaler:** means a type of insurance broker who acts as an intermediary between a retail broker and an insurer, while having no contact with the insured.

## **2. GENERAL CONDITIONS; ACCESS TO AND USE OF THE SERVICES**

**2.1** During the Subscription Term and subject to compliance by You and Users with this Agreement, You have the limited right

to access and use a Service that You subscribe to, together with all applicable Deployed Associated Services, for Your internal business purposes. An Affiliate may receive Services under this Agreement provided that such Affiliate directly enters into a Service Order Form, unless Affiliates are included or identified on Your Order Form, in which case they do not have to enter into a separate Service Order Form. By entering into a Service Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Subscriber will be responsible for its Affiliates’ compliance with this Agreement. We will (a) make the Services and Service Data available to You pursuant to this Agreement and the applicable Order Forms or SLA; (b) provide applicable standard customer support for the Services to You at no additional charge as detailed on the applicable Site and Documentation and/or upgraded support if purchased; (c) use commercially reasonable efforts to make the Services available during the timeframes set forth in the applicable Order Form, except (i) during planned downtime for upgrades and maintenance to the Services (of which We will use commercially reasonable efforts to notify You in advance both through Our Site and a notice to Your Account owner and Users) (“Planned Downtime”); and (ii) for any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Third Party Services, or acts undertaken by third parties, including without limitation, denial of service attack (“Force Majeure Event”). The parties may enter into one or more Service Level Agreements (each, an “SLA”) that modify the foregoing terms.

**2.2** You may not use the Services outside of your authorized usage, namely for the internal business purposes of the contracting entity. You may not distribute Analytics to any third parties without prior written consent of AgencyKPI. Your right to access and use the API is also subject to the restrictions and policies implemented by AgencyKPI from time to time with respect to the API as set forth in the Documentation.

**2.3** A high speed Internet connection is required for proper transmission of the Services. You are responsible for procuring and maintaining the network connections that connect Your network to the Services, including, but not limited to, “browser” software that supports protocols used by AgencyKPI, including the Transport Layer Security (TLS) protocol or other protocols accepted by AgencyKPI, and to follow procedures for accessing services that support such protocols. We are not responsible for notifying You or Users of any upgrades, fixes or enhancements to any such software. We assume no responsibility for the reliability or performance of any connections as described in this section.

**2.4** In addition to complying with the other terms, conditions

and restrictions set forth below in this Agreement, You agree not to (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or make the Services available to any third party, other than authorized Users in furtherance of Your internal business purposes as expressly permitted by this Agreement; (b) use the Services to Process data on behalf of any third party other than Users or Affiliates; (c) modify, adapt, or hack the Services or otherwise attempt to gain unauthorized access to the Services or related systems or networks; (d) falsely imply any sponsorship or association with AgencyKPI or the AgencyKPI Group, (e) knowingly use the Services in any unlawful manner, including, but not limited to, violation of any person's privacy rights; (f) use the Services to send unsolicited or unauthorized bulk mail, junk mail, spam, pyramid schemes or other forms of duplicative or unsolicited messages; (g) use the Services to store or transmit files, materials, data, text, audio, video, images or other content that infringes on any person's intellectual property rights; (h) use the Services in any manner that interferes with or disrupts the integrity or performance of the Services and its components; (i) attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any Software making up the Services; (j) use the Services to knowingly post, transmit, upload, link to, send or store any content that is unlawful, racist, hateful, abusive, libelous, obscene, or discriminatory; (k) use the Services to store or transmit any "protected health information" as that term is defined in 45 C.F.R. 160.103, unless expressly agreed to otherwise in writing by AgencyKPI; (l) use the Services to knowingly post transmit, upload, link to, send or store any viruses, malware, Trojan horses, time bombs, or any other similar harmful software ("Malicious Software"); (m) use or launch any automated system that accesses a Service (i.e., bot) in a manner that sends more request messages to a Service server in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser; or (n) attempt to use, or knowingly use the Services in violation of this Agreement.

**2.5** As between You and AgencyKPI, You are responsible for compliance with the provisions of this Agreement by Users and for any and all activities that occur under Your Account. Without limiting the foregoing, You are solely responsible for ensuring that use of the Services to store and transmit Service Data is compliant with all applicable laws and regulations as well as any and all privacy policies, agreements or other obligations You may maintain or enter into with Users. You also maintain all responsibility for determining whether the Services or the information generated thereby is accurate or sufficient for Your purposes. Subject to any limitation on the number of individual Users available under the applicable Service Plan(s) to which You subscribed or applicable Deployed Associated Service, access to and use of the Services is restricted to the specified number of individual Users permitted under Your subscription to the applicable Service.

You agree and acknowledge that each User will be identified by a unique username and password ("Login") and that a Login may only be used by one (1) individual. You will not share a Login among multiple individuals. You and Your Users are responsible for maintaining the confidentiality of all Login information for Your Account. AgencyKPI reserves the right to periodically verify that Your use of the AgencyKPI Services complies with the Agreement. Should AgencyKPI discover that Your use of an AgencyKPI Service is not in compliance with this Agreement, AgencyKPI shall notify you of such non-compliance. If such non-compliance is over-usage, You shall reduce such use or enter into an amendment to the Order Form with AgencyKPI for such additional usage on a going forward basis

**2.6** In addition to Our rights as set forth in Sections 2 and 8.4, We reserve the right, in Our reasonable discretion, to temporarily suspend Your access to and use of a Service if We suspect or detect any Malicious Software connected to Your Account.

**2.7** You acknowledge that AgencyKPI may modify the features and functionality of the Services during the Subscription Term; provided, however, if any modification that materially reduces the Services originally contracted as of the date of this Agreement, You may immediately terminate this Agreement pursuant to the breach provisions below.

**2.8** You may not access the Services if You are a direct competitor of the AgencyKPI Group, except with AgencyKPI's prior written consent. For purposes of clarification, so long as You do not permit a competitor to access the system through Your access and are not in material breach of this Agreement, minority ownership in a competitor shall not constitute a violation of this Section. You may not access the Services for the purposes of monitoring performance, availability, functionality, or for any benchmarking or competitive purposes.

**2.9** If You register for a free trial for any of the Services, We will make such Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s); (b) the start date of any subscription to such Service purchased by You for such Service(s); or (c) termination of the trial by Us in our sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Please review the applicable Documentation during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

**2.10** From time to time, We may make Beta Services available to You. You may choose to try such Beta Services in Your sole discretion. Beta Services are intended for evaluation purposes

and not for production use, are not supported, and may be subject to additional terms that will be presented to You. Beta Services are not considered “Services” under this Agreement; however, all restrictions, Our reservation of rights and Your obligations concerning the Service, and use of any Third Party Services shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

### **3. CONFIDENTIALITY; SECURITY AND PRIVACY**

**3.1** Subject to the express permissions of this Agreement, each Party will protect each other’s Confidential Information from unauthorized use, access or disclosure. Except as otherwise expressly permitted pursuant to this Agreement, each Party may use each other’s Confidential Information solely to exercise their respective rights and perform their respective obligations under this Agreement and shall disclose such Confidential Information (a) solely to the employees and/or non-employee service providers and contractors who have a need to know such Confidential Information for such purposes, are informed of its confidential nature, and who are bound to maintain the confidentiality of, and not misuse, such Confidential Information; (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; (c) as reasonably necessary to comply with any applicable law or regulation; or (d) as You expressly permit in writing. The provisions of this Section 3.1 shall supersede any non-disclosure agreement by and between the Parties relating to the Confidential Information.

**3.2** The AgencyKPI Group will maintain reasonable administrative, physical, and technical safeguards, and policies and procedures, for protection of the use, security, confidentiality and integrity of Service Data and Confidential Information, as set described in (but not necessarily limited to) the attached Data Security Addendum. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Confidential Information by Personnel except Confidential Information may be disclosed as set forth in Section 3.1(a) through (d).

**3.3** You agree that the AgencyKPI Group and the third-party service providers that are utilized by the AgencyKPI Group to assist in providing the Services to You shall have the right to access Your Account and to use, modify, reproduce, distribute, display and disclose Service Data to the extent necessary to provide the Services, including, without limitation, in response to Your support requests. In addition, You agree that the

AgencyKPI Group may syndicate the Service Data for research purposes and for industry offerings, provided it is done on an anonymized and aggregated basis. Any third-party service providers utilized by the AgencyKPI Group will only be given access to Your Account and Service Data as is reasonably necessary to provide the Services and will be subject to (a) confidentiality obligations which are commercially reasonable and at least as restrictive as the standards described in Sections 3.1 and 3.2; and (b) their agreement to comply with the data transfer restrictions applicable to Personal Data.

**3.4** Whenever You or Your Users interact with our Services, We may automatically receive and record information on Our server logs from the browser or device, which may include IP address, “cookie” information, the type of browser and/or device being used to access the Services. “Cookies” are identifiers We transfer to the browser or device of Your Users that allow Us to recognize User and their browser or device along with how our Services are being utilized. When We collect this information, We may use this data in aggregate form, and not in a manner that would identify You or Your Users personally. For example, this aggregate data can tell Us how often Users use a particular feature of the Services, and We can use that knowledge to improve the Services.

**3.5** We receive and store any information that You knowingly provide to Us. For example, through the registration process for Our Services and/or through your Account settings, We may collect Personal Data such as Your Users’ name, email address, phone number, and third-party account credentials of You and Your Users. In addition, We may communicate with You and Your Users. For example, We may send You and Your Users product announcements and promotional offers or contact You and Your Users about Your use of the Services. If a User does not want to receive communications from Us, please indicate this preference by sending an email to [privacy@AgencyKPI.com](mailto:privacy@AgencyKPI.com) and provide us with the name and email address of each User that no longer wishes to receive these communications.

**3.6** We may share Analytics with third parties such as business partners, Carriers and/or Agencies and/or the Agency Networks or Wholesalers to which they belong, provided it is done on an anonymized and aggregated basis. We may also share certain Analytics to develop industry insights, show trends and develop rankings, provided it is done on an anonymized and aggregated basis. We may syndicate such Analytics for redistribution and/or subscription.

**3.7** All Agencies and Carriers that receive or are granted access to Your Confidential Information as a result of or in furtherance of the Services shall be contractually obligated to use such information solely for the purposes relating to and in fulfilling the purpose of the Services.

**3.8** The confidentiality obligations of this Section 3 shall survive the termination or expiration of this Agreement or the applicable Order Form.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

Each Party shall retain all rights, title and interest in and to all its respective patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights (collectively, "Intellectual Property Rights"). The rights granted to You to use the Service(s) under this Agreement do not convey any additional rights in the Service(s) or in any Intellectual Property Rights associated therewith. Subject only to limited rights to access and use the Service(s) as expressly stated herein, all rights, title and interest in and to the Services and all hardware, Analytics, Software and other components of or used to provide the Services, including all related Intellectual Property Rights, will remain with AgencyKPI and belong exclusively to AgencyKPI. The ownership of the Service Data shall remain with You. The ownership of the Agency Data shall remain with such originating Agency, the Carrier Data shall remain with the originating Carrier and the Network Data, the originating Network. The AgencyKPI Group shall have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, and/or incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback We receive from You, Users, or other third parties acting on Your behalf. AgencyKPI, and the AgencyKPI Group's other product and service names and logos used or displayed in or on the Services are registered or unregistered trademarks of one or more members of the AgencyKPI Group (collectively, "Marks"). You may not use the Marks without our prior written consent.

You shall at all times maintain and own all right title and interest in and to Your Confidential Information, and Service Data. You grant AgencyKPI a limited, non-assignable, royalty free, paid-up license to receive and use such information solely for the purpose of performing the Services as set forth in this Agreement and the applicable Order Form (except that Syndicated Data may be retained). Such right shall terminate at the earlier of the expiration or termination of the applicable Order Form or this Agreement. AgencyKPI may not use, disclose, publish, or otherwise display in any manner any of Your business names, logos, or marks for any reason without Your prior written consent.

#### **5. THIRD PARTY SERVICES**

If You decide to enable, access or use Third Party Services, be advised that Your access and use of such Third Party Services

are governed solely by the terms and conditions of such Third Party Services, and We do not endorse, are not responsible or liable for, and make no representations as to any aspect of such Third Party Services, including, without limitation, their content or the manner in which they handle, protect, manage or process data (including Service Data) or any interaction between You and the provider of such Third Party Services. We cannot guarantee the continued availability of such Third Party Service features, and may cease enabling access to them without entitling You to any refund, credit, or other compensation, if, for example and without limitation, the provider of a Third Party Service ceases to make the Third Party Service available for interoperability with the corresponding Service in a manner acceptable to Us. You irrevocably waive any claim against AgencyKPI with respect to such Third Party Services. Unless we fail to give notice to You as set forth below, We are not liable for any damage or loss caused or alleged to be caused by or in connection with Your enablement, access or use of any such Third Party Services, or Your reliance on the privacy practices, data security processes or other policies of such Third Party Services. You may be required to register for or log into such Third Party Services on their respective websites. By enabling any Third Party Services, You are expressly permitting AgencyKPI to disclose Your login, as well as Service Data as necessary to facilitate the use or enablement of such Third Party Services. Notwithstanding the foregoing, We will notify You five (5) business days before disclosing Your login to any third parties and You may instruct Us not to disclose Your login; provided, however, You understand that doing so may prevent access or use of such Third Party Services. Failure to instruct Us not to share Your login shall be deemed Your consent to sharing Your login with such third party.

#### **6. BILLING, PLAN MODIFICATIONS AND PAYMENTS**

**6.1** Unless otherwise indicated on an Order Form referencing this Agreement, all charges associated with Your access to and use of a Service ("Subscription Charges") are due in full upon commencement of Your Subscription Term, or, with respect to a Deployed Associated Service, at the time such Deployed Associated Service is purchased, subscribed to or otherwise deployed. If You fail to pay Your Subscription Charges or other charges indicated on any Order Form within ten (10) business days of Our notice to You that payment is due or delinquent, or if You do not update payment information upon Our request, in addition to Our other remedies, We may suspend or terminate access to and use of such Service by You.

**6.2** Unless otherwise stated, Our charges do not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction (collectively "Taxes"). You are responsible for paying Taxes, except those assessable against the AgencyKPI Group

measured by its net income. We will invoice You for such Taxes if We believe We have a legal obligation to do so and You agree to pay such Taxes if so invoiced.

**6.3** Any Subscriber that mandates AgencyKPI to use a vendor payment portal or compliance portal which charges AgencyKPI a subscription fee or a percentage of any uploaded invoice as a required cost of doing business shall be invoiced by AgencyKPI for the cost of this fee.

## **7. RESERVED**

## **8. CANCELLATION AND TERMINATION**

**8.1** The Subscription Term ends on the date set forth in the applicable Order Form and does not automatically renew without your prior written consent except as may be set forth in an Order Form. If there are no active Order Forms or Subscription Terms, then You may terminate this Agreement upon thirty (30) days' notice to Us.

**8.2** Except for Your termination under Section 8.5, no refunds or credits for Subscription Charges or other fees or payments will be provided to You if You elect to terminate Your subscription to the Service or cancel Your Account prior to the end of Your then effective Subscription Term.

**8.3** Except for Your termination under Section 8.5, if You terminate Your subscription to a Service or cancel Your Account prior to the end of Your then effective Subscription Term or We effect such termination or cancellation pursuant to Sections 8.4 and 8.5, in addition to other amounts You may owe AgencyKPI, You must immediately pay any then unpaid Subscription Charges associated with the remainder of such Subscription Term; provided, however, such payments shall not exceed twelve (12) months of such fees.

**8.4** We reserve the right to modify, suspend or terminate the Services (or any part thereof), Your Account or Your and/or Users' rights to access and use the Services, and remove, disable and discard any Service Data if You or Your Users have violated this Agreement and such violation remains thirty (30) days after We provide written notice to You of the same. Unless legally prohibited from doing so, We will notify You prior to taking any of the foregoing actions.

**8.5** A Party may terminate this Agreement or any Order Form or Your Account for cause (a) upon thirty (30) days' written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period; or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. If this Agreement is terminated by You in accordance with this

section, We will, to the extent permitted by applicable law, refund You on a prorated basis any prepaid fees covering the remainder of the Subscription Term(s) after the effective date of termination. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**8.6** Upon request by You made within thirty (30) days after the effective date of termination or expiration of this Agreement, We will make Service Data and Confidential Information that a Network, Agency, Carrier or Wholesaler owns available to such party for export or download as provided in the Documentation. After such 30-day period, we will have no obligation to maintain or provide any Service Data and Confidential Information, and, unless prohibited by law, upon a request by You we will delete or destroy all copies of Service Data and Confidential Information in Our systems or otherwise in Our possession or control, including information in any cloud storage environment maintained by Us or a third party vendor, and provide written confirmation of completion of same.

**8.7** Notwithstanding anything to the contrary in this Agreement, You may terminate this Agreement or any Order Form or cancel Your Account without liability upon the occurrence of a material security breach resulting in the unauthorized use (including theft) or unauthorized access of the Service Data.

## **9. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS**

**9.1** Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

**9.2** Excluding Beta Services, We warrant that during an applicable Subscription Term that the Services will perform materially in accordance with the applicable Documentation. For any breach of a warranty above, Your exclusive remedies are those described in Section 8.5 herein.

**9.3** We further warrant that we seek appropriate permissions and access to Agency Data, Network and Carrier Data; provided, however, that We make no warranty that any such permission or authority purportedly given to Us will be actual, unconditional, unchanging or absolute. We will make commercially reasonable efforts to assure appropriate permissions and authorizations as We deem necessary.

**9.4** EXCEPT AS SPECIFICALLY SET FORTH IN SECTION 9.2, THE SITES AND THE SERVICES, INCLUDING ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT

NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE, FREE FROM CYBER ATTACKS OR DATA LOSS, OR FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE, AND NO INFORMATION OR ADVICE OBTAINED BY YOU FROM US OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## **10. LIMITATION OF LIABILITY**

**10.1** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL EITHER PARTY TO THIS AGREEMENT, OR THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, USERS, SERVICE PROVIDERS, SUPPLIERS OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA (BEING DATA LOST IN THE COURSE OF TRANSMISSION VIA YOUR SYSTEMS OR OVER THE INTERNET THROUGH NO FAULT OF AGENCYKPI), BUSINESS INTERRUPTION, LOSS OF GOODWILL, OR FOR ANY TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, IN CONNECTION WITH THIS AGREEMENT, THE SERVICES OR CONSULTING SERVICES, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

**10.2** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR (I) EACH PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 11; (II) A PARTY'S MISUSE OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; AND (III) SUBSCRIBER'S OBLIGATION TO PAY SUBSCRIPTION CHARGES, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY ARISING OUT OF THIS AGREEMENT, THE SERVICES OR CONSULTING SERVICES, SHALL IN NO EVENT EXCEED THE SUBSCRIPTION CHARGES AND/OR CONSULTING FEES PAID BY YOU DURING THE TWELVE (12) MONTHS PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. THE PARTIES EACH ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 10.2 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES AND

CONSULTING FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF EITHER PARTY WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. WE HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE YOU WITH THE RIGHTS TO ACCESS AND USE THE SERVICES AND/OR THE CONSULTING SERVICES PROVIDED FOR IN THIS AGREEMENT.

**10.3** Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply to You. IN THESE JURISDICTIONS, THE AGENCYKPI GROUP'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

**10.4** Any claims or damages that the parties may have against each other shall only be enforceable against You and AgencyKPI Group, respectively, and not any other entity or their officers, directors, representatives or Users.

## **11. INDEMNIFICATION**

**11.1** We will indemnify and hold You harmless, from and against any claims, damages, costs and expenses incurred by or against You by reason of Your use of a Service as permitted hereunder, brought by a third party alleging that the Software infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret (an "IP Claim"). We shall, at Our expense, defend such IP Claim and pay damages finally awarded against You in connection therewith, including the reasonable fees and expenses of any attorneys engaged by You and AgencyKPI for such defense, provided that (a) You promptly notify AgencyKPI of the threat or notice of such IP Claim; (b) We will have the sole and exclusive control and authority to select defense attorneys, and defend and/or settle any such IP Claim (however, We shall not settle or compromise any claim that results in liability or admission of any liability by You without Your prior written consent); and (c) You fully cooperate with AgencyKPI in connection therewith. If use of a Service by You, Users has become, or, in Our opinion, is likely to become, the subject of any such IP Claim, We may, at Our option and expense, (a) procure for You the right to continue using the Service(s) as set forth hereunder; (b) replace or modify a Service to make it non-infringing; or (c) if options (a) or (b) are not commercially reasonable or practicable as determined by AgencyKPI, terminate Your subscription to the Service(s) and repay You, on a pro-rata basis, any Subscription Charges previously paid to AgencyKPI for the corresponding unused portion of Your Subscription Term for such Service(s). We will have no liability or obligation under this Section 11.1 with respect to any IP Claim if such claim is caused in whole or in part by (i) Customer's willful infringement; (ii) modification



of the Service(s) by anyone other than AgencyKPI (unless done with AgencyKPI's consent); or (iii) the combination, operation or use of the Service(s) with other hardware or software where a Service would not by itself be infringing.

The provisions of this Section 11.1 state the sole, exclusive and entire liability of AgencyKPI to You and constitute Your sole remedy with respect to an IP Claim brought by reason of access to or use of a Service by You or Your Users.

**11.2** You will indemnify and hold AgencyKPI harmless against any claim brought by a third party against AgencyKPI arising from or related to use of a Service by You, Users in breach of this Agreement or matters for which You have expressly agreed to be responsible pursuant to this Agreement; provided (a) We shall promptly notify You of the threat or notice of such claim; (b) You will have the sole and exclusive control and authority to select defense attorneys, and defend and/or settle any such claim (however, You shall not settle or compromise any claim that results in liability or admission of any liability by Us without Our prior written consent); and (c) We fully cooperate with You in connection therewith.

## **12. ASSIGNMENT, ENTIRE AGREEMENT AND AMENDMENT**

**12.1** You may not, directly or indirectly, by operation of law or otherwise, assign all or any part of this Agreement or Your rights under this Agreement or delegate performance of Your duties under this Agreement without Our prior written consent. We may, without Your consent, assign this Agreement to any member of the AgencyKPI Group or in connection with any merger or change of control of AgencyKPI or the AgencyKPI Group or the sale of all or substantially all of Our assets provided that any such successor agrees to fulfill its obligations pursuant to this Agreement, provided, however, that, notwithstanding anything to the contrary in this Agreement, in the event that AgencyKPI assigns this Agreement to a competitor of Yours, or any other Carrier or Agency without Your consent, or a party that would cause You to violate law or industry regulation, you may terminate this Agreement without penalty and receive a pro rata refund for any Service Charges or other fees paid by You for the number of days remaining in the then-existing Subscription Term(s) after the effective date of termination. Subject to the foregoing restrictions, this Agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**12.2** This Agreement, together with any Order Form(s) and Supplemental Term(s) constitute the entire agreement, and supersede any and all prior agreements between You and AgencyKPI with regard to the subject matter hereof. This Agreement shall apply in lieu of the terms or conditions in any purchase order or other order documentation You or any Entity

which You represent provides, and, except as expressly stated herein, there are no other agreements, representations, warranties, or commitments which may be relied upon by either Party with respect to the subject matter hereof. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind between the Parties, except as may otherwise be expressly provided herein. The terms of Exhibit A shall govern in the event of any conflict with the terms of this Exhibit B. The terms of this Agreement shall govern in the event of any conflict with the terms of the AgencyKPI Privacy Policy. The terms of an Order Form or SOW shall govern in the event of any conflict with the terms of this Agreement, SLA, or AgencyKPI Privacy Policy.

Notwithstanding the foregoing, You may be presented with additional features, functionality, or services as detailed in a Supplement hereto or that We offer as part of or distinct from the Services (the "Additional Features"). In those instances, We will notify You of such Additional Features prior to the activation of these features, functionality, or services and the activation of these features, functionality, or services in Your Account will be considered acceptance of the Additional Features. All such Additional Features will be considered incorporated into this Agreement when You or any User authorized as an administrator in Your Account activate the feature, functionality, or service.

**12.3** This Agreement may be modified only by a written agreement signed by both parties.

## **13. SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

## **14. EXPORT COMPLIANCE AND USE RESTRICTIONS**

The Services and other Software or components of the Services that We may provide or make available to You, Users may be subject to U.S. export control and economic sanctions laws. You agree to comply with all such laws and regulations as they relate to access to and use of the Services, Software and such other components by You and Your Users. You shall not access or use the Services if You are located in any jurisdiction in which the provision of the Services, Software or other components is prohibited under U.S. or other applicable laws or regulations (a "Prohibited Jurisdiction") and You shall not provide access to the Services to any government, entity or individual located in any Prohibited Jurisdiction. You represent, warrant and covenant that (a) You are not named on any U.S.

government list of persons or entities prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) You are not a national of, or a company registered in, any Prohibited Jurisdiction; (c) You shall not permit Users to access or use the Services in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) You shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which You or Users are located.

## **15. RELATIONSHIP OF THE PARTIES**

The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship among the Parties.

## **16. NOTICE**

All notices to be provided by AgencyKPI to You under this Agreement may be delivered in writing (a) by nationally recognized overnight delivery service (“Courier”) or U.S. mail to the contact mailing address provided by You on any Order Form; or (b) electronic mail to the electronic mail address provided for Your Account owner. You must give notice to AgencyKPI in writing by Courier or U.S. mail to AgencyKPI, Inc. 813 The High Road, Austin, TX 78746, Attn: Legal Department. All notices shall be deemed to have been given immediately upon delivery by electronic mail; or, if otherwise delivered upon the earlier of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

## **17. GOVERNING LAW**

This Agreement shall be governed by the laws of the State of Texas, without reference to conflict of laws principles. Any disputes under this Agreement shall be resolved in a court of general jurisdiction in Travis County, Texas. You hereby expressly agree to submit to the exclusive personal jurisdiction of this jurisdiction for the purpose of resolving any dispute relating to this Agreement or access to or use of the Services by You or Users.

## **18. ANTI-CORRUPTION**

You agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or Users in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify us at [hello@AgencyKPI.com](mailto:hello@AgencyKPI.com)

## **19. SURVIVAL**

Sections 1, 3.1, 4, 8.6, and 9-20 shall survive any termination of our agreement with respect to use of the Services by You or Users. Termination of such agreement shall not limit a Party’s liability for obligations accrued as of or prior to such termination or for any breach of this Agreement.

## **SECTION 20: LIABILITY FOR PERSONNEL AND THIRD PARTIES.**

AgencyKPI shall be responsible for the conduct of AgencyKPI Group and its or their third party service providers, subcontractors, and Personnel, including, without limitation, any breach of this Agreement.

## **EXHIBIT B: SUPPLEMENTAL TERMS AND CONDITION**

### **SECTION 1: CONSULTING SERVICES**

If Subscriber has engaged AgencyKPI for the provision of Consulting Services as indicated on an Order Form or other written document such as a Statement of Work, the provision of such Consulting Services will be governed by the Agreement, including these Supplemental Terms. Unless otherwise agreed to in a Statement of Work, Subscriber agrees that any Consulting Services must be scheduled for completion by Subscriber within six (6) months following the commencement of the Subscription Term as indicated on the Order Form. In consideration of the foregoing, Subscriber and AgencyKPI, intending to be legally bound, agree to the terms set forth below.

**1. Scope.** All Consulting Services pursuant to the Agreement provided by AgencyKPI to Subscriber will be outlined in one or more mutually agreed-upon and jointly executed Statement of Work(s) (“SOW(s)”) or Order Forms, each incorporated into the Agreement and describing in detail the scope, nature and other relevant characteristics of Consulting Services to be provided.

**2. Retention.** Subscriber hereby retains AgencyKPI to provide the Consulting Services described in one or more SOWs, subject to the terms and conditions set forth in the Agreement. AgencyKPI shall not be obligated to perform any Consulting Services until both Parties have mutually agreed upon and executed an SOW with respect to such Consulting Services. After execution of an SOW, the Consulting Services to be provided under that SOW may only be changed through a change order mutually executed by the Parties (“Change Order”).

### **3. Performance of Consulting Services.**

**3.1** Each SOW will include reasonable details about Consulting Services, including, at a minimum, the Consulting Fees charged and the Consulting Services provided. AgencyKPI and

Subscriber agree to cooperate in good faith to achieve satisfactory completion of the Consulting Services in a timely and professional manner.

**3.2** The Parties will each designate a representative to interface and facilitate the successful completion of the Consulting Services (“Subscriber’s Representative” and “AgencyKPI’s Representative”, respectively). Any Subcontractor (defined below) designated by AgencyKPI to perform any portion of the Consulting Services will designate a representative to interface with Subscriber and AgencyKPI on all matters relating to Subcontractor’s performance of Consulting Services (“Subcontractor’s Representative”).

**3.3** AgencyKPI will perform the Consulting Services through qualified employees and/or non-employee contractors of AgencyKPI (“Subcontractors” and together with AgencyKPI’s employees for the purposes of these Supplemental Terms, “Consulting Services Personnel”). Subscriber agrees to provide, at no cost to AgencyKPI, timely and adequate assistance and other resources reasonably requested by AgencyKPI to enable the performance of the Consulting Services (collectively, “Assistance”). Neither AgencyKPI, nor its Subcontractors, will be liable for any deficiency in performance of Consulting Services to the extent resulting from any acts or omissions of Subscriber, including but not limited to, Subscriber’s failure to provide Assistance as required hereunder.

**3.4** In performing the Consulting Services, AgencyKPI will provide such resources, and utilize Consulting Services Personnel as it deems necessary to perform the Consulting Services or any portion thereof. Subscriber may object to AgencyKPI’s election of Subcontractors by specifying its objection to AgencyKPI, in which case the Parties will cooperate in good faith to appoint another Subcontractor to perform such Consulting Services. AgencyKPI may replace Consulting Services Personnel in its normal course of business, provided that AgencyKPI will be responsible for the performance of Consulting Services by all Consulting Services Personnel.

**3.5** AgencyKPI will control the method and manner of performing all work necessary for completion of Consulting Services, including but not limited to the supervision and control of any Personnel performing Consulting Services. AgencyKPI will maintain such number of qualified Consulting Services Personnel and appropriate facilities and other resources sufficient to perform AgencyKPI’s obligations under the Agreement in accordance with its terms.

**3.6** With Subscriber’s approval, AgencyKPI may enter (“assume into”) Subscriber’s Account as needed to provide the Consulting Services.

**3.7** In the event that Subscriber seeks to change the scope of Consulting Services to be provided under any SOW (including, but not limited to, any changes to the project schedule described in the SOW), Subscriber shall discuss such proposed changes with AgencyKPI. If AgencyKPI elects to perform such changes to the Consulting Services, the Parties shall work together in good faith to execute a Change Order. AgencyKPI shall be entitled to an adjustment in Consulting Fees pursuant to the changes reflected in the Change Order. AgencyKPI shall not be obligated to perform any differing or additional Consulting Services unless the Parties have mutually agreed upon a written Change Order.

**3.8** For SOWs that are deliverable/milestone based, upon delivery of all deliverables or completion of all milestones detailed in the SOW, AgencyKPI shall provide Subscriber with written notice (“Completion Notice”). Thereafter, Subscriber shall have five (5) business days after the date of the Completion Notice to provide AgencyKPI with written notice describing any deliverables that have not been provided or milestones not met. The SOW shall be deemed complete and the deliverables accepted absent Subscriber’s timely written notice of any deliverables or milestones not having been met. For the avoidance of doubt, a Completion Notice shall not be necessary for SOWs that are Time and Materials based. After receipt of such written notice, AgencyKPI shall promptly complete all incomplete deliverables and milestones.

#### **4. Consulting Fees; Payment Terms.**

**4.1** Subscriber will pay AgencyKPI the fees to provide the Consulting Services as detailed or described in an Order Form or SOW (the “Consulting Fees”). Unless agreed upon otherwise in the applicable SOW or Order Form, AgencyKPI shall invoice Subscriber for the Consulting Services provided on a monthly basis. All Consulting Fees are due and payable upon date of invoice, except for Consulting Fees that Subscriber disputes in good faith for reasons articulated in writing by Subscriber within thirty (30) days’ after receiving such invoice.

**4.2** All Consulting Services will be provided on either a time and materials or fixed-fee basis, as indicated in the applicable SOW. Each SOW providing for time and materials based Consulting Fees will contain a detailed estimate of such time and materials necessary for performance of Consulting Services (“T&M Estimate”). AgencyKPI will make a commercially reasonable effort to provide such Consulting Services within such T&M Estimate, up to the number of hours agreed to by the Parties. AgencyKPI will make a reasonable effort to notify Subscriber as soon as practicable if it appears that T&M Estimate may be exceeded. Upon receiving such amended T&M Estimate, Subscriber will assess, and accept or reject the amended T&M Estimate. Unless Subscriber rejects such amended T&M Estimate within five (5) business days of delivery, such amended T&M Estimate shall be deemed accepted by Subscriber and Subscriber shall be liable for all

Consulting Fees associated with Consulting Services delivered in reliance on such amended T&M Estimate. Any amended T&M Estimate which is or is deemed accepted by Subscriber shall be deemed a Change Order.

**4.3** The performance of Consulting Services may be subject to a retainer to be paid in advance by Subscriber upon execution and delivery of the SOW. Such retainer will be applied against Consulting Fees which become payable by Subscriber. AgencyKPI may refuse to perform Consulting Services unless and until such retainer is paid to AgencyKPI.

**4.4** If stated explicitly in an Order Form, in addition to any and all Consulting Fees, Subscriber will reimburse AgencyKPI for any reasonable expenses for travel, lodging, communications, shipping charges and out-of-pocket expenses, including change fees to travel and accommodations resulting from Subscriber's request incurred by AgencyKPI in connection with providing the Consulting Services ("Expenses"). AgencyKPI will provide reasonable documentation for all Expenses as requested by Subscriber. Subscriber shall reimburse AgencyKPI for Expenses within thirty (30) days of submission of the Expenses to Subscriber by AgencyKPI.

**4.5** Any unpaid Consulting Fees or Expenses will become overdue thirty (30) days after payment is due and shall be subject to a late fee of one and a half percent (1.5%) per month for each month where payment is not received.

**4.6** Cancellation/Changes: Any cancellations/changes less than five (5) business days prior to agreed Consulting Services commencement date are subject to forfeiture of Consulting Fees paid and reserved date(s).

**5. Relationship of the Parties.** AgencyKPI is an independent contractor and will maintain complete control of and responsibility for its Consulting Services Personnel, methods and operations in providing Consulting Services. AgencyKPI at no time will hold itself out as an agent, subsidiary or affiliate of Subscriber for any purpose, including reporting to any government authority. The Agreement will not be construed so as to create a partnership, other joint venture or undertaking, or any agency relationship between the Parties, and neither Party shall become liable for any representation, act or omission of the other Party or have the authority to contractually bind the other Party. Any Consulting Fees, Expenses or other amounts paid by Subscriber to AgencyKPI hereunder shall not be considered salary for pension or wage tax purposes and neither AgencyKPI nor its Consulting Services Personnel will be entitled to any fringe benefits, including sick or vacation pay, or other supplemental benefits of Subscriber, unless otherwise required by law. Subscriber shall not be responsible for deducting or withholding from Consulting Fees or Expenses paid for Consulting Services any taxes, unemployment, social security or other such expense unless otherwise required by

law.

## **6. Warranties.**

**6.1** AgencyKPI hereby represents and warrants that:

(a) the Consulting Services provided pursuant to the Agreement will be performed in a timely and professional manner by AgencyKPI and its Consulting Services Personnel, consistent with generally-accepted industry standards; provided that Subscriber's sole and exclusive remedy for any breach of this warranty will be, at AgencyKPI's option, re-performance of the Consulting Services or termination of the applicable SOW and return of the portion of the Consulting Fees paid to AgencyKPI by Subscriber for the nonconforming portion of the Consulting Services; and

(b) it is under no contractual or other restrictions or obligations which are inconsistent with the execution of the Agreement, or, to its best knowledge, which will interfere with its performance of the Consulting Services.

**6.2** The Parties hereby agree that:

CUSTOM APPLICATIONS THAT RESIDE WITHIN THE AGENCYKPI SERVICE FRAMEWORK, INTEGRATIONS, AND PROGRAMMING SCRIPTS THAT ARE IDENTIFIED AND BEING DELIVERED UNDER A SOW (COLLECTIVELY, "CUSTOMIZED DELIVERABLES") SHALL BE MADE IN ACCORDANCE WITH THE APPLICABLE REQUIREMENTS SET FORTH IN THE DOCUMENTATION. EXCEPT FOR THE FOREGOING WARRANTY, AGENCYKPI EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING CUSTOMIZED DELIVERABLES, INCLUDING, WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, COMPATIBILITY, SECURITY OR ACCURACY, AT LAW OR OTHERWISE, OR FOR ANY FAILURE OF THE CUSTOMIZED DELIVERABLES TO PERFORM DESPITE ANY OTHER WARRANTIES OR GUARANTEES, CAUSED BY CUSTOMIATIONS OR MODIFICATIONS MADE BY CUSTOMER IN A MANNER NOT INSTRUCTED BY AGENCYKPI. AGENCYKPI DOES NOT WARRANT THAT SUBSCRIBER'S OR ANY THIRD PARTY'S ACCESS TO OR USE OF THE CUSTOMIZED DELIVERABLES SHALL BE UNINTERRUPTED OR ERROR-FREE, OR THAT IT WILL MEET ANY PARTICULAR CRITERIA OF PERFORMANCE OR QUALITY. FURTHER, AGENCYKPI EXPRESSLY DISCLAIMS ANY RESPONSIBILITY TO SUPPORT OR MAINTAIN CUSTOMIZED DELIVERABLES AND WILL NOT DO SO UNLESS OTHERWISE AGREED BY THE PARTIES. THIS DISCLAIMER OF WARRANTY AND LIABILITY IS EXPRESSLY MADE IN ADDITION TO ANY DISCLAIMERS MADE BY AGENCYKPI OR ITS AFFILIATES UNDER THE AGREEMENT WITH RESPECT

TO THE SERVICES AS APPLICABLE TO SUBSCRIBER AND ANY THIRD PARTY'S USE OF THE SERVICES.

Information. For avoidance of doubt, Subscriber's Confidential Information and Service Data shall not be included in any of the above defined terms.

### **7. Rights to Deliverables; Ownership.**

**7.1** The Parties hereby agree that the specified Consulting Services to be completed pursuant to any SOW primarily involve the configuration of Subscriber's subscription to a Service and integration of Subscriber data with and into one or more Services using Pre-existing Technology, Developed Technology, and/or Generic Components (each as defined below). Unless otherwise expressly specified in a SOW, no deliverable provided in connection with the Consulting Services provided pursuant to the Agreement shall constitute a "Work Made For Hire" under the Agreement. In the event that any such deliverable is held to be a Work Made For Hire, Subscriber hereby assigns to AgencyKPI all right, title and interest therein or to the extent such assignment is not permitted or effective, hereby grants to AgencyKPI a perpetual, irrevocable, exclusive, worldwide, fully-paid, sub-licensable (through multiple layers), assignable license to any such deliverable. Additionally, AgencyKPI shall have a perpetual, irrevocable, non-exclusive, worldwide, fully-paid, sub-licensable (through multiple layers), assignable license to incorporate into the Pre-existing Technology, Developed Technology, and/or Generic Components or otherwise use any suggestions, enhancement requests, recommendations or other feedback AgencyKPI receives from Subscriber.

**7.2** Without limiting the foregoing, AgencyKPI and its licensors reserve and retain ownership of all Preexisting Technology, Developed Technology and Generic Components (each as defined below), and AgencyKPI hereby grants to Subscriber a non-exclusive, fully-paid, limited license to use Pre-existing Technology, Developed Technology and Generic Components solely in connection with Subscriber's use of the Service(s). "Pre-existing Technology" means all of AgencyKPI's inventions (including those of AgencyKPI's Affiliates) (whether or not patentable), works of authorship, designs, know-how, ideas, concepts, information and tools in existence prior to the commencement of the Consulting Services. "Developed Technology" means ideas (whether or not patentable) know-how, technical data, techniques, concepts, information or tools, and all associated Intellectual Property Rights thereto developed by AgencyKPI and its Affiliates or their Consulting Services Personnel in connection with providing Consulting Services pursuant to the Agreement that derive from, improve, enhance or modify AgencyKPI's Pre-existing Technology. "Generic Components" means all inventions (whether or not patentable), works of authorship, designs, know-how, ideas, information and tools, including without limitation software and programming tools developed by AgencyKPI or its Consulting Services Personnel in connection with providing Consulting Services generally to support AgencyKPI's product and/or service offerings and which can be so used without use of Subscriber's Confidential