



Version: 1.1 dated July 24, 2023

TERMS AND CONDITIONS

These General Terms and Conditions including any addenda or other terms referenced herein (the “**Agreement**”), are effective on the date listed on any applicable Quote(s) (the “**Effective Date**”), by and between the applicable DRB Contracting Entity(ies) (collectively “**DRB**”) and you, or the entity(ies) you represent, as set out in the Quote(s) (collectively “**Customer**”) (each a “**Party**”, collectively the “**Parties**”).

1. This Agreement specifies the terms and conditions upon which Customer receives the DRB Solution, including access to the Subscription Solution, the purchase of Hardware, a license to Software and/or receipt of the Services as specified in the Quote(s)

2. **Definitions.**

“**Acceptable Use Policy**” means the Acceptable Use Policy found, which may be amended from time to time [here](#).

“**Access Credentials**” means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Subscription Solution.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

“**Affiliate**” means any corporation, partnership or other entity that is under the direct or indirect control of the applicable Party or its respective successors and assigns. For purposes of the foregoing, “**control**” shall exist whenever there is an ownership, profits, voting or similar interest (including any right or option to obtain such an interest) representing at least 51% of the total interests of the pertinent entity then outstanding.

“**Authorized User**” means Customer’s employees, consultants, contractors, and agents (a) who are authorized by Customer’s administrator to access and use the DRB Solution under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the DRB Solution has been purchased hereunder; which, for the avoidance of doubt shall not include a DRB Competitor or any employees, consultants, contractors or agents of a DRB Competitor.

“**API**” means an application program interface.

“**API Terms of Use**” means the API Terms of Use found, which may be amended from time to time, [here](#).

“**Customer Data**” means information, including Personal Information, data, and other content, in any form or medium, that is collected, uploaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the DRB Solution or that incorporates or is derived from the Processing of such information, data, or content by or

through the DRB Solution. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the Subscription Solution by or on behalf of Customer or any Authorized User.

“**Customer Systems**” means Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

“**Data Processing Addendum**” or “**DPA**” means the addendum containing terms and conditions relating to the Processing of Personal Information as set out [here](#).

“**Documentation**” means any manuals, instructions, or other documents or materials that DRB provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the DRB Solution, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“**DRB Contracting Entity**” means DRB Systems LLC or its Affiliate as set out in the Quote.

“**DRB Competitor**” means any provider or operator of a product and/or service similar to any of the DRB Solutions.

“**DRB Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by DRB or its designee to disable Customer’s or any Authorized User’s access to or use of the Subscription Solution automatically with the passage of time or under the positive control of DRB or its designee.

“**DRB Materials**” means the Subscription Solution, Software, Hardware, Services, Documentation, and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by DRB or any subcontractor in connection with the DRB Solution or otherwise comprise or relate to the DRB Solution or DRB Systems. For the avoidance of doubt, DRB Materials include Resultant Data and any information, data, or other content derived from Customer’s access to or use of the DRB Solution but does not include Customer Data.

“**DRB Solution**” means the combination of the Subscription Solution, Hardware, Software, and/or Services as set out in the Quote.

“**DRB Systems**” means the information technology infrastructure used by or on behalf of DRB in providing the Subscription Solution, including all computers, software,

hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by DRB or through the use of third-party services.

“Harmful Code” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Subscription Solution as intended by this Agreement. Harmful Code does not include any DRB Disabling Device.

“Hardware” means point of sale terminals, tunnel controllers, product sub-assemblies, semi-conductor chips, firmware, spare parts, and other such DRB product offerings as specifically set out in the Quote.

“Intellectual Property Rights” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“Losses” means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Quote” means DRB’s proposal to Customer for a DRB Solution, which references this Agreement as being incorporated, as accepted by Customer.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“Personal Information” means all Personally Identifiable Information and/or Personal Data (as defined under applicable law), in whatever form or medium, regardless of whether the Personally Identifiable Information and/or Personal Data is supplied to (by transfer or access) and/or produced or generated by or on behalf of a Party in connection with the Agreement including as set out in Appendix 1 of the DPA, as applicable.

“Process” means to take any action or perform any operation or set of operations that the Subscription Solution is capable of taking or performing on any data, information, or other content. **“Processing”** and **“Processed”** have correlative meanings.

“Representatives” means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors,

consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

“Resultant Data” means Customer Data that has been aggregated and/or anonymized and data and information related to Customer’s use of the DRB Solution that is used by DRB in an aggregate or anonymized manner, including, without limitation, to compile statistical and performance information related to the provision and operation of the DRB Solution.

“Services” means DRB service offerings as set out in the Quote such as installation, integration with Customer’s systems and non-DRB provided systems and software, graphics, screen designs, marketing programs, Customer specific training, and engineering and software initiatives.

“Software” means the executable, object-code version of the desktop and/or mobile application software offering described in the Quote.

“Subscription Solution” means DRB’s proprietary software-as-a-service offering and any API made available by DRB designed to interoperate and/or communicate with such software-as-a-service, in each case as described in the Quote and that may be changed, modified or updated from time to time at DRB’s sole discretion to reflect changes in the technology, services, availability of Third-Party Materials, and/or industry practices or for other purposes.

“Support Description” mean a description of the standard support services for the Subscription Solution set out [here](#), which DRB may amend or withdraw from time to time in its sole discretion after giving the Customer prior written notice of the same.

“Term” has the meaning given to it in Section 11.1.

“Third-Party Materials” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the DRB Solution that are not proprietary to DRB.

3. DRB Solution.

3.1 Hardware. If the DRB Solution includes the provision of Hardware, the [Hardware Addendum](#) is hereby incorporated and shall apply to the Parties.

3.2 Software. If the DRB Solution includes the licensing of Software, the [Software Addendum](#) is hereby incorporated and shall apply to the Parties.

3.3 Services. If the DRB Solution includes the provision of Services, the [Services Addendum](#) is hereby incorporated and shall apply to the Parties.

3.4 Access and Use. Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, DRB hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 14.5), revocable, limited right to access and use the Subscription Solution and related Software during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer’s internal use, provided that internal use shall include use in connection with the Customer product identified in the Quote, which the Parties agree may be made available to Customer’s customers, by way of example as part of a web or mobile application,

provided such customer is not a DRB Competitor and all such use shall be in accordance with DRB provided Subscription Solution and Documentation and not in violation of Section 4.1 below. DRB shall provide to Customer's administrator the Access Credentials as of the Effective Date.

3.5 Documentation License. DRB hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 14.5) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the DRB Solution.

3.6 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the Parties: (a) DRB has and will retain sole control over the operation, provision, maintenance, and management of the Subscription Solution and DRB Systems. For the avoidance of doubt, DRB shall be free to change, modify and update any Subscription Solution and Documentation, provided that DRB shall provide reasonable advance notice to Customer regarding any such change, modification or update that materially impacts Customer's use of the Subscription Solution.

3.7 Suspension or Termination of Subscription Solution. DRB may, directly or indirectly, through any lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the Subscription Solution, without incurring any resulting obligation or liability, if: (a) DRB receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires DRB to do so; or (b) DRB believes, in its good faith and reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with any material term of this Agreement, or accessed or used the Subscription Solution beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement included in the Documentation; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with the Subscription Solution; (c) this Agreement expires or is terminated; (d) DRB or Customer is subject to any security breach, other similar incident, or there exists a threat thereof; or (e) such suspension, termination, or denial is necessary or desirable for the security, integrity, or confidentiality of the Subscription Solution or Customer Data. This Section 3.7 does not limit any of DRB's other rights or remedies, whether at law, in equity, or under this Agreement.

3.8 Standard Support for Subscription Solution. DRB shall use commercially reasonable efforts to provide the Subscription Solution 24 hours a day, seven days a week, except for: (a) planned maintenance carried out, to the extent practicable, between the hours of 10 PM Saturday – 4 AM Sunday (CST) subject to DRB providing Customer with prior notice of any such maintenance via email; and (b) unscheduled or emergency maintenance, provided that DRB has given Customer at least six (6) hours notice in advance, where practicable. For the avoidance of doubt, the Parties agree DRB shall provide no

credits, refunds, or rebates for any unavailability of the Subscription Solution.

3.9 Additionally, DRB shall not be deemed responsible for any unavailability of the Subscription Solution due to: (i) Customer's equipment, software, facility, databases, or operator error not caused by DRB or the DRB Solution; (ii) an interruption in Customer's connection to the internet not caused by DRB or the DRB Solution; (iii) a Force Majeure Event; or (iv) third party failures, omissions, or unavailability.

3.10 DRB will, for no extra cost, use commercially reasonable endeavors to make available to the Customer standard support services for the Subscription Solution as set forth in the Support Description. The Customer may purchase enhanced support services separately at DRB's then current rates.

4. Use Restrictions; Service Usage.

4.1 Customer shall not, and shall not permit any other Person to access or use the Subscription Solution or Documentation (and shall use commercially reasonable efforts to prevent another Person from accessing or using the Subscription Solution or Documentation) except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not:

(a) use the Subscription Solution in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the Subscription Solution or any operating system;

(b) access or use the Subscription Solution or Documentation for purposes of competitive analysis of the Subscription Solution or Documentation, the development, provision, or use of a competing software service or product or any other purpose that is to DRB's detriment or commercial disadvantage; or

(c) use the Subscription Solution or Documentation in a way that could damage, disable, overburden, impair or compromise DRB's systems or security or interfere with other users.

4.2 Customer shall, and shall ensure that its Authorized Users shall, comply with the Acceptable Use Policy at all times when accessing and using the Subscription Solution and related Software.

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 4.1, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Subscription Solution and Documentation and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify DRB of any such actual or threatened activity.

5. Customer Obligations.

5.1 Customer Systems and Cooperation.

Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Documentation all Customer Systems on or through which the DRB Solution is accessed or used; and (b) provide all cooperation and assistance as DRB may reasonably request to enable DRB to exercise its rights and perform its obligations under and in connection with this Agreement.

5.2 Effect of Customer Failure or Delay. DRB is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

5.3 Third Party Licenses. The Parties shall cooperate to obtain, at Customer's cost, licenses to any third-party technology necessary for delivery of the DRB Solution as communicated to Customer in advance of the Effective Date. Customer acknowledges that a high-speed Internet connection is required at all times in order to use the Subscription Solution properly, and DRB shall be excused without liability from failing to provide the Subscription Solution to the extent such failure is due to a high-speed internet connection not being in operation.

5.4 Export Control. Customer shall not export, directly or indirectly, any technical data acquired from DRB under this Agreement (or any products, including Software and Hardware, incorporating any such data) in breach of any applicable laws or regulations, including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

5.5 Environment Regulations. Customer shall comply with all environmental laws, regulations and standards.

6. Security, Customer Data and Data Protection.

6.1 DRB Systems and Security Obligations. DRB will employ technical and organizational measures as described in the relevant appendix of the Data Processing Addendum.

6.2 Data Breach Procedures. DRB will maintain a data breach response plan in accordance with its security measures and shall implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan).

6.3 Access to Customer Data. Customer's Authorized Users may have the ability to access, monitor, use, or disclose data available to or from end users within the DRB Solution. Customer will obtain and maintain all required consents from end users to allow Customer's, and DRB's access, monitoring, use and disclosure of this data in order for DRB to provide the DRB Solution and as provided herein.

6.4 Prohibited Data. Customer acknowledges that the Subscription Solution is not designed with security and access management for Processing special categories or sensitive categories of personal data/personally identifiable information (as these terms are used in applicable data protection law) ("**Prohibited Data**"). Notwithstanding the foregoing, the Parties

acknowledge certain categories of sensitive personal information (as defined under the California Consumer Privacy Act as amended by the California Privacy Rights Act), e.g., driver license number, account log-in credentials when associated with payment information, etc., as specifically identified in the Data Protection Addendum shall not be considered Prohibited Data. Customer shall not, and shall not permit any Authorized User or other Person to, provide any Prohibited Data to DRB Personnel, or Process any Prohibited Data through, the DRB Solution. Customer is solely responsible for reviewing all Customer Data and shall ensure that no Customer Data constitutes or contains any Prohibited Data.

6.5 Customer Control and Responsibility.

Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the DRB Solution; (c) the operation, maintenance, and management of, and all access to and use of the Customer's Systems; (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the DRB Solution and Documentation directly or indirectly by or through the Customer Systems or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

6.6 Access and Security. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the DRB Solution; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Subscription Solution.

6.7 API Limitations. API access and use limitations apply to the use of the DRB Solution and are set forth in the API Terms of Use and other applicable API documentation.

6.8 Data Backup. DRB HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

6.9 Data Protection. If DRB Processes any Personal Information on behalf of the Customer via the DRB Solution, the Data Processing Addendum is hereby incorporated into this Agreement.

7. Fees and Payment.

7.1 Fees. Customer shall pay DRB the fees set forth in the Quote ("**Fees**") in accordance with this Section 7.

7.2 Reimbursable Expenses. Customer shall reimburse DRB for any out-of-pocket expenses incurred by DRB in connection with providing the DRB Solution, to the extent such expenses are not already included in the Fees ("**Reimbursable Expenses**").

7.3 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any

federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on DRB's income.

7.4 Payment. Customer shall pay all Fees and Reimbursable Expenses on or prior to the due date(s) set forth in the Quote. If no due date is set out in the Quote, Customer shall pay all Fees and Reimbursable Expenses within twenty (20) days of receiving a written invoice from DRB. Unless otherwise stated, all Fees and Reimbursable Expenses shall be paid in US Dollars.

7.5 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available: (a) DRB may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (b) Customer shall reimburse DRB for all costs incurred by DRB in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (c) if such failure continues for thirty (30) days following written notice thereof, DRB may suspend Customer's and its Authorized Users' access to the DRB Solution (including firmware in the Hardware where applicable) until all past due amounts and interest thereon have been paid and/or terminate this Agreement, in each case without incurring any obligation or liability to Customer or any other Person by reason of such suspension or termination.

7.6 No Deductions or Setoffs. All amounts payable to DRB under this Agreement shall be paid by Customer to DRB in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

7.7 Fee Increases. DRB may increase Fees no more than once annually, after the first contract year of the Term, including any contract year of any renewal term, by providing written notice to Customer at least sixty (60) calendar days prior to the commencement of such renewal term.

7.8 Audits. DRB or its agent may, on thirty (30) days' notice, inspect and audit Customer's use of the DRB Solution under this Agreement at any time during the Term. All audits will be conducted during regular business hours, and no more frequently than twice in any twelve (12) month period. Customer shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of DRB with respect to such audit. DRB shall only examine information directly related to Customer's use of the DRB Solution. If the audit determines that Customer has underpaid for the DRB Solution, Customer shall pay to DRB within fifteen (15) days all amounts due plus interest on such amounts as calculated pursuant to Section 7.5. If the audit determines that such excess use equals or exceeds 5% of Customer's permitted level of use, Customer shall also pay to DRB all reasonable costs incurred by DRB in conducting the audit within fifteen (15) days of receipt of DRB's invoice for the same.

8. Confidentiality.

8.1 "Confidential Information" means any material or information that a Party considers confidential or that otherwise relates to the Party's past, present and future

research, development, business activities, products, software, services, technical knowledge, designs, methodologies, business plans or forecasts, finances, pricing, marketing plans, customers, prospects or other affairs and has been identified as confidential or would be understood to be confidential by a reasonable person under the circumstances. Confidential Information does not include information (i) previously known to the receiving Party, before it was received from the disclosing Party without an obligation not to disclose such information, (ii) independently developed by the receiving Party without use of the Confidential Information, (iii) acquired by the receiving Party from a third party that was not, to the receiving Party's knowledge, under an obligation to the disclosing Party not to disclose such information, or (iv) that is or becomes publicly available through no breach of this Agreement by the receiving Party.

8.2 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party shall have access to the other Party's Confidential Information. Both Parties agree that, as between the Parties, Confidential Information is owned by the disclosing Party.

8.3 Mutual Confidentiality Obligations. Each Party agrees: (i) to use the Confidential Information of the other Party only for the purposes described herein; (ii) that such Party shall not reproduce the Confidential Information of the other Party except as necessary to comply with this Agreement and shall hold in confidence and protect such Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party shall create any derivative work from the other Party's Confidential Information; (iv) to restrict access to the other Party's Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

8.4 Required Disclosure. In the event that the receiving Party becomes legally compelled by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar judicial or administrative process to disclose any of the disclosing Party's Confidential Information, the receiving Party shall, unless prohibited by Law, provide the disclosing Party with prompt prior written notice of such requirement, and, to the extent reasonably practicable, cooperate with the disclosing Party (at the disclosing Party's expense) in any efforts by the disclosing Party to obtain a protective order or similar remedy, as the case may be, to cause such Confidential Information not to be disclosed, including interposing all available objections thereto, such as objections based on settlement privilege. The receiving Party shall furnish only that portion of the Confidential Information that has been legally compelled and shall cooperate with the disclosing Party (at the disclosing Party's expense) in any efforts by the disclosing Party to obtain assurance that confidential treatment will be accorded such disclosed Confidential Information.

9. Intellectual Property Rights.

9.1 DRB Materials. All right, title, and interest in and to the DRB Materials, including all Intellectual Property Rights therein, are and will remain with DRB and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the DRB Materials, except as expressly set forth in this Agreement in each case subject to any conditions or restrictions set out in this Agreement. All other rights in and to the DRB Materials are expressly reserved by DRB.

9.2 Resultant Data. In furtherance of the foregoing, and to the extent such right, title and interest does not automatically vest in DRB as a matter of Law, Customer hereby unconditionally and irrevocably assigns to DRB all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights therein or thereto. Additionally, for the sake of clarity, the Parties agree Resultant Data does not constitute Personal Information and is not subject to the DPA.

9.3 Customer Data. As between Customer and DRB, 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 relating thereto and hereby grants DRB a non-exclusive, non-transferable, royalty-free license to use the Customer Data for the purpose of providing the DRB Solution and creating the Resultant Data.

9.4 Feedback. Any suggestions, enhancement requests, recommendations, or other feedback (collectively, "**Feedback**") provided to DRB by Customer or its Authorized Users (and all Intellectual Property Rights therein or thereto) shall be owned by DRB, and Customer hereby unconditionally and irrevocably assigns to DRB all right, title, and interest in and to such Feedback.

10. Representations and Warranties.

10.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

10.2 Additional DRB Representations, Warranties, and Covenants. DRB represents, warrants, and covenants to Customer that the Subscription Solution will perform substantially in accordance with the Documentation and with reasonable skill and in a professional manner. If the Subscription Solution does not conform to the foregoing warranty, DRB will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the

Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in this Section 10.2.

10.3 Additional Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to DRB that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by DRB and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, any privacy or other rights of any third party or violate any applicable Law.

10.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 10.1 AND SECTION 10.2 OR THE APPLICABLE ADDENDA. THE DRB SOLUTION IS PROVIDED "AS IS," "WHERE IS" and "WITH ALL FAULTS". DRB SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, DRB MAKES NO WARRANTY OF ANY KIND THAT THE DRB SOLUTION OR DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

11. Indemnification.

11.1 DRB Indemnification. DRB shall indemnify, defend, and hold harmless Customer from and against any and all Losses incurred by Customer resulting from any Action by a third party ("**Claim(s)**") due to claim(s) of security breach directly attributable to DRB's failure affecting Customer's Personal Information or to, the extent arising out of or in connection with a Claim alleging that Customer's authorized use of the DRB Solution(s) in accordance with applicable product documentation and the terms of this Agreement infringes a U.S. patent, copyright or trademark right of a third party or misappropriates such third party's trade secrets. DRB shall have no liability under this Section 11.1 to the extent arising from: any (a) Third-Party Materials or Customer Data; (b) access to or use of the DRB Solution in combination with any product, device, hardware, system, software, network, or other materials or service not provided by DRB or specified for Customer's use in the Documentation; (c) modification of the DRB Solution other than by DRB or with DRB's written approval in accordance with DRB's written specification; (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of DRB; or (e) act, omission, or other matter described in Section 11.2(a), Section 11.2(b),

Section 11.2(c), Section 11.2(d) or Section 11.2(e), whether or not the same results in any Action against, or Losses by, any DRB Indemnitee.

11.2 Customer Indemnification. Customer shall indemnify, defend, and hold harmless DRB from and against any and all Losses incurred by DRB resulting from any Action by a third party that arises out of or results from, or is alleged to arise out of or result from: any (a) Customer Data, including any Processing of Customer Data by or on behalf of DRB in accordance with this Agreement; (b) other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including DRB's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User; (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or (d) negligence, willful misconduct or fraud by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User; (e) any violation of laws or regulations including but not limited to privacy laws by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User.

11.3 Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as the case may be. The Party seeking indemnification (the "**Indemnitee**") shall provide all available information and reasonable assistance to the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee (including making any admission or agreeing to any finding of wrongdoing, violation of Law or violation of the rights of any third party) without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Section 11.3, except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.

11.4 Mitigation. If any of the DRB Solution is, or in DRB's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the DRB Solution is enjoined or threatened to be enjoined, DRB may, at its option and sole cost and expense:

(a) obtain the right for Customer to continue to use the DRB Solution under substantially similar terms and conditions as contemplated by this Agreement;

(b) modify or replace the DRB Solution, in whole or in part, to seek to make the DRB Solution (as so modified or replaced) non-infringing, while providing substantially similar features and functionality, in which case such modifications or replacements will constitute the DRB Solution, as applicable, under this Agreement; or

(c) by written notice to Customer, terminate this Agreement with respect to all or part of the DRB Solution, and require Customer to immediately cease any use of the DRB Solution or any specified part or feature thereof.

11.5 SOLE REMEDY. THIS SECTION 11 SETS FORTH CUSTOMER'S SOLE REMEDIES AND DRB'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE DRB SOLUTION OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

12. Limitations of Liability.

12.1 LIMITATIONS. THE CUMULATIVE LIABILITY OF DRB TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID TO DRB BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM. THE FOREGOING MONETARY CAP ON LIABILITY SHALL APPLY TO ALL CLAIMS OR CAUSES OF ACTION OTHER THAN (I) A PARTY'S DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT (WHICH IS SUBJECT TO SECTION **Error! Reference source not found.**); AND (II) FRAUD, OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

12.2 THE CUMULATIVE LIABILITY OF DRB TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO DRB'S DEFENSE AND INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID TO DRB BY THE CUSTOMER UNDER THIS AGREEMENT IN THE TWENTY-FOUR (24) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM.

12.3 IN NO EVENT SHALL DRB OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER FOR ANY EXEMPLARY, INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST SALES, BUSINESS OR PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR ACCESS THERETO, LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING STRICT LIABILITY, NEGLIGENCE OR OTHERWISE) OR LEGISLATION OR REGULATION, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES IS FORESEEABLE, AND EVEN IF DRB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL DRB BE LIABLE FOR ANY LOSSES DUE TO FAILURE IN CUSTOMER'S ENVIRONMENT OR NETWORK SECURITY.

12.4 NOTWITHSTANDING ANY OTHER PROVISION HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF CASH, REVENUES, OR OTHER MONEY, FUNDS, OR VALUABLES RESULTING FROM ANY MISDISPENSING OF FUNDS, OR CRIMINAL OR MISCHIEVOUS ACTS OCCURRING ON OR AT ANY EQUIPMENT OR AT AN EQUIPMENT LOCATION.

12.5 Essential Basis. The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties, and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including, without limitation, the economic terms, would be substantially different.

13. Term and Termination.

13.1 Term. This Agreement shall become effective upon the Effective Date and shall continue for the period set out in the Quote (the “**Initial Term**”) and thereafter shall renew automatically for successive one year periods until terminated in accordance with this Section 13, or until either Party provides written notice of its intent not to renew at least sixty (60) days prior to the end of the then-current Initial Term or renewal term, as applicable (the “**Term**”).

13.2 Termination for Breach. Either Party may terminate this Agreement upon written notice if the other Party breaches a material term of this Agreement and thereafter (i) in the case of a breach resulting from non-payment of amounts due hereunder, has failed to pay such amounts within ten (10) days after receiving written notice thereof; or (ii) has failed to cure any other breach within thirty (30) days after receiving written notice thereof (provided that such thirty (30)-day period shall be automatically extended as long as the Party is exercising diligent efforts to cure such breach).

13.3 Effect of Termination or Expiration. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents, and authorizations granted by either Party to the other hereunder will immediately terminate and Customer shall cease using or accessing any of the DRB Solution subject to such rights, licenses, consents, and authorizations;

(b) DRB shall immediately cease all use of any Customer Data and Customer’s Confidential Information and on Customer’s written request within sixty (60) days of the Termination date (i) promptly return to Customer all Customer Data and Customer’s Confidential Information; or (ii) permanently erase all Customer Data and Customer’s Confidential Information from all DRB Systems directly or indirectly controlled by DRB, provided that, for clarity, DRB’s obligations under this Section 13.3(b) do not apply to any Resultant Data;

(c) Customer shall immediately cease all use of any DRB Confidential Information and (i) promptly return to DRB, or at DRB’s written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any DRB Confidential Information; and (ii) permanently erase all DRB’s Confidential Information from all Customer Systems;

(d) notwithstanding anything to the contrary in this Agreement, with respect to information and

materials then in its possession or control: (i) a receiving Party may retain a disclosing Party’s Confidential Information; (ii) DRB may retain Customer Data; in the case of each of subclause (i) and (ii) in its then current state and solely to the extent and for so long as required by applicable Law; (iii) DRB may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (iv) all information and materials described in this Section 13.3(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

(e) DRB may disable all Customer and Authorized User access to the DRB Materials;

(f) if Customer terminates this Agreement pursuant to Section 13.2 or DRB terminates this Agreement pursuant to Section 11.4(c), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and DRB will refund to Customer unused Fees paid in advance for access to the Subscription Solution that DRB has not delivered as of the effective date of termination; and

(g) if DRB terminates this Agreement pursuant to Section 13.2, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of DRB’s invoice.

13.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 4.1, Section 8, Section 9, Section 10.4, Section 11, Section 12, Section 13.3, this Section 13.4, and Section 14.

14. Miscellaneous.

14.1 Cooperation. Customer shall fully and completely cooperate (at Customer’s sole expense) with DRB in connection with any matters related to the provision or receipt of the DRB Solution. On DRB’s reasonable request, Customer shall execute and deliver all such documents and instruments, and take all such further actions, as may be necessary for DRB to satisfy and perform its obligations hereunder. DRB shall be entitled to rely, without inquiry, upon the genuineness, validity or truthfulness of any document, instrument or other writing presented by Customer or its Authorized Users in connection with this Agreement.

14.2 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to conflict of law rules. For any Action between the Parties arising from or related to this Agreement, the Parties hereby submit to and consent to the exclusive jurisdiction of the State of Ohio and agree such Action shall be conducted exclusively in the state and federal courts located in the State of Ohio. The predominantly prevailing Party in any action under this Agreement shall be entitled to recover reasonable attorneys’ fees and related costs.

14.3 Force Majeure. Neither Party shall be liable to the other for any failure or delay in the performance of its obligations under this Agreement (other than with respect to payment obligations), to the extent such failure or delay is caused by a Force Majeure Event. Upon the occurrence of a Force Majeure Event, (a) the non-performing Party shall promptly notify the other Party of the circumstances hindering its performance and of its plans and efforts to implement a work-around, (b) the non-performing Party shall be excused from any further performance or observance of the affected obligation(s) for as long as such circumstances prevail, and (c) the non-performing Party shall use commercially reasonable efforts to attempt to recommence performance or observance. The non-performing Party shall also notify the other Party promptly when the Force Majeure Event has abated. The term “**Force Majeure Event**” shall mean an event or condition that is caused by or results from any (i) act of war, insurrection, terrorism, riot or rebellion, (ii) Law, demand, seizure or requirement of any governmental authority (including court of law), quarantine, embargo or any other similar unusual action of a governmental authority, (iii) extraordinary element of nature or act of God, fire, flood, or storm, (iv) strike, lockout or other labor trouble, delays by suppliers or carriers, shortages of fuel, power, raw materials or components, (v) pandemic or epidemic, or (vi) any other event or condition outside the reasonable control of the Party subject to such failure or delay.

14.4 Notices. All notices required by or relating to this Agreement shall be in writing and shall be sent by registered mail, return receipt requested, or via an internationally recognized express mail carrier (postage prepaid, return receipt requested) to the contact and address for each Party set forth in the Quote or addressed to such other address as that Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by electronic mail, if the sender also mails a hard copy of such notice to the aforementioned address.

14.5 Assignment. This Agreement will be binding upon and will inure to the benefit of each Party and each Party's respective successors and permitted assigns or transferees. Neither Party shall assign or transfer this Agreement, or any of its rights or obligations hereunder, to any third party without the prior written consent of the other Party. Notwithstanding the foregoing, DRB shall not be required to obtain the prior written consent of Customer to assign or transfer this Agreement in the event of a Change in Control, provided that the acquirer(s) assumes DRB's obligations hereunder after such Change of Control. For the purposes of this paragraph, “**Change in Control**” means (a) a merger or consolidation involving DRB, (b) a transaction or series of related transactions in which a third party, together with its affiliates, becomes the beneficial owner of fifty percent (50%) or more of the combined voting power of the outstanding securities of DRB, or (c) the sale of all or substantially all of the assets of DRB. Any attempted assignment in contravention of this Section 14.5 will be null and void.

14.6 Independent Contractors. Customer and DRB acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture,

partnership, employment relationship, or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.

14.7 Amendment. DRB may update this Agreement from time to time, typically in connection with new or updated features. If DRB makes a material change to any applicable terms, then DRB will notify Customer by either sending an email to the notification email address or posting a notice in the Administrator's instance of Customer's account dashboard and require Customer to read, explicitly consent and agree to such changes to continue use of the Service. If Customer does not agree to the change, Customer must so notify DRB in accordance with the notification obligations in Section 14.4 within thirty (30) days of the notice of change and discontinue use of the Service until resolution. If Customer notifies DRB as required, then DRB may, in its sole and exclusive discretion: (i) allow Customer to remain governed by the Agreement in effect immediately prior to the change; or (ii) work in good faith with Customer to develop an alternative solution. In the aforementioned instances, upon renewal of the affected Service, it will be renewed under DRB's then current Agreement.

14.8 Waiver. No waiver under this Agreement shall be binding unless set forth in writing and duly executed by the Party against whom enforcement of such waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described therein and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Any delay by either Party in exercising any right hereunder shall not be deemed a waiver of that right.

14.9 Severability. If any provision, or portion thereof, of the Agreement is held unenforceable or invalid by a court of competent jurisdiction, the enforceability of the remaining provisions shall not be affected, and the affected provision(s) shall be deemed revised to the extent permitted by a court of competent jurisdiction with respect to the original intent of the provision(s).

14.10 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary of this Agreement or have any right or cause of action hereunder.

14.11 Non-Solicitation. Customer will not, without the prior written consent of DRB (which may be given or withheld at DRB's absolute discretion), solicit, offer work to, employ, or contract with, directly or indirectly, on its own behalf or on behalf of its Affiliates, any of DRB's Personnel or the Personnel of its Affiliates during the Term of this Agreement or during the twelve (12) months thereafter. For purposes of this section, “**Personnel**” includes any individual that DRB employs, engages, or has employed or engaged as a partner, employee, consultant or contractor with whom Customer comes into contact in connection with this Agreement.

14.12 Headings; Interpretation. The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement. The terms “hereof,” “herein” and “hereunder” and terms of similar import will refer to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, exhibit and addenda references contained in this

Agreement are references to Sections, clauses, exhibits and addenda in or attached to this Agreement, unless otherwise specified. Each defined term used in this Agreement has a comparable meaning when used in its plural or singular form. Each gender-specific term used in this Agreement has a comparable meaning whether used in a masculine, feminine or gender-neutral form. Each reference in this Agreement to any Law will be deemed to include such Law as it hereafter may be amended, supplemented or modified from time to time and any successor thereto, unless such treatment would be contrary to the express terms of this Agreement. Unless expressly stated otherwise, wherever the word “include,” “includes” or “including” is used in this Agreement, it shall be deemed to be followed by the words “without limitation” regardless of whether such words are included in some contexts but not others.

14.13 Publicity. All communication, publicity, information concerning this Agreement, its contents and/or its execution are strictly prohibited in any written or oral announcement, press release or other public release of information, catalog or reference list on any media unless previously authorized in writing by either party. Notwithstanding the foregoing, DRB shall be entitled to include Customer’s name and logo in any presentation, marketing materials, and/or customer lists (including, without limitation, customer lists

posted on DRB web sites). Customer acknowledges that DRB is a subsidiary of a publicly traded company in the NYSE and as such is required to provide reports and/or make announcements, from time to time, as required under applicable securities acts and regulations.

14.14 Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersedes any prior agreements and understandings between the Parties, whether written or oral, which may have related to the subject matter hereof in any way.

14.15 Equitable Relief. Customer acknowledges and agrees that a breach or threatened breach by Customer of any of its obligations under Section 4.1, Section 4.3, or Section 6.3 or Section 8, would cause DRB irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, DRB will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.