

7 BULLET POINTS CRUDE SUMMARY, LACKING MANY IMPORANT DETAILS

- ✓ Nothing in this bullet points changes, contradicts, or otherwise affects the full agreement below. Courtesy summary doesn't replace the agreement below.
- ✓ OptiMargin parses your data and runs thousands of scenarios to deliver a menu of trades that maximize margin savings *without* affecting risk
- ✓ The service is free.
- ✓ The file uploaded with *your* position data will be *deleted* in 5 business days. The recommendations generated for you via email, are *kept* for research and development.
- ✓ Did you like one of our recommendations? Great. You can reciprocate by executing with our partner, Ulysses, an executing brokerage with years of experience. Opti gave'em your email, as a lead.
- ✓ Play Nice. Do not prey on years of hard work, its our IP so no copying, hacking, reverse engineering, etc
- ✓ Thanks for giving us a shot. Hope you like our work 😊

OPTIMARGIN SOFTWARE SERVICES AGREEMENT

This OptiMargin Software Services Agreement (this “Data Services Agreement” or “DSA”), entered into by and between a Provider, OptiMargin Software Co (“OptiMargin”) (as defined below) and Subscriber (as defined below), governs Subscriber’s use of and access to the Services (as defined below) provided by such Provider that are identified in this DSA or any such Product Activation Form or Annex. In consideration of the mutual promises and covenants hereinafter contained, the parties agree as follows:

1. **GRANT.** Subject to the terms of this DSA and any applicable Product Activation Form or Annex, the applicable Provider grants Subscriber a non-exclusive, non-transferable, revocable right to permit its Authorized Users to receive and access the Data Services (as defined below) made available by such Provider and identified in this DSA or any such Product Activation Form or Annex, and to access and utilize the Software Services (as defined below) that such Provider makes available to Subscriber and are identified in this DSA or any such Product Activation Form or Annex, in each case, in such form as such Data Services and Software Services may exist from time to time. The Data Services and the Software Services are collectively referred to herein as the “Services”. For the avoidance of doubt, no rights are conferred on or granted to Subscriber under this DSA or any Product Activation Form or Annex with respect to OptiMargin.

2. **DEFINITIONS.** All capitalized terms used in this DSA and not otherwise defined herein shall have the meanings ascribed to them in this Section 2 or in the applicable Product Activation Form or Annex.
 - a) “Affiliate” means any entity directly or indirectly controlling, controlled by or under common control with another entity, where “control” means ownership of more than 50% of the voting stock or other equity interests of an entity, or the right to direct the management of such entity.
 - b) “Agreement” means, collectively, this DSA and all Product Activation Forms, Annexes and EULA entered between Subscriber and a specified Provider, together with any applicable Additional Agreement and Additional Terms incorporated therein by reference.
 - c) “Annex” means any annex, schedule or order form, however it may be titled, attached to this DSA or otherwise agreed or entered into in writing between Subscriber and the applicable Provider, which sets forth the business terms, as well as any additional terms and conditions governing a particular Service, and is governed by this DSA.
 - d) “Authorized Site(s)” means Subscriber’s location(s) and/or territory set forth in a Product Activation Form from which the Authorized Users may access the Services identified in such Product Activation Form.
 - e) “Authorized Users” means those employees or third-party agents of Subscriber listed as “Authorized Users” in a Product Authorization Form and authorized by the applicable Provider to access the Services identified in such Product Activation Form.
 - f) “Commencement Date” means, with respect to any Service, the date that Subscriber and the applicable Provider entered into this DSA, the applicable Product Activation Form or the applicable Annex providing for such Service, unless another date is specified as the “Commencement Date” in any such applicable Product Activation Form or Annex, in which case, such other specified date.

- g) “Data” or “Data Services” means all information and content (including, but not limited to, bids, offers, prices, rates and other trading and informative data), and information derived therefrom, that is generated by the applicable Provider or distributed or made available to such Provider by the Software Services, other Affiliates of such Provider, and/or Third-party Providers (as defined below), and that such Provider makes available to Subscriber (as indicated in this DSA or the applicable Product Activation Form or Annex) via the Software Services.
- h) “OptiMargin Affiliate” means any Affiliate of OptiMargin, specifically, ULYSSES COMMODITIES LLC.
- i) “OptiMargin Proprietary Data” means the information and content (including, but not limited to, bids, offers, prices, rates and other trading and informative data) included in the Data Services that are owned by OptiMargin or any Affiliate.
- j) “Initial Term” means, with respect to any Service, unless otherwise set forth in the applicable Product Activation Form or Annex, the initial twelve (12) month period commencing from the Commencement Date.
- k) “Intellectual Property Rights” means all intellectual property rights (including, but not limited to, patents, copyrights, trade secrets, database rights, design rights, goodwill and trademark rights), whether registered or not, and including applications for registration thereof, rights in know-how and moral rights.
- l) “Person” means an individual, corporation, partnership, limited partnership, limited liability company, joint venture, association, trust, estate, unincorporated organization or other entity.
- m) “Product Activation Form” means an order form, schedule or other document incorporating this DSA, entered into by and between Subscriber and a Provider, specifying specific Data Services and/or Software Services to be delivered by such Provider to Subscriber and listing, as applicable, Subscriber, the Subscribed Affiliates, the Authorized Users, the Authorized Sites and the fees for such Services.
- n) “Provider” means OptiMargin unless another Affiliate is specified as “Provider” in the applicable Product Activation Form or Annex
- o) “Software Services” means certain graphical user interfaces, application programming interfaces, workflow engines, methods, processes, analytics and other related services, including, but not limited to, hardware, software, Data access, feeds, selected or bulk delivery of Data, hosted solutions, digital asset warehouse, contract programming, consulting, technical assistance and support services, which (a) enable, store and/or enhance the Data Services, and (b) provide the ability to receive and enhance the Data Services. For purposes hereof, the Software Services include, without limitation, the following services: OptiMargin, CFO Dashboard, Daily Email and ongoing update & maintenance and any other market data and analytics interfaces as may be made available by a Provider from time to time, alone or in connection with the Data Services.
- p) “Subscriber” means the Person that has entered into this DSA with a Provider and shall include any additional Persons expressly identified as a “Subscriber” in any applicable Product Activation Form or Annex entered into with such Provider.
- q) “Subscriber Administrator(s)” means, with respect to any Service, Subscriber employees or third-party agents designated by Subscriber and approved by the applicable Provider as Subscriber’s administrator(s) with respect to Subscriber’s use of such Service.

- r) “Term” means, with respect to any Service, the Initial Term of such Service and any subsequent renewal terms as may be set forth in an applicable Product Activation Form or Annex.
- s) “Third-party Provider” means a supplier of data information, software, services or other items that are part of or otherwise used in connection with any Service, other than the applicable Provider of such Service.

3. USE AND RESTRICTIONS ON USE.

- a) Only those entities that are expressly identified in the sign up form as Subscriber or its Authorized Users are authorized to access and use the Services identified in such Product Activation Form or Annex. Except as expressly permitted in a Product Activation Form or in an Annex, the Services shall be used exclusively for Subscriber’s own internal business. Access to and use of the Services shall be limited to the Authorized Site(s).
- b) Except as expressly permitted in a Product Activation Form or Annex, Subscriber shall not (i) copy, modify, reverse engineer, reverse assemble or reverse compile or store the Services or any part thereof; (ii) license, sublicense, transfer, sell, resell, publish, reproduce, and/or otherwise distribute or redistribute the Services or any portion or components thereof in any manner (including, but not limited to, via or as part of any Internet site); or (iii) create archival or derivative works based on the Services or any portion thereof. Subscriber shall take all precautions that are reasonably necessary to prevent any unauthorized distribution or redistribution of the Services.
- c) Subscriber agrees that it will not disclose or provide access to the Services or any portion thereof to any person, firm or entity other than an Affiliate of Subscriber that is listed in the applicable Product Activation Form (or otherwise expressly authorized by the applicable Provider in writing) (collectively, the “Subscribed Affiliates”) and Authorized Users. Affiliates of Subscriber that are not listed on the applicable Product Activation Form or otherwise expressly authorized by the applicable Provider in writing are not permitted to access or use the Services or any portion thereof. Subscriber shall ensure the Authorized Users’ and Subscribed Affiliates’ compliance with the terms and conditions of each Agreement, and Subscriber shall remain responsible for such compliance. Subscriber and each Subscribed Affiliate shall be jointly and severally liable to the applicable Provider, its Affiliates and their Third-party Providers for any breaches of the applicable Agreement and for the indemnity obligations set forth below in Section 11(c). For purposes of defining Subscriber’s obligations under each Agreement, any time the term “Subscriber” is used in such Agreement it includes all Subscribed Affiliates and Authorized Users under such Agreement, as appropriate.
- d) Subscriber shall not use the Services, in whole or in part, in any manner that competes with the applicable Provider or any of its Affiliates, including without limitation, any distribution of the Services or derivative works based thereon. Without limiting the foregoing, unless Subscriber enters into a separate license agreement with the applicable Provider, and then only to the extent set forth in such license agreement, Subscriber agrees that it will not (other than for its own internal use in accordance with the applicable Agreement), communicate, redistribute, or otherwise furnish, or permit to be communicated, redistributed or otherwise furnished, all or any portion of the Services, in any format, to any third party.
- e) Subscriber guarantees right of first refusal (“First Look”) on execution recommendations to Ulysses Commodities LLC (“Ulysses”).

- ✓ Subscriber is sole decision maker on which recommendations to execute, if any, or at all, at any given time
- ✓ If Subscriber decides on executing any recommendation, First Look will be given to Optimargin Affiliate, Ulysses Commodities LLC
- ✓ If Ulysses returns with markets that are less competitive than other executing brokers, Ulysses will be given 5 minutes to match those markets or lose the business.

4. SUBSCRIBER IDs AND PASSWORDS. A Provider may, in its sole and absolute discretion, issue to Subscriber, through its Authorized Users or Subscriber Administrators, one or more Subscriber IDs and passwords (collectively, the "Passwords") for use exclusively by such Authorized Users or Subscriber Administrators. In no event will Subscriber or its Authorized Users or Subscriber Administrators provide such unique keys to any third parties. The initial Subscriber Administrator(s) for any Service are identified on the applicable Product Activation Form, and Subscriber acknowledges and agrees that Subscriber Administrators may designate additional Subscriber Administrators, and such Subscriber Administrators shall be considered by the applicable Provider as having the same authority as the initial Subscriber Administrator(s) identified in the applicable Product Activation Form. Subscriber will promptly notify the applicable Provider in writing, which may be via email, of any changes and/or additions to its Subscriber Administrator(s). Subscriber warrants that Subscriber: (i) will be solely responsible for controlling and monitoring the use of the Passwords; (ii) will provide the Passwords only to its Authorized Users or Subscriber Administrator(s) for the sole purpose of accessing and using the applicable Services; and (iii) will not provide the Passwords to any third party. Subscriber will immediately notify the applicable Provider of any unauthorized disclosure or use of the Passwords or access to the Services or of the need to deactivate any Passwords. Subscriber acknowledges and agrees that it will be bound by any actions taken through the use of its Passwords, including the use of any Services, whether or not such actions were authorized by Subscriber. Subscriber will only use the Passwords to access and use the applicable Services from the Authorized Sites. The Subscriber Administrator shall be responsible for all communications between the applicable Provider and Subscriber and any notices or other communications sent by the applicable Provider to a Subscriber Administrator shall be binding on Subscriber. In addition, Subscriber acknowledges and agrees that the applicable Provider may rely on any instruction, agreement or authorization communicated by a Subscriber Administrator. Subscriber will promptly inform the applicable Provider in writing if any Subscriber Administrator is no longer authorized to act in the capacity set forth herein. Sharing of Passwords and Subscriber IDs, and simultaneous access via the same Password or Subscriber ID, is prohibited. At any time during the Term of a Service, Subscriber may replace an Authorized User for such Service without charge and upon providing written notice to the applicable Provider prior to such replacement. Additional Authorized Users may be requested by providing the applicable Provider with written notice, which may be in the form of an e-mail, and upon such Provider's approval, such additional Authorized Users will be granted access to the Services.

5. ALTERATIONS, UPGRADES AND ENHANCEMENTS. Provider reserves the right to alter or modify its Services and any portions or configurations thereof from time to time without notice. Such alterations and/or modifications may include, without limitation, addition or withdrawal of features and/or data, or changes in instructions and/or documentation. A Provider may also, in its sole discretion, make available enhancements, upgrades and other improvements to its Services which require additional fees. To the extent Subscriber chooses to receive any such enhancements, upgrades and other improvements to the Services, or any additional Services, Subscriber and the applicable Provider will enter into an additional Product Activation Form and, upon payment of the applicable fees, such enhancements, upgrades and other improvements, or additional Services, shall be deemed to be included in the Services

made available to Subscriber under the applicable Agreement. All fees associated with such additional/upgraded Services or additional Authorized Users shall be prorated for partial Billing Cycles (as defined in the applicable Product Activation Form), rounded to the nearest month and subsequently billed to Subscriber by the applicable Provider.

6. PROPRIETARY RIGHTS/INJUNCTIVE RELIEF.

- a) All Intellectual Property Rights in the Services and any derivative works thereof, are and shall remain the sole and exclusive property of the applicable Provider (or its Affiliates, as applicable) and/or the Third-party Providers. The Services are compiled, prepared, revised, selected and arranged by the applicable Provider or its Affiliates and their Third party Providers through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort, creativity and financial resources, and the Services constitute the valuable intellectual property of the applicable Provider, its Affiliates and/or the Third-party Providers. Subscriber shall comply with all reasonable requests made by the applicable Provider to protect the rights of such Provider, its Affiliates, and their Third-party Providers in the Services. Subject to the limited rights expressly granted hereunder, each Provider reserves all rights, title and interest in and to its Services, including all related Intellectual Property Rights. No rights are granted to Subscriber under any Agreement other than as expressly set forth in such Agreement.
- b) Copying of, use of, access to or distribution of the Services or any information, data or software contained therein in breach of the applicable Agreement is strictly forbidden and shall cause the applicable Provider and/or the Third-party Providers irreparable injury that cannot be adequately compensated for by means of monetary damages. Any breach of an Agreement by Subscriber may be enforced by the applicable Provider, its Affiliates or their Third-party Providers by means of equitable relief (including, but not limited to, injunctive relief) in addition to any other rights and remedies that may be available.
- c) Third-party Provider Terms and Conditions. Subscriber agrees and acknowledges that to the extent Subscriber is accessing or using any portion of the Services provided by a Third-party Provider, such Third-party Provider may enforce its rights against Subscriber as an intended third-party beneficiary of the applicable Agreement, even though such Third-party Provider is not a party to such Agreement. Subscriber shall, where applicable, and as required to receive certain portions of the Services, be responsible for obtaining and maintaining written approval from each Third-party Provider whose approval is required for receipt and use of such Service and/or enter into separate agreements with the applicable Provider and/or Third-party Providers, as applicable. Third-party providers may include, but are not limited to, CME PC-Span calculator and SPAN for ICE Calculators used to verify and test results by OptiMargin calculators.

Subscriber shall comply with any conditions, restrictions, or limitations imposed in the Additional Agreements, which are incorporated by reference into this DSA as if set forth in their entirety herein and form an integral part of this DSA, including without limitation with the acknowledgments, notices, reporting and audit requirements set forth therein. Failure of Subscriber to comply with the provisions of this Section shall constitute a material breach of the applicable Agreement.

7. **TERM.** Each Agreement will continue in force and effect for as long as Subscriber is using the applicable Services, unless and until terminated

8. **TERMINATION AND SUSPENSION OF SERVICE.**

- a) **Suspension of Services.** Subscriber acknowledges that the applicable Provider may, in its sole discretion, with or without cause or prior notice to Subscriber, temporarily or permanently cease to operate the Services, temporarily or permanently cease to make certain Software Services or Data Services available, or suspend, terminate or restrict Subscriber's use of or access to the Services, in each case as and to the extent such Provider determines is necessary to protect its Intellectual Property Rights, reputation, or the integrity, operation or functioning of the Services, or as necessary to comply with applicable law or regulation. Subscriber acknowledges that its utilization of the Software Services and Data Services may be monitored by the applicable Provider for its own purposes, including, without limitation, for purposes of maintaining the functional and operational integrity and performance of the Software Services and Data Services, for purposes of complying with applicable laws and regulations, and to monitor compliance with the terms of the applicable Agreement.
- b) **Termination.** Each Agreement may be terminated for the additional reasons set forth below:
 - i) The applicable Provider shall have the right to terminate an Agreement effective immediately in the event of Subscriber's breach of Section 3, 4, 6, 13, 14(d) or 14(f) of this DSA.
 - ii) Either party may terminate an Agreement in the event of a breach thereof which is not cured within ten (10) days of written notice of such breach; provided, however, such termination shall not take effect if the breaching party cures or corrects the breach within such ten (10) day notice period.
 - iii) Either party may terminate an Agreement upon written notice to the other if the other party is adjudicated as bankrupt or if a petition in bankruptcy is filed by or against the other party or if the other party makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy act or insolvency laws.
- c) **Effect of Termination.** Termination of an Agreement shall terminate the provision of the Services under such Agreement by the applicable Provider to Subscriber and Subscriber's use of and all access to such Services. Upon termination of an Agreement for any reason set forth herein by either party, Subscriber shall (a) cease all use of and access to the Services provided under such Agreement and (b) expunge such Services and any portion or copies thereof from all of Subscriber's electronic systems, except to the extent Subscriber is otherwise required by law or pursuant to Section 10 below to retain such records. At a Provider's request, Subscriber shall certify to such Provider in writing that Subscriber has fully complied with the foregoing expungement requirement.
- d) **Other Agreements.** For the avoidance of doubt, termination of one Agreement shall not terminate any other Agreement (or any Services under any such other Agreement) that is not independently terminated by either party (or both parties) to such other Agreement.

9. **NO WARRANTIES; LIMITATION OF LIABILITY; INDEMNITY.**

- a) Subscriber acknowledges, understands and accepts that each Provider and its affiliates and Third-party Providers make no warranty whatsoever to Subscriber as to the services, express or implied, and that the services are provided on an “as is” basis at Subscriber’s sole risk. Each Provider expressly disclaims any implied warranties of merchantability or fitness for a particular purpose. No Provider or its affiliates, its Third-party Providers or their respective directors, managers, officers, subsidiaries, shareholders, employees or agents make any warranty with respect to, and no such party shall have any liability to subscriber for (I) the accuracy, adequacy, timeliness, completeness, reliability, performance or continued availability of the services or (II) delays, omissions or interruptions therein. The Providers do not, and shall have no duty or obligation to, verify, monitor, control or review any information and/or data displayed via the services. Subscriber acknowledges and agrees that: (I) it is solely responsible for evaluating the accuracy, timeliness, and completeness of any and all information and/or data delivered to it via services; and (II) it has determined, based on its own evaluation, that the services and each agreement are suitable for and satisfactory to Subscriber, and Subscriber has not relied on any statement, representation or warranty made by any Provider or any Provider’s affiliates or third-party providers in making such determination.
- b) Subscriber acknowledges and agrees that neither the services nor any of the information obtained by or through the services are intended to supply investment, financial, tax or legal advice. Subscriber acknowledges and agrees that it will consult its own investment, financial, tax, and legal advisors to the extent it requires any such advice. A reference to a particular investment or security, a credit rating, or any observation concerning a security or investment provided in the services is not a recommendation to buy, sell or hold such investment or security or to make any other investment decisions. The Providers offer no advice regarding the nature, potential value, or suitability of any particular security, transaction, investment or investment strategy. Subscriber acknowledges and agrees that the use of the services and information, and any decisions made in reliance upon the services and information, are made at Subscriber’s own risk. Subscriber further acknowledges and agrees that neither the services nor any information obtained by or through the services constitutes an offer to purchase or a solicitation of an offer to sell securities.
- c) To the fullest extent permitted by law, Subscriber shall indemnify, protect, and hold harmless the applicable Provider and its Affiliates and Third-party Providers and each of their respective directors, officers, affiliates, employees and agents from and against any and all losses, liabilities, judgments, suits, actions, proceedings, claims, damages, costs (including attorneys’ fees) resulting from or arising out of any use of the Services by Subscriber or by others using the Passwords in Subscriber’s possession.
- d) Notwithstanding anything to the contrary in any agreement, in no event whatsoever shall a Provider, its Affiliates or any of their Third-party Providers be liable to Subscriber for any special, indirect, incidental, punitive or consequential damages, however caused, or for any loss of profits, trading losses, or lost time or good will, loss of use, cost or procurement of substitute goods or services, whether in contract, tort or otherwise, arising out of, or in any way connected with the services, including but not limited to the use or inability to use the service, any interruption, inaccuracy, error or omission, even if they have been advised of the possibility of such damages.
- e) No action or claim, regardless of form, arising from or pertaining to the services or to any agreement may be brought by Subscriber more than one (1) year after the cause of such action or claim has accrued.

- f) To the maximum extent permitted by law and subject to section 11(h), in the event that a Provider is determined to be liable to Subscriber for any cause arising out of or related to any agreement, Subscriber expressly agrees that in entering into such agreement, such Provider's aggregate liability, for any claims, damages or losses under all causes of action, will not exceed the greater of: (I) one thousand USD (\$1,000); or (II) the fees paid and payable by Subscriber to such Provider under such agreement for the service in question in the three (3) month period prior to the date such claim arose, less all payments made of other claims subject to this limitation under such agreement. The foregoing limitations shall apply even if Subscriber's remedies under such agreement fail of their essential purpose.
- g) The limitations of a Provider's liability set forth in sections 11(d) through 11(f) shall not apply in respect of (I) death or personal injury of a third party to the extent caused by such Provider's willful or negligent acts; or (II) such Provider's fraud or willful misconduct.
- h) If a third party brings a claim or other legal action against Subscriber alleging that OptiMargin Proprietary Data, as and in the manner provided to Subscriber by the applicable Provider, infringes upon a copyright, trademark, or U.S. patent of such third party ("Covered Claim"), such Provider shall defend Subscriber, at such Provider's expense, from such Covered Claim, and will pay all amounts payable to third parties in connection with any settlement or compromise of a Covered Claim approved by such Provider, and pay all damages awarded to third parties relating to a Covered Claim, including court costs and attorneys' fees awarded. The foregoing obligations of the applicable Provider are conditioned upon and shall remain subject to Subscriber: (i) providing such Provider with prompt written notice of any Covered Claim, with such Provider's obligation to defend and indemnify Subscriber with respect to a Covered Claim being reduced only to the extent that a delay by Subscriber in notifying such Provider of the Claim adversely affects such Provider's ability to defend, compromise, settle or appeal such Claim; (ii) giving such Provider sole control of the defense of the Covered Claim and any related settlement negotiations; and (iii) cooperating and assisting (as reasonably requested by such Provider and at such Provider's expense) with such Provider's efforts to defend or settle the Covered Claim. In the event that a third-party claim or other legal action is made or brought against Subscriber alleging that a Third-party Provider data or service as provided to Subscriber by a Provider infringes such third party Intellectual Property Right, such Provider shall indemnify Subscriber to the same extent such Provider is indemnified by the Third-party Provider in question, or shall assign to the benefit of Subscriber the indemnification right afforded to such Provider, if applicable. A Provider will have no obligation under this Section or otherwise for any infringement or misappropriation claim based on or arising out of: (i) any modification of the Services made by someone other than such Provider or its authorized agents; (ii) any combination or use of the Services with any other software, hardware, data, or other materials or information not furnished by such Provider; and/or (iii) any failure of Subscriber, or others acting under Subscriber's authority or control, to comply with Subscriber's obligations under the applicable Agreement. If the Services become, or the applicable Provider believes are likely to become, subject to an infringement claim, such Provider may, at its sole option and expense: (x) replace or modify the Services, or any portion thereof, so that they become non-infringing; (y) obtain for Subscriber the right to continue using the infringing part of the Services, or (z) terminate the applicable Agreement as to the infringing part of the Service. The foregoing states each Provider's entire liability and Subscriber's sole and exclusive remedies for infringement or misappropriation claims and actions of any kind. Notwithstanding anything to the contrary herein, a Provider's maximum cumulative liability to Subscriber under this Section 11(h) shall not exceed One Thousand USD

(\$1,000) in the aggregate, regardless of the number of indemnification claims that may be made hereunder.

10. CONFIDENTIALITY.

- a) Any and all non-public information in any form obtained by either party to an Agreement or such party's Affiliates or its or their respective employees arising out of or related to the provision or use of the Services, including but not limited to, trade secrets, processes, computer software and other proprietary data, research, information or documentation related thereto, shall be deemed to be confidential and proprietary information. The Data generated, specifically margin compression recommendations and the Software Services are the confidential information of the applicable Provider. The Position Data provided by the subscriber is their sole property and shall be deleted within 5 business days. Each party agrees to hold such information in strict confidence and not to disclose such information to third parties (other than to its employees, its Affiliates and its and their respective employees or agents on a need to know basis only) and not to use such information for any purpose whatsoever other than as contemplated by the applicable Agreement and to advise each of its employees, Affiliates and agents who may be exposed to such proprietary and confidential information of their obligations to keep such information confidential in accordance with this Section 12(a), except that Subscriber expressly permits Provider to maintain results of simulations, or recommendations generated internally for research purposes.
- b) The restrictions in Section 12(a) shall not apply to information which the Receiving Party (as defined below) can demonstrate: (i) is in or becomes part of the public domain other than by disclosure by the Receiving Party in violation of the applicable Agreement; (ii) is known to or obtained by the Receiving Party previously without an obligation of confidentiality; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's confidential information; (iv) is required to be disclosed by applicable law or regulation (including without limitation, tax laws or regulations), or pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction as set forth in Section 12(c) below.
- c) In the event that a party receives a subpoena, data request, or order of a court in any private party litigation requesting confidential information of the other party, such party will promptly notify the other party of such requirement or request to the extent it is legally permitted to do so.
- d) Upon termination or expiration of the applicable Agreement, the Receiving Party will return to the Disclosing Party, or securely destroy, all copies of confidential information already in the Receiving Party's possession or within its control. Upon the Disclosing Party's request, an officer of the Receiving Party will certify in writing to the Disclosing Party that all such confidential information has been so destroyed.
- e) **Personal Information.** Any party to an Agreement receiving confidential information (the "Receiving Party") acknowledges that the other party to such Agreement disclosing confidential information (the "Disclosing Party") may be subject to internal policies, laws and regulations that govern and restrict the collection, storage, processing, disclosure or use of any information that identifies or can be used to identify, contact or precisely locate the person or legal entity to whom such information pertains or from which identification or contact information of an individual person or legal entity can be derived ("Personal

Information”), including, but not limited to, any Personal Information relating to the Disclosing Party, the Disclosing Party’s Affiliates and each of their respective customers, suppliers and personnel. Where Subscriber is subject to the data protection laws and regulations of the European Union (“EU”), the European Economic Area (“EEA”) and/or any Member State thereof (including the United Kingdom in the event that the United Kingdom is no longer part of the EU or EEA), Switzerland and/or Singapore, Subscriber acknowledges and agrees that certain additional terms and conditions set out in Privacy Policy and other documents in connection with the collection, storage, processing, disclosure, access, review and/or use of such Personal Information are applicable to such Agreement. Specifically with respect to Subscribers or one or more of its Affiliates which provide Personal Information to a Provider that is subject to European Data Protection Laws shall be incorporated into and form part of such Agreement and, in the event of conflict with any other terms of such Agreement, shall prevail over such terms.

11. EAR/OFAC/ANTI-SOCIAL.

- a. EAR/OFAC. Subscriber acknowledges that the Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations (EAR) and the requirements of the U.S. Department of the Treasury’s Office of Foreign Assets Controls’ (OFAC) sanctions programs, including the Specially Designated Nationals List (collectively, the “Controls”). Subscriber will: (i) comply with all legal requirements established under the Controls; (ii) cooperate fully with the applicable Provider in any official or unofficial audit or inspection that relates to the Controls; and (iii) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to, or otherwise enter into any transaction or engage in any other activities with, any country, territory or Person restricted or targeted by the Controls. Subscriber further represents and warrants that as of the effective date of any Agreement, (x) none of Subscriber, Subscriber’s Affiliates or any of their respective affiliates, subsidiaries, or any director or corporate officer of any of the foregoing entities, is the subject of any OFAC sanctions and (y) Subscriber is not 50% or more owned or controlled, directly or indirectly, by any person or entity that is the subject of any OFAC sanctions. Subscriber will notify the applicable Provider as soon as is practicable, but in any event no later than forty-eight (48) hours, after it determines that any of these circumstances change.
- b. Anti-Social Forces. No Subscriber organized or doing business in Japan shall be a part of Anti-Social Forces as defined below:
 - (i) "Anti-Social Forces" means:
 - (1) an organized crime group, a member of an organized crime group, a related company or association of an organized crime group, and any other equivalent person of above; or
 - (2) a person who themselves or through the use of third parties conducts a demand with violence, an unreasonable demand beyond its legal entitlement, use of intimidating words or actions, damages the credit or obstructs the business of the other party by spreading false rumors or by the use of fraudulent, or any other equivalent actions of above.
 - (ii) Each party to this Agreement represents and warrants that it does not fall under any of the following items and covenants that it shall not fall under any of the following items:
 - (1) It has a relationship where Anti-Social Forces are considered to be controlling its management.

- (2) It has a relationship where Anti-Social Forces are considered to be substantially involved in its management.
- (3) It has a relationship where it is considered to be using Anti-Social Forces in an improper manner (e.g., for the purpose of pursuing illicit profits for itself or a third party or for the purpose of causing damage to a third party).
- (4) It has a relationship where it is considered to be involved with Anti-Social Forces (e.g., providing funds or the like or furnishing benefits).
- (5) Its officer or a person substantially involved in its management has a relationship with Anti-Social Forces that should be the subject of social criticism.

(iii) In the event of a breach of the preceding paragraph by a party, each party shall have the right to suspend its transactions with the breaching party or terminate this Agreement immediately by a written notice without any cure period and claim for damages incurred arising out of such breach, and all obligations of the breaching party shall become due and payable immediately. The non-breaching party shall not be held liable for any damages incurred by the breaching party as a result of such suspension or termination.

12. GENERAL PROVISIONS.

- a) Notices. Except for the amendments implemented by the applicable Provider in accordance with Section 14(e) below, all notices delivered with respect to an Agreement shall be in writing and either (i) hand delivered or forwarded by registered or certified mail, return receipt requested; or (ii) sent via email, in the case of Subscriber, to the applicable Subscriber Administrator or, in the case of the applicable Provider, to the relevant address provided by such Provider in the applicable Product Activation Form or otherwise.
- b) Force Majeure. Except for Subscriber's payment obligations, neither the applicable Provider nor Subscriber shall be deemed to be in default of any provision of an Agreement or be liable for any delay, failure in performance, or interruption of service, in each case, resulting directly or indirectly from acts of God, civil or military authority, civil disturbance, war, strikes, fires, other catastrophes, power failure or any other cause beyond its reasonable control.
- c) Waiver. Failure by any party to exercise any right or remedy under the Agreement will not signify acceptance of the event giving rise to such right or remedy nor will it constitute a waiver of such right or remedy.
- d) Assignment; Change of Control. Subscriber shall not assign or transfer an Agreement without the prior written consent of the applicable Provider, and any attempted assignment or transfer shall be null and void and shall constitute a material breach of such Agreement. In addition to and notwithstanding the foregoing, if the ownership of Subscriber at any time shall pass out of the majority control of its then-current owners by sale of stock or assets, merger or otherwise during the Term, Subscriber shall notify each Provider in writing of such change of control event no later than thirty (30) days following the effective date of any such event. Each Provider shall then have the right to terminate its Agreement by providing a written notice to Subscriber within sixty (60) days following the receipt of such notice of change of control, if in such Provider's reasonable opinion the new owner of Subscriber: (i) is a competitor of such Provider; or (ii) presents a substantial risk to such Provider's reputation, Intellectual Property Rights, or ability to collect payment hereunder. If a Provider elects not to exercise the foregoing

termination right, any successor-in-interest to the applicable Agreement as a result of the change of control shall assume all rights and obligations of Subscriber under such Agreement and shall be responsible for adhering to the terms thereof. The applicable Provider may assign all or part of its rights and obligations under an Agreement to any of its Affiliates or to any entity which succeeds to all or substantially all of the assets and business of such Provider, provided that, in the case of any such assignment by such Provider, the assignee agrees in writing to assume the obligations under, and to be bound by the provisions of, such Agreement that have been assigned. On the effective date of any valid assignment pursuant to this Section 14(d), the assignor shall be released from all obligations and liabilities arising under the applicable Agreement or, in case of a partial assignment by the applicable Provider, from all obligations and liabilities arising from the parts of such Agreement that have been assigned.

- e) **Entire Agreement; Modification or Amendment.** This DSA, taken together with (i) each Product Activation Form, (ii) applicable Additional Terms, if any, (iii) applicable Additional Agreements, if any, (iv) any applicable Annexes, and (v) any EULA, if any, in each case, entered into with a specified Provider, represents the entire agreement between Subscriber and such Provider with respect to the subject matter thereof and supersedes all previous agreements, representations, discussions, understandings or writings between such parties with respect to such subject matter. In the event of a conflict or inconsistency between the terms of this DSA and the terms of any Product Activation Form or Annex, this DSA shall prevail unless such Product Activation Form or Annex expressly provides otherwise. The Providers may amend this DSA at any time by sending email notice to the applicable Subscriber Administrator(s), and any such amendments, including fee increases (subject to Section 7(a)), will be prospectively binding on Subscriber effective ten (10) days from the date of such posting. Notwithstanding the foregoing, the applicable Provider will provide thirty (30) days' prior notice, by email to the Subscriber Administrator or by other direct communication with Subscriber, of any such amendments that are likely to materially and adversely affect Subscriber or its rights or obligations under an Agreement. Subscriber's use of the applicable Services after the effective date of any such amendment shall constitute Subscriber's ratification of, and agreement to, any such amendment. If a Provider elects to require Subscriber to acknowledge and agree to an amendment, such amendment will not become effective until Subscriber has done so in the manner specified by such Provider.
- f) **Compliance with Law.** Subscriber will comply with any and all laws, rules, regulations or orders applicable to Subscriber's receipt of and use of the Services.
- g) **Authority and Binding Effect.** The parties to each Agreement represent and warrant that they have all necessary power and authority to execute and perform such Agreement, and such Agreement is a legal, valid and binding agreement, enforceable against each party in accordance with its terms.
- h) **Survival.** Sections 3(d), 6, 7(a), 7(c), 9(c), 10, 11, 12, and 14 of this DSA shall survive any termination of any Agreement.
- i) **Governing Law.** Unless otherwise specified in a Product Activation Form or Annex, each Agreement is deemed entered into in Houston, Texas, and shall be governed and construed in all respects by the laws of the State of Texas, without giving effect to principles of conflict of law. The parties to each Agreement and their successors and assigns irrevocably consent to the exclusive jurisdiction of any courts located in the State of Texas for the resolution of any disputes arising from or related to such Agreement.

- j) Headings. The headings in this DSA are intended for convenience of reference and shall not affect its interpretation.
- k) Severability. If any provision of an Agreement (or any portion thereof) shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of such Agreement shall not in any way be affected or impaired thereby.
- l) Independent Contractors. Subscriber and each Provider are independent contractors, and nothing in any Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties thereto. Neither party to any Agreement is an agent or representative of the other or is authorized to make any warranties or assume or create any other obligations on behalf of the other.
- m) Counterparts. Any Product Activation Form may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall (together with this DSA and any applicable Annexes, Additional Terms, Additional Agreements, and EULA) constitute one agreement binding on the parties thereto.