

Master Services Agreement

This Master Services Agreement (the "**Agreement**"), last updated as of May 30, 2022 (the "**Effective Date**") outlines the terms of service by and between Plena Data, Inc. "**Plena Data**" and "**Customer**" (as defined in an applicable Statement of Work which makes reference to this Agreement. All Customers which enter into an SOW (as defined below) with Plena Data which makes reference to this Agreement are bound by the terms of this Agreement. Any term not defined herein is defined in accordance with the applicable SOW.

1. Definitions.

"**Authorized User**" means Customer's employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

"**Bot**" means a configurable robotic process automation software that is engineered to perform and automate specific tasks. A Plena Data developed Bot can be used to automate one process, with limitation based on data size and processing time.

"**Confidential Information**" has the meaning set forth in Section 6.1.

"**Customer Data**" means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services.

"**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.

"**Implementation Services**" means the implementation and installation of the Services into Customer Systems (as defined below) or other applicable systems or locations as may be outlined in the relevant SOW.

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

"**Plena Data Systems**" means the information technology infrastructure used, created, or developed by or on behalf of Plena Data in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Plena Data or through the use of third-party services.

"**Professional Services**" means professional services performed by Plena Data pursuant to the relevant SOW, including professional services to implement the Services.

"**Services**" means the software-as-a-service offering described in the relevant SOW.

"**SOW Term**" means the period of time during which an SOW is in effect.

"**Statement of Work**" or "**SOW**" means each contract document that is executed by duly authorized representative of each party, titled "Statement of Work" or "SOW, and by its terms expressly refers to this Agreement and states that it incorporates the terms of this Agreement

"**Third-Party Materials**" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, products, equipment, or components of or relating to the Services that are not proprietary to Plena Data.

"**Third Party Services**" has the meaning assigned in Section 4.4.

2. Professional Services and the Services.

2.1 In General. This Agreement will govern each party's rights and obligations relating to Plena Data's provision of the Services and the Professional Services. The Agreement, by itself, does not implement any transaction; Plena Data and Customer intend that all services provided by Plena Data to Customer hereunder be implemented through individual SOWs, each of which has its own term, and each of which incorporates the terms and conditions of this Agreement except to any extent expressly stated to the contrary in an SOW. Plena Data will provide the Services. The description of Services in each SOW will be based on information provided by Customer; Customer acknowledges that if the information provided by Customer is incomplete or inaccurate, or if the stated assumptions are not correct, then the parties may amend the SOW by a written agreement signed by duly authorized representatives of each party, or Plena Data may terminate the SOW without cause.

2.2 Professional Services. Plena Data will provide the Professional Services. Unless otherwise stated in the SOW, upon final completion and delivery of the Implementation Services, Customer will have fourteen (14) days in which to notify Plena Data in writing whether the Professional Services fail to comply with project specifications as detailed in the SOW; if Plena Data is not notified of any problems within this time period, the Professional Services will be deemed to be accepted by Customer.

2.3 Access and Use. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement and the SOW, Plena Data hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 12.5) right to access and use the Services during the SOW Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal business purposes. Plena Data shall provide access credentials to Customer. The total number of Authorized Users will not exceed the number set forth in the SOW, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the Fees payable hereunder. Notwithstanding the foregoing, upon payment and implementation, Customer shall own any Bot developed by Plena Data on behalf of Customer.

2.4 Changes. Plena Data reserves the right, in its sole discretion, to make any updates to the Services and Plena Data Systems.

2.5 Use Restrictions. Customer shall not: (a) rent, lease, sell, sublicense, copy, modify, or create derivative works of the Services or the Plena Data Systems; (b) reverse engineer, disassemble, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or the Plena Data Systems; (c) bypass or breach any security device or protection used by the Services or the Plena Data Systems; (d) input, upload, transmit, or otherwise provide to or through the Services or Plena Data Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs, and malware ("Harmful Code"); (e) damage, destroy, disable, interfere with, or otherwise impede or harm in any manner the Services, Plena Data Systems, or Plena Data's provision of services to any third party, in whole or in part; (f) access or use the Services or Plena Data Systems in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, or that violates any applicable law.

3. Customer Obligations. Plena Data is not responsible for delays or errors in the Services that result from Customer's failure to fulfill its obligations under the Agreement, including those specified in this Section 3.

3.1 Cooperation. Customer shall at all times (a) provide Plena Data with such access to Customer's premises and Customer Systems as is necessary for Plena Data to perform the Services (including access to any applicable third party vendor portals, platforms, or services which Customer utilizes as a part of the Customer Systems) and, (b) provide all cooperation and assistance as Plena Data may reasonably request to enable Plena Data to perform the Services. "**Customer Systems**" means the 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.

3.2 Cooperation During Implementation Services. Customer shall provide Plena Data with all necessary and reasonably requested access to Customer premises and Customer Systems prior to and during the

Implementation Services. It is Customer's sole responsibility to ensure that Plena Data receives all the requisite permissions and authorizations to access Customer Systems as is necessary for performance of the Implementation Services. Customer understands and acknowledges that any failure on Customer's part to provide Plena Data with access to the Customer Systems which is not promptly remedied may result in a delay in the Implementation Services. Such delay will be calculated based on Plena Data's then available timeline. Prior to the Implementation Services, upon first notice from Plena Data of its inability to access Customer Systems, Customer will have a two-month grace period to ensure Plena Data has access to the Customer Systems. After the two-month grace period, should access not be granted, Customer will be charged a delay fee of \$100 monthly (to be automatically charged through Customer's preferred payment method) until such access is granted.

3.3 Customer Systems. Customer is solely responsible for the maintenance of Customer Systems, including software APIs and Customer Third Party systems. The Services will rely on the proper function and maintenance of Customer Systems, and Plena Data is not responsible for delays or errors in the Services that result from Custom System errors, changes, or delays.

3.4 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all information, instructions, and materials provided by or on behalf of Customer; (b) the security and use of Customer's access credentials; (c) Customer Systems and Customer Data, including the operation, maintenance, and management of each.

4. Plena Data Responsibilities.

4.1 Plena Data Systems and the Services. Plena Data has and will retain sole control over the operation, provision, maintenance, and management of the Plena Data Systems and the Services. The Plena Data Platform which services the Bot will maintain a system uptime of no less than 99.1%

4.2 Security Obligations. Plena Data will employ security measures in accordance with applicable industry practice. This includes appropriate administrative, physical, and technical safeguards to protect the security, confidentiality and integrity of Customer Data. Safeguards include measures designed to prevent unauthorized access to, or disclosure of Customer Data. The security of Customer Data is of the utmost importance to Plena Data. All Customer Data is secured via encryption and multi-layer password protections in a Virtual Private Network provided by public cloud platforms such as Google, Azure, and AWS. No data is retained for longer than its useful period. Upon termination of an SOW, all Customer Data pertaining to that SOW is erased and the cloud instance wherein it is stored is permanently destroyed.

4.3 Services Availability. Plena Data will use commercially reasonable efforts to make the Services Available excluding unavailability as a result of any of the Exceptions described below in this Section 4.3 (the "**Availability Requirement**"). "**Available**" means the Services are available for access and use by Customer over the Internet. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and the Services will not be considered un-Available in connection with any failure to meet the Availability Requirement or impaired ability of Customer to access or use the Services that is due, in whole or in part, to any: (a) access to or use of the Services by Customer or using Customer's access credentials, that does not strictly comply with this Agreement and the Services documentation; (b) Customer's delay in performing, or failure to perform, any of its obligations under this Agreement; (c) Force Majeure Event (as that term is defined in Section 12.6); (d) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Plena Data pursuant to this Agreement; (e) scheduled downtime (of which Plena Data shall give at least 12 hours' notice via email).

4.4 Third Party Dependencies. The Services may enable Customer to link to, transfer Customer Data to, or otherwise access third parties' websites, platforms, content, products, services, and information ("Third Party Services"). Plena Data does not control and is not responsible for such Third Party Services. Customer is solely responsible for complying with the terms of access and use of Third Party Services, and if Plena Data accesses or uses any Third Party Services on Customer's behalf to facilitate performance of the Services or Professional Services, Customer is solely responsible for ensuring that such access and use, including through passwords, credentials or tokens issued or otherwise made available to Customer, is authorized by the terms of access and use for

such services. If Customer transfers or causes the transfer of Customer Data from the Services to a Third Party Service or other location, that transfer constitutes a distribution by Customer and not by Plena Data. Any Third Party Services that Plena Data makes accessible is provided on an “as-is” and “as available” basis without any warranty of any kind. Customer acknowledges and agrees that Plena Data is not responsible for, and has no obligation to control, monitor, or correct, content from Third Party Services. Plena Data disclaim all liabilities arising from or related to content from Third Party Services. Customer acknowledges that: (i) the nature, type, quality and availability of Third Party Services content may change at any time; and (ii) features of the Services that interoperate with Third Party Services depend on the continuing availability of such third parties’ respective application programming interfaces (APIs). Plena Data may need to update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third Party Services, Third Party Services content, or APIs. If any third party ceases to make its Third Party Services, Third Party Services content or APIs available on reasonable terms for the Services or Professional Services, as determined by Plena Data in its sole discretion, Plena Data may cease providing access to the affected Third Party Services content or Third Party Services without any liability to Customer.

4.5 Data Backup. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. Plena data has no obligation or liability for any loss, alteration, destruction, damage, corruption, or recovery of customer data.

5. Fees and Payment.

5.1 Payment. Customer shall pay all fees specified in the SOW on or prior to the due date set forth in the SOW. Customer shall make all payments hereunder in US dollars. Customer shall make payments to the address or account specified in the SOW or such other address or account as Plena Data may specify in writing from time to time. It is Customer’s responsibility to ensure the payment method provided is current and accessible to automatic withdrawals of payments by Plena Data. If such payment method expires or if Plena Data is otherwise unable to withdraw payments, Plena Data will notify Customer of non-payment. Customer will promptly resolve the error or provide an alternative payment method. If Customer does not resolve the non-payment in a timely manner than its account will be considered delinquent and late-fees as well as other non-payment remedies may be assessed.

5.2 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 Plena Data's income.

5.3 Refund. All payments made to Plena Data are non-refundable. However, if Plena Data is unable or fails to build the Bot(s) for Customer as specified in the SOW, the Customer is entitled to a full refund of the Implementation Fee. Any refund under this Section 5.3 must be requested by Customer within 75 days of the effective date of the relevant SOW.

5.4 Suspension or Termination of Services. If Customer fails to cure a breach of its payment obligations within fifteen (15) days of receipt of notice of breach from Plena Data, Plena Data may suspend, terminate, or otherwise deny Customer's access to or use of all or any part of the Services, without incurring any resulting obligation or liability.

6. Confidentiality.

6.1 Confidential Information. In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 6.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case that is either marked, designated, or otherwise identified as "confidential" or that at the time of disclosure or under the circumstances surrounding disclosure, Receiving Party knows, or ought to

reasonably know, is confidential. The Services, the Plena Data systems, and the terms of any SOW making reference to this Agreement are Confidential Information.

6.2 Exclusions. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information. "**Representatives**" means, with respect to a party, that party's employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

6.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for three (3) years from the date of receipt: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 6.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 7; (c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 6.

6.4 Trade Secrets. Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 6 with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

7. Intellectual Property Rights.

7.1 Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to or resulting from, the Services, the Professional Services, Plena Data Systems, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Plena Data System, anything resulting from the Professional Services and the Third-Party Materials are and will remain with Plena Data and the respective rights holders in the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Plena Data Systems or the Services except as expressly set forth in Section 2.3 or the applicable third-party license, in each case subject to Section 2.5. All rights in and to the Plena Data Systems and the Services are expressly reserved by Plena Data. Plena Data will have the unrestricted and permanent right to use and implement all ideas, recommendations, and proposed modifications or enhancements provided by Customer and Authorized Users with respect to the Services and the Plena Data Systems in any manner and in any media.

7.2 Customer Data. As between Customer and Plena Data, Customer is and will remain the sole and exclusive owner of all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in this Section 7.2. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Plena Data and its personnel (including subcontractors) to enforce this Agreement, exercise their rights, and perform their obligations hereunder. Notwithstanding the foregoing, Plena Data may analyze and use Customer Data to improve Plena Data's internal systems and products, and in any other way permissible by all relevant laws and regulations, so long as such Customer Data cannot be

reasonably used to identify Customer. Plena Data's right to use non-identifiable Customer Data shall not terminate with the expiration or termination of this Agreement or any relevant SOW.

8. Representations and Warranties.

8.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that it has validly entered into this Agreement and has the legal power to do so.

8.2 Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to Plena Data that Customer owns and has the necessary rights to Customer Data so that, as received by Plena Data and processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

8.3 DISCLAIMER OF WARRANTIES. ALL SERVICES (INCLUDING THE SERVICES) AND THE PLENA DATA SYSTEMS ARE PROVIDED "AS IS." PLENA DATA 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, PLENA DATA MAKES NO WARRANTY OF ANY KIND THAT THE PROFESSIONAL SERVICES, SERVICES, OR PLENA DATA SYSTEMS, 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 (AS DEFINED IN SECTION 2.5), 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.

9. Indemnification.

9.1 Plena Data Indemnification. Plena Data shall indemnify, defend, and hold harmless Customer from and against any and all damages, attorney fees, and costs incurred by Customer resulting from any claim, suit, demand, or proceeding ("**Action**") by a third party (other than an affiliate of Customer) alleging that Customer's use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this Agreement and the Services documentation infringes or misappropriates such third party's US Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from: (a) Third-Party Materials or information provided to Plena Data by or for Customer; (b) access to or use of the Plena Data Systems in combination with any hardware, system, software, network, or other materials or service not provided by Plena Data or specified for Customer's use in the Services documentation; (c) modification of the Services or Plena Data Systems; or (d) breach of this Agreement by Customer or Customer's gross negligence or willful misconduct.

9.2 Customer Indemnification. Customer shall indemnify, defend, and hold harmless Plena Data from and against any and all damages, attorney fees, and costs incurred by Plena Data 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 Action alleging that the Customer Data, as received by Plena Data and processed in accordance with this Agreement, or Customer's use of the Services, whether in breach of this Agreement or not, infringes, misappropriates, or otherwise violate any US Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

9.3 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 9.1 or Section 9.2, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with 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 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 9.3 will not relieve the Indemnitor of its obligations under this Section 9, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

9.4 Mitigation. If any of the Services or Plena Data Systems are, or in Plena Data'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 Services or Plena Data Systems is enjoined or threatened to be enjoined, Plena Data may at its option, by written notice to Customer, terminate each relevant SOW with respect to all or part of the Services and Plena Data Systems, and require Customer to immediately cease any use of the Services and the Plena Data Systems, and any specified part or feature of each, provided that, subject to Customer's compliance with its post-termination obligations set forth in Section 11.3, Customer will be entitled to a refund of any unused, prepaid Services fees covering the remainder of the SOW Term.

9.5 Sole Remedy. THIS SECTION 9 SETS FORTH: (a) CUSTOMER'S SOLE REMEDIES AND PLENA DATA'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE PROFESSIONAL SERVICES, SERVICES, AND PLENA DATA SYSTEMS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, AND (b) PLENA DATA'S SOLE REMEDIES AND CUSTOMER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE CUSTOMER DATA OR CUSTOMER'S USE OF THE SERVICES IN BREACH OF THIS AGREEMENT MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY OR VIOLATES ANY LAW.

10. Limitations of Liability.

10.1 EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 10.3, IN NO EVENT WILL A PARTY (OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS) BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES (INCLUDING PROFESSIONAL SERVICES); (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

10.2 CAP ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN SECTION 10.3, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF A PARTY (AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED FIVE THOUSAND DOLLARS (\$5,000). THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10.3 Exceptions. The exclusions and limitations in Section 10.1 and Section 10.2 do not apply to either party's obligations under Section 9 or liability for either party's gross negligence or willful misconduct.

11. Term and Termination.

11.1 Term. The term of this Agreement shall be defined in the relevant SOW by and between Plena Data and Customer.

11.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) either party may terminate this Agreement and all SOWS, effective on written notice to the other party, if the other party materially breaches this Agreement or any SOW, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and,

(b) either party may terminate this Agreement and all SOWs, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

11.3 Effect of Termination or Expiration. Upon any expiration or termination of this Agreement or of an SOW, except as expressly otherwise provided in this Agreement or the SOW, with respect to the Agreement or that SOW:

(a) all rights, licenses, consents, and authorizations granted by either party to the other thereunder will immediately terminate;

(b) Plena Data shall immediately cease all use of any Customer Data or Customer's Confidential Information in its performance of the Services and upon written request of Customer (i) promptly destroy all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Plena Data directly or indirectly controls;

(c) Plena Data may disable all Customer access to the Plena Data Systems;

11.4 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 2.5, Section 6, Section 7, Section 8.3, Section 9, Section 10, Section 11, and Section 12.

12. Miscellaneous.

12.1 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

12.2 Marketing. Plena Data may include Customer's name and other indicia in its lists of Plena Data's current or former customers of Plena Data in promotional and marketing materials.

12.3 Notices. Unless otherwise agreed to by the parties, all notices shall be deemed effective when made in writing and received by (i) registered mail, (ii) certified mail, return receipt requested, (iii) e-mail, (iv) overnight mail, or (v) fax with confirmation, addressed and sent to the receiving party's address specified in the signature block of this Agreement.

12.4 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. With regard to Confidential Information, if the Parties previously entered a confidentiality agreement to exchange confidential information in the course of contemplating the business relationship described in this Agreement ("Preexisting NDA"), all disclosures of information under the Preexisting NDA are subject to the terms of this Agreement, as if this Agreement has been in effect at the time of each disclosure, this Agreement supersedes the Preexisting NDA, which is hereby terminated.

12.5 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Plena Data's prior written consent. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 12.5 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

12.6 Force Majeure. In no event will either party be liable or responsible to /the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, Internet service provider failure or delay, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 30 days or more.

12.7 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

12.8 Severability. If any provision or portion of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions or portions shall remain in full force and effect.

12.9 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Utah without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Utah. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Utah in each case located in Salt Lake City and County of Salt Lake, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

12.10 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to this Agreement, the prevailing party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.