MASTER LICENSE AND SERVICES AGREEMENT

Updated July 12, 2023

This Master License and Services Agreement ("**Master Agreement**") between Scuba Analytics, Inc., a Delaware corporation, with its principal place of business at 800 West El Camino Real, Suite 180, Mountain View, California 94040, United States ("**Scuba**") and **Customer** (each a "**Party**", collectively "**Parties**") This Master Agreement sets forth the terms and conditions governing the use of the Scuba software and the performance of related services. The details of the applicable software and services offering will be further detailed in an order form ("**Order Form**"), entered under and incorporating this Master Agreement (the Order Form together with the Master Agreement, the "**Agreement**").

1. DEFINITIONS. Unless otherwise provided herein, all capitalized terms shall have the following meanings:

"**Cluster**" means a single logical deployment of the Scuba Software;

"**Customer Data**" means any electronic data or information of Customer ingested into the Scuba Software;

"**Daily**" or "**Day**", means, as applicable, the time period measured from midnight to midnight UTC;

"**Data Source**" means each designated data source from which Customer Data is ingested into the Scuba Software;

"**Documentation**" means the product and technical documentation relating to Scuba Software that Scuba makes available to Customer and is referenced in the applicable Order Form;

"**Event**" means a unique time stamped record of Customer Data ingested into the Scuba Software;

"**Licensed Capacity**" means the maximum usage of the Scuba Software as set forth in an Order Form (including, without limitation, Maximum Daily Event Volume, Retention Period, number of Users and number of Clusters and/or Data Sources);

"**Scuba Software**" means the Scuba-managed behavior analytics software solution that Scuba deploys in one or more Clusters on a Customer designated hosted environment, and as specified in the applicable Order Form;

"**Daily Event Volume**" means the number of Events ingested Daily into the Scuba Software, based on a 7 day rolling average.

"**Indemnitee(s)**" means the Party and its officers, directors, employees, successors, and assigns, who are to be indemnified under this Agreement.

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"**Maximum Daily Event Volume**" means, as specified in an Order Form, the maximum number of Events permitted to be ingested Daily into the Scuba Software, but excludes any Event that is re-Ingested after the initial ingestion of such Event;

"**Party**" means Customer or Scuba, individually, and "**Parties**" means Customer and Scuba, collectively.

"**Retention Period**" means, as specified in an Order Form, the maximum number of calendar days (or other period of time) that Customer is allowed to retain Events for live query access in the Scuba Software;

"**Services**" means the Support Services and any additional professional services that Scuba makes available to Customer from time to time for additional fees, as mutually agreed to by the Parties in and Order Form;

"**Subscription Term**" means, as specified in the Order Form, the term during which Customer may use the Scuba Software; and

"**Support Services**" means the support and maintenance services that Scuba performs during the Subscription Term in connection with the Scuba Software as provided for in the Order Form.

2. SOFTWARE LICENSE AND SERVICES.

2.1   License. Subject to Customer's compliance with this Agreement (including payment of applicable fees), Scuba grants to Customer during the Subscription Term a limited, non-exclusive, non-transferable, non-assignable and non-sublicensable license to access, display and use the Scuba Software and Documentation solely for Customer's own internal business purposes and solely within the Licensed Capacity (and such license grant includes a license to install such Scuba Software solely on Customer's designated hosted environment).

2.2   Restrictions. Customer shall not: (a) use the Scuba Software except as expressly authorized in this Agreement; (b) decompile, disassemble or reverse engineer the Scuba Software, or otherwise attempt to learn the source code, structure or algorithms underlying the Scuba Software; (c) copy, modify, distribute, adapt, or create derivative works of the Scuba Software or Documentation; (d) rent, lease, loan, sublicense, assign, distribute, resell or otherwise commercially exploit the Scuba Software or Documentation or make the Scuba Software available to any third party (other than Users (defined below)); (e) use the Scuba Software or Documentation to provide processing services to third parties, or otherwise use the Scuba Software or Documentation on a "service bureau" or "timesharing" or subscription basis; (f) access the Scuba Software or Documentation to build a competitive product or service, or copy any ideas, features, functions, graphics of the Scuba Software or Documentation; (g) interfere with or disrupt the integrity or performance of the Scuba Software; (h) remove or obscure any proprietary or other notices contained in the Scuba Software or Documentation; (i) disclose to any third party the results of any benchmark tests or other evaluation of the Scuba Software; (j) upload, transmit, or distribute to or through the Scuba Software any computer viruses, worms, or any software intended to damage or alter a computer system or data; (k) in violation of any law, regulation, rule, applicable standards, or third-party rights; or (l) authorize or enable any third parties to do any of the above.

2.3   Responsibilities. Customer shall: (a) limit access to, and use of, the Scuba Software to its authorized employees and third party contractors ("**Users**"); (b) access and use, and cause its Users to access and use, the Scuba Software and Documentation in compliance with the Agreement and all applicable laws; (c) remain responsible for any and all acts or omissions of action of any of its Users; (d) provide Scuba personnel with administrative and network access (reasonably satisfactory to Scuba) to its third party hosted environment where the Scuba Software is deployed; and (e) provide prompt cooperation and access to Customer personnel, systems, and resources where Scuba requests in order for Scuba to provide patches and other updates to the Scuba Software as deemed necessary at Scuba's discretion.

2.4   Provision of Services. Subject to Customer's compliance with the Agreement (including timely payment of applicable fees), Scuba will perform the Services specified in the Order Form.

3. TERM AND TERMINATION.

3.1   Term of Agreement and Order Form. This Agreement commences on the Effective Date and continues until the expiration or termination of all Order Forms entered hereunder, unless terminated earlier in accordance with this Section 3. Each Order Form will have an initial Subscription Term set forth therein ("**Initial Subscription Term**"). Upon expiry of such initial Subscription Term, the Order Form will automatically renew for additional one (1) year periods (each, a "**Renewal Subscription Term**"; and together with Initial Subscription Term, the "**Subscription Term**"), unless either Party provides written notice to the other Party of non-renewal at least sixty (60) days prior to the then-current Subscription Term.

3.2   Termination. Either Party may terminate this Agreement or any or all Order Forms entered hereunder as follows: (a) upon thirty (30) days written notice if the other Party breaches any material provision of this Agreement and does not cure such breach before the end of such notice period; (b) effective immediately and without notice if the other Party ceases to do business or otherwise terminates its operations, except as a result of a permitted assignment hereunder; or (c) if the other Party seeks protection under any bankruptcy, receivership, trust deed, creditor's arrangement or comparable proceedings, if such proceeding is instituted against that Party (and not dismissed with sixty (60) days thereafter).

3.3   Effect of Termination.   Upon any expiration or termination of this Agreement:

(a) all Order Forms will immediately terminate;
(b) Customer's right and license to the Scuba Software and Documentation under the expired or terminated Orders shall terminate immediately;
(c) Scuba will immediately cease providing and/or performing any Services under the applicable Orders;
(d) Customer shall immediately (i) cease use of the Scuba Software and Documentation under the expired or terminated Order and (ii) delete all Events ingested in the Scuba Software;
(e) each Party shall destroy (or if reasonable and requested by the other Party, return to the other Party), the Confidential Information of the other Party and any copies thereof and certify in writing such destruction; except that each Party may retain a copy of the other Party's Confidential Information to the extent and only for the period of time required according to its (i) record retention policies

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designed to meet its legal obligations, and (ii) data backup and archival procedures, provided the Confidential Information is destroyed at the end of the requirement under such policies and procedures;

(f) if the Agreement or an Order is terminated due to Customer breach, Customer shall pay to Scuba all unpaid fees set forth in the applicable Order Form(s) and Customer will not be entitled to any refund of any fees pre-paid prior to such termination;

(g) if the Agreement or an Order is terminated due to Scuba's breach, Customer shall pay Scuba all unpaid fees set forth in the applicable Order Form(s) up to the date of termination and Scuba shall refund to Customer any fees pre-paid prior to such termination for the remainder of the Subscription Term during which Customer was unable to use the Scuba Software; and

(h) upon receipt of a request to return Customer Data at any time up to thirty (30) days after termination of the Agreement, Scuba shall either at Scuba's option: (i) allow Customer limited access to the Scuba Software, at no additional cost and subject to the obligations and restrictions of this Agreement, solely for the purpose of retrieving Customer Data; or (ii) provide an export file of Customer Data in a commonly used format reasonably determined by Scuba and subject to Scuba's standard fees for such export.

3.4   Survival. This Section 3.4 (Survival) along with the following sections shall survive the expiration or termination of this Agreement: Sections 1 (Definitions), 2.2 (Restrictions), 2.3 (Responsibilities), 3.3 (Effect of Termination), 4 (Ownership), 5 (Confidentiality), 6 (Limitation of Liability), 7 (Payment Terms), 8.2 (Disclaimers), 9 (Indemnification), 10 (Export), 11 (Government Restricted Rights), 12 (Database of Record) and 14 (Miscellaneous).

4. OWNERSHIP.

4.1   Generally. Scuba or its licensors retain all worldwide right, title and interest, including all related intellectual property rights, in and to the Scuba Software, Services, Documentation, its Confidential Information, any technology developed from any Services provided by Scuba herein, and all derivative works, improvements, modifications thereto or thereof, by whomever made. No rights are granted to Customer hereunder other than as expressly set forth herein. Notwithstanding any contrary term herein, the Scuba Software is licensed, not sold, to Customer.

4.2   Customer Technology. Customer acknowledges that Scuba's ability to make the Scuba Software available to Customer and perform Services herein may be dependent on Scuba's timely access to certain Customer technical data, computer facilities, files, documentation, and other resources requested by Scuba ("**Customer Technology**"). Customer hereby grants Scuba a limited license to access and use such Customer Technology for purposes of making the Scuba Software available and performing the Services and Customer will remain responsible for and assume the risk of any problems arising from such Customer Technology.

4.3   Feedback. If Customer or any of its employees or contractors provides Scuba with any suggestions, ideas, improvements or other feedback with respect to the Scuba Software or any of the Services ("**Feedback**"), the Feedback will not be considered Confidential Information of the Customer.

Scuba shall be free to use any part of the Feedback without limitation, without any attribution or compensation to any party, and for any purpose. Customer   hereby assigns, and shall cause Customer's employees, contractors, and agents to assign, to Scuba all right, title, and interest in, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever in its sole discretion.

4.4   Customer Data. Customer retains all right, title and interest in and to all Customer Data. Customer represents and warrants that: (i) Customer's use of the Scuba Software and Services and all Customer Data is at all times compliant with Customer's privacy policies and all applicable laws and regulations, including without limitation, all applicable laws and regulations related to data privacy, exportation of technical data and personally identifiable information and international communications; and (ii) Customer has sufficient rights in the Customer Data to grant the rights granted to Scuba below and that the Customer Data does not infringe or otherwise violate the rights of any third party. Customer hereby grants to Scuba a non-exclusive, worldwide, right and license during the term of this Agreement to use the Customer Data in order to make the Scuba Software available to Customer and to perform the Services.

5. CONFIDENTIALITY.

5.1   Confidential Information. Any and all non-public, confidential and proprietary information, including, without limitation, code, inventions or know-how, or business, technical or financial information furnished by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), that is either marked as "confidential" or "proprietary" or that should be reasonably known by the Receiving Party to be Confidential Information, due to the nature of the information disclosed and the circumstances surrounding the disclosure, shall constitute the confidential property of the Disclosing Party ("**Confidential Information**"). Scuba Confidential Information shall include the Scuba Software, the Services, the Documentation, any Order Form (and any information therein) and any performance information (e.g., benchmarking) of the Scuba Software. Confidential Information does not include information that the Receiving Party can document: (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party; (b) was known to the Receiving Party free of any obligation of confidentiality before it was communicated to the Receiving Party by the Disclosing Party; (c) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (d) is rightfully obtained by Receiving Party from a third party without a breach of any confidentiality obligation.

5.2   Obligations of Confidentiality. The Receiving Party shall treat all Confidential Information of the Disclosing Party by using the same degree of care, but no less than a reasonable degree of care, as it accords its own Confidential Information. The Receiving Party further agrees:

(a) to keep all Confidential Information of Disclosing Party in strict confidence and not to disclose or reveal any such Confidential Information to any person (other than such Receiving Party's officers, directors, employees, contractors, consultants, or professional advisors who (i) have a need to know the Confidential Information and (ii) are subject to fiduciary, professional, or written

> obligations of confidentiality providing sufficient protections of confidentiality as contemplated herein; and

(b) not to use Confidential Information for any purpose other than in connection with fulfilling its obligations or exercising rights under this Agreement.

5.3   Required Disclosure. The Receiving Party may disclose the Confidential Information of the Disclosing Party if it is required to do so pursuant to an order or requirement of a court, administrative agency or other governmental body; provided however, that the Receiving Party provides the Disclosing Party with prior written notice thereof (where possible and legally permissible) to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure, and shall cooperate with the Disclosing Party (at the Disclosing Party's expense) to obtain such protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, or the Disclosing Party waives compliance, the Receiving Party shall disclose only that portion of the Confidential Information that is legally required to be disclosed or is the subject of such waiver, and ensure that all Confidential Information that is so disclosed shall be accorded confidential treatment.

5.4   Irreparable Harm. The Receiving Party acknowledges that any misuse or unauthorized disclosure of Confidential Information of Disclosing Party may cause substantial harm to the Disclosing Party for which damages alone may not be a sufficient remedy, and the Disclosing Party shall be entitled to seek equitable relief (without the posting of a bond or similar instrument) in addition to any other available remedies.

6. LIMITATION OF LIABILITY.

6.1   INDEMNITY DAMAGES. EXCLUDING A BREACH OF SECTIONS 2.2 (RESTRICTIONS), 2.3 (RESPONSIBILITIES), 5 (CONFIDENTIALITY), 7 (PAYMENT TERMS), CUSTOMER'S INDEMNITY OBLIGATION IN SECTION 9.2 (CUSTOMER INDEMNITY), OR LIABILITY DUE TO EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, DATA, OR PROFITS, BUSINESS INTERRUPTION, OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. UNDER NO CIRCUMSTANCES WILL SCUBA BE LIABLE OR RESPONSIBLE FOR THE COST OF PROCUREMENT OF ANY SUBSTITUTE PRODUCTS OR SERVICES.

6.2   MAXIMUM LIABILITY. EXCEPT FOR: (A) LIABILITY DUE TO A BREACH OF SECTIONS 2.2 (RESTRICTIONS), 2.3 (RESPONSIBILITIES), 7 (PAYMENT TERMS), EITHER PARTY'S INDEMNITY OBLIGATIONS IN SECTION 9 (INDEMNIFICATION), OR LIABILITY DUE TO EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, FOR WHICH THE AMOUNT OF LIABILITY WILL NOT BE LIMITED; AND (B) LIABILITY DUE TO A BREACH OF

SECTION 5 (CONFIDENTIALITY), FOR WHICH EACH PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED ONE MILLION DOLLARS ($1,000,000.00); FOR ALL OTHER CLAIMS, EACH PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY FOR CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS THAT ARE PAID OR PAYABLE BY CUSTOMER TO SCUBA HEREUNDER IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY, IN ADDITION TO REASONABLE ATTORNEYS' FEES AND COSTS FOR THE PREVAILING PARTY.

7. PAYMENT TERMS.

7.1   Payment of Fees. Unless otherwise provided in an Order Form, Customer shall pay all fees set forth therein within thirty (30) days of receipt of Scuba's invoice. Scuba will invoice Customer as follows: (a) for Scuba Software for the Subscription Term, annually in advance; and (b) for any other Services (other than Support Services), in full in advance of the Services to be performed. Except as otherwise provided in the Agreement, all fees must be paid in United States Dollars, are based on products and services purchased and not on actual usage or performance, and are non-cancelable and non-refundable.

7.2   Rate Increases. The Parties agree that after the initial twelve (12) months from the Order Form Effective Date (as defined in the Order Form), and annually thereafter, the applicable Order Form pricing will be increased by five percent (5%).

7.3   Excess Usage. Scuba's measurement tools will be used to determine Customer's usage, including any excess usage, of the Scuba Software, and handled in accordance with the terms of the applicable Order Form.

7.4   Late Payment; Suspension. Any late payment shall be subject to interest that accrues at a rate of the lower of one and one half per cent (1.5%) per month or the highest rate permitted by law, plus costs of collection. If Customer's account is ten (10) days or more overdue or if Scuba in good faith believes that Customer is engaging in unauthorized conduct in its use of the Scuba Software or Services, in addition to any of its other rights or remedies, Scuba may suspend Customer's access to the Scuba Software and performance of the Services without liability to Customer until such amounts are paid in full or Customer stops engaging in such unauthorized conduct.

7.5   Taxes. Any and all payments made by Customer in accordance with the Agreement are exclusive of any taxes that might be assessed against Customer by any jurisdiction. Customer shall be responsible for and pay or reimburse Scuba for: (a) all federal, state, local of foreign value-added, sales, use, property and similar taxes; (b) all customs duties, import fees, stamp duties, license fees and similar charges; and (c) all other mandatory payments to government agencies of whatever kind, except any taxes imposed on the net or gross income of Scuba. All amounts payable to Scuba under the Agreement shall be without set-off and without deduction of any taxes, levies, imposts, charges, withholdings and/or duties of any nature which may be levied or imposed, including without limitation, value added tax, customs duty and withholding tax.

8. WARRANTY AND DISCLAIMERS.

8.1   Warranty. Scuba warrants to Customer that: (a) the Scuba Software will perform in all material respects with the Documentation during the Subscription Term; and (b) the Services, as applicable, will be performed in a professional, workmanlike manner consistent with generally accepted industry standards. Customer's sole and exclusive remedy, and Scuba's sole liability, for any breach of this warranty shall be for Scuba to correct the Scuba Software in accordance with the Support Services or re-perform the Services, at Scuba's expense.

8.2   DISCLAIMERS. EXCEPT FOR THE LIMITED WARRANTY IN THIS SECTION 8, SCUBA PROVIDES THE SCUBA SOFTWARE AND SERVICES ON AND "AS IS" AND "AS AVAILABLE" BASIS. NEITHER SCUBA NOR ITS SUPPLIERS MAKE OTHER WARRANTIES OF ANY KIND AND SPECIFICALLY DISCLAIM ANY AND ALL EXPRESS, IMPLIED, STATUTORY AND OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY OR NONINFRINGEMENT. SCUBA DOES NOT WARRANT THAT THE SCUBA SOFTWARE OR SERVICES ARE ERROR-FREE, OR THAT THE SCUBA SOFTWARE OR SERVICES WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY SCUBA.

9. INDEMNIFICATION

9.1   Scuba Indemnity. Scuba shall defend, indemnify and hold harmless Customer Indemnitees from and against any and all third party claims asserted against an Indemnified Party (and all resulting, to the extent payable to unaffiliated third parties, damages, losses, liabilities, penalties, costs and expenses, including reasonable attorneys' fees and costs) ("**Losses**") arising out of the alleged infringement or misappropriation of a copyright, trade secret, trademark or United States patent by the Scuba Software. If any third party claim which Scuba is obligated to defend has occurred, or in Scuba's determination is likely to occur, Scuba may, in its sole discretion and at its option and expense: (a) obtain for Customer the right to use the allegedly infringing item; (b) substitute a non-infringing replacement for such item; or (c) if in Scuba's opinion neither item (a) nor item (b) are reasonably available, terminate the Agreement and refund to Customer the fees paid by Customer in an amount pro-rated for the portion of the Subscription Term remaining after termination. The foregoing indemnification obligation of Scuba shall not apply if such claim arises out of: (1) use of the Scuba Software in combination with any software, hardware, network or system not supplied by Scuba where the alleged infringement is caused by such combination; (2) any modification or alteration of the Scuba Software (other than by Scuba); (3) where Customer continues the allegedly infringing activity after being informed of a modification that would avoid the alleged infringement; (4) Scuba's compliance with Customer's designs, specifications or instructions; or (5) use of the Scuba Software other than in accordance with the terms and conditions of the Agreement. THIS SECTION 9.1 SETS FORTH SCUBA'S SOLE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY.

9.2   Customer Indemnity. Customer shall indemnify, defend and hold harmless Scuba Indemnitees from and against any and all Losses arising out of (a) any Customer Data (including, without limitation, the violation of any laws, regulations or privacy rights), (b) any Customer Technology or (c) any actual or alleged breach by Customer of its obligations under this Agreement.

9.3   Procedure. The indemnifying Party's indemnification obligation is subject to the indemnifying Party receiving (a) prompt written notice from the Indemnitee Party of such claim (but in any event, notice in sufficient time for the indemnifying Party to respond without prejudice); (b) the exclusive right to control and direct the investigation, defense, or settlement of such claim (provided that indemnifying Party will not agree to any settlement that imposes on the Indemnitee Party a material obligation or admission of liability); and (c) all reasonable necessary cooperation of the Indemnitee Party at indemnifying Party's expense.

10. EXPORT. Customer agrees to comply fully with all U.S. export laws and regulations to ensure that neither the Scuba Software, the Services nor any technical data related thereto, nor any direct product thereof are exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations.

11. GOVERNMENT RESTRICTED RIGHTS. If Customer is a branch or agency of the United States Government, (a) the Services and Documentation are "commercial items" as that term is defined in FAR 2.101, consisting of "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and DFARS 227.7202, (b) are being acquired by or on behalf of the U.S. Government, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, and (c) the U.S. Government's rights in the Services and Documentation will be only those specified in this Agreement.

12. DATABASE OF RECORD. Customer acknowledges and agrees that Scuba and the Scuba Software are not the database of record for Customer, and Customer shall not rely on or consider Scuba or the Scuba Software as the sole source of, or a complete copy of Customer Data.

13. PUBLICITY. Upon customer approval in each instance, Scuba may (a) use Customer's name and logo on Scuba's web site and in its promotional materials and (b) may print, transmit and/or publicize details of its relationship with Customer as a user of the Services. Customer hereby agrees to participate in a case study where requested by Scuba.

14. MISCELLANEOUS

14.1   Evaluation Projects. If Scuba permits Customer to access and use the Scuba Software for evaluation purposes and/or provides Customer with an "early access" or beta version of the Scuba Software (an, "**Evaluation Project**"), Customer may be presented with additional terms and conditions prior to such use, and such additional terms and conditions are hereby incorporated into the Agreement by reference and are legally binding upon Customer and Scuba. NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT (INCLUDING WITHOUT LIMITATION SECTION 8.1 (WARRANTY)), ANY EVALUATION PROJECT MADE AVAILABLE BY SCUBA TO CUSTOMER (A) WILL BE SET

FORTH AS SUCH IN THE ORDER FORM, AND (B) WILL BE MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS, (I) WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY (TO THE FULLEST EXTENT PERMITTED BY LAW) AND (II) WITHOUT ANY OBLIGATION OF SCUBA TO PROVIDE SUPPORT SERVICES OR ANY INDEMNITY FOR CUSTOMER ACCESS TO, AND USE OF, THE SCUBA SOFTWARE DURING THE EVALUATION PROJECT.

14.2   Independent Contractor. In connection with this Agreement, each Party is an independent contractor and as such will not have any authority to bind or commit the other. Furthermore, neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture or agency relationship or as granting a franchise.

14.3   Third Party Products and Services. Customer may choose to obtain products and services that are provided or supported by third parties for use with the Services. Such third party products and services are provided pursuant to the terms of the applicable third party agreement between Customer and such third party, and Scuba assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any third party products or services.

14.4   Audit. During the term of this Agreement and for a period of one (1) year thereafter, upon reasonable notice and during Customer's normal business hours, Scuba shall have the right to audit Customer's systems and logs as necessary to verify Customer compliance with the Agreement, including the accuracy of the fees paid pursuant to this Agreement. Customer shall promptly pay the difference (plus interest) if such audit reveals an underpayment. If such audit reveals an underpayment of more than five per cent (5%), Customer shall also promptly reimburse Scuba for the reasonable costs and expenses of such audit.

14.5   Dispute Resolution and Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the state of Delaware without giving effect to its conflicts of law rules. The Parties shall resolve any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach, termination, or invalidity hereof (each, a **"Dispute"**), under the provisions of this section. A Party shall send written notice to the other party of any Dispute (**"Dispute Notice"**). The Parties shall first attempt in good faith to resolve any Dispute set forth in the Dispute Notice by negotiation and consultation between representatives at the executive levels. If the Parties cannot resolve any Dispute during the time period ending 30 days after the date of the Dispute Notice, either party may initiate mediation. The Parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the Parties. The Parties further agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential and privileged. If the Parties cannot resolve any Dispute by mediation within 45 days after the commencement of mediation, either party may commence binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction. The mediation shall be held in San Francisco, CA, or otherwise may be held by videoconference or other appropriate technology. Any arbitration shall be held

in San Francisco, CA, unless otherwise mutually agreed by the Parties. Any decision by the arbitration panel must be accompanied by a written opinion setting forth the findings of fact and conclusions of law, supported by evidence, that were relied upon in reaching the decision. The prevailing Party in the arbitration is entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the proceeding, including reasonable attorneys' fees, expenses, and costs.

14.6   Assignment. Neither Party may assign or transfer this Agreement or any rights granted hereunder, by operation of law or otherwise, without the other Party's prior written consent, and any attempt to do so without such consent will be void and have no effect; provided, however, each Party may assign this Agreement without consent of the other Party in connection with a merger or acquisition or a sale of all or substantially all of such Party's assets.

14.7   Force Majeure. Neither Party shall be liable for failure to perform any of its obligations under this Agreement (except payment obligations) during any period in which such Party cannot perform due to fire, earthquake, flood, any other natural disaster, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, war, embargo, riot, civil disturbance, act of public enemy, act of nature, the intervention of any government authority, any failure or delay of any transportation, power, or for any other similar cause beyond such Party's control ("**Force Majeure Event**"). In the case of failure to perform, the failing Party shall promptly notify the other Party in writing of the reason for and the likely duration of the failure. The performance of the failing Party's obligations shall be suspended during the period that the cause persists, and each Party shall use commercially reasonable efforts to avoid the effect of that cause.

14.8   No Third Party Beneficiary. This Agreement is intended for the sole and exclusive benefit of the Parties and is not intended to benefit any third party.

14.9   Entire Agreement. This Agreement, each Order Form and their terms constitute the complete and exclusive understanding and agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, relating to its subject matter, including any online terms of use. Purchase Orders (or similar documents) issued by Customer are for administrative purposes only (e.g., setting out Services ordered and associated fees) and any additional or different terms or conditions contained in any such purchase order shall not apply (even if the order is accepted, or performed on, by Scuba). In the event of any conflict between the terms of this Agreement and any Order Form, the terms of the Order Form will prevail, but only for the scope of license and services covered in such Order Form.

14.10   Waiver. Any waiver of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both Parties.

14.11   Amendments. Except as provided below, any modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both Parties.

14.12   <u>Severability</u>. If any court of competent jurisdiction determines that any provision of this Agreement is unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

14.13   <u>Notice</u>. All notices or approvals required or permitted under this Agreement will be in writing and delivered by overnight delivery service with signature required, or by certified mail, and in each instance will be deemed given upon receipt. All notices or approvals will be sent to the addresses set forth in the applicable Order Form or to such other address as may be specified by either Party to the other in writing in accordance with this section, and in connection with Scuba, such notice should be sent to the attention of Scuba's Legal Department, with copy to Legal@Scuba.com.