

**SPINNAKER SUPPORT
MANAGED SERVICES TERMS AND CONDITIONS**

THESE TERMS AND CONDITIONS (“TERMS”) GOVERN CUSTOMER’S ACQUISITION AND USE OF THE MANAGED SERVICES PROVIDED BY SPINNAKER SUPPORT AND/OR ITS AFFILIATES (“SPINNAKER”). CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN. IF CUSTOMER ACCEPTS A STATEMENT OF WORK REFERENCING THESE TERMS, CUSTOMER AGREES TO BE BOUND BY THE TERMS STATED HEREIN. ANY INDIVIDUAL AGREEING TO BE BOUND BY THESE TERMS ON BEHALF OF CUSTOMER REPRESENTS THAT SUCH INDIVIDUAL HAS THE AUTHORITY TO BIND CUSTOMER TO THE TERMS CONTAINED HEREIN. These Terms were last updated on August 20, 2021.

1. DEFINITIONS. As used in these Terms or any Statement of Work:

1.1 “Affiliate” means, with respect to a party, any person or entity that is directly or indirectly controlled by, under common control with, or that controls such party. For purposes of this definition, “controls,” “control” and “controlling” mean the direct or indirect ownership or control (whether through contract or otherwise) of shares entitled to more than fifty percent (50%) of the vote for the election of directors in the case of corporate entities and in the case of non-corporate entities, more than fifty percent (50%) of the equity interest with the power to direct management policies, or the direct or indirect power to direct or cause the direction of the management or policies of the party.

1.2 “Customer” means the business entity or person identified on the Statement of Work.

1.3 “Deliverable” means any item provided by Spinnaker to Customer as a result of the Services, which may include, findings, analyses, conclusions, opinions, designs, programs, enhancements, updates, fixes and/or source and object code.

1.4 “Intellectual Property Rights” means all known or hereafter existing worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights and other proprietary rights.

1.5 “Licensor” means the applicable licensor of a Third Party Product.

1.6 “Licensor Terms and Conditions” means the terms and conditions applicable to access and/or use of any Third Party Product, including any confidentiality, license and/or other agreement with the applicable Licensor(s), and any “terms of use” or similar terms imposed by such Licensor(s).

1.7 “Services” means the consulting, support, training, integration, implementation and other professional services to be performed by Spinnaker for Customer under these Terms pursuant to one or more Statement(s) of Work.

1.8 “Spinnaker Tools” means (a) all software, documentation, tools, routines, programs, designs, technology, ideas, know-how, processes, techniques and inventions that Spinnaker utilizes in connection with its performance of the Services and that Spinnaker makes, develops, conceives or reduces to practice, either (i) prior to, contemporaneously with, or subsequent to the performance of the Services, or (ii) in the course of performing the Services, and (b) all enhancements, modifications, improvements and derivative works of each and any of the foregoing.

1.9 “Statement of Work” means a written statement of work executed by the parties that describes the specific Services to be performed by Spinnaker hereunder.

1.10 “Third Party Product(s)” means any third-party licensed software product(s) or other third-party material(s) in Customer’s custody and/or control.

1.11 Capitalized terms not specifically defined in this Section shall have the respective meanings ascribed to them in these Terms.

2. PERFORMANCE OF SERVICES.

2.1 Statements of Work. The specific Services to be performed by Spinnaker under these Terms shall be set forth in one or more Statements of Work mutually agreed to by the parties. A Statement of Work shall not be binding unless signed by both parties, and upon such signing, shall be incorporated into these Terms.

2.2 Additional Services. Any additional services required by Customer that are outside the scope of a Statement of Work (“Additional Services”) shall be performed at Spinnaker’s then-current consulting rates on a time and materials basis; that is, Customer shall pay Spinnaker for the time spent performing the relevant Additional Services, plus applicable materials, taxes and expenses. Notwithstanding the foregoing, for Additional Services, Spinnaker shall bill a minimum of

one (1) labor hour for each new, unique request for assistance placed with Spinnaker (as evidenced by an assigned unique case number), with billing in ¼ hour increments thereafter (rounding up to the next whole ¼ hour of labor).

2.3 Change Orders; Conflicts. In the event either party requires a material change to a Statement of Work, such party will provide a written change order to the other for approval, specifying the change required (each a “**Change Order**”). Each party agrees that a Change Order may necessitate a change in the delivery schedule and/or fees due under the applicable Statement of Work. No Change Order will be binding upon either party until it is signed by the authorized representatives of both parties. Each Statement of Work and Change Order will be governed by these Terms. In the event of a conflict between the terms and conditions of these Terms and those of a Statement of Work or Change Order (if any), the following order of precedence shall apply: (i) Change Order (if any), (ii) Statement of Work, (iii) these Terms.

3. FEES AND PAYMENT.

3.1 Fees. Customer will timely pay Spinnaker all fees as specified in the applicable Statement of Work. Unless otherwise expressly provided in these Terms or the applicable Statement of Work, all fees are non-refundable.

3.2 Payment Terms. Unless otherwise expressly provided in these Terms or the applicable Statement of Work, Customer will pay Spinnaker all amounts due under these Terms within fifteen (15) days after the date of the invoice therefore. All payments must be made in U.S. dollars and shall be paid by electronic funds transfer (ACH or SWIFT) or wire transfer to the account specified in the invoice received, or to such other account as Spinnaker may designate from time to time. Customer shall pay any applicable wire transfer fees. Any amounts not paid when due will accrue interest at the lesser of one and one-half percent (1½%) per month or the maximum rate permitted by applicable law from the due date until paid. Without limiting any other remedy available to Spinnaker, Spinnaker reserves the right to suspend any Services during any period in which Customer has failed to timely pay any amounts due and payable.

3.3 Taxes. Fees exclude, and Customer will make all payments of fees to Spinnaker free and clear of, all applicable sales, use and other taxes and all applicable export and import fees, customs, duties and similar charges. When applicable, Spinnaker may include any taxes that it is required to collect as a separate line item on an invoice. Customer will be responsible for, and will indemnify and hold harmless Spinnaker from, payment of all such taxes (other than taxes based on Spinnaker’s net income), fees, duties and charges, and any related penalties and interest, arising from the payment of fees or the performance of Services hereunder.

3.4 Travel and Other Expenses. Services provided hereunder shall be provided at Spinnaker’s principal places of business. Should Customer request or it be otherwise necessary that Spinnaker send personnel to any Customer site or other location in connection with the Services, Customer shall pay Spinnaker’s reasonable travel, meals and lodging expenses. Under such circumstances, Customer shall also pay actual costs for supplies and other expenses reasonably incurred by Spinnaker, which are not of the sort normally provided or covered by Spinnaker, provided that Customer has approved in advance the purchase of such supplies and other expenses. If Customer so requires, Spinnaker shall submit written evidence of each expenditure to Customer prior to receiving reimbursement of such costs and expenses.

4. CUSTOMER OBLIGATIONS. Customer shall provide Spinnaker with such resources, information, software access and assistance as Spinnaker may reasonably request in connection with the performance of the Services. Customer acknowledges and agrees that Spinnaker’s ability to successfully perform the Services in a timely manner is contingent upon its receipt from Customer of such information, resources, software access and assistance. Spinnaker shall have no liability for deficiencies in the Services resulting from the acts or omissions of Customer, its agents or employees. Without limiting the generality of the foregoing, Customer acknowledges and agrees that Customer’s obligations include the following:

4.1 Primary Contact. Customer shall designate one (1) primary point of contact under each Statement of Work who shall be responsible for managing the relationship between Spinnaker and Customer thereunder, including providing reasonable assistance to Spinnaker with technical and non-technical issues related to the applicable Services.

4.2 Access to Third Party Products. Customer acknowledges and agrees that Spinnaker is performing the Services solely for the benefit of Customer, and that Spinnaker’s ability to perform the Services may require Spinnaker’s access (either through remote access or direct physical access on Customer’s premises) and use of certain Third Party Products. In connection therewith, Customer hereby represents and warrants that it has the right to provide Spinnaker with access to, and use of, any and all portions of such Third Party Products in connection with Spinnaker’s performance of the Services, including, if applicable, the right to customize and/or configure each such Third Party Product for the benefit of

Customer. Customer agrees to immediately notify Spinnaker of any changes made (actual or attempted) by the applicable Licensor to Customer's license and access rights to such Third Party Product(s), including changes to the applicable Licensor Terms and Conditions, that may affect Spinnaker's ability to continue performing the Services. Customer shall indemnify, defend and hold Spinnaker, its officers, employees, personnel, agents and representatives harmless from and against any and all claims, liabilities, damages and expenses (including reasonable attorneys' fees), arising out of Customer's breach of this Section, including any breach of Customer's representations and warranties hereunder.

4.3 Personnel. Customer shall provide sufficient, qualified and knowledgeable personnel capable of (a) performing Customer's obligations as described in these Terms and each Statement of Work and (b) making necessary and timely decisions on behalf of Customer.

5. WARRANTIES.

5.1 Performance. Spinnaker warrants to Customer that the Services will be performed in a professional manner consistent with industry standards. Spinnaker shall, as its sole obligation and Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section, re-perform the Services which gave rise to the breach, or at Spinnaker's option, refund the fees paid by Customer for the Services which gave rise to the breach; provided that Customer notifies Spinnaker in writing of the breach within thirty (30) days following performance of the defective Services, specifying the breach in reasonable detail.

5.2 Disclaimers. THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES, AND SPINNAKER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NO SPECIFIC RESULTS FROM THE PERFORMANCE OF THE SERVICES ARE ASSURED OR GUARANTEED. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN.

6. INFRINGEMENT CLAIMS. Spinnaker will defend at its own expense any action against Customer brought by a third-party to the extent that the action is based upon a claim that Customer's use of any Deliverable infringes any U.S. patent or copyright or misappropriates any trade secret of a third-party, and Spinnaker will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer (a) notifying Spinnaker promptly in writing of such action, (b) giving Spinnaker sole control of the defense thereof and any related settlement negotiations and (c) cooperating and, at Spinnaker's request and expense, assisting in such defense. If any Deliverable becomes, or in Spinnaker's opinion is likely to become, the subject of an infringement claim, Spinnaker may, at its option and expense, either (i) procure for Customer the right to continue using the Deliverable, (ii) replace or modify the Deliverable so that it becomes non-infringing or (iii) terminate Customer's right to use the Deliverable and refund Customer the fees paid for such portion of the Deliverable which is allegedly infringing, upon which Customer shall have no further rights in and to the subject Deliverable. Notwithstanding the foregoing, Spinnaker will have no obligation under this Section 6 or otherwise with respect to any infringement claim based upon (A) any use of the Deliverable not in accordance with these Terms or for purposes not intended by Spinnaker, (B) any use of the Deliverable in combination with other services, products, equipment, software or data not intended by Spinnaker to be used with the Deliverable, (C) any information, software code or other materials furnished to Spinnaker by Customer, its agents, representatives and suppliers, including Customer's specifications, (D) any unauthorized and/or unlicensed activities by Customer, its agents, representatives and suppliers, including any violation by Customer of Section 4.2, or (E) any modification of the Deliverable by any person other than Spinnaker or its authorized agents or subcontractors; and Customer shall indemnify, defend and hold Spinnaker, its officers, employees, personnel, agents and representatives harmless from and against any and all claims, liabilities, damages and expenses (including reasonable attorneys' fees) based upon any of the foregoing. THIS SECTION 6 STATES SPINNAKER'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS RELATED TO THE SERVICES AND ANY DELIVERABLE UNDER THESE TERMS.

7. OWNERSHIP.

7.1 Work Product. Except as provided in Section 7.2, the parties hereby agree that any and all Customer-specific work product (the "**Work Product**") which is produced as a result of the Services performed by Spinnaker under these Terms, including any Intellectual Property Rights therein, shall be the property of Customer.

7.2 Spinnaker Property. Notwithstanding the foregoing in Section 7.1, as between the parties, Spinnaker shall retain all Intellectual Property Rights in and to any and all Spinnaker Tools which have general applicability apart from the Work Product (collectively, the “**Spinnaker Property**”). Subject to Customer’s payment of all applicable fees, Spinnaker grants Customer a non-exclusive, non-transferable license, without rights to sublicense, to use the Spinnaker Property that is incorporated into a Deliverable solely for Customer’s own internal business purposes in connection with the use of such Deliverable.

7.3 Third Party Products. Notwithstanding anything contained herein to the contrary, Spinnaker acknowledges and agrees that it has no claim of ownership in and to any Third Party Products or any Intellectual Property Rights therein.

8. LIMITATION OF LIABILITY. SPINNAKER’S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY SERVICES PROVIDED UNDER THESE TERMS, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO SPINNAKER UNDER THE STATEMENT OF WORK UNDER WHICH SUCH SERVICES ARE PERFORMED DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THESE TERMS, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THIS LIMITATION SHALL NOT APPLY TO CUSTOMER’S BREACH OF SECTION 4.2 OR EITHER PARTY’S BREACH OF SECTION 9. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT SPINNAKER WOULD NOT ENTER INTO THESE TERMS OR ANY STATEMENT OF WORK WITHOUT THESE LIMITATIONS ON SPINNAKER’S LIABILITY.

9. CONFIDENTIALITY.

9.1 Protection of Confidential Information. Each party (the “**Disclosing Party**”) may from time to time disclose to the other party (the “**Receiving Party**”) certain information regarding the business of the Disclosing Party and its suppliers, including technical, marketing, financial, employee, planning and other confidential or proprietary information (“**Confidential Information**”). Any information that the Receiving Party knew or should have known, under the circumstances, is considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party. Without limiting the generality of the foregoing, the Spinnaker Tools shall be considered Spinnaker’s Confidential Information.

9.2 Protection of Confidential Information. The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by these Terms, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of these Terms and who are under a duty of confidentiality no less restrictive than the Receiving Party’s duty hereunder. The Receiving Party will protect the Disclosing Party’s Confidential Information from unauthorized use, access and disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

9.3 Exceptions. The Receiving Party’s obligations under Section 9.2 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party by a third-party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, or use of, the Disclosing Party’s Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under these Terms in connection with a legal proceeding; or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party’s request and expense, in any lawful action to contest or limit the scope of such required disclosure.

9.4 Return of Confidential Information. The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party’s possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party and/or upon

the expiration or termination of these Terms (except for any computer records or files that have been created pursuant to the Receiving Party's automatic archiving and back-up procedures and the removal of which is not technically reasonable, which shall remain subject to a continuing obligation of confidentiality). Upon request from the Disclosing Party, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 9.

9.5 Confidentiality of Agreement. Except as expressly permitted hereunder, neither party will disclose any terms of these Terms to anyone other than its attorneys, accountants and other professional advisors except (a) as required by law, or (b) pursuant to the mutual agreement of the parties, or (c) in connection with a financial investment in such party's business or (d) in connection with a contemplated transfer of such party's business permitted by Section 12.2 (provided that any third-party to whom the terms of these Terms is to be disclosed is under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder).

10. TERM AND TERMINATION.

10.1 Term. The term of a Statement of Work is the period of time, including all renewals thereto, that begins on the Statement of Work's Start Date and, unless terminated sooner as provided herein, will continue until the Statement of Work's End Date, both dates as specified and defined in the Statement of Work (the "Initial Term"). The term of these Terms shall continue as long as a Statement of Work referencing or incorporated into these Terms remains valid and in effect.

10.2 Termination. Either party may terminate these Terms or any uncompleted Statement(s) of Work if the other party (a) breaches any material provision of these Terms or the applicable Statement(s) of Work and does not cure such breach within thirty (30) days after receiving written notice thereof; (b) shall formally declare bankruptcy, insolvency, reorganization, liquidation or receivership; or (c) shall have instigated against it bankruptcy, insolvency, reorganization, liquidation or receivership proceedings, and shall fail to remove itself from such proceedings within ten (10) days from the date of institution of such proceedings. Notwithstanding the foregoing, Spinnaker may also terminate these Terms or any uncompleted Statement(s) of Work immediately upon written notice in the event Customer fails to pay any amounts payable hereunder within ten (10) days after receiving written notice from Spinnaker that payment is due, or (ii) Customer breaches Section 4.2. The termination or expiration of a single Statement of Work shall not cause the automatic termination of any other Statement of Work.

10.3 Effects of Termination. Expiration or termination of these Terms for any reason shall not release either party from liability which at said time has already incurred to the other party. Except as otherwise expressly set forth herein, the following provisions will survive expiration or termination of these Terms pursuant to their terms, together with any other provisions necessary for their construction and enforcement: Sections 1, 3, 4.2 (with respect to Customer's representations, warranties and indemnity obligations), 5, 6, 7, 8, 9, 10.3 and 11, together with any accrued payment obligations. Without limiting the foregoing, upon termination or expiration of these Terms or any Statement(s) of Work for any reason, any amounts owed to Spinnaker under these Terms or the applicable Statement(s) of Work before such termination or expiration will be immediately due and payable, including any amounts due for Services performed and expenses incurred prior to such termination or expiration and any reasonable and necessary travel or out-of-pocket expenses incurred after such termination or expiration, without regard to whether any invoices had or had not been issued.

11. GENERAL.

11.1 Compliance. Customer shall comply with all applicable laws and regulations in its use of the Services and Deliverables, including any such laws and regulations related to export and import controls.

11.2 Assignments. Neither party may assign or transfer, by operation of law or otherwise, any of its rights under these Terms to any third-party without the other's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. Notwithstanding the foregoing, each party shall have the right, upon providing notice to the other party (but not requiring the other party's consent), to assign its rights and obligations under these Terms to an Affiliate or any successor to its business or assets to which these Terms relate, whether by merger, sale of assets, sale of stock, reorganization or otherwise.

11.3 Force Majeure. Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires,

flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of such party.

11.4 Notices. All notices required in connection with these Terms will be in writing and deemed effectively given: (a) upon personal delivery to the party to be notified; (b) on the date on which such notice is delivered by email with confirmation that the email has been received and read; or (c) one (1) business day after deposit with a nationally/internationally recognized overnight courier that provides tracking and verification of delivery. All notices shall be sent to the address set forth on the cover page of these Terms. Either party may change its address by giving notice of the new address to the other party in writing.

11.5 Governing Law and Venue. These Terms will be governed by and interpreted in accordance with the laws of the State of Colorado, United States, without reference to its choice of laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. Any action or proceeding arising from or relating to these Terms shall be brought exclusively in a federal or state court in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

11.6 Remedies. Except as provided in Sections 5 and 6, the parties' rights and remedies under these Terms are cumulative. Each party acknowledges that any breach of Sections 4.2, 7 and/or 9 of these Terms would cause irreparable injury to the other party for which monetary damages would not be an adequate remedy, and therefore, the other party will be entitled to injunctive relief. If any legal action is brought by a party to enforce these Terms, the prevailing party will be entitled to receive its attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

11.7 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.8 Severability. If any provision of these Terms is held by a court of competent jurisdiction to be unenforceable, such provision will be deemed modified and will be interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of these Terms will continue in full force and effect.

11.9 Subcontractors. Customer acknowledges and agrees that Spinnaker may hire subcontractors to perform certain Services hereunder. Spinnaker will be responsible for the direction and coordination of the services of each subcontractor and Customer will have no obligation to pay any subcontractor directly.

11.10 Relationship of Parties. The relationship of the parties established under these Terms is that of independent contractors and neither party is a partner, employee, agent or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

11.11 Construction. The headings used for the sections of these Terms are for information purposes and convenience only and in no way define, limit, construe or describe the scope or extent of the sections. The word "including" or any variation thereof means "including, without limitation" and will not be construed to limit any general statement that such word or variation thereof follows. The language used in these Terms will be deemed to be the language chosen by the parties to express the parties' collective mutual intent, and no rule of strict construction will be applied against any party.

11.12 Non-Solicitation of Personnel. Customer recognizes that the employees and independent contractors of Spinnaker, and such employees' and independent contractors' loyalty and service to Spinnaker, constitute a valuable asset of Spinnaker. Accordingly, Customer hereby agrees, during the term of these Terms and for two (2) years thereafter, not to make any offer of employment to, nor enter into a consulting relationship with, any person who was employed or retained by Spinnaker during the previous two (2) years. Any violation of this provision shall constitute a material breach of these Terms, and upon any such breach, Customer shall pay to Spinnaker liquidated damages consisting of the amount of all compensation (e.g., salary, bonuses, fees, etc.) paid or to be paid by Customer to the person during the first twelve (12) months after such person was hired/retained by Customer. Each party acknowledges and agrees that the amount of liquidated damages stated herein is a good faith estimate of the training and personnel related investment costs Spinnaker will lose if a Spinnaker employee or independent contractor is hired or retained by Customer. In the event this Section is deemed unenforceable for any reason, Spinnaker shall nevertheless be entitled to recover its actual damages resulting from Customer's breach.

11.13 Data Processing Addendum. To the extent that Spinnaker has access to or processes any Customer Personal Data, Spinnaker shall comply with the terms of the **Data Processing Addendum** (below).

11.14 Entire Agreement. These Terms, together with any attachments, addendums, and exhibits hereto (including all Statements of Work), constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings and communication, whether written or oral. Any different or additional terms of a related purchase order, confirmation or similar form signed by the parties after the date hereof shall have no force or effect on these Terms or its subject matter, and pre-printed or standard terms of Customer's purchase order are specifically excluded. These Terms and each Statement of Work shall not be modified except by a subsequently dated written amendment signed on behalf of Spinnaker and Customer by their duly authorized representatives.

DATA PROCESSING ADDENDUM

This Data Processing Addendum ("**Addendum**") supplements and is governed by the Terms. The terms used in this Addendum shall have the meanings set forth in this Addendum. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Terms. Except as modified below, the terms and conditions of the Terms shall remain in full force and effect.

The parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Terms. The following obligations shall only apply to the extent required by Data Protection Laws (as defined below) with regard to the relevant Customer Personal Data (as defined below), if applicable.

1. Definitions.

- 1.1. "**Affiliate**" means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with either Customer or Spinnaker respectively, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.
- 1.2. "**Controller,**" "**Processor,**" "**Data Subject,**" "**Processing,**" "**Supervisory Authority,**" "**Personal Data Breach,**" and "**Special Categories of Personal Data**" shall have the same meaning as in the applicable Data Protection Law.
- 1.3. "**Customer Personal Data**" means Personal Data received from or on behalf of Customer that is covered by a Data Protection Law.
- 1.4. "**Data Protection Laws**" means all applicable laws, rules, regulations, or implementing legislation that (a) relate to the data privacy or security of Personal Data of individuals; or (b) provide individuals with certain rights with respect to their Personal Data, whether such laws are already in force or will come into effect during the term of this Addendum. Data Protection Laws include, without limitation (i) the General Data Protection Regulation 2016/679 ("**GDPR**"), as well as any other applicable national rule and legislation on the protection of Personal Data in the European Union or any Member State that is already in force or that will come into force during the term of this Addendum, including, any measure, guideline and opinion issued by the data protection authorities, the Working Party under Article 29 of Directive 95/46/EC, the European Data Protection Board under Article 63 *et seq.* of the GDPR and any other competent authority, and any other data protection laws substantially amending, replacing or superseding the GDPR following any exit by the United Kingdom from the European Union, or, to the extent applicable, the data protection or privacy laws of any other Member State of the EEA; and (ii) the California Consumer Privacy Act ("**CCPA**"), including any regulation, guideline and opinion issued by any competent authority of the CCPA (e.g., the regulations issued by the California Attorney General concerning the CCPA).
- 1.5. "**EEA**" means the European Economic Area as well as any country for which the European Commission has published an adequacy decision as published at <https://ec.europa.eu/info/law/law-topic/data->

[protection/data-transfers-outside-eu/adequacy-protection-personal-data-non-eu-countries_en.](#)

- 1.6. **“Personal Data”** means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household.
- 1.7. **“Restricted Transfer”** means the onward transfer of Customer Personal Data that is located in the EEA to Spinnaker in a country that is not in the EEA, where such transfer would be prohibited by Data Protection Laws in the absence of the Standard Contractual Clauses or another adequate transfer mechanism as approved by the European Commission.
- 1.8. **“Standard Contractual Clauses”** means the Standard Contractual Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection pursuant to the European Commission’s decision (C(2010)593) of 5 February 2010, if applicable.
- 1.9. **“Subprocessor”** means any Processor (including any third party and any Spinnaker Affiliate) appointed by Spinnaker to Process Customer Personal Data on behalf of Customer or any Customer Affiliate.

2. **Data Processing Terms.** While providing the Services to Customer and Customer Affiliates, Spinnaker and Spinnaker Affiliates may Process Customer Personal Data on behalf of Customer or any Customer Affiliate as per the terms of this Addendum. Spinnaker agrees to comply with the following provisions with respect to any Customer Personal Data submitted by or for Customer or any Customer Affiliate to the Services or otherwise collected and Processed by or for Customer or any Customer Affiliate by Spinnaker or any Spinnaker Affiliate. Spinnaker shall only retain, use, or disclose Customer Personal Data as necessary for Spinnaker’s performance of its obligations under the Agreement and only in accordance with Customer’s instructions. Spinnaker must not sell any Customer Personal Data as the term “selling” is defined in the CCPA. Spinnaker agrees to refrain from taking any action that would cause any transfers of Customer Personal Data to or from Spinnaker to qualify as “selling personal information” under the CCPA.
3. **Processing of Customer Personal Data.** Spinnaker shall not Process Customer Personal Data other than on Customer’s documented instructions unless Processing is required by Data Protection Laws to which Spinnaker is subject, in which case Spinnaker shall to the extent permitted by Data Protection Laws inform Customer of that legal requirement before Processing Customer Personal Data. For the avoidance of doubt, the Terms and any related Statement of Work entered into by Customer shall constitute documented instructions for the purposes of this Addendum. Customer shall be responsible for: (1) giving adequate notice and making all appropriate disclosures to Data Subjects regarding Customer’s use and disclosure and Spinnaker’s Processing of Customer Personal Data; and (2) obtaining all necessary rights, and, where applicable, all appropriate and valid consents to disclose such Customer Personal Data to Spinnaker and to permit the processing of such Customer Personal Data by Spinnaker for the purposes of performing Spinnaker’s obligations under the Terms and any related Statement of Work or as may be required by Data Protection Laws. Customer shall notify Spinnaker of any changes in, or revocation of, the permission to use, disclose, or otherwise process Customer Personal Data that would impact Spinnaker’s ability to comply with the Terms, or applicable Data Protection Laws.
4. **Confidentiality.** Spinnaker shall take reasonable steps to ensure that individuals that process Customer Personal Data are subject to obligations of confidentiality or are under an appropriate statutory obligation of confidentiality.
5. **Security.** Taking into account the state of the art, the costs of implementation and the nature, scope, context, and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Spinnaker shall in relation to Customer Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk.
6. **Subprocessing.** Upon Customer’s request, Spinnaker shall provide Customer with a list of its Subprocessors (the **“Subprocessor List”**). Spinnaker may engage additional Subprocessors as Spinnaker considers reasonably appropriate for the processing of Customer Personal Data in accordance with this Addendum, provided that

Spinnaker shall notify Customer of the addition or replacement of Subprocessors from the Subprocessor List. Customer may, on reasonable grounds, object to a Subprocessor by notifying Spinnaker in writing within 10 days of Customer's receipt of the Subprocessor List or Spinnaker's notification of a change to the Subprocessor List, as applicable, giving reasons for Customer's objection. Upon receiving such objection, Spinnaker shall: (1) work with Customer in good faith to make available a commercially reasonable change in the provision of the Services which avoids the use of that proposed Subprocessor; and (2) where such change cannot be made within 10 days of Spinnaker's receipt of Customer's notice, Customer may by written notice to Spinnaker with immediate effect terminate the portion of the Terms or relevant Statement of Work to the extent that it relates to the Services which require the use of the proposed Subprocessor. This termination right is Customer's sole and exclusive remedy to Customer's objection of any Subprocessor appointed by Spinnaker. Spinnaker shall require all Subprocessors to enter into an agreement with equivalent effect to the Processing terms contained in this Addendum. Spinnaker shall remain fully liable for all the acts and omissions of each Subprocessor.

- 7. Data Subject Rights.** Spinnaker shall promptly notify Customer if it receives a request from a Data Subject under any Data Protection Laws in respect to Customer Personal Data. In the event that any Data Subject exercises any of its rights under the Data Protection Laws in relation to Customer Personal Data, Spinnaker will shall use reasonable commercial efforts to assist Customer in fulfilling its obligations as Controller following written request from Customer, provided that Spinnaker may charge Customer on a time and materials basis in the event that Spinnaker considers, in its reasonable discretion, that such assistance is onerous, complex, frequent, or time consuming.
- 8. Personal Data Breach.** In the event of a Personal Data Breach, Spinnaker will notify Customer without undue delay after becoming aware of the Personal Data Breach. Such notification may be delivered to an email address provided by Customer or by direct communication (for example, by phone call or an in-person meeting). Customer is solely responsible for ensuring that the appropriate notification contact details are current and valid. Spinnaker will take reasonable steps to provide Customer with information available to Spinnaker that Customer may reasonably require to comply with its obligations as Controller to notify impacted Data Subjects or Supervisory Authorities.
- 9. Data Protection Impact Assessment and Prior Consultation.** In the event that Customer considers that the Processing of Customer Personal Data requires a privacy impact assessment to be undertaken or requires assistance with any prior consultations to any Supervisory Authority of Customer, following written request from Customer, Spinnaker shall use reasonable commercial efforts to provide relevant information and assistance to Customer to fulfil such request, provided that Spinnaker may charge Customer on a time and materials basis in the event that Spinnaker considers, in its reasonable discretion, that such assistance is onerous, complex, frequent, or time consuming.
- 10. Deletion or Return of Customer Personal Data.** Unless otherwise required by applicable Data Protection Laws, following termination or expiration of the Terms Spinnaker shall, at Customer's option, delete or return all Customer Personal Data and all copies to Customer.
- 11. Relevant Records and Audit Rights.** Spinnaker shall make available to Customer on request all information reasonably necessary to demonstrate compliance with this Addendum and allow for and contribute to audits, including inspections by Customer or an auditor mandated by Customer, not being competitors of Spinnaker ("**Mandated Auditor**") of any premises where the Processing of Customer Personal Data takes place in order to assess compliance with this Addendum. Spinnaker shall provide reasonable cooperation to Customer in respect of any such audit and shall at the request of Customer, provide Customer with relevant records of compliance with its obligations under this Addendum. Spinnaker shall promptly inform Customer if, in its opinion, a request infringes the Data Protection Laws or any other confidentially obligations with Spinnaker's other customers. Customer agrees that: (1) audits may only occur during normal business hours, and where possible only after reasonable notice to Spinnaker (not less than 20 days' advance written notice); (2) audits will be conducted in a manner that does not have any adverse impact on Spinnaker's normal business operations; (3) Customer and any

Mandated Auditor will comply with Spinnaker's standard safety, confidentiality, and security procedures in conducting any such audits; and (4) any records, data, or information accessed by Customer or any Mandated Auditor in the performance of any such audit will be deemed to be the Confidential Information of Spinnaker. To the extent any such audit incurs in excess of 20 hours of Spinnaker personnel time, Spinnaker may charge Customer on a time and materials basis for any such excess hours.

- 12. International Data Transfer.** When applicable, in the event that any Customer transfers any Customer Personal Data to Spinnaker in a country outside the EEA, Customer on behalf of itself and each Customer Affiliate as data exporter and Spinnaker on behalf of itself and each Spinnaker Affiliate as data importer shall enter into the Standard Contractual Clauses, which terms shall take precedence over those in this Addendum. In the event that the Standard Contractual Clauses cease to be recognized as a legitimate basis for the transfer of Personal Data to an entity located outside the EEA, Customer shall cooperate with Spinnaker to identify and implement an alternative legitimate basis to the extent that one is required by the Data Protection Laws. The Standard Contractual Clauses shall come into effect on the later of: (1) the data exporter becoming a party to them; (2) the data importer becoming a party to them; and (3) commencement of the relevant Restricted Transfer.
- 13. General Terms.** Any obligation imposed on Spinnaker under this Addendum in relation to the Processing of Personal Data shall survive any termination or expiration of this Addendum. Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either: (1) amended as necessary to ensure its validity and enforceability, while preserving the intent of the provision as closely as possible or, if this is not possible, (2) construed in a manner as if the invalid or unenforceable part had never been contained therein. With regard to the subject matter of this Addendum, the provisions of this Addendum shall prevail over the Terms with regard to data protection obligations for Personal Data of a Data Subject under Data Protection Laws.