



## Software as a Service (SaaS) Terms and Conditions

### 1. DEFINITIONS.

**1.1 "Access Protocols"** shall mean the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer to access the SOR Services.

**1.2 "Agreement"** has the meaning set forth on the Order Form.

**1.3 "Authorized User"** shall mean any individual or such other entity as may be authorized by an Order Form, by virtue of such individual's relationship to, or permissions from, Customer, to access the SOR Service pursuant to Customer's rights under this Agreement.

**1.4 "Confidential Information"** means any non-public material or information relating to a Party which it discloses or makes available to the other Party under this Agreement, including, by way of example, research, strategies, inventions, processes, formulas, technologies, designs, drawings, finances, or other non-public information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the software and any databases of SOR (including any data models and data contained therein that are not specific to Customer) shall constitute Confidential Information of SOR.

**1.5 "Customer"** has the meaning set forth on the Order Form.

**1.6 "Customer Content"** shall mean the data, media and content provided by Customer and/or Authorized Users through the SOR Service.

**1.7 "Customer Indemnity Responsibilities"** shall have the meaning set forth in Section 13.1.

**1.8 "Documentation"** shall mean SOR's standard user manuals and/or related documentation generally made available to Customers of the SOR Application.

**1.9 "Effective Date"** has the meaning set forth on the Order Form.

**1.10 "External User"** shall mean any Authorized User that is not an employee of Customer.

**1.11 "Intellectual Property Rights"** shall have the meaning set forth in Section 8.2.

**1.12 "Internal User"** shall mean any Authorized User who is an employee of Customer.

**1.13 "SOR"** means SpotOnResponse LLC.

**1.14 "SOR Application"** means any of SOR's proprietary software application(s) regarding which a right to access is granted pursuant to these SaaS Terms.

**1.15 "SOR Services"** shall mean the services ordered by Customer through an Order Form and provided by SOR by means of access to certain content and use of the features and functionality of software applications available and accessible within the SOR Web Sites, solely to the extent set forth and further described in, and as limited by, the Order Forms executed by the Parties.

**1.16 "SOR Web Sites"** shall mean the URL of the client's SOR branded platform as set forth on the Order Form.

**1.17 "Order Form"** means SOR's standard purchase order form, executed by both Parties, that incorporates these SaaS Terms and sets forth the SOR Services to be ordered, the applicable Service Limits, if any, and number of Internal and External Users and/or any other relevant information relating to the SOR Services; additional terms for SOR Services including without limitation, the term and fees; if applicable the schedule of payments for the performance of any services; and any unique additional terms.

**1.18 "Party"** has the meaning set forth on the Order Form.

**1.19 "Professional Services"** has the meaning set forth in Section 6.1.

**1.20 "SaaS Terms"** means all the provisions, terms and conditions set forth herein and incorporated into each Order Form.

**1.21 "Service Limit"** shall mean a monthly limit for storage of 10 GB of storage of Customer Content and a monthly transit of 100 GB of data for each 10 hours of video content hosted by SOR plus the other limitations set forth in SOR's standard policies provided to Customer from-time-to-time or as otherwise identified in an Order Form. For example, there may be Service Limits on number of Authorized Users accessing a particular presentation within Customer Content, constituent records, website hits, email, hours of Customer Content, etc.

**1.22 "Statement of Work"** has the meaning set forth in Section 6.2.

**1.23 "Term"** means the period during which these SaaS Terms remain in force and effect in accordance with Section 14.1.

**2. GENERAL.** These SaaS Terms contain the terms and conditions governing the legal relationship between SOR and Customer relating to the mutual covenants and obligations of the Parties set forth herein. SOR's provision of the SOR Services and Professional Services are subject to the terms and conditions set forth in these SaaS Terms and in the applicable Order Form.

### 3. SOR SERVICES -- ORDERS, ACCESS AND USE

**3.1 Orders.** The SOR Services to be provided by SOR under this Agreement will be set forth in the Order Form executed by the Parties. The Order Form includes a description of the applicable SOR Services, the costs associated with such SOR Services, the period of time Customer will have access to the ordered SOR Services (the "**Access Term**"), any additional Service Limits for such SOR Services, the schedule of payments for the performance of such SOR Services, and any unique additional terms. These SaaS Terms are incorporated into each Order Form.

**3.2 Provision of Access.** Subject to the terms and conditions contained in this Agreement, SOR hereby grants to Customer a non-exclusive, non-transferable right to access the features and functions of the applicable SOR Service ordered pursuant to an Order Form during the Access Term for the number of Authorized Users enabled and up to the Service Limits. On or as soon as reasonably practicable after the Effective Date, SOR shall provide to Customer the necessary Access Protocols to allow Customer to access the SOR Services.

**3.3 Responsibility for Application and Content Hosting.** SOR shall, at its own expense, provide for the hosting of the SOR Services which is accessible as part of the SOR Services, provided that nothing herein shall be construed to require SOR to provide for, or bear any responsibility with respect to, the development, or with respect to any telecommunications or computer network hardware required by Customer to provide access from the Internet to the SOR Services.

**3.4 Usage Restrictions.** Customer will not (i) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the SOR Services is compiled or interpreted, and Customer acknowledges that nothing in this Agreement will be construed to grant Customer any right to obtain or use such code; (ii) create any derivative product from any of the foregoing; or (iii) allow third parties other than Authorized Users to gain access to the SOR Services.

Customer will ensure that its use of the SOR Service complies with all applicable laws, statutes, regulations or rules.

#### **4. SOR SERVICES -- CUSTOMER RESPONSIBILITIES.**

**4.1 Authorized Users Access to Services.** Customer may permit any Authorized Users to access and use the features and functions of the SOR Service in accordance with this Agreement (including the Service Limits). Customer will ensure that any such Authorized Users will be bound by a contractual, enforceable agreement, which agreement, will, by its terms, provide substantially the same or greater protections for SOR's Confidential Information and the SOR Service as are provided by the terms hereof. Customer will only allow Authorized Users who have been assigned a unique user identification ("**User ID**") to access the SOR Services. User IDs cannot be shared or used by more than one Authorized User. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the SOR Service, and notify SOR promptly of any such unauthorized use known to Customer.

**4.2 Customer Responsibility for Data and Security.** Customer and its Authorized Users shall have access to the Customer Content and shall be responsible for all changes to and/or deletions of Customer Content and the security of all passwords and other access protocols required in order to access the SOR Services. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of the all Customer Content.

**4.3 Data Acquisition.** Customer will procure all rights and privileges to obtain and transfer data to SOR under the terms of this Agreement including the Customer Content. The provision of such data from Customer to SOR shall be in compliance with all applicable laws and regulations, including but not limited to all privacy laws and regulations. Customer hereby represents and warrants that it owns or otherwise has sufficient right to grant SOR access to and use of the Customer Content in accordance with the terms of this Agreement.

**4.4 Excessive System Usage and Service Limits.** When Customer reaches approximately 90% of the maximum Service Limit for a particular SOR Service, SOR shall notify Customer. Customer may purchase additional SOR Services to increase the Service Limit at the then current rate. SOR reserves the right to establish or modify its general practices and limits related to each Service Limit. SOR shall determine if Customer is using the SOR Services in excess of the Service Limit. SOR reserves the right to discontinue access to the SOR Services upon Customer exceeding the Service Limit.

**4.5 Service Rules and Guidelines.** Customer shall use the SOR Services as contemplated by this Agreement and shall not use the SOR Services to: (a) send any form of duplicative and unsolicited messages, other than marketing and promotional messages to Customer members, customers and prospective members and customers as contemplated by the SOR Service; (b) harvest, collect, gather or assemble information or data regarding other users without their consent; (c) transmit through or post on the SOR Service unlawful, immoral, libelous, tortuous, infringing, defamatory, threatening, vulgar, or obscene material or material harmful to minors; (d) transmit material containing software viruses or other harmful or deleterious computer code, files, scripts, agents, or programs; (e) interfere with or disrupt the integrity or performance of the SOR Service or the data contained therein; (f) attempt to gain unauthorized access to the SOR Service, computer systems or networks related to the SOR Service; or (g) interfere with another user's use and enjoyment of the SOR Service.

**4.6 Suspension of Service.** If Customer fails to pay undisputed amounts in accordance this Agreement or breaches any provision of Section 4.5, SOR shall have the right, in addition to any of its other rights or remedies, to immediately suspend the SOR Services to Customer, without liability to Customer until such amounts are paid in full or such breach is cured (in SOR's sole discretion), as applicable.

#### **5. SOR SERVICES -- SOR OBLIGATIONS.**

**5.1 Technical Assistance.** SOR provides certain limited support services as part of the SOR Services. Customer will be solely

responsible for the support of all Authorized Users who are Customer's customers accessing the SOR Services through the Customer URL(s). Subject to the terms and conditions of this Agreement including the payment of the applicable fees, SOR shall, exercise commercially reasonable efforts to provide technical assistance to Eligible Support Recipients during SOR's ordinary and customary business hours in accordance with its standard policies and procedures. SOR shall have no obligation to provide technical assistance, by any means, to any entity or individual other than Eligible Support Recipients. Customer can designate up to two (2) persons, which designees shall be eligible to receive technical assistance from SOR ("**Eligible Support Recipients**"). Such designees may be changed at any time by written notice.

**5.2 Means of Access to Technical Assistance.** Eligible Support Recipients shall be permitted to request technical assistance (i) by telephoning SOR at such telephone number as SOR may specify for such purposes from time to time; or (ii) by directing electronic mail requests therefore to SOR at the electronic mail address as SOR may specify for such purposes from time to time. Unless otherwise agreed by the Parties, SOR shall have no obligation hereunder to provide on-site Technical Assistance at Customer's facilities or at any other location. To the extent the Parties hereafter agree that SOR shall provide on-site technical assistance of any kind whatsoever, Customer shall be obligated to pay a fee to SOR, in an amount determined by SOR' then-standard hourly rates for such support, and Customer shall further reimburse SOR for expenses related to travel and/or living expenses incurred by SOR personnel in the provision of such on-site support.

**5.3 Training.** Customer may request for SOR to provide training services related to Customer's use of the SOR Services. SOR agrees to provide such training services as are set forth in a Statement of Work. Until the Customer has ordered training services pursuant to a Statement of Work, SOR shall have no obligation to provide training services to Customer.

**5.4 Communication with Authorized Users.** As part of the provision of the support services under this Agreement, SOR may need to communicate with Authorized Users from time-to-time. Customer hereby grants SOR the limited right to communicate with Authorized Users as may be necessary as part of the provision of the SOR Services, in SOR's reasonable discretion.

#### **6. PROFESSIONAL SERVICES**

**6.1 Professional Services.** The Parties anticipate that Customer may desire to engage SOR to perform certain services in connection with the access rights granted to Customer by SOR, including, by way of example, training, installation, configuration and/or customization of SOR Application(s) or Customer's computers or related systems. Subject to the terms and conditions set forth in this Agreement, SOR shall use commercially reasonable efforts to perform the services as set forth in Statements of Work separately executed by the Parties (the "**Professional Services**"). SOR shall perform the Professional Services in a professional manner in accordance with industry standards.

**6.2 Issuance of Statements of Work.** Customer may request that SOR perform services by delivering a written request describing the proposed Professional Services. SOR shall prepare a draft statement of work (each, a "**Statement of Work**"), each of which will incorporate these SaaS Terms. Such Statement of Work shall describe the fees, costs and expenses payable by Customer to SOR in connection with the performance of such services. Customer, within five (5) business days after receipt of the proposed Statement of Work, shall notify SOR of its acceptance of such Statement of Work. Until mutual acceptance in writing of the proposed Statement of Work, SOR shall have no obligation to perform the proposed Professional Services, provided that this Agreement shall remain in full force and effect in accordance with Section 14.1. Each Statement of Work, regardless of whether it relates to the same subject matter as any previously executed Statement(s) of Work, shall become effective upon execution by authorized representatives of both Parties.

**6.3 Modifications.** Customer may at any time request a modification to the Professional Services to be performed pursuant to any particular Statement of Work by written request to SOR

specifying the desired modifications. SOR shall, within a reasonable time following receipt of such request, submit an estimate of the cost for such modifications and a revised estimate of the time for performance of the Professional Services pursuant to the Statement of Work. If accepted in writing by Customer, such modifications in the Statement of Work shall be performed under the terms of this Agreement. Modifications in any Statement of Work shall become effective only when a written change request is executed by authorized representatives of both parties.

## 7. PERSONNEL

**7.1 Suitability.** SOR shall assign employees and subcontractors with qualifications suitable for the work described in the relevant Statement of Work. SOR may replace or change employees and subcontractors in its sole discretion with other suitably qualified employees or subcontractors.

**7.2 Customer Responsibilities.** Customer shall make available in a timely manner at no charge to SOR all technical data, computer facilities, programs, files, documentation, test data, sample output, or other information and resources of Customer required by SOR for the performance of the Professional Services. Customer shall be responsible for, and assumes the risk of, any problems resulting from, the content, accuracy, completeness and consistency of all such data, materials and information supplied by Customer. Customer shall provide, at no charge to SOR, office space, services and equipment (such as copiers, fax machines and modems) as SOR reasonably requires to perform the Professional Services.

**7.3 Non-solicitation.** Customer acknowledges and agrees that the employees and consultants of SOR who perform the Professional Services are a valuable asset to SOR and are difficult to replace. Accordingly, Customer agrees that, for a period of one (1) year after the termination or expiration of this Agreement, it shall not offer employment or engagement (whether as an employee, independent contractor or consultant) to any SOR employee or consultant who performs any of the Professional Services. Customer agrees that for each individual that Customer hires or engages in violation of this Section 7.3, Customer shall pay to SOR liquidated damages equal to fifty percent (50%) of the annual cumulative value of salary and benefits paid or payable to that individual by either Customer or SOR, whichever amount is greater.

## 8. PROPRIETARY RIGHTS.

**8.1 Ownership and use of Customer Content.** Customer retains all right, title and interest in and to the Customer Content, and SOR acknowledges that it neither owns nor acquires any additional rights in and to the Customer Content not expressly granted by this Agreement. SOR further acknowledges that Customer retains the right to use the Customer Content for any purpose in Customer's sole discretion. Subject to the foregoing, Customer hereby grants to SOR a non-exclusive, non-transferable right and license to use the Customer Content during the Term for the limited purposes of performing SOR's obligations under this Agreement.

**8.2 Ownership of SOR Services.** Customer acknowledges that SOR and its licensors own all right, title, and interest, including all patent, copyright, trade secret, trademark, moral rights, mask work rights, and other intellectual property rights ("**Intellectual Property Rights**") in and to the SOR Services (including all components thereof), and Documentation and SOR expressly reserves all rights not expressly granted to Customer in this Agreement. Customer shall not engage in any act or omission that would impair SOR's and/or its licensors' Intellectual Property Rights in the SOR Services, and any other materials, information, processes or subject matter proprietary to SOR. Customer further acknowledges that SOR retains the right to use the foregoing for any purpose in SOR's sole discretion.

**8.3 Work Product.** Unless otherwise expressly agreed in any particular Statement of Work, ownership of all work product, developments, inventions, technology or materials provided under this Agreement shall be solely owned by SOR, subject to the usage rights granted to Customer under the relevant Statement of Work.

## 9. FEES AND PAYMENTS

### 9.1 Fees Payable.

**(a) Professional Services.** In consideration for SOR's performance under this Agreement, Customer shall pay to SOR, without offset or deduction, such fees as required by the applicable Statement(s) of Work and Order Form. Additionally, Customer will reimburse SOR for (i) reasonable travel and living expenses incurred by SOR's employees and contractors for travel from SOR's offices in connection with the performance of the Professional Services; (ii) international telephone charges (if applicable); and (iii) any other expenses for which reimbursement is contemplated in the applicable Statement of Work. Except as provided above, each Party will be responsible for its own expenses incurred in rendering performance under this Agreement and each applicable Statement of Work. Unless otherwise contemplated in a particular Statement of Work, SOR will issue invoices to Customer on a monthly basis for amounts due for Professional Services, and payment of such amounts shall be due within ten (10) days of the date of invoice.

**(b) SOR Services.** Customer acknowledges and agrees that for all Access Terms that are on a month-to-month basis, SOR will invoice Customer on the Billing Date set forth on the Order Form of the applicable period for that period's access. SOR will submit invoices to Customer with respect to such fees according to the relevant payment schedules indicated on the applicable Order Form, and each invoiced amount will be due and payable upon receipt of the relevant invoice by Customer. Notwithstanding the foregoing, any set-up fees listed on a particular Order Form, shall be due and payable upon execution of the Order Form. In the event SOR provides Customer with additional SOR Services as contemplated by Section 4.4, SOR may invoice Customer SOR's then-current fees for such additional SOR Service for the month for which such additional SOR Service was provided and Customer shall pay such amounts within thirty (30) days after receipt of such an invoice.

**9.2 Disputed Charges.** Customer must notify SOR in writing of any dispute or disagreement with invoiced charges within thirty (30) days after the date of invoice. Absent such notice, Customer shall be deemed to have agreed to the charges as invoiced after the expiration of such time period.

**9.3 Late Payments; Interest; Payment in Dollars.** SOR reserves the right to charge, and Customer agrees to pay, a late charge equal to one and one-half percent (1½%) per month or the maximum rate permitted by applicable law, whichever is less, on any amount that is not the subject of a good faith dispute that is unpaid on the due date, and on any other outstanding balance. All payments to be made under this Agreement shall be made in US dollars.

**9.4 Taxes.** All amounts payable under this Agreement shall exclude all applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges. Customer will be responsible for payment of all such taxes (other than taxes based on SOR's income), fees, duties and charges, and any related penalties and interest, arising from the payment of any fees hereunder, the grant of license rights hereunder, or the delivery of services. Customer will make all payments required hereunder to SOR free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on any payments hereunder to SOR will be Customer's sole responsibility, and Customer will, upon SOR's request, provide SOR with official receipts issued by the appropriate taxing authority, or such other evidence as SOR may reasonably request, to establish that such taxes have been paid.

## 10. CONFIDENTIALITY

**10.1 Ownership of Confidential Information.** The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

**10.2 Mutual Confidentiality Obligations.** Each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that, except as required in performance of a Party's

obligations under this Agreement, neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing or are otherwise bound to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

**10.3 Confidentiality Exceptions.** Notwithstanding the foregoing, the provisions of Sections 10.1 and 10.2 shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

## 11. WARRANTIES

**11.1 Mutual Representations and Warranties.** Each Party represents and warrants to the other that the execution and performance of this Agreement does not and shall not violate any other contract, obligation, or instrument to which it is a party, or which is binding upon it, including terms relating to covenants not to compete and confidentiality obligations.

**11.2 SOR Representations and Warranties.** SOR represents and warrants that it will provide the SOR Service and perform its other obligations under this Agreement in a professional and workmanlike manner substantially consistent with general industry standards.

**11.3 No Other Warranties.** EXCEPT AS EXPRESSLY WARRANTED IN THIS AGREEMENT, THE SOR APPLICATION AND ANY OTHER MATERIALS, SOFTWARE, DATA AND/OR SERVICES PROVIDED BY SOR ARE PROVIDED "AS IS" AND "WITH ALL FAULTS," AND SOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY ADDITIONAL OR IMPLIED WARRANTIES OF NON-INFRINGEMENT, NON-INTERFERENCE, VALUE OR ACCURACY OF DATA, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, SYSTEM INTEGRATION, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. NO WARRANTY IS MADE BY SOR ON THE BASIS OF TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE. SOR DOES NOT WARRANT THAT THE SOR APPLICATION OR ANY OTHER INFORMATION, MATERIALS, TECHNOLOGY OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. CUSTOMER ACKNOWLEDGES THAT SOR'S OBLIGATIONS UNDER THIS AGREEMENT ARE FOR THE BENEFIT OF CUSTOMER ONLY. SOR'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SOR IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## 12. LIMITATION OF LIABILITY

**12.1 LIMITATIONS.** IN NO EVENT SHALL SOR BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF

THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE CUMULATIVE LIABILITY OF SOR TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE GREATER OF (I) FIVE THOUSAND DOLLARS (U.S. \$5,000.00) OR (II) THE TOTAL AMOUNT OF ALL FEES THEN-PAID TO SOR BY CUSTOMER UNDER THIS AGREEMENT. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

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

## 13. INDEMNIFICATION

### 13.1 Indemnification by SOR.

(a) SOR shall defend, indemnify, and hold Customer harmless against all costs and reasonable expenses (including reasonable attorneys' fees), damages, and liabilities arising out of any claim by a third party that any use of the SOR Services expressly authorized under this Agreement infringes or misappropriates, as applicable, any U.S. patent issued as of the Effective Date or any copyrights or trade secrets under applicable laws of any jurisdiction within the United States, provided that Customer gives SOR (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as SOR may reasonably request, at SOR's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, SOR shall have no obligation or liability to the extent that the alleged infringement arises from (1) the combination, operation, or use of the SOR Services with products, services, information, materials, technologies, methods or processes not furnished by SOR; (2) modifications to the SOR Services, which modifications are not made by SOR; (3) failure to use updates to the SOR Services provided by SOR; or (4) use of the SOR Services except in accordance with any applicable user documentation or specifications (circumstances under the foregoing clauses (1), (2), (3) and (4), collectively, "**Customer Indemnity Responsibilities**").

(b) Upon the occurrence of a claim for which indemnity is or may be due under this Section 13.1, or in the event that SOR believes that such a claim is likely, SOR may, at its option (i) appropriately modify the SOR Services so that it becomes non-infringing, or substitute functionally equivalent software or services; (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) terminate this Agreement on written notice to Customer and refund to Customer a portion of the license fees paid by Customer, pro-rated on a five (5)-year straight-line basis. The obligations set forth in this Section 13 shall constitute SOR's entire liability and Customer's sole remedy for any actual or alleged infringement or misappropriation.

**13.2 Indemnification by Customer.** Customer shall indemnify, hold harmless, and, at SOR's option, defend SOR from and against all losses, expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any claim by any third party arising from or in connection with Customer Indemnity Responsibilities or Customer's breach of this Agreement. In the event that SOR elects to require Customer to provide defense for such claim, SOR agrees to give Customer (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement thereof; and (iii)

such information and assistance as Customer may reasonably request, at Customer's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Customer shall not settle any third-party claim against SOR unless such settlement completely and forever releases SOR with respect thereto or unless SOR provides its prior written consent to such settlement. In any action for which Customer provides defense on behalf of SOR, SOR may participate in such defense at its own expense by counsel of its choice.

#### 14. TERM AND TERMINATION

**14.1 Term.** Unless earlier terminated in accordance with this Section 14, the term of this Agreement will commence on the Effective Date and will continue for a period of one (1) year thereafter and will automatically renew for successive one (1) year terms, unless either Party provides written notice of its desire not to renew at least thirty (30) days prior to the expiration of the then-current term (the initial term, together with any renewal terms, collectively, the "**Term**"). Either party may terminate this Agreement without cause upon thirty (30) days prior written notice to the other party. Notwithstanding the foregoing, this Agreement shall remain in effect until the completion of all outstanding Statements of Work.

**14.2 Termination for Breach.** Either Party may terminate this Agreement immediately upon written notice in the event that the other Party materially breaches this Agreement and thereafter (i) in the case of material breach resulting from non-payment of amounts due hereunder, has failed to pay such amounts within ten (10) days after receiving written notice thereof; or (ii) has failed to cure any other material breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the terminating Party) within thirty (30) days after receiving written notice thereof.

**14.3 Termination Upon Bankruptcy, Insolvency, Etc.** Either Party may, at its option, terminate this Agreement immediately upon written notice to the other Party, in the event (i) that the other Party becomes insolvent or unable to pay its debts when due; (ii) the other Party files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing; (iii) the other Party discontinues its business; or (iv) a receiver is appointed or there is an assignment for the benefit of such other Party's creditors.

**14.4 Termination of Individual Statements of Work.** Either Party may, at its sole option and for its own convenience, terminate any or all Statements of Work in effect upon fifteen (15) days prior written notice. Upon such termination, the Parties shall inform each other of the extent to which performance has been completed through such date, and collect and deliver all work in process. In the event of termination, the Parties agree to wind up their work in a commercially reasonable manner and to preserve and deliver items of value created prior to termination. SOR shall be paid for all work performed and expenses incurred through the date of termination.

**14.5 Accrued Obligations.** Termination of this Agreement shall not release the Parties from any liability which, at the time of termination, has already accrued or which thereafter may accrue with respect to any act or omission before termination, or from any obligation which is expressly stated in this Agreement to survive termination. Notwithstanding the foregoing, the Party terminating this Agreement as permitted by any provision in this Section 14 shall incur no additional liability merely by virtue of such termination.

**14.6 Cumulative Remedies.** Termination of this Agreement, regardless of cause or nature, shall be without prejudice to any other rights or remedies of the Parties and shall be without liability for any loss or damage occasioned thereby.

**14.7 Effect of Termination.** Upon any termination of this Agreement, Customer shall immediately discontinue all use of the SOR Service and each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) delete the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; (iii) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession; and (iv) shall promptly pay all amounts due and remaining payable hereunder. Within thirty (30) business days after the effective date of any termination of this Agreement, SOR shall

make available to Customer a comma-separated text file of Customer Content. After such thirty (30) day period, SOR shall have no obligation to maintain or provide any Customer Content to Customer.

**14.8 Survival of Obligations.** The provisions of Sections 7.3, 8, 9.5, 10, 12, 13, 14.8 and 15, as well as Customer's obligations to pay any amounts due and outstanding hereunder, shall survive termination or expiration of this Agreement.

#### 15. MISCELLANEOUS

**15.1 Applicable Law.** THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND SHALL BE GOVERNED BY, THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT GIVING EFFECT TO ITS RULES REGARDING CONFLICTS OF LAWS. CUSTOMER AGREES THAT ANY AND ALL CAUSES OF ACTION BETWEEN THE PARTIES ARISING FROM OR IN RELATION TO THIS AGREEMENT SHALL BE BROUGHT EXCLUSIVELY IN THE STATE AND FEDERAL COURTS LOCATED WITHIN THE COMMONWEALTH OF VIRGINIA.

**15.2 Force Majeure.** SOR shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, fire, strike, embargo, terrorist attack, war, insurrection or riot or other causes beyond the reasonable control of SOR. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances.

**15.3 Notices.** All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid, to the Parties to the Agreement and addressed, if to Customer, as set forth on the Order Form, or if to SOR, as follows:

SpotOnResponse, LLC  
5021 Del Ray Avenue  
Bethesda, MD 20814  
Attention: James W. Morentz, Ph.D.

or addressed to such other address as that Party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by facsimile, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices shall be effective on the date indicated in such confirmation. In the event that either Party delivers any notice hereunder by means of facsimile transmission in accordance with the preceding sentence, such Party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving Party, addressed as set forth above or to such other address as the receiving Party may have previously substituted by written notice to the sender.

**15.4 Assignment.** Customer shall not assign its rights or delegate its obligations under this Agreement without SOR's prior written consent, and, absent such consent, any purported assignment or delegation by Customer shall be null, void and of no effect. This Agreement shall be binding upon and inure to the benefit of SOR and Customer and their successors and permitted assigns.

**15.5 Independent Contractors.** Customer and SOR acknowledge and agree that the relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.

**15.6 Amendment.** No amendment to this Agreement shall be valid unless such amendment is made in writing and is signed by the authorized representatives of the Parties.

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

**15.8 Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained in this Agreement shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance or jurisdiction, or of rendering any other provisions of this Agreement invalid or unenforceable whatsoever.

**15.9 Causes of Action.** No action arising from or related to this Agreement may be brought by either Party more than one (1) year after the cause of action has accrued, except that an action for non-payment may be brought within two (2) years after the date such amount was due.

**15.10 No Third Party Beneficiaries.** The Parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the Parties, their successors and permitted assigns. Nothing herein, whether express or implied, shall confer upon any person or entity, other than the Parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

**15.11 U.S. Government End-Users.** Each of the components that constitute the SOR Services is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as

such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the SOR Services with only those rights set forth herein.

**15.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one Agreement.

**15.13 Headings.** The headings in this Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this Agreement.

**15.14 Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and, except as specifically provided herein, supersedes and merges all prior oral and written agreements, discussions and understandings between the Parties with respect to the subject matter hereof, and neither of the Parties shall be bound by any conditions, inducements or representations other than as expressly provided for herein.

[End of SaaS Terms]