

# Vivun Inc. - Master Subscription Agreement

This Master Subscription Agreement (the “Agreement”) entered into by and between Vivun Inc., a Delaware corporation (“Vivun”) and any individual or organization agreeing to these terms (“Customer”) prior to Customer’s use of the Subscription Service or any Services (as defined herein). Vivun and Customer are sometimes referred to herein individually as a “Party” and collectively as the “Parties”. By attaching this Agreement to an Order Form, signing an Order Form with reference to this Agreement, acknowledging or agreeing to these terms via dialogue box linked to these terms, or by using the Service in any capacity as a paid or unpaid End User, the Parties agree to the terms of this Agreement. If an individual is entering into this Agreement on behalf of an organization or other legal entity such organization shall be deemed the Customer hereunder and such individual hereby represents and warrants that she/he has the power and authority required to bind such organization to this Agreement.

This Agreement governs the use of the software solutions owned by Vivun identified in an Order Form, provided by Vivun as a Subscription Service, provided by Vivun as a free Trial Service, any Professional Services, any other products, services, or software solutions received from Vivun and its associated applications and website, by Customer, whether on a free or paid basis (collectively, the “Services”). Customer agrees that Customer’s use of the Services is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Vivun regarding future functionality or features.

## 1. Services

1.1 *The Services and Associated Software.* Customer and users of the Services under Customer’s account (“End Users”) may access and use the Services in accordance

with this Agreement and Privacy Policy, a current copy of which can be found at <https://www.vivun.com/privacy-policy/>. Vivun may update or modify the Services from time to time.

1.2 *Subscription to the Services*. Subject to the payment of all applicable Fees and for the applicable Subscription Term, Vivun hereby grants to Customer a non-sub-licensable, non-transferable (except as provided herein), non-exclusive right to access and use the Services, in accordance with the terms and conditions of this Agreement and all applicable Order Forms. End User subscriptions are for designated End Users and cannot be shared or used by more than one End User but may be reassigned to new End Users replacing former users who no longer require ongoing use of the Services.

1.3 *Additional Use*. In the event Customer adds an additional End User or End Users (“Additional User(s)”) in excess of the originally designated amount (as set forth in the Order Form or as otherwise purchased or agreed to by and between Customer and Vivun) of End Users at any point during the term of the Agreement, the Additional Users will be billed at the current list price for the Services from the starting date of the Additional User(s)’ use of the Services. Additional User(s) use will be bound by the terms and conditions set forth in this Agreement. The term of any Additional Users’ access to the Services will be coterminous with the current Subscription Term.

1.4 *Secondary Users*. Certain offerings within the Services may be used in connection with third parties outside of Customer’s organization (“Secondary Users”), the use of which is subject to the terms and conditions of this Agreement. Customer may grant to its own Secondary Users limited rights to use the Services solely so that they may view and interact with such resources. Customer may not permit Secondary Users to use the Services for purposes unrelated to supporting Customer’s offerings or grant Secondary Users administrator, configuration or similar use of the Services. Customer may not charge Secondary Users a specific fee for use of the Services. Customer is solely responsible under Section 2.2 (End Users) for all Secondary Users as “End Users” and are otherwise solely responsible for Customer’s own products, support

offerings and Secondary relationships. Notwithstanding anything to the contrary in this Agreement, Vivun has no direct or indirect warranty, indemnity or other liability or obligations of any kind to Secondary Users.

*1.5 Trial/Limited/Early Adopter Use.* If, as indicated herein, in the Order Form, or through any notification to Customer (including click-to-accept dialogue boxes), Customer uses the Services on a "Trial," "Early Adopter," or "Limited" basis for any End User ("Trial"), or, alternatively, if a Customer uses the Services, including any subset, product or capability of the Services without payment to Vivun, Vivun will make the applicable Service(s) available to Customer on a Trial basis at the agreed upon pricing stated in the Order Form, where applicable, at Vivun's discretion and until the earlier of (a) the end of the Trial period for which Customer has contracted to use the applicable Service(s), or (b) the start date of any purchased Service subscriptions ordered by Customer for such Service(s) as set forth in the Order Form, or (c) upon the termination by Vivun in its sole discretion. Additional Trial terms and conditions may be included on an Order Form on in any click-to-accept dialogue box. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. All Trials are provided on an "as-is," "as-available," basis. Vivun shall have no responsibility to provide any Trial Services for any specified term, or at any specified term start date. Any Term Start Date associated with any Trial Services is expressly not binding on Vivun, and Vivun shall bear no liability for providing, or having provided, any Trial Services. Any representations of Trial Services offered, issued, existing, or remaining, including those displayed within the Services, are for direction purposes only and do not create any binding obligation on Vivun to be provided to Customer.

ANY DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER DURING CUSTOMER'S TRIAL MAY BE PERMANENTLY LOST EVEN WHERE CUSTOMER PURCHASES A SUBSCRIPTION OF THE SAME SERVICES AS THOSE COVERED BY THE TRIAL (UNLESS OTHERWISE STATED) PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA BEFORE THE END OF THE

TRIAL PERIOD. CUSTOMER CANNOT TRANSFER DATA ENTERED OR CUSTOMIZATIONS MADE DURING THE TRIAL TO A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, THEREFORE IF CUSTOMER PURCHASES A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, CUSTOMER MUST EXPORT CUSTOMER DATA BEFORE THE END OF THE TRIAL PERIOD OR CUSTOMER DATA WILL BE PERMANENTLY LOST.

NOTWITHSTANDING THE “DISCLAIMER OF WARRANTIES” SECTION AND THE LIMITATION OF LIABILITY” SECTION BELOW, DURING THE TRIAL THE SERVICES ARE PROVIDED ON AN “AS-IS,” AS-AVAILABLE” BASIS, WITHOUT ANY WARRANTY AND VIVUN SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE VIVUN’S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE TRIAL SHALL NOT EXCEED \$100.00. WITHOUT LIMITING THE FOREGOING, VIVUN DOES NOT REPRESENT OR WARRANT TO CUSTOMER THAT (A) CUSTOMER’S USE OF THE SERVICES DURING THE TRIAL PERIOD WILL MEET CUSTOMER’S REQUIREMENTS, (B) CUSTOMER’S USE OF THE SERVICES DURING THE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE TRIAL WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE “LIMITATION OF LIABILITY” SECTION BELOW, CUSTOMER SHALL BE FULLY LIABLE UNDER THE AGREEMENT TO VIVUN FOR ANY DAMAGES ARISING OUT OF CUSTOMER’S USE OF THE SERVICES DURING THE TRIAL PERIOD, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER’S INDEMNIFICATION OBLIGATIONS HEREUNDER.

CUSTOMER SHALL REVIEW THE APPLICABLE SERVICES DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND

## FUNCTIONS OF THE SERVICES PRIOR TO MAKING A PURCHASE.

1.6 *Termination of Trial.* Vivun may terminate a Trial at any point, with or without written Notice to the Customer.

1.7 *Suspension of Services.* Vivun reserves the right to suspend Customer's access to the Services: (i) for scheduled or emergency maintenance, (ii) unavailability of services (including network and hosting services) including those services provided by a third party service provider, or (iii) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to Vivun.

## 2. Customer Obligations

2.1 *Administration of Customer's Account.* Depending on the Service purchased or used by Customer, Customer may be required to specify one or more administrators (each an "Administrator") to manage its account. Administrators have the ability to access, monitor, use, export and disclose all content posted by End Users in accordance with applicable local laws. Customer is responsible for: (i) the selection of its Administrator(s); (ii) maintaining the confidentiality of passwords and Administrator accounts; (iii) managing access to Administrator accounts; (iv) ensuring that each Administrator's use of the Services complies with this Agreement. Vivun shall not be held liable for any actions on the part of Customer's Administrator(s); and providing any notices to pursuant to Section 14.8. Where a Service does not require the active specification of an Administrator, the person or persons initially agreeing to these terms shall be considered, by default, the Administrator of such services. In such event, should Customer wish to change the Administrator, Customer shall contact Vivun at [Legal@vivun.com](mailto:Legal@vivun.com) with the name of the new proposed administrator. Vivun shall, without undue delay, assist Customer in such Administrator change.

2.2 *End User Conduct; Compliance.* Customer is responsible for use of the Services by its End Users and for their compliance with Vivun's User Terms of Service. Customer is also responsible for providing any notice and obtaining any consents and

authorizations necessary: (i) to allow the Administrator to access, monitor, use, and disclose the content posted by the End Users on the Services; and (ii) to allow Vivun to provide the Administrator with access to such End User content. The Services are not intended for use by persons under the age of 18 and Customer will ensure that it does not allow any person under 18 to use the Services. Customer will promptly notify Vivun if it becomes aware of any unauthorized access to Customer's account or the Services, failure to notify Vivun of the same shall be considered a breach of this agreement.

*2.3 Configuration, Third Party Technology or Services.* Customer acknowledges that the Services and their features and functionality may be dependent on Customer's proper configuration of the Services, the availability of and proper performance Third Party Apps (as defined below) and services, such as salesforce.com, and that Vivun is not liable for performance issues or downtime of the Services to the extent caused by Third Party Apps or other factors outside of Vivun's control.

*2.4 Restrictions.* Customer will not: (i) rent, sell, resell or lease the Services to any third party; (ii) use the Services for any purpose where either the use or the failure of the Services might lead to personal injury, death or physical damage; (iii) disassemble, decompile or reverse engineer the Services or attempt or assist anyone else to do so, unless such restriction is prohibited by law; (iv) modify, translate, or create derivative works based on the Services; (v) permit any third party to access the Services except as permitted herein or in an Order Form or use the Services other than in accordance with this Agreement and in compliance with all applicable laws and regulations; (vi) remove any title, trademark, copyright and/or restricted rights notices or labels from the Services; (vii) use any robot, spider, search or retrieval application, or any other manual or automatic device or process to retrieve, index, data-mine, or in any way reproduce or circumvent the navigational structure or presentation of the Services and/or Services; (viii) harvest, collect or mine information about users of the Services and Services; (ix) use or access other user's account or password without permission; or (x) copy, frame or mirror any content forming part of the Services, other than on

Customer's own intranets or otherwise for its own internal business purposes and Customer shall not access the Services in order to (a) build a competitive product or service, or (b) copy any ideas, features, functions or graphics of the Services.

*2.5 Suspension.* Vivun may request that Customer suspend the account of any End User who: (i) violates the User Terms of Service; or (ii) is using the Services in a manner that Vivun reasonably believes may cause a security risk, a disruption to others' use of the Services, or liability for Vivun. If Customer fails to promptly suspend or terminate such End User's account, Vivun reserves the right to do so.

### 3. Customer's Use of Third-Party Services

*3.1* The Services may have the ability to integrate with free and paid third-party applications used by Customer ("Third Party App"). Third Party Apps are optional and are chosen and installed at Customer's sole discretion. In some cases, Customer must acquire a Third-Party App in order to utilize certain optional features or functionality of the Services. Customer is responsible for all fees related to Third Party Apps. When Customer downloads or uses a Third-Party App, Customer acknowledges and agrees that Vivun may collect information from Customer regarding the use of the Third Party App in order to offer Customer the Services. Additionally, data may be transferred directly between the Services and the Third-Party App. Vivun is not responsible or liable for any aspect of the Third Party Apps. Vivun shall have no liability, obligation or responsibility whatsoever with respect to any Third-Party Apps and services. Vivun does not endorse any Third-Party App. Vivun may remove integrations with Third Party Apps at any time at its discretion.

### 4. Intellectual Property Rights

*4.1 Ownership of Intellectual Property Rights.* Vivun and its licensors own all rights, title and interest, including all related Intellectual Property, in and to the Vivun System, the Content, Documentation, and the Services and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or

any third party relating to the Services. The Vivun name, the Vivun logo, and the product names associated with the Services are trademarks of Vivun.

*4.2 Customer Intellectual Property.* As between the parties, any content created or provided by Customer and/or its End Users through the Services, including any User Content (as defined below) and any demos or recordings created through the Services, excluding any Vivun Intellectual Property ("Customer Materials") shall be the sole property of the Customer.

*4.3 Limited License to Use Customer Content.* Customer hereby grants to Vivun a limited, nonexclusive and nontransferable (except in connection with the sale or transfer of its business) license to access, use, copy, reproduce, process, adapt, publish, transmit and display Customer Data for the limited purpose of (i) providing the Services and associated customer support to Customer; (ii) displaying Customer Data to the End Users; (iii) publication of aggregate, anonymized data regarding Services use; and (iv) analyzing and improving the Services.

*4.4 Reservation of Rights.* Except as expressly set forth herein, this Agreement does not (i) grant Vivun any rights or interest in or to Customer Data or any Customer Intellectual Property; or (ii) grant Customer any rights or interest in or to the Services or any Vivun Intellectual Property. For purposes hereof, the term "Intellectual Property" shall mean any current or future rights under any patent, copyright, trademark, or trade secret; any moral rights or any similar rights.

*4.5 Customer Marks.* Vivun may include Customer's name and logo in a list of Vivun's Customers online and in print and electronic marketing materials. Customer acknowledges and agrees to Vivun's use of Customer's name and/or logo in disclosures to third parties, either in print or online, regarding current Vivun subscribers.

## 5. Fees and Payment

*5.1 Fees, Payment.* Customer will pay Vivun the applicable fees as set forth on the

Order Form or, if applicable, the recurring subscription rate agreed to via online order (the “Fees”). Except as otherwise provided for the Subscription Term: (i) the Fees set forth in each Order Form hereunder shall be fixed during the Subscription Term, including the per user rate for purchases of additional Users; and (ii) the Fees set forth in each Order Form hereunder will be invoiced upon execution of such Order Form. Payments will be due within the time frame specified in the applicable Order Form’s Payment Terms.

*5.2 Payment.* Customer is responsible for providing complete and accurate billing information to Vivun. Customer agrees to promptly notify Vivun of any changes to its billing information. If Customer uses a credit card to make payment hereunder, Customer authorizes Vivun to charge such credit card on a recurring basis for all applicable fees and taxes. If Customer is invoiced for fees and taxes, all amounts are payable in U.S. dollars pursuant to the time frame specified in the applicable Order Form’s Payment Terms from the date of the invoice per the invoice instructions unless otherwise specified. Customer will be billed for the appropriate plan based on the total number of End Users, including those with limited access.

*5.3 Taxes.* If Vivun has the legal obligation to pay or collect taxes for which Customer is responsible, including but not limited to, sales, use, transfer, privilege, excise, and all other taxes and duties that are levied or imposed by reason of performance of Customer under this Agreement, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides Vivun with a valid tax exemption certificate authorized by the appropriate taxing authority.

*5.4 Non-Payment.* Any payment not received from Customer may accrue, at Vivun’s discretion, late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; from the date such payment was due until the date paid. In addition to any other rights granted to Vivun herein, Vivun reserves the right to suspend or terminate Customer’s use of the Services if Customer fails to pay any undisputed amount owed following the notice and cure period

process set forth in this Agreement. If Customer or Vivun initiates termination of this Agreement, or if any charge owing by Customer under this or any other agreement for services is 30 days or more overdue Vivun may accelerate all of Customer's unpaid feed obligations under this, or any related, Agreement, Purchase Order, or Order Form, so that all such obligations become immediately due and payable.

## 6. Term and Termination

**6.1 *Subscription Term.*** This Agreement will remain in effect for the term provided in the Order Form or until this Agreement is otherwise terminated as provided for herein. Unless otherwise stated in the Order Form, the Subscription Term shall automatically renew for subsequent twelve (12) month periods at the list price in effect at the time of renewal unless either party gives the other party notice of non-renewal at least sixty (60) days prior to the end of the then-current Subscription Term.

**6.2 *Termination.*** Either Party may terminate this Agreement and/or any Order Form by providing written notice to the other Party in the event (i) the other Party materially breaches any of its duties, obligations or responsibilities under this Agreement and fails to cure such breach within thirty (30) days after receipt by the breaching Party of written notice specifying the breach, or provide the other Party with an acceptable plan for curing such breach within ten (10) days after receipt of such notice and thereafter curing such breach in accordance with such plan; (ii) a receiver, trustee, administrator, or administrative receiver is appointed for the other Party or its property; (iii) the other Party makes an assignment for the benefit of creditors; (iv) any proceedings should be commenced against the other Party under any bankruptcy, insolvency, or debtor's relief law, and such proceedings shall not be vacated or set aside within sixty (60) days from the date of commencement thereof; or (v) the other Party is liquidated or dissolved. Vivun may immediately suspend access and/or terminate the agreement without notice in the event Vivun determines, in Vivun's sole discretion, that Customer commences development of developing, or releases a Competing Product. As used herein,

“Competing Product” shall mean any software product that is substantially the same as, incorporates, is based upon, is functionally similar to, or competes in any material respect with any Vivun Services.

6.3 *Effect of Termination.* Upon any expiration or termination of this Agreement, and upon expiration of the Subscription Term (monthly or otherwise) the rights and licenses granted hereunder will automatically terminate, and Customer may not continue to use the Services. Vivun will have no liability for any costs, losses, damages, or liabilities arising out of or related to any termination of this Agreement.

6.4 *Survival.* All sections of this Agreement which by their nature should survive termination will survive termination in accordance with their terms, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, indemnification, and limitations of liability.

## 7. Representations & Warranties

7.1 *Mutual Warranty.* Each party represents and warrants that it has the legal power and authority to enter into this Agreement.

7.2 *Data Warranty.* Customer represents and warrants that Customer owns or has obtained all rights, consents, permissions, or licenses necessary to allow the Services access to, or to possess, manipulate, process, store, create, or otherwise use, Customer Materials, Customer Data, and User Details. Further, Customer represents and warrants that both it and any and all End Users or Secondary Users, shall at all times use the Services in compliance with applicable law; (a) it has all right, license and consent required under applicable law to provide Vivun with the Customer Materials; and (b) any materials that it provides, including in the Customer Materials, do not and will not infringe the intellectual property, privacy, publicity, moral, or any other rights of any third party and Vivun’s use thereof in accordance with the terms of these Terms does not and will not infringe upon any third party's right.

7.3 *Vivun Warranties.* Vivun represents and warrants that (i) Vivun will perform its

obligations hereunder in a professional and workmanlike manner in accordance with industry standards, (ii) the Services will materially conform to any related documentation made available by Vivun, and (iii) the Services, and the use thereof as contemplated by this Agreement, do not infringe, misappropriate, or violate any third-party rights or applicable laws.

## 8. User Content

8.1 Customer, its End Users and Secondary Users (hereinafter "Authorized Users") will be permitted to upload certain content, including but not limited to text, images, pictures, videos and/or feedback on or through the Services, referred to herein as "User Content".

8.2 Vivun does not endorse any User Content or any opinion, recommendation, or advice expressed in any User Content and expressly disclaims any and all liability in connection with the User Content. Vivun disclaims all liability, regardless of the form of action, for the acts or omissions of any and all Authorized Users (including unauthorized users) that are not solely due to Vivun's gross negligence or willful misconduct, whether such acts or omissions occur during the use of the Services or otherwise.

8.3 Vivun has no obligation to accept, display, or maintain any User Content. Moreover, Vivun reserves the right to remove and permanently delete any User Content, without notice and for any reason. Customer and Authorized Users are fully and solely responsible for any User Content that is uploaded by Customer and/or the Authorized User, as applicable, to the Services.

8.4 Without limiting the foregoing, Customer and Authorized User agree that Customer and /or any Authorized User on its behalf will not transmit, submit or upload any User Content or act in any way that:

8.4.1 restricts or inhibits use of the Services;

8.4.2 violates the legal rights of others, including defaming, abuse, stalking or

threatening users or individuals;

8.4.3 infringes (or results in the infringement of) the intellectual property, moral, publicity, privacy, or other rights of any third party;

8.4.4 is (or should be reasonably be believed to be) in furtherance of any illegal, counterfeiting, fraudulent, pirating, unauthorized, or violent activity, or that involves (or should be reasonably be believed to involve) any stolen, illegal, counterfeit, fraudulent, pirated, or unauthorized material;

8.4.5 does not comply with all applicable laws, rules and regulations;

8.4.6 posts, stores, transmits, offers, or solicits anything that contains the following, or that contains links to the following or to locations that in turn contain links to the following:

8.4.6.1 material that Vivun determines to be offensive (including material promoting or glorifying hate, violence, bigotry, or any entity (past or present) principally dedicated to such causes or items associated with such an entity),

8.4.6.2 material that is racially or ethnically insensitive,

8.4.6.3 material that is defamatory, harassing or threatening,

8.4.6.4 pornography or obscene material,

8.4.6.5 any virus, worm, trojan horse, or other harmful or disruptive component; or

8.4.6.6 anything that encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law or regulation or is otherwise inappropriate or offensive.

8.5 Vivun may, at its sole discretion, choose to monitor User Content for inappropriate or illegal behavior, including through automatic means, provided however, that Vivun reserves the right to treat User Content as content stored at the direction of users for which Vivun will not exercise editorial control except when violations are directly brought to Vivun's attention.

## 9. Disclaimer of Warranties

9.1 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN AN APPLICABLE EXHIBIT, VIVUN AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, FUNCTIONALITY, MERCHANTABILITY, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES OR ANY CONTENT, AND THE SERVICES AND ALL CONTENT IS PROVIDED TO CUSTOMER STRICTLY ON AN "AS IS, AS-AVAILABLE" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY VIVUN. VIVUN WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF VIVUN. TO THE MAXIMUM EXTENT PERMITTED BY LAW, VIVUN MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF ANY SERVICES OR ANY CONTENT THEREIN OR GENERATED THEREWITH, OR THAT: (A) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE; (B) THE SERVICES WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA; (C) THE SERVICES (OR ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS); (D) ERRORS OR DEFECTS WILL BE CORRECTED; OR (E) UNLESS OTHERWISE STATED HEREIN, THE SERVICES IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU MAY HAVE

OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

## 10. Non-Disclosure and Confidentiality

10.1 *Confidentiality*. During the course of their performance under this Agreement, each party (a “Disclosing Party”) may make available to the other party (the “Receiving Party”) information that is not generally known to the public and at time of disclosure is either identified as, or should reasonably be understood by the receiving party to be, proprietary or confidential (the “Confidential Information”). Confidential Information shall include, but shall not be limited to: business plans, strategies, technical data, reports, designs, drawings, services information, forecasts, projects and analyses; financial information and fee structures; business processes, methods and models; employee, customer and supplier information; sales and marketing information. With respect to Customer, Confidential Information also includes Customer Data and User Details. Confidential Information does not include: (a) information that was generally known to the public at the time disclosed to the Receiving Party; (b) information that becomes generally known to the public (other than through a breach of this Section by the Receiving Party) after disclosure to the Receiving Party; (c) information that was in the Receiving Party’s possession free of any obligation of confidentiality prior to disclosure by the Disclosing Party; (d) information that is rightfully received by the Receiving Party from a third party without any restriction on disclosure; or (e) information that was independently developed by the Receiving Party without reference to or use of the Disclosing Party’s Confidential Information. All Confidential Information is provided “AS IS.” NEITHER PARTY MAKES ANY WARRANTIES, EXPRESSED OR IMPLIED, CONCERNING THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION.

10.2 *Use and Disclosure of Confidential Information*. The Receiving Party: (a) will not

use Confidential Information for any purpose except in connection with this Agreement; (b) will not disclose, give access to, or distribute any of the Confidential Information to any third party, except to the extent expressly authorized in a separate written agreement signed by the Disclosing Party; and (c) will take reasonable security precautions (which will be at least as protective as the precautions the Receiving Party takes to preserve its own confidential information of a similar nature) to keep the Confidential Information confidential. The Receiving Party agrees to only disclose the Confidential Information to those of its employees, directors, affiliates, advisors, agents, contractors, and other representatives (“Representatives”) who need to know such information, provided that each such Representative is bound to protect the Confidential Information by confidentiality obligations substantially as protective as this Agreement. The Receiving Party will be responsible for its Representatives’ disclosure or use of the Confidential Information in violation of this Section. The Receiving Party will promptly notify the Disclosing Party upon discovery of any unauthorized disclosure or use of the Confidential Information, or any other breach of this Section, by the Receiving Party or its Representatives. The Receiving Party’s (and its Representatives’) obligations under this Section cease to apply to information upon the later of: (i) the termination of this Agreement; or (ii) after three (3) years have passed from the date on which the Confidential Information was first disclosed. Notwithstanding the foregoing, the Receiving Party may not disclose the Disclosing Party’s trade secrets for as long as the confidentiality of such trade secrets is maintained.

*10.3 Return and Destruction of Materials.* On termination of this Agreement, Customer will uninstall, remove, or otherwise fully cease all interactions with all instances of the Services contemplated by this Agreement and the applicable Order Forms. Within One Hundred and Twenty days (120) following the termination of this agreement, the Receiving Party shall destroy all Disclosing Party Confidential Information (including all data contained within the Services), provided that, no fewer than Forty Five (45) days

prior to the termination of this agreement, the Disclosing Party elects to make a request of the Receiving Party to return, as directed by the Disclosing Party, all copies of Confidential Information (including all data contained within the Services) received pursuant to this Agreement, in which case, such destruction or return shall be completed within One Hundred and Twenty Days of the notified Party's receipt of the same. Notwithstanding the foregoing, neither party shall be obligated to erase or destroy Confidential Information that such party is required to retain under any applicable law, regulation or order (only during such required period of retention), or that is contained in an archived computer system backup made in accordance with such party's records retention, security and/or disaster recovery procedures, provided that such archived copy will (i) eventually be erased or destroyed in the ordinary course of such party's data processing procedures, and (ii) shall remain fully subject to the obligations of confidentiality stated herein until the earlier of the erasure or destruction of such copy, or the expiration of the confidentiality obligations set forth in this Agreement.

10.4 *Processing of Personal Data.* To the extent that Vivun processes personal data (as that term is defined in Vivun's Data Processing Addendum) of Company in the course of providing the Services, it shall do so in accordance with the Data Processing Addendum provided herewith as "[https://static.vivun.com/privacy/Vivun\\_DPA\\_EN.pdf](https://static.vivun.com/privacy/Vivun_DPA_EN.pdf)."

10.5 *Intellectual Property; No Obligation to Disclose.* Each Party retains all rights, title, and interest in and to the Confidential Information it discloses under this Agreement, including all intellectual property and proprietary rights therein. The disclosure of the Confidential Information to the Receiving Party does not grant or convey any right of ownership of such Confidential Information.

10.6 *Required Disclosures.* The Receiving Party may disclose the Confidential Information to the extent required by law or legal process. In such cases, however, the Receiving Party will (except to the extent prohibited by law or legal process from doing so): (a) give the Disclosing Party prior notice of such disclosure so as to afford the

Disclosing Party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure; (b) use reasonable efforts to limit disclosure to that which is legally required; and (c) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, in the Disclosing Party's efforts to ensure that the Confidential Information will be subject to a protective order or other legally available means of protection. Either Party may disclose the terms of this Agreement to potential parties to an acquisition or similar transaction to facilitate due diligence and closing of the transaction, provided that any such Party is subject to written non-disclosure obligations and limitations on use only for the prospected transaction.

*10.7 Injunctive Relief.* The Parties acknowledge that any actual or threatened breach of this Section 9 may cause irreparable, non-monetary injury to the other Party, the extent of which may be difficult to ascertain. Accordingly, each Party is entitled to seek injunctive relief in addition to all remedies available at law and/or in equity.

## 11. Indemnification.

*11.1 By Vivun.* Vivun hereby agrees to indemnify, defend and hold harmless Customer and its employees, contractors, agents, officers and directors (together the "Customer Affiliates"), from and against any and all Losses (as defined below) arising from or as a result of any claim by a third party against Customer or Customer Affiliates (i) to the extent based on an allegation that the Services or Vivun's technology used to provide the Services infringes or misappropriates any copyright, trade secret, patent, or trademark right of the third party. In no event will Vivun have any obligations or liability under this section arising from: (i) Customer's unauthorized modification of the Services, or use of the Services in combination with materials not furnished by Vivun; (ii) use of any Third Party App developed using Vivun's API; or (iii) use of any content, information, or data provided by Customer, End Users, or other third parties. THIS INDEMNITY IS CUSTOMER'S ONLY REMEDY UNDER THIS AGREEMENT FOR

## ANY VIOLATION BY VIVUN OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

11.2 *By Customer.* Customer and its Authorized Users hereby agrees to indemnify, defend and hold harmless Vivun, its licensees and licensors, and their respective employees, contractors, agents, officers and directors (together, the "Vivun Affiliates"), from and against any and all liabilities, damages, obligations, losses, costs and expenses (including but not limited to reasonable attorney's fees) (together, the "Losses") arising from or as a result of any claim by a third party against Vivun or the Vivun Affiliates regarding: (i) use of or access to the Services by Customer or its End Users in violation of this Agreement; or (ii) any data or Customer Data transmitted or received through, or posted or stored in, Customer's account, or (ii) Customer's use of the Services beyond the license granted in this Agreement misappropriates any copyright, trade secret, U.S. patent, or trademark right of the third party.

11.3 *Infringement Claims.* If the Services become, or in Vivun's reasonable judgment are likely to become, the subject of a claim of infringement, then Vivun may: (i) obtain the right, at Vivun's expense, for Customer to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement; (iii) modify the Services so that it is no longer infringing. If Vivun, in its sole and reasonable judgment, determines that none of the above options are commercially reasonable, then Vivun may suspend or terminate Customer's use of the Services and provide Customer with a pro rata refund of prepaid fees.

11.4 *Process.* The party seeking indemnification will provide prompt notice concerning the existence of an indemnifiable claim and cooperate fully with the indemnifying party in defending the claim. Failure to give prompt notice shall not constitute a waiver of a party's right to indemnification and shall affect the indemnifying party's obligations hereunder only to the extent that the indemnifying party's rights are materially prejudiced by such failure or delay. The indemnifying party will have full control and authority over the defense of any claim; provided, however, that: (i) the indemnified party may join in the defense at its own expense using counsel of its choice; and (ii)

any settlement requiring the party seeking indemnification to admit liability or make any financial payment will require such party's prior written consent, not to be unreasonably withheld or delayed.

## 12. Limitation of Liability.

*12.1 Limitation of Liability.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT IN CONNECTION WITH THEIR RESPECTIVE INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR VIOLATION OF LAW, IN NO EVENT SHALL EITHER PARTY OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, EMPLOYEES OR SUPPLIERS BE LIABLE UNDER THIS AGREEMENT FOR (I) ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES; OR (II) LOSS OF USE, DATA, BUSINESS REVENUES, PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), GOODWILL, OR OTHER INTANGIBLE LOSSES. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR CUSTOMER'S ACCOUNT OR THE INFORMATION CONTAINED THEREIN BY ANY THIRD PARTY. THESE LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER A PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. EXCEPT IN CONNECTION WITH ITS INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS HEREUNDER, OR A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR VIOLATION OF LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT PAID BY CUSTOMER TO VIVUN HEREUNDER DURING THE SIX (6) MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

### 13. Governing Law; Binding Arbitration and Class Action Waiver.

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT. This Agreement will be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. Claims relating to this Agreement or the Services will be resolved through final and binding arbitration, except as set forth below. The parties agree that the Agreement affects interstate commerce and that the Federal Arbitration Act governs the interpretation and enforcement of these arbitration provisions.

**Initial Dispute Resolution:** The parties agree that most disputes can be resolved without resorting to litigation. The parties agree to use their best efforts to settle any dispute, claim, question, or disagreement directly through consultation with each other, and good faith negotiations shall be a condition to either party initiating a lawsuit or arbitration. Accordingly, before initiating a lawsuit or arbitration, a Party Agrees to contact the other Party to attempt to resolve the dispute in good faith.

**Binding Arbitration & Class Action Waiver:** If the Parties do not reach an agreed-upon solution within a period of thirty (30) days from the time the informal dispute resolution is initiated under the Initial Dispute Resolution provision above, then either Party may initiate binding arbitration as the sole means to resolve claims, subject to the terms set forth below. Specifically, all claims arising out of or relating to the Agreement (including its formation, performance and breach), the Parties' relationship with each other and/or your use of the Services shall be finally settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, excluding any rules or procedures governing or permitting class actions. Thus, THE PARTIES AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that arbitration can proceed on a class basis, then the disputes, claims or controversies will

not be subject to arbitration and must be litigated in state or federal court located in Delaware. The arbitrator, and not any federal, state or local court or agency, shall have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of the Agreement, including, but not limited to any claim that all or any part of the Agreement is void or voidable, or whether a claim is subject to arbitration. The arbitrator shall be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award shall be written, and binding on the Parties and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration will be held in Delaware. If any court or arbitrator determines that this arbitration provision is void or unenforceable for any reason or that the parties are not bound to arbitrate their claims, then the disputes, claims or controversies deemed not to be subject to arbitration must be litigated in state or federal court located in Delaware. Notwithstanding the foregoing, each Party shall have recourse to any court of competent jurisdiction to enforce claims for injunctive and other equitable relief. Nothing herein shall preclude either Party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

#### 14. Miscellaneous.

14.1 *Modifications*. This Agreement shall not be modified except by a subsequently dated, written amendment that expressly amends this Agreement and which is signed on behalf of Customer and Vivun by their duly authorized representatives.

14.2 *Hosting of the Services; Export Restrictions*. The Services are controlled and operated from facilities in the United States. Customers who access or use the Services from other jurisdictions (or who allow their End Users to do so) do so of their own volition and are responsible for compliance with all applicable United States and international laws and regulations, including but not limited to export and import regulations.

14.3 *Relationship of the Parties.* The parties are and shall be independent contractors with respect to all services provided under this Agreement.

14.4 *Force Majeure.* Except for payment obligations, neither Vivun nor Customer will be liable for inadequate performance to the extent caused by a condition that is beyond the party's reasonable control, including but not limited to natural disaster, civil disturbance, acts of terrorism or war, labor conditions, governmental actions and interruption or failure of the Internet or any utility service. Vivun will not be liable for: (i) any problems resulting from Customer combining or merging Vivun Services with any hardware or software not supplied by Vivun or not identified by Vivun in writing as compatible with the Services; or (ii) any interruption or unavailability resulting from Customer's use of the Services in an unauthorized or unlawful manner or any interruption resulting from the misuse, improper use, alteration, or damage of the Services; (iii) any problems caused by modifications in any version of the Services not made or authorized by Vivun in writing; and (vii) any problems resulting from Customer's or any third party's acts, errors or omissions or any systems not provided by Vivun.

14.5 *Assignment.* Neither this Agreement nor any of the rights and licenses granted hereunder, may be transferred or assigned by either Party without the other Party's express written consent. Notwithstanding the foregoing, no consent shall be required in case of assignment as a result of a merger, acquisition, or change of control. In any case of such assignment not requiring prior consent the assigning party will provide the other party written notice of the assignment. Terms and conditions set forth in this Agreement shall be binding upon assignees. Any assignment in violation of this Section 15.3 shall be void, ab initio, and of no effect. Subject to the foregoing, this Agreement is binding upon, inures to the benefit of and is enforceable by, the parties and their respective permitted successors and assigns. In the event of an assignment by Customer not requiring prior consent, following required written notice, Vivun shall have the ability to terminate the agreement with immediate effect and provide a pro-rata refund of fees should Vivun determine (acting reasonably) that the change in

control was to: (i) a direct competitor or (ii) an affiliate of a direct competitor of Vivun.

14.6 *Entire Agreement*. This Agreement, together with the Order Form constitutes the entire agreement between Customer and Vivun and supersedes and replaces all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter herein. If a court of competent jurisdiction deems any provision of this Agreement invalid, the invalidity of such provision shall not affect the validity of the remaining provisions hereof, which shall remain in full force and effect.

14.7 *No Waiver*. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and a Party's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

14.8 *Communications*. The Parties agree to receive by e-mail all communications, agreements, documents, notices, and disclosures that a Party provides in connection with the Services ("Communications") or this Agreement. Vivun may provide Communications in a variety of ways, including by e-mail, text, in-app notifications, or by posting them on the Vivun website or through the Services. The Parties agree that all Communications provided by Vivun to Customer electronically satisfy any legal requirement that such communications be in writing.

14.9 *Analytics Offerings*. All purchases of Vivun's suite of Analytics Products and Services ("Analytics Services"), and shall be construed in accordance with both this Master Subscription Agreement, as well as the Vivun, Inc. – BI Analytics Service Usage Terms, located at [Legal.vivun.com](http://Legal.vivun.com).

## 15. Definitions

15.1 "Content" means the visual information, documents, software, products and services contained or made available to Customer in the course of using the Services,

other than Customer Data.

15.2 “Customer Data” means any information (including without limitation personally identifiable information) provided, made available, or submitted by Customer to the Services or retrieved by the Services from Customer’s salesforce.com account other than User Details.

15.3 “Documentation” means Vivun's published documentation, knowledge base articles and other content, and technotes that are generally made available by Vivun to all customers, including without limitation the materials located at <https://www.vivun.com>.

15.4 “End User(s)” means Customer’s named employees, representatives, consultants, contractors, partners, or agents who are authorized to use the Services by Customer through the Salesforce LMA (License Management Application) or the “User Management” facility of the Services.

15.5 “Order Form” means (a) an electronic or tangible order form or (b) online order, setting forth commercial details of a subscription to the Subscription Service (including any Add-Ons) and the purchase of associated Professional Services (if any), incorporating this Agreement by reference.

15.6 “salesforce.com” means the service provided by salesforce.com to which Customer may be required to be a subscriber in order to obtain access to one of the offerings within the Service.

15.7 “Subscription Term” means the length of time the Services will be available to Customer, as negotiated between Customer and Vivun and set forth in the applicable Order Form.

15.8 “User Details” means basic information collected by Vivun about Customer’s Salesforce.com users’ authorized by Customer to use the Services which is used for subscription management, activity logging, and technical support purposes.

15.9 “Vivun System” means the hardware, software, network equipment, and other

technology used by Vivun to deliver the Services, and any other of Vivun's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by Vivun in providing the Services.

15.10 "Total Contract Billing" ("TCB") is defined as a the total amount that will be billed over the duration of the charge.

## 16. Changes to Terms of Service

16.1 We reserve the right, at our sole discretion, to update, change or replace any part of these Terms. The most current version of the Terms will be posted on the Service and it is your responsibility to check our website periodically for changes. If the changes include material changes that affect your rights or obligations, we will notify you of the changes by reasonable means, which could include notification through the Service or via email. Your continued use of the Service following the effective date of any changes to these Terms constitutes acceptance of those changes. If you do not agree to the new Terms, you may not use the Service.

For questions about these or any Vivun terms or policies, email us at [legal@vivun.com](mailto:legal@vivun.com).