



## PURCHASE AND SUBSCRIPTION SERVICES AGREEMENT TERMS AND CONDITIONS

The Parties agree that their contractual relationship with respect to the Raptor Services will be governed by (1) these Terms and Conditions (the “Terms”), (2) the applicable Purchase and Subscription Services Agreement (each, a “Subscription Agreement”), and (3) all Invoices and exhibits, schedules and terms and conditions referenced by or in the Terms and Subscription Agreement(s). Unless otherwise specified, capitalized terms in these Terms have the same meaning as those in the Subscription Agreement.

### 1. DEFINITIONS

1.1 “Access Credentials” means login information, passwords, security protocols, and policies through which Users access the Raptor Services.

1.2 “Customer Content” means all data, information and materials (a) collected via Customer’s and Users’ use of the Raptor Services and transmitted to Raptor; and (b) otherwise provided by Customer to Raptor under this Agreement.

1.3 “Documentation” means the documentation, user manuals, help files and videos, and other materials that describe the features, functions and operation of the Raptor Services.

1.4 “Intellectual Property Rights” means all forms of industrial and intellectual property rights and protections throughout the world, including any: (a) patents, patent applications, and inventions (whether or not patentable); (b) copyrights and other works of authorship; (c) Internet domain names, trademarks, service marks, and trade dress, together with all goodwill associated therewith; (d) trade secrets, know-how, and rights in confidential information; (e) rights in software, databases and designs; (f) moral rights, rights of privacy, rights of publicity, and similar rights; and (g) any other proprietary rights and protections, whether currently existing or hereafter developed or acquired arising under statutory or common law, including all applications, disclosures, and registrations with respect thereto.

1.5 “Raptor Platform” means the online software-as-a-service platform to which Customers connect to access the Raptor Services.

1.6 “Raptor Services” means the provision of access to any portion of the Raptor Platform including integrations with third-party or Customer software or hardware provided by Raptor. References to any Raptor Services include the associated Documentation.

1.7 “Invoice” means an invoice, executed by both Parties, that sets forth the Raptor Services ordered, the schedule of payments for the Raptor Services, and any unique additional terms.

1.8 “Users” means employees or contractors of Customer who are authorized to access the Raptor Services using a user identifier and password provided to Customer by Raptor or set up by Customer.

### 2. UPDATES

2.1 Updates. During the Term, Raptor shall supply Customer, without charge, any revisions, corrections, and upgrades of the Raptor Platform that are made generally available by Raptor to its other customers free of charge (“Updates”).

### 3. SERVICES

3.1 Restrictions. During the Term and thereafter, Customer shall not, and shall not permit any of its Users or any third parties to, directly or indirectly: (a) act as a reseller or distributor of, or a service bureau for, the Raptor Platform, or otherwise use, exploit, make available or encumber any of the Raptor Platform to or for the benefit of any third party; (b) use or demonstrate the Raptor Platform in any other way that would be competitive with Raptor; (c) reverse engineer, disassemble or decompile the Raptor Platform, or attempt to derive the source code or underlying ideas or algorithms of any part of the Raptor Platform; (d) remove any notice of proprietary rights from the Raptor Platform; (e) copy, modify, translate or otherwise create derivative works of any part of the Raptor Platform; (f) use the Raptor Services in a manner that interferes or attempts to interfere with the proper working of the Raptor Services, or any activities conducted in connection with the Raptor Services, including bypassing or attempting to bypass any privacy settings or measures used to prevent or restrict access to the Raptor Services; (g) use or allow the transmission, transfer, export, re-export or other transfer of any software, technology or information forming a part of the Raptor Services in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction; or (h) use the Raptor Services to share or store inappropriate materials, including (i) materials containing viruses or other harmful or malicious code; (ii) copyrighted materials to which Customer does not have sufficient rights; or (iii) other materials prohibited by applicable international, federal, state, or local laws and regulations.

3.2 Access Credentials. Customer will safeguard, and ensure that all Users safeguard, the Access Credentials. Customer will be responsible for all acts and omissions of Users. Customer will notify Raptor immediately if it learns of any unauthorized use of any Access Credentials or any other known or suspected breach of security.

3.3 Customer Obligations. Customer will be responsible for obtaining and maintaining, at Customer’s expense, all of the necessary telecommunications, computer hardware, software,

and internet connectivity required by Customer or any User to access the Raptor Services from the internet. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Raptor Services, and notify Raptor promptly of any such unauthorized use known to Customer.

**3.4 Reservation of Rights.** As between Customer and Raptor, all right, title and interest, including all Intellectual Property Rights, in and to the Raptor Platform are owned exclusively by Raptor. Except for any Customer Content, all work product or services provided or developed pursuant to this Agreement or any Invoice (including any modifications and improvements to any Raptor Platform pursuant to Section 3.6 (Continuous Development) and any intellectual property developed pursuant to Section 3.7 (Professional Services Support) below), and all intellectual property and other proprietary rights derived therefrom, will be the sole and exclusive property of Raptor.

**3.5 Continuous Development.** Customer acknowledges that Raptor may continually develop, deliver and provide to Customer, at Raptor's sole discretion, on-going innovation to the Raptor Platform in the form of new features, functionality, and efficiencies. Accordingly, Raptor reserves the right to automatically modify the Raptor Platform from time to time. Some modifications will be provided to Customer at no additional charge. Raptor may condition the implementation of other modifications on Customer's payment of additional fees, provided Customer may continue to use the version of the Raptor Platform that Raptor makes generally available (without such features) without paying additional fees.

**3.6 Support.** During the Term, Raptor shall use commercially reasonable efforts to provide the services necessary to remedy any software function that does not operate in substantial conformance to the Documentation (an "Error"). Raptor's technical support staff shall provide Customer with email and telephone consultation during the hours of 7:00 a.m. through 5:00 p.m. US Central Time, Monday through Friday, except holidays recognized by the United States federal government. Such consultation shall include technical advice concerning the use and operation of the Raptor Services, including clarification of functions and features of the Raptor Services, and clarification of documentation, as well as Error verification, analysis, corrections and workarounds. All services provided hereunder shall be provided remotely from Raptor's place of business or such other locations designated by Raptor. In furtherance of this Section 3.8, Customer will identify not more than two (2) technically proficient contacts to act as the primary liaisons responsible for all communications with Raptor in connection with support issues

**3.7 Feedback.** Customer hereby grants to Raptor a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use and incorporate into the Raptor Services any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including its Users, relating to the Raptor Services.

## **4. CUSTOMER CONTENT**

**4.1 Customer Content.** Customer is solely responsible for the accuracy, quality and legality of Customer Content. Customer will obtain all third-party licenses, consents and permissions needed for Raptor to use the Customer Content to provide the Raptor Services.

**4.2 Ownership.** As between Customer and Raptor, Customer retains all right, title, and interest to the Customer Content. Customer grants to Raptor, on behalf of itself and its Users, a non-exclusive license to use the Customer Content as necessary for purposes of providing the Raptor Services. Notwithstanding anything to the contrary herein, Customer agrees that Raptor has the right to collect, use and analyze any de-identified information derived from the Customer Content (collectively, the "De-identified Data") for Raptor's lawful business purposes, including to improve and enhance the Raptor Services, and for other development, diagnostic, and corrective purposes in connection with the Raptor Services. Raptor may disclose De-identified Data solely in aggregate form in connection with its business.

**4.3** Raptor will maintain and enforce safety and physical security procedures with respect to its access and maintenance of all personal information that are (a) at least equal to industry standards for such types of personal information and (b) which provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration, or unauthorized disclosure or access of personal information. Without limiting the generality of the foregoing, Raptor will encrypt personal information with industry standard encryption levels.

**4.4** Raptor shall not retain, use, or disclose any personal data that constitutes "personal information" under the California Consumer Privacy Act of 2018 and any regulations promulgated thereunder, in each case, and amended from time to time ("CCPA"), ("CA Personal Information"), for any purpose other than for the specific purpose of providing the Raptor Services, or as otherwise permitted by CCPA, including retaining, using, or disclosing the CA Personal Information for a commercial purpose (as defined in CCPA) other than providing the Raptor Services.

**4.5** Raptor shall not (a) sell any CA Personal Information; (b) retain, use or disclose any CA Personal Information for any purpose other than for the specific purpose of providing the Raptor Services, including retaining, using, or disclosing the CA Personal Information for a commercial purpose (as defined in the CCPA) other than provision of the Raptor Services; or (c) retain, use or disclose the CA Personal Information outside of the direct business relationship between Raptor and Customer. Raptor hereby certifies that it understands its obligations under this Section 4.5 and will comply with them.

**4.6** Raptor will process CA Personal Information only in accordance with Client's instructions. By entering into this Agreement, Customer instructs Raptor to process CA Personal Information to provide the Raptor Services. Client

acknowledges and agrees that such instruction authorizes Raptor to process Personal Data (a) to perform its obligations and exercise its rights under the Agreement; (b) perform its legal obligations and to establish, exercise or defend legal claims in respect of the Agreement; (c) pursuant to any other written instructions given by Client and acknowledged in writing by Raptor as constituting instructions for purposes of this Agreement; and (d) as reasonably necessary for the proper management and administration of Raptor's business.

4.7 Notwithstanding anything in the Agreement or any Invoice entered in connection therewith, the parties acknowledge and agree that Raptor's access to CA Personal Information or any other personal data does not constitute part of the consideration exchanged by the parties in respect of the Agreement.

## 5. TERM, TERMINATION

5.1 Initial Term. Unless earlier terminated in accordance with the terms of this Section 5, this Agreement will become effective on the Effective Date and continue for the Initial Term (the "Initial Term").

5.2 Renewal Terms. Following the Initial Term and except as earlier terminated as described below, this Agreement will automatically renew for successive one (1) year renewal terms (each, a "Renewal Term") at the then current price, unless either Party provides written notice to the other of its intention to allow the Agreement to expire at least 60 (sixty) days prior to the expiration of the Initial Term or the then-current Renewal Term. The Initial Term and all Renewal Terms will collectively be referred to as the "Term."

5.3 Termination for Breach. Either Party may terminate this Agreement upon written notice to the other Party in the event the other Party commits any material breach of this Agreement and fails to cure such breach within 30 (thirty) days after its receipt of written notice of such breach.

5.4 Obligations on Termination. Upon expiration or termination of this Agreement all rights granted hereunder by Raptor and all obligations of Raptor to provide Raptor Services will immediately terminate. Sections 1 (Definitions), 3.1 (Restrictions), 3.4 (Reservation of Rights), 3.7 (Feedback), 4.2 (Ownership), (Fees), 5.4 (Obligations on Termination), 6 (Confidentiality), 7.3 (Exclusions), 8 (Indemnification), 9 (Limitations on Liability) and 10 (General) will survive termination of this Agreement. All fees for the Raptor Services are nonrefundable. Without limiting the foregoing, no refunds or credits will be issued for partial periods of service, downgrade refunds or refunds for period unused periods in the event of termination under this Agreement, except in the case of Raptor's infringement of a third party's Intellectual Property Rights as outlined in section 8.1.

## 6. CONFIDENTIALITY

6.1 Definition. As used herein, subject to Section 6.2 (Exclusions) below, "Confidential Information" means any and all information or data, regardless of whether it is in tangible form, disclosed by either Party (the "Disclosing Party") to the other Party (the "Receiving Party"), that the Disclosing Party has either marked as confidential or proprietary, or that should be reasonably understood by the Receiving Party to be confidential due to the nature of the information disclosed or the circumstances surrounding disclosure. Raptor's Confidential Information includes all information relating to the Raptor Services, and Customer's Confidential Information will include the Customer Content (subject to Section 4.2 (Ownership)). In addition, the terms of this Agreement will be considered the Confidential Information of both Parties.

6.2 Exclusions. Notwithstanding the foregoing, information and data will not be deemed "Confidential Information" if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes generally publicly known except through a breach of this Agreement by the Receiving Party; or (iv) is independently developed by the Receiving Party without use of or reference to any Confidential Information.

6.3 Obligations. The Receiving Party will use commercially reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use or reproduction of, the Disclosing Party's Confidential Information. Without restricting or otherwise limiting the exercise by a Party of the rights and licenses expressly granted to it under this Agreement, Confidential Information may be disclosed to only such employees and agents of the Receiving Party on a need-to-know basis; provided in each case that such employees and agents are bound by a written agreement respecting such Confidential Information in accordance with the terms of this Section 7. In addition, Confidential Information may be disclosed to any competent authorities following a judicial order to do so.

## 7. REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

7.1 General. Each Party represents and warrants to the other Party that it has all required rights, power and authority to enter into this Agreement and to grant all rights, authority and licenses granted hereunder. Raptor represents and warrants to Customer that Raptor will provide the Raptor Services in a professional and workmanlike manner.

7.2 Background Checks. Background checks and Sexual Offender Checks, if applicable, performed using the Raptor Services are based on third party information made available to Customer as part of the Service. Raptor does not screen, monitor or modify the third-party information and does not

guarantee or warrant the accuracy, integrity or quality of the third-party information. Customer understands and agrees that positive or false matches in background checks may not provide confirmation of an individual's background; background checks may return false-positive matches, where the database incorrectly returns a record containing a negative background for an individual who does not have a negative background, and false-negative matches, where the database does not return a record of a negative background for an individual who does have a negative background. Customer shall not use the Raptor Service background check functionality for any purpose other than to deny or permit access to Customer's premises. Use of such background check functionality is at Customer's own risk, and Raptor shall not be liable for any damages that result from such use. Raptor disclaims and Customer assumes all responsibility for determinations of an individual's registered sex offender or custom alert status based on the information conveyed in connection with the Raptor Services. Customer is solely responsible for such determinations and understands that information provided by Raptor is not intended to substitute for the determinations made by Customer and Customer's employees and contractors.

**7.3 Exclusions.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7.1 (GENERAL), THE RAPTOR SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, SECURITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER AGREES THAT RAPTOR DOES NOT WARRANT THAT THE RAPTOR SERVICES WILL BE PROVIDED IN AN UNINTERRUPTED OR ERROR FREE FASHION AT ALL TIMES, THAT THE RAPTOR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THE RAPTOR SERVICES WILL YIELD ANY PARTICULAR RESULT. CUSTOMER AGREES THAT RAPTOR WILL HAVE NO LIABILITY TO CUSTOMER WITH RESPECT TO THE CUSTOMER CONTENT OR CUSTOMER'S USE THEREOF. RAPTOR MAKES NO WARRANTY OR REPRESENTATION REGARDING THE ACCURACY OR COMPLETENESS OF ANY DATA. RAPTOR DOES NOT AND CANNOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS REGARDING THE PERFORMANCE, USE OR RESULTS OF THE USE OF THE RAPTOR SERVICES IN TERMS OF EFFECTIVENESS, ACCURACY, RELIABILITY, THAT CUSTOMER WILL BE SECURE AS A RESULT OF ITS USE OF THE RAPTOR SERVICES, OR OTHERWISE.

## **8. INDEMNIFICATION**

**8.1 Indemnification by Raptor.** Raptor will defend at its expense any claim, suit or proceeding (each a "Claim") brought against Customer by a third party based upon a claim that Customer's use of the Raptor Services as contemplated by this Agreement infringes such third party's Intellectual Property

Rights, and Raptor will pay all damages finally awarded against Customer by a court of competent jurisdiction as a result of any such Claim. If the use of any Raptor Services by Customer has become, or in Raptor's opinion is likely to become, the subject of any claim of infringement, Raptor may at its option and expense (a) procure for Customer the right to continue using such portion of the Services as set forth hereunder; (b) replace or modify such portion of the Services to make it non-infringing so long as it retains at least equivalent functionality; or (c) if options (a) or (b) are not reasonably practicable, terminate this Agreement and provide a pro-rata refund of any amounts pre-paid. Raptor will have no liability or obligation under this Section 8.1 with respect to any Claim to the extent caused by (w) use of the Raptor Services outside the scope of this Agreement; (x) compliance with or use of designs, data, instructions or specifications provided by Customer (including the Customer Content); (y) modification of the Raptor Services by any person or entity other than Raptor without Raptor's express consent; or (z) the combination, operation or use of the Raptor Services with other applications, product(s), devices, equipment, hardware, software, data or services not provided by Raptor.

**8.2 Indemnification by Customer.** Customer will defend at its expense any Claim brought against Raptor by any third party arising from (a) any Customer Content; (b) clauses (w) through (z) of Section 8.1 (Indemnification by Raptor) and (c) Customer's breach of Section 4.4, and Customer will pay all damages finally awarded against Raptor by a court of competent jurisdiction as a result of any such Claim.

**8.3 Additional Terms.** The foregoing indemnification obligations are conditioned upon the following: (a) the Party seeking indemnification will promptly notify the indemnifying Party of the applicable Claim, (b) the indemnifying Party will have the sole and exclusive authority to defend and/or settle any such Claim (provided that the indemnifying Party will not settle any such Claim without the other Party's prior written consent), (c) the Party seeking indemnification will reasonably cooperate with the indemnifying Party in connection therewith, and (d) the Party seeking indemnification may participate in the defense of any such Claim at its own expense.

## **9. LIMITATIONS ON LIABILITY**

**9.1 Disclaimer of Indirect Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL RAPTOR BE LIABLE FOR CUSTOMER'S PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

9.2 Limitations on Liability. EACH PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY RAPTOR UNDER THE APPLICABLE INVOICES(S) DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE.

9.3 Exceptions. RAPTOR WILL NOT BE LIABLE FOR ANY CLAIM OR DEMAND AGAINST CUSTOMER BY ANY THIRD PARTY EXCEPT FOR THE INDEMNIFICATION SET FORTH IN SECTION 8. THE PROVISIONS OF THIS SECTION 9 WILL APPLY TO ALL CLAIMS AGAINST RAPTOR IN THE AGGREGATE (NOT PER INCIDENT) WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED. ANY LIMITED REMEDY HEREIN IS HELD TO FAIL OF ITS ESSENTIAL PURPOSE OR THE FORM OF THE CLAIM OR CAUSE OF ACTION, WHETHER IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND PRODUCT LIABILITY).

## 10. GENERAL

10.1 Force Majeure. Raptor will not be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control.

10.2 Compliance with Laws. Without limiting the generality of the foregoing, Customer will not transfer, either directly or indirectly, the Raptor Services, either in whole or in part, to any destination subject to export restrictions under United States law, unless prior written authorization is obtained from Raptor and the appropriate United States agency and will otherwise comply with all other applicable import and export laws, rules and regulations. Each Party shall comply with all applicable laws and regulations in connection with its performance of its obligations and the exercise of its rights under this Agreement. Customer shall comply with all applicable data privacy and security laws in the treatment of personally identifying information of any third party obtained using the Raptor Services.

10.3 No Assignment. Customer may not assign this Agreement or any of its rights or obligations, or sublicense any of the rights granted herein, in whole or in part, without the prior written consent of Raptor, except that Customer may assign this Agreement, without the prior written consent of Raptor, to a corporation or other business entity succeeding to all or substantially all of the assets and business of Customer by merger or acquisition, provided that such corporation or other business entity assumes, in a writing delivered to Raptor, all of the terms and conditions of this Agreement. Any attempt by Customer to assign or transfer any of the rights, duties or obligations of this Agreement in violation of the foregoing will be null and void.

10.4 Amendment; Waiver. This Agreement may not be amended or modified, in whole or part, except by a writing signed by duly authorized representatives of both Parties. No provision or part of this Agreement or remedy hereunder may be waived except by a writing signed by a duly authorized representative of the Party making the waiver. Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

10.5 Relationship. The Parties are independent contractors. Nothing in this Agreement will be construed to place the Parties in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

10.6 Severability. In the event that any provision of this Agreement is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and such provision as so reformed will continue in effect, to the extent consistent with the intent of the Parties as of the Effective Date.

10.7 Governing Law, Jurisdiction. This Agreement will be governed by the laws of the State of Texas without reference to its conflicts of law principles. Application of the U.N. Convention on Contracts for the International Sale of Goods is hereby excluded. Any dispute or claim arising out of, or in connection with, this Agreement shall be finally settled by binding arbitration in Houston, Texas, in accordance with the Texas General Arbitration Act, Tex. Civ. Prac. & Rem. Code § 171.001 *et seq.* ("TAA") and the then-current rules and procedures of the American Arbitration Association by one (1) arbitrator appointed by the American Arbitration Association. The arbitrator shall apply the law of the State of Texas, without reference to rules of conflict of law or statutory rules of arbitration, to the merits of any dispute or claim. Judgment on the award rendered by the arbitrator may be confirmed, reduced to judgment and entered in any court of competent jurisdiction. The Parties agree that, any provision of applicable law notwithstanding, they will not request, and the arbitrator shall have no authority to award punitive or exemplary damages against any Party.

10.8 Notices. All notices, consents, and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail (postage prepaid and return receipt requested) to the other Party and will be effective upon receipt. Either Party may change its address by giving notice of the new address to the other Party.

10.9 Use of Name and Logo. Customer agrees that Raptor may indicate that Customer is a Raptor customer on Raptor's website and in its marketing materials. Any such attribution will be consistent with Customer's style guidelines and requirements as communicated to Raptor.



10.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations.