

**IMPORTANT, READ CAREFULLY: SUBSCRIBER'S USE OF AND ACCESS TO THE SERVICES OF 1010DATA SERVICES LLC ARE CONDITIONED UPON SUBSCRIBER'S COMPLIANCE AND ACCEPTANCE OF THESE TERMS.**

THESE SUBSCRIPTION TERMS (THE "**TERMS**") GOVERN THE ACQUISITION AND USE OF 1010DATA SERVICES LLC'S SERVICES BY SUBSCRIBER. BY EXECUTING AN ORDER FORM (EACH AN "**ORDER FORM**") THAT REFERENCES THESE TERMS, SUBSCRIBER AGREES TO ALL OF THE TERMS AND CONDITIONS STATED HEREIN. TOGETHER WITH AN EXECUTED ORDER FORM, THESE TERMS SHALL BE COLLECTIVELY REFERRED TO AS THE "**AGREEMENT**").

These Terms were last updated on **July 1, 2021**, and the Agreement shall be effective between Subscriber and 1010data as of the Effective Date of the Order Form executed by both parties.

**WHEREAS**, Family Dollar Services, Inc. ("**Retailer**") and/or its affiliates operate a network of retail stores. Subscriber is supplier of merchandise that is offered for sale in Retailer stores, and identified in an Order Form using Retailer's Master Initial Supplier Number ("**MIS No.**"). 1010data provides suppliers of Retailer's stores with access over the internet to reports of analysis of supplier sales and inventory data ("**Reports**") and related sales or other data (collectively, the "**Sales Information**") provided by Retailer for use by suppliers and, if subscribed to, the ability to analyze the Sales Information on 1010data's enterprise analytics platform (the "**Collaboration Portal**"). Subject to the terms and conditions of this Agreement, Subscriber subscribes to, and 1010data shall provide the Services, defined herein, solely for its Internal Use, at the "**Tier**" specified in the Order Form, with the access rights described in Schedule B (available at <https://1010data.com/media/3093/1010data-services-llc-family-dollar-collaboration-portal-schedule-b-tier-offering-schedule-07-01-2021vf.pdf>, the "**Tier Schedule**"), and accessible over the internet using a standard Web browser and website link provided by 1010data;

**NOW THEREFORE**, in consideration of the mutual promises and covenants in the Agreement, the Parties hereto agree as follows:

**1. Subscription and License.** Subject to the terms and conditions of this Agreement, the terms and conditions of this Agreement, Schedule A: the Service Level Agreement (available at: <https://1010data.com/media/2864/1010data-services-llc-schedule-a-sla-current.pdf>), 1010data will provide Subscribers with the ability to access the Collaboration Portal and Sales Information provided by Retailer for the Tier level subscribed indicated in the Order Form, and if subscribed for, the ability to upload Subscriber provided data (either Subscriber owned or licensed by Subscriber from third-parties) onto the Collaboration Portal only as permitted in this Agreement for enhanced analysis by Subscriber ("**Subscriber Data**") (together, the "**Services**"). The scope of access, and type of Sales Information provided under the Tier subscribed is described in Tier Schedule. Upon written request, 1010data will provide Subscriber with access to the raw data feeds for Subscriber Data afforded to it under the Tier subscribed. Further, from time to time, 1010data may at its discretion make available, or cease making available, additional data ("**1010data Data**") for Subscriber's use and analysis within the Collaboration Portal. 1010data shall have no obligation to disclose how the Collaboration Portal and related software and equipment and methodologies work beyond the information voluntarily disclosed to Subscriber by 1010data to enable Users to use the System in accordance with this Agreement.

**1.1. Collaboration Portal Access.** The Collaboration Portal shall be accessed by a user through 1010data's user interface ("**UI**"), which shall be accessed using major web browsers. Web browsers are not part of 1010data's Collaboration Portal or its functionality. User access is controlled by assigned user identification ("**User ID**") with password protection and provided to users identified by the User ID Administrator ("**Administrator**"). User IDs are personal to the assigned user and shall not be shared with any other party or individual. Subscriber will be responsible activities of each user and User ID. Subscriber agrees to: (a) maintain the security of all passwords and usernames; (b) notify 1010data immediately of any unauthorized use or other

breach of security; and (c) accept all responsibility for activity that occurs under each User ID. The Administrator shall promptly notify 1010data when a person who was previously identified to 1010data as a user is no longer authorized to use the Services so that 1010data can deactivate such employee's User ID. Upon deactivation, 1010data shall, upon the Administrator's written request, assign a User ID to a replacement user, designated by Administrator.

1010data hereby grants to Subscriber a limited, non-exclusive, non-transferable, and revocable license (without the rights to sublicense) to access the Sales Information solely for the purpose of facilitating the sale of Subscriber's merchandise in Retailer's stores, and for no other purpose whatsoever. Access to the Collaboration Portal is limited to the number of User ID(s) permitted under Subscriber's applicable Tier. Additional User ID(s) may be purchased by Subscriber in an applicable Order Form. Subscriber's **"Internal Use"** shall mean access and use by Subscriber's employees, and its Affiliates' or agent's employees, solely on Subscriber's behalf and for Subscriber's benefit; provided that none of Subscriber's Affiliates or agents may be competitors of 1010data.

- 1.2. **Represented Suppliers.** If so indicated on an applicable Order Form that Subscriber is a **"Manufacturer's Representative"** representing one or more individual suppliers to Retailer (the **"Represented Suppliers"**), then Subscriber shall hereby represent and warrant that as a Manufacturer's Representative they are subscribing to the Services on behalf of and for the benefit of the Represented Suppliers listed in Section D of the applicable Order Form, and not for Subscriber's Internal Use. Further, and if so indicated, Subscription will include access to the Represented Suppliers' Sales Information available to the relevant Tier subscribed. Manufacturer's Representative is entitled to change its listing of assigned Represented Suppliers one time (1x) per contract year. Such changes shall be permitted when the new represented suppliers are of similar sales volume to those Represented Suppliers being removed. 1010data reserves the right to charge an fee for any additional changes to the list of Represented Supplier, or when such changes involve represented suppliers of differing sales volumes.
2. **Training and Optional Services.** 1010data will provide all Users with access to online training resources that support the use of the Collaboration Portal inclusive of printable job aids, webinar recordings, and reporting examples (**"Training"**). Training will be made available via web conference to all Users on a monthly cadence. Each monthly web conference will cover different reporting topics and use cases. Some web conferences may cover topics and use cases only be available to Sapphire and Diamond Tier subscribers. Basic support includes User ID administration, investigation of issues, answering simple how-to questions relating to accessing Reports, and, if permitted by the Tier subscribed for, provision of instructions on running ad-hoc queries. Basic support can be requested online (through support portal ticketing system) or via email to [support@1010data.com](mailto:support@1010data.com). Support specialists monitor support requests from 7:00 a.m. – 7:00 p.m. ET. Pearl, Sapphire and Diamond Tier subscribers are additionally invited to attend quarterly Training sessions via web conference that cover a broader range of topics that enable users to optimize their reporting. Quarterly Training sessions will only be available live, and will not be recorded for offline viewing.

Diamond Tier subscribers are also eligible to schedule monthly consultation calls with a 1010data solutions consultant to answer specific reporting questions. Such consultations may not to exceed one (1) hour per month. Additional consulting services and custom training to solve specific subscriber requests are offered on a time and materials basis, at 1010data's then current billing rates, unless pre-purchased as an Optional Service by Client.

Consultative services (**"Additional Analytic Support Services"**), Client directed training (**"Additional Education Services"**), and 1010data's programmatic toolkit (**"TenDo"**) are available for purchase at an incremental cost, and available in any subscription Tier (the **"Optional Services"**). Additional Analytic Support Services shall be an annual recurring service and must be subscribed for the entirety of the

Subscription Term and any renewal thereof. Additional Education Services are one-time charges only, and available as either: (i) Additional Education Services (Advanced) which is focused on Client's use of the Services, and on building Reports, or (ii) Additional Education Services (Developer) which is focused on providing instructions to Client in building its own quick applications. Only Pearl, Sapphire, Diamond Tier subscribers can access TenDo. TenDo enables Client's Users to use command-line interfaces to run queries and retrieve results from the Collaboration Portal.

### **3. Subscriber Restrictions and Obligations.**

**3.1. Use Restrictions.** Subscriber agrees that the Collaboration Portal may be accessed solely by authorized users of the User IDs identified in Order Form ("**User(s)**"). Subscriber shall designate one of its employees in the Order Form, as its Administrator. The Administrator shall determine which of Subscriber's employees shall be designated as a User. In addition to its own obligations, Subscriber shall be responsible for any violations of this Agreement committed by its Users. Subscriber may use the Collaboration Portal to access and analyze the Sales Information for the Tier subscribed for and 1010data Data solely for its Internal Use (or for the benefit of its Represented Suppliers), and only in accordance with the terms and conditions of this Agreement. All other uses of the Collaboration Portal and Sales Information are prohibited.

**3.2. User IDs.** Subscriber shall promptly notify 1010data when a person who was previously identified to 1010data as a User is no longer authorized to use the Services so 1010data can deactivate such employee's User ID. Upon deactivation, 1010data shall, upon Subscriber's written request, assign a User ID to any replacement User, designated by Subscriber.

**3.3. No Reverse Engineering.** Subscriber shall not attempt to reverse engineer any Sales Information or Services. Nor shall Subscriber reverse engineer, re-identify, or associate any de-identified or pseudonymized data with any identifiable person or legal entity.

**3.4. No Identification of Individual and/or Bank Information.** Subscriber shall not: i) use the Services to derive information about specific individuals, transactions, or financial institutions or to determine 1010data's or Retailer's Vendors, ii) combine the Sales Information with any personally identifiable information in violation of any applicable laws, rules or regulations, or iii) use the Services to provide non-public or insider information, or in a manner that violates applicable laws, rules or regulations.

### **4. Fees, Taxes & Invoicing.**

**4.1. Fees.** Fees for initial setup and configuration of the services (the "**Setup Fee(s)**"), annual service fees for ongoing provision of the Services subscribed (the "**Annual Fee(s)**"), and fees for any Optional Services subscribed (the "**Services Fee(s)**") (together the "**Subscription Fees**") for the Services shall be set forth in an applicable Order Form. Except as otherwise provided in an Order Form, all Subscription Fees are quoted in United States Dollars ("**USD**"). Subscriber hereby agrees that if a purchase order ("**P.O.**") is required for payment, then each Order Form will be covered by a single P.O. and further that if a P.O. is required that all access to any Services (but not the Subscription Term) will be delayed until such P.O. number is received by 1010data. Upon commencement of any Renewal Term subsequent to the expiration of the Subscription Term specified in an applicable Order Form, the Parties agree that the Subscription Fees may be increased at 1010data's sole discretion. 1010data will notify Subscriber of such increase not less than forty-five (45) days prior to the commencement of each Renewal Term, and Subscriber shall then have ten (10) days to terminate the Agreement by providing written notice to 1010data of such intent to terminate, after which the pricing increase shall be binding on Subscriber for the duration of the Renewal Term.

**4.2. Travel Expenses.** All reasonable, pre-approved travel and living expenses required for services provided pursuant to an applicable Order Form, or otherwise authorized in advance by Subscriber to perform work requested by Subscriber shall be reimbursed by Subscriber.

**4.3. Taxes.** Unless otherwise stated, Subscription Fees specified on an Order Form do not include any local, state, federal or foreign taxes or duties of any kind ("**Taxes**"). Subscriber shall be responsible for paying all Taxes, excluding any Taxes based on 1010data's or its affiliates' income. If 1010data or any of its affiliates has the legal obligation to pay or collect Taxes in any jurisdiction, Subscriber shall be responsible for such Taxes and the appropriate amount shall be invoiced to and paid by Subscriber, unless Subscriber provides to 1010data a valid tax exemption certificate authorized by the appropriate taxing authority.

**4.4. Invoicing and Default.** Unless agreed to otherwise in an Order Form, any and all Subscription Fees will be invoiced annually-in-advance. Except as otherwise provided in an Order Form, all Subscription Fees, not subject to a good faith dispute, shall be due within thirty (30) days of the date of the invoice ("**Due Date**") and payable via automated clearing house payment ("**ACH**") or wire transfer in accordance with the terms herein. Invoices will be sent by email to the address provided in the applicable Order Form, or as otherwise provided by Subscriber in writing, and shall be deemed received when sent to such address. Any Subscription Fees not received within thirty (30) days after the Due Date shall be considered a "**Payment Default**" and will accrue interest from the due date at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. Subscriber also shall pay to 1010data all reasonable expenses incurred by 1010data in exercising any of its rights under this Agreement or applicable law with respect to a Payment Default by Subscriber, including, but not limited to, reasonable attorneys' fees and the fees of any collection agency retained by 1010data. In addition, within fifteen (15) days of the occurrence of a Payment Default, 1010data reserves the right, without liability to Subscriber, to suspend and/or terminate Services. Following such suspension for a Payment Default, 1010data may charge, and Subscriber agrees to pay, a "**Reinstatement Fee**" equal to one (1) month's Subscription Fees in order to restore such terminated Services. Receipt, in full, by 1010data of any Reinstatement Fee and delinquent Subscription Fees shall be required prior to the restoration of any Services.

**5. Commercial Reference.** Subscriber agrees that 1010data may use Subscriber's name, tradename(s), trademark(s) and/or logo(s) as a commercial reference, and/or in a Subscriber list identifying all or a material representation of 1010data's or its affiliates Subscribers. 1010data agrees not to alter the name, tradename(s), trademark(s) or logo(s) of Subscriber for any such commercial reference, list, whitepaper or testimonial, nor to state or imply any endorsement of 1010data by Subscriber without the express written permission of Subscriber.

## **6. Confidentiality.**

**6.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" is any proprietary and/or non-public information of a Party ("**Disclosing Party**") disclosed by or on behalf of the Disclosing Party to the other ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (including pricing and other terms reflected in all applicable Order Form(s)), the Services, business and marketing plans, trade secrets, technology and technical information, product designs, methods, processes, code, data, inventions, apparatus, statistics, programs, prototypes, samples, demonstrations, demonstration environments, research, development, information technology, network designs, passwords, sign-on codes, usage data, the Order Forms, and this Agreement. Confidential Information shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure

by the Disclosing Party without breach by any third-party of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; (d) is approved for release by written authorization of the Disclosing Party or (e) is received from a third-party without breach of any confidentiality obligation.

**6.2. Confidentiality.** The Receiving Party shall not disclose or use Confidential Information of the Disclosing Party for any purpose other than to perform its obligations and/or exercise its rights under this Agreement, except with Disclosing Party's prior written permission. Except as set forth herein, the Receiving Party shall not use for commercial purposes, in whole or in part, of any such Confidential Information disclosed to it without the prior written consent of the Disclosing Party.

**6.3. Protection.** During the Subscription Term specified in the applicable Order Form, and for a period of three (3) years from the termination thereof, each Party agrees to (a) use at least the same care and precaution in protecting such Confidential Information as the Receiving Party uses to protect its own Confidential Information, and in no event use not less than a commercially reasonable standard of care to protect Disclosing Party's Confidential Information disclosed hereunder; (b) not use Disclosing Party's Confidential Information other than as necessary to perform its obligations under and in accordance with this Agreement; (c) not disclose the Confidential Information to any other third-party except as provided herein or as authorized by the Disclosing Party in writing; and (d) disclose Disclosing Party's Confidential Information to its authorized employees, User(s), Administrator, agents, auditors, directors, and/or consultants (each, a "**Representative**") on a "need-to-know" basis only, provided that each Representative is bound by obligations of confidentiality and usage and restrictions against disclosure substantially similar to those contained herein. Each Receiving Party shall be liable for the breach by any of its Representatives of such Representatives' confidentiality obligations hereunder.

**6.4. Compelled and Other Permitted Disclosures.** Notwithstanding Section 6.3, if the Receiving Party is compelled by any applicable law, subpoena, order by a court of competent jurisdiction, or order by any public or private regulatory authority to disclose Confidential Information of the Disclosing Party, it shall (a) provide the Disclosing Party with reasonable prior written notice of such compelled disclosure (to the extent permitted by applicable law, court order or regulation); (b) provide the Disclosing Party with reasonable assistance and cooperation, at Disclosing Party's cost, if the Disclosing Party wishes to contest or limit the disclosure; and (c) only disclose that Confidential Information necessary to comply with such applicable law, subpoena or order as determined by counsel at Disclosing Party's reasonable cost. The terms of this Agreement may be disclosed to an entity that is interested in purchasing or investing in either Party provided that prior written notice is provided to the other Party, and that any such recipient must, prior to any disclosure, agree to treat the terms of this Agreement in a manner substantially similar to the manner of protections described herein. Provided further that nothing herein shall restrict Subscriber's ability to share Confidential Information with a regulator during a routine regulatory examination if required by such regulator in writing.

**6.5. Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies may be inadequate. The remedies provided in this Section 6.5 shall not be exclusive of, or limit any other remedies that may be available to either of the Parties.

**6.6. Return of Confidential Information.** Upon the written request of Disclosing Party at any time throughout the Subscription Term or upon expiration or termination of this Agreement, Receiving Party shall at its option, and if legally permissible, return or destroy (and certify such destruction in a signed writing) all Confidential Information of Disclosing Party, including all copies thereof, whether in physical or electronic form; provided, however, that either party may retain an archival

set of its working papers and a copy of the other Party's Confidential Information for ensuring compliance with any applicable laws, rules, regulations, and such Party's automated document retention policies and procedures. To the extent that it is impracticable to return or destroy any Confidential Information, and with respect to any information retained for archival purposes, Receiving Party shall continue to maintain the confidentiality of such information in accordance with this Agreement for as long as such information is retained.

**6.7. Consumer Data.** When applicable to the ordered Services, Subscriber shall not upload, or cause to be uploaded by 1010data, any EU Personal Data and/or US Personal Data ("**Consumer Data**") into the Services, without the prior written consent of 1010data. If 1010data consents to the hosting of Consumer Data on the 1010 Platform, the types of EU Personal Data and/or US Personal Data must be listed in an applicable Order Form or amendment hereto and executed by the parties. In the event any Consumer Data is uploaded in violation of this provision, Subscriber shall immediately remove such information from the Collaboration Portal or, at its reasonable discretion, 1010data may purge any such Consumer Data from the Services. Further, Subscriber shall not use the Services to identify or attempt to identify, directly or indirectly, individuals or any EU Personal Data and/or US Personal Data without the prior written consent of 1010data. ("**EU Personal Data**") shall have the meaning as defined in Regulation (EU) 2016/679, referred to as the General Data Protection Regulation ("**GDPR**") as it relates to natural persons in the European Economic Area or Switzerland. US Personal Identifiable Information ("**US Personal Data**") means any information that can be used on its own or with other information to identify, contact or locate an individual as it relates to natural persons within the United States (e.g., social security numbers or other similar identifying information issued by any governmental organization such as driver's license numbers, birth dates, personal bank account numbers, passport or visa numbers, employee ID numbers, healthcare information, biometric data, employee reviews, user IDs and passwords for online systems, other passwords, credit card numbers or any information relating to individuals that is subject to any state, federal or other governmental law or restriction on collection, publication, sharing and/or disclosure).

**6.8. Data Protection; CCPA; Data Breaches.** If required to do so under GDPR, CCPA or other applicable law, Subscriber and 1010data agree to be bound by a Data Processing Agreement ("**DPA**") to be mutually entered into by the Parties. Subscriber agrees that 1010data and/or its affiliates may, subject to the terms of the DPA, process Subscriber's data and Consumer Data.

The parties acknowledge and agree that 1010data is a Service Provider, as defined under the California Consumer Privacy Act, codified at Cal. Civ. Code §1798.100 et. seq. ("**CCPA**") with respect to Subscriber and any of Subscriber's Data that constitutes Personal Information as that term is defined in the CCPA ("**California Personal Data**"). 1010data agrees that it shall not (i) collect, retain, use, or disclose California Personal Data for any purpose other than for the specific purpose of performing the Services specified in the Agreement or as otherwise permitted under the CCPA; or (ii) sell, rent, lease, disclose, disseminate, make available, transfer, or otherwise communicate by any means California Personal Data for monetary or other valuable consideration, unless directed to do so by Subscriber. 1010data shall notify Subscriber within a reasonable period if it receives a request to know or a request to delete from an individual whose personal information is California Personal Data. 1010data shall provide commercially reasonable cooperation and assistance to allow Subscriber to meet its obligations under the CCPA. 1010data may charge a reasonable fee for such assistance.

For purposes of this Section, a "breach" means any actual unlawful or unauthorized access, acquisition or use of Consumer Data that compromises the security, privacy or integrity of the Consumer Data. If any Consumer Data that is held by 1010data and/or its affiliates is breached, 1010data shall utilize commercially reasonable efforts to: (a) provide Subscriber written notice of such breach no later than three (3) business days from the date it obtains actual or constructive

knowledge of the breach; and (b) take commercially reasonable steps designed to mitigate all known causes of the breach. In the event of a breach as defined in this Section or any other occurrence of any other event regarding Consumer Data resulting from 1010data's failure to comply with applicable law or with the provisions of this Section that requires notification under applicable law, 1010data agrees, subject to the limits set forth in Section 11 of this Agreement, to provide reasonable assistance in providing any required notice to affected individuals in accordance with any applicable law.

7. **Term and Termination.** The Services ordered in the applicable Order Form shall be provided throughout the Subscription Term described in any applicable Order Form. All Order Forms will automatically renew at the end of each term for an additional term of twelve (12) months (Each a "**Renewal Term**"), unless either party gives the other notice of non-renewal at least sixty (60) calendar days before the end of the then-current term. Renewals will automatically apply to all Services listed in any applicable Order Form. In the event data necessary to provide any of the Services ceases to be available to 1010data, 1010data may terminate the subscription to such Services (or any portions thereof) by providing Subscriber with written notice of the termination. In the event of such termination, 1010data shall provide a *pro rata* refund of any fees advanced by Subscriber for the period after termination of the Services. In the event of a material breach of this Agreement, the non-breaching party may terminate this Agreement upon ten (10) days written notice to the other party; provided, however, that such notice of termination shall not be effective if such breach is cured within such ten (10) day period. In the event of such termination owing to a material breach by 1010data, 1010data shall provide a *pro rata* refund of any fees advanced by Subscriber for the period after termination of the Services.
8. **Ownership.** 1010data shall own all IP Rights contained in any and all Reports provided to Subscriber under this Agreement, including but not limited to, Report designs, layouts, and formats provided to Subscriber pursuant to this Agreement. Subject to payment of all applicable Subscription Fees, Subscriber shall own any results it generates using the Services, and the contents of any report created by 1010data specifically and solely for Subscriber; provided however, Subscriber shall not own any underlying data, which may be included in such reports and use of the results generated by the Software or contents of the Service shall be subject to the use restrictions in Section 3.1. Such underlying data shall be considered the Confidential Information of 1010data. Notwithstanding anything to the contrary herein, 1010data shall retain all right, title, and interest in and to the following at all times: (a) all underlying data collected, maintained or utilized in providing any part of the Services; and (b) any proprietary technology, software, products, web portals, databases, information, algorithms, strategies, methods, analyses, techniques, processes, trade secrets or know-how owned, utilized, licensed or developed by 1010data in connection with providing the Services hereunder, including any IP Rights embodied therein or related thereto. "**IP Rights**" shall mean all past, present and future intellectual property rights which may exist or be created in any jurisdiction in the world, of every kind and nature and however designated, whether arising by operation of law, contract or otherwise, including, but not limited to, copyrights, works of authorship, trademark rights, trade secret rights, and patent rights. The Services are non-exclusive, and nothing in this Agreement shall restrict 1010data from providing such 1010data Services to other Subscribers.
9. **WARRANTIES.** TO THE EXTENT THAT ANY IS PROVIDED TO 1010DATA BY SUBSCRIBER, SUBSCRIBER REPRESENTS AND WARRANTS THAT IT HAS THE RIGHT TO PROVIDE THE SUBSCRIBER DATA TO 1010DATA TO BE USED BY 1010DATA IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT.

1010DATA WARRANTS THAT IT IS AND WILL DURING THE TERM OF THIS AGREEMENT AND ANY SUCCESSIVE RENEWAL TERMS REMAIN AUTHORIZED TO PROVIDE THE SERVICES TO SUBSCRIBER UNDER THIS AGREEMENT. 1010DATA FURTHER WARRANTS THAT TO THE BEST OF ITS KNOWLEDGE, NEITHER THE SERVICES, NOR 1010DATA'S PROVISION THEREOF TO

SUBSCRIBER VIOLATES ANY APPLICABLE LAW, RULE OR REGULATION (INCLUDING, WITHOUT LIMITATION, ANY PRIVACY LAW).

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES PROVIDED BY 1010DATA HEREUNDER AND ANY 1010DATA DATA ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THOSE ARISING BY LAW, STATUTE, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE. THIS LIMITATION APPLIES TO THE SALES INFORMATION, REPORTS, AND ANY OTHER DATA LOADED INTO THE SUBSCRIBER PORTAL, WHATEVER ITS SOURCE, AS WELL AS TO ANY HARDWARE OR SOFTWARE APPLICATION USED TO MANIPULATE THE DATA THAT IS MADE AVAILABLE BY 1010DATA TO SUBSCRIBER. SUBSCRIBER ASSUMES THE ENTIRE RISK AS TO THE RESULTS AND PERFORMANCE OF THE SUBSCRIBER PORTAL AND ANY OTHER SOFTWARE PROVIDED BY 1010DATA. SUBSCRIBER AGREES THAT ITS PURCHASE HEREUNDER IS NOT CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES, OR DEPENDENT ON ANY ORAL OR WRITTEN STATEMENTS MADE BY 1010DATA REGARDING FUTURE FUNCTIONALITY OR FEATURES.

## **10. Indemnification.**

**10.1 Mutual Indemnification.** Each Party (the "**Indemnifying Party**") will indemnify, defend and hold harmless the other Party and its affiliates, subsidiaries, permitted successors in interests and assigns and its and their respective officers, directors, employees, and agents, from and against any and all third-party claims, actions, demands or lawsuits arising out of performance of this Agreement, and any resulting judgments, damages, liabilities, fines, penalties, losses, costs and expenses (including reasonable attorneys' fees) or any amounts paid in settlement thereof (collectively "**Claim(s)**") subject to the conditions herein, to the extent arising out of or relating to: (i) the gross negligence or willful misconduct of the Indemnifying Party; or (ii) any act or omission by the Indemnifying Party that results in personal injury or death.

**10.2 Indemnification by Subscriber.** Subject to this Agreement, and the limitations set forth in Section 11 below, Subscriber shall defend, indemnify and hold 1010data, its Subscribers and affiliates, Vendors, and each of their respective officers, directors, employees, agents, permitted successors in interests and assigns (collectively, the "**1010data Indemnified Parties**") harmless against any loss or damage incurred in connection with any Claims brought against any 1010data Indemnified Party alleging that Subscriber's data, Consumer Data, or Subscriber's illegal or unauthorized use of the Services infringes the rights of any third-party; provided, that 1010data (x) promptly gives written notice of the Claim to Subscriber; provided, that failure to give such notice shall not operate as a waiver of 1010data's rights hereunder to the extent that delay in giving notice does not materially prejudice Subscriber's ability to fulfill its obligations under this Section 10.2; (y) gives Subscriber sole control of the defense and settlement of the Claim; and (z) provides to Subscriber, at Subscriber's cost, all reasonable assistance.

Subscriber may agree on any settlement; provided, that Subscriber will not enter into or agree to any settlement that imposes any obligation on 1010data without 1010data's prior written consent and will not admit liability on behalf of 1010data. 1010data may also choose to participate in the defense of such Claims at 1010data's sole cost and expense. Subscriber shall keep 1010data advised of the status of the Claim and will consider in good faith recommendations made by 1010data with respect to the Claim.

**10.3 Indemnification by 1010data.** Subject to this Agreement, and the limitations set forth in Section 11 below, 1010data shall defend, indemnify and hold Subscriber and its respective officers, directors, employees, agents, permitted successors in interests and assigns (collectively, the "**Subscriber Indemnified Parties**") harmless against any loss or damage incurred in connection with any Claims



brought against any Subscriber Indemnified Party alleging that the use of the Services provided hereunder infringes any third-party patents(s), copyright(s) or trademark(s) registered in the United States, as of the Effective Date of the Order Form; further provided, that Subscriber (x) promptly gives written notice of the Claim to 1010data; provided further, that failure to give such notice shall not operate as a waiver of Subscriber's rights hereunder to the extent that delay in giving notice does not materially prejudice 1010data's ability to fulfill its obligations under this Section 10.3; (y) gives 1010data sole control of the defense and settlement of the Claim; and (z) provides to 1010data, at 1010data's cost, all reasonable assistance.

1010data may agree on any settlement; provided, that 1010data will not enter into or agree to any settlement that imposes any obligation on Subscriber without Subscriber's prior written consent. 1010data will not admit liability on behalf of Subscriber. Subscriber may also choose to participate in the defense of such Claims at Subscriber's sole cost and expense. 1010data shall keep Subscriber informed of the status of the Claim and will consider in good faith recommendations made by Subscriber with respect to the Claim.

In the event a Claim under this Section 10.3 is made or in 1010data's reasonable opinion is likely to be made, 1010data may, at its sole option and expense: (i) procure for Subscriber the right to continue using the Services under the terms of this Agreement; (ii) replace or modify the Services to be non-infringing or compliant with law; or (iii) if the foregoing options are not reasonably available, terminate this Agreement and refund to Subscriber all prepaid, unused Fees.

## **11 Limitations of Liability.**

**11.1 Limitation of Liability.** EXCEPT FOR EACH PARTY'S OBLIGATIONS UNDER SECTION 10.1 ABOVE, AND FOR SUBSCRIBER'S OBLIGATIONS UNDER SECTIONS 3 AND 10.2 ABOVE, IN NO EVENT SHALL EITHER PARTY'S, OR ITS AFFILIATES' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE LESSER OF: (I) THE NON-BREACHING PARTY'S ACTUAL DIRECT DAMAGES; OR (II) THE AGGREGATE AMOUNTS PAID AND PAYABLE BY SUBSCRIBER TO 1010DATA IN THE TWELVE (12) MONTHS PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY.

**11.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY, NOR THEIR AFFILIATES' HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS, REVENUES (EXCEPT FOR ANY SUBSCRIPTION FEES OWED PURSUANT TO THIS AGREEMENT), LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, GOODWILL OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (COLLECTIVELY, "**INDIRECT DAMAGES**") HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH INDIRECT DAMAGES.

## **12 Miscellaneous.**

**12.1 Nature of Relationship.** 1010data and Subscriber understand, acknowledge and agree that they are independent contractors, and nothing in this Agreement is intended to create a partnership, agency, fiduciary, joint venture or employment relationship.

**12.2 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to subject matter hereof and supersedes all prior or simultaneous agreements, discussions, negotiations and statements, written or oral.

- 12.3 Other Documents.** No terms, provisions or conditions of any purchase order, acknowledgement or other business form that Subscriber may use in connection with an Order Form or the purchase of any services will have any effect on the rights, duties or obligations of the Parties hereunder, or otherwise modify, this Agreement, regardless of any failure of 1010data or its affiliates to object to any such terms, provisions or conditions.
- 12.4 Governing Law; Venue.** This Agreement and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the applicable internal laws of the State of New York, without reference to conflict of laws principles. The Parties hereby submit and consent to the personal and exclusive jurisdiction of courts located in the County of New York, State of New York. Any claim before a court in connection with this Agreement may only be initiated by either signatory, within one (1) year of the date on which the facts giving rise to such claim are known or should have been known by the claimant.
- 12.5 Successors and Assigns; Assignment.** Except as provided for elsewhere in this Agreement, neither this Agreement nor any rights or obligations of either Party arising hereunder may be assigned or transferred without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. If a Party provides a commercially reasonable basis for withholding consent to an assignment under this Section 12.5, said non-consenting Party may terminate this Agreement upon ninety (90) calendar days prior written notice to the other Party. Notwithstanding the foregoing, each Party may assign this Agreement, upon notice to the other Party, in connection with a merger, reorganization, or sale of all or substantially all of the assets of the assigning Party or sale of sufficient stock to constitute a change of control. This Agreement shall be binding on the Parties' respective successors and permitted assigns.
- 12.6 Force Majeure.** Neither Party shall incur any liability to the other for any failure to perform any of its obligations under this Agreement to the extent such failure is caused by events, occurrences, or causes beyond its reasonable control and without any negligence on the part of the Party seeking protection under this Section 12.6. Such events shall include, without limitation, acts of God, disease, epidemic, pandemic, strikes, mandatory government shutdowns, lockouts, riots, acts of war, acts of insurrection, terrorism, earthquake, fire, or explosions (each a "**Force Majeure Event**"). Each Party shall use commercially reasonable endeavors to minimize and reduce any period of delay caused by any Force Majeure Event. In the event the Force Majeure Event continues for a period longer than thirty (30) days, then either Party shall be entitled to terminate this Agreement upon written notice, with no further obligation owed by such Party to the other Party in respect thereof subsequent to such date of termination.
- 12.7 Audit.** Upon thirty (30) calendar days' prior written notice, not more than once per calendar year during the Subscription Term, and subject to any confidentiality obligations owing to any third-parties, Subscriber shall make available such records reasonably necessary to permit 1010data to verify Subscriber's compliance with the terms of this Agreement. 1010data will conduct any audits in a way to avoid unreasonable interference with Subscriber's normal business operations.
- 12.8 Amendment; Severability.** This Agreement may be amended or supplemented only in a writing signed by duly authorized representatives of both Parties. If any provision of this Agreement is held invalid or unenforceable for any reason, the remaining provisions shall continue in full force without being impaired. 1010data and Subscriber shall use commercially reasonable efforts to replace any invalid provision with a valid one that most closely approximates the intent and economic effect of the invalid provision.
- 12.9 Waiver; Cumulative Remedies.** Any waiver of the provisions of this Agreement or of a Party's rights or remedies under this Agreement must be in writing to be effective. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no

way impair the rights of the Party granting such waiver in any other respect or at any other time. The rights and remedies herein provided are cumulative and none is exclusive of any other, or of any rights or remedies that any Party may otherwise have at law or in equity. Except as otherwise set forth in this Agreement, any failure, neglect or delay by a Party to enforce the provisions of this Agreement, or its rights or remedies at any time, shall not be construed and shall not be deemed to be a waiver of such Party's rights under this Agreement and shall not in any way affect the validity of the whole or any Part of this Agreement or prejudice such Party's right to take subsequent action.

- 12.10 Survival.** The provisions which by their nature should survive termination of this Agreement shall survive termination of this Agreement, in accordance with their respective terms (as and if applicable).
- 12.11 Non-Solicitation.** During the Subscription Term and for a period of six (6) months after its expiration, neither Party shall, directly or indirectly, solicit any current employee of the other Party who has directly participated in the performance of this Agreement. In the event of a breach of this Section 12.11, the non-defaulting Party may, within thirty (30) calendar days following its written notice of such breach, claim from the defaulting Party compensation in the amount of twelve (12) months of the applicable employee's most recent compensation rate as an employee of the non-defaulting Party. The foregoing shall not apply to individuals hired as a result of the use of an independent employment agency (so long as the agency was not directed to solicit a particular individual) or as a result of the use of a general solicitation (such as a newspaper advertisement or digital posting) not specifically directed to employees of the other Party.
- 12.12 Notices.** Any notice required or permitted under this Agreement must be in writing and be (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate, return receipt requested or (c) sent by reputable overnight courier, in each case properly posted and fully prepaid to the address of the applicable Party identified herein as of the Effective Date or to such other address of such Party as may be later designated in writing in accordance with this Section. Notices to 1010data shall be sent to: 1010data Services LLC, 432 Park Avenue South, 15<sup>th</sup> Floor, New York, NY 10016, Attn: Legal Department, with copy to: CFO at the same address. Notices shall be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above or one (1) day after delivery to an overnight air courier service. E-mail notice may be given to noticed e-mail addresses and are effective on dispatch, provided that one (1) of the above methods is also initiated on such same date. Email notice to 1010data shall be sent to: [legal@1010data.com](mailto:legal@1010data.com).
- 12.13 Titles and Subtitles; Binding Effect; Counterparts.** In this Agreement, unless expressly stated otherwise: (a) reference to a person includes a legal person (such as a limited company) as well as a natural person; (b) reference to "including" shall be treated as being by way of example and shall not limit the general applicability of any preceding words; (c) reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation; (d) reference to one Party giving notice to the other Party shall mean notice in writing; (e) references to clauses or schedules shall be to those in this Agreement; and (f) the titles and subtitles are used for convenience only and shall not be considered in construing or interpreting this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors, executors, administrators, heirs, representatives, and assigns of the respective Parties. This Agreement may be executed in duplicate counterparts, each of which shall be enforceable against the Parties actually executing such counterparts, and both of which together shall constitute the same instrument.
- 12.14 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

- 12.15 Feedback/Reviews.** Client agrees that 1010data, its Affiliates, or any of their agents, may freely use, disclose, reproduce, license, distribute or otherwise exploit in any manner any feedback, comments, reviews or suggestions Client or its Users may post in any forums or otherwise provide to 1010data or its Affiliates about the Products and/or Services without any obligation to Client or its Users, without restrictions of any kind (including on account of any intellectual property rights), and without any obligation of compensation to Client, its Users and/or any third- party.
- 12.16 Signature.** The Parties agree to the execution of this Agreement using electronic signatures. The Parties agree, to the extent necessary, that such signatures will be regarded as an original of the document. The Parties agree to use a third-party electronic signature platform designated by 1010data; provided, that such platform conforms with any applicable framework, regulation, or legislation applicable to electronic signatures.