

SUBSCRIPTION SERVICES AGREEMENT

This Subscription Services Agreement (this “Agreement”) by and between Sembly AI, Inc., a Delaware corporation (“Sembly”) and the organization or individual, as applicable, (“Customer”), and governs Customer’s access to and use of the Sembly Software and Services (defined below). Sembly and Customer are each referred to herein as a “Party” and collectively as the “Parties.”

In consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt, sufficiency, and adequacy of which are hereby acknowledged, the Parties agree as follows:

A. **CERTAIN DEFINITIONS.** When used herein the following capitalized terms shall have the following meanings:

1. “Customer Data” means data generated by Customer and Customer’s Registered Users through use of the Software in accordance with this Agreement.

2. “Data” means information, content and other data that may be exchanged electronically between Customer and Sembly.

3. “Documentation” means the user manuals and/or technical publications as applicable, supplied in connection with Software relating to the installation, use and administration of Software.

4. “Hardware” means equipment or hardware (if any) sold or otherwise provided by Sembly to Customer, including Hardware and access thereto provided on an Infrastructure as a Services (IaaS) basis.

5. “Local Software” means the portion of the Software, if any, installed locally on computers, machines, hand-held and mobile devices, and other computing devices utilized by Customer to access and use the portion of the Software hosted by Sembly.

6. “Order” means a separate Sembly order form mutually agreed to by the parties which contains additional terms and conditions relating to the Software, Services, pricing, subscription term, additional payment terms and other commercial terms applicable to the Customer’s access to and use of the Software and Services.

7. “Registered User” shall mean an individual affiliated with Customer identified to Sembly and authorized to utilize the Software hereunder.

8. “Services” means implementation, initial deployment, maintenance, administration, subscription, software services, technical, training, consulting, support and other professional services provided in connection with or otherwise associated with Software.

9. “Software” means the proprietary software and platform employed by Sembly to deliver Services and its associated technology (if applicable), and any modified versions and copies of, and upgrades, updates and additions to such Software, provided to Customer by

Sembly, including Software and access thereto provided on a software as a service (SaaS) basis. Software includes the Local Software.

B. LICENSE GRANT AND PROVIDER RESPONSIBILITIES

1. *Hosting and Software Services.* Sembly agrees to provide the hosting services described herein and as may be set forth in more detail in the applicable Order, including the right of Customer to access, view, download, transmit and use all Customer Data hosted by Sembly. Sembly hereby grants to Customer a non-exclusive, non-transferable, worldwide right to use and access the Software and the Hardware, solely for Customer's own internal business purposes, subject to the terms and conditions of this Agreement and provided that all fees due and payable under this Agreement have been paid by Customer to Sembly. Unless agreed to otherwise by the parties, the Software shall be hosted on Hardware owned, operated and managed by Sembly at Sembly's facilities, or at facilities owned and operated by authorized outsourcers and contractors of Sembly pursuant to a written agreement with Sembly. Sembly shall have the right to modify the Software and Hardware in its sole discretion, provided that Sembly shall not materially diminish the performance or functionality of the Software or the Hardware without Customer's prior written consent.

2. *Reservation of Rights.* All rights not expressly granted to Customer are reserved by Sembly. Unless specifically authorized by Sembly, Customer may not access Software or Hardware for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purpose. Customer shall not: (a) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit or make available to any third-party any of the Software or Hardware in any way; (b) modify or make derivative works based upon Software; (c) create internet "links" to Software or "frame" or "mirror" any content on any other server or wireless or internet-based device; or (d) reverse engineer or access Software or Hardware in order to (i) build a competitive product or service, (ii) build a product using similar ideas, features, functions, or graphics of Software or Hardware, or (iii) copy any ideas, features, functions, or graphics of Software. Customer may use the Software and access the Hardware only for its internal business purposes and shall not: (1) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (2) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or that violates a third-party's privacy rights; (3) send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (4) interfere with or disrupt the integrity or performance of the Software, the Hardware or the data contained therein; or (5) attempt to gain unauthorized access to Software or its related systems or networks. Sembly shall have the right to immediately suspend access to the Software and the Hardware in the event Customer's use or access of the Software or Hardware results in a risk of loss or damage to the Software or the Hardware, Sembly's other systems, or the data or property of any other of Sembly's customers.

3.

a. *Delivery of Services; Additional SOWs.* During the term of this Agreement, Sembly shall deliver the Services in accordance with applicable Order, and any applicable Statement of Work. Additionally, Sembly shall perform the Services as set forth in any additional Statements of Work attached hereto, or otherwise agreed to in writing by the parties and subject to the terms and conditions of this Agreement. The Parties may from time to time

mutually agree to any Statements of Work which, when signed by an authorized representative of each Party, shall be deemed incorporated herein by reference. Except as otherwise specifically set forth therein, each Statement of Work shall be subject to the terms and conditions of this Agreement.

b. Agreement Precedence - in case of conflict with the Sembly AI Terms of Service Agreement (TOS) , this, Subscription Service Agreement, takes precedence.

4. *Change Orders.* Sembly shall have no obligation to perform Services outside the scope of this Agreement or any applicable Statement of Work. Either party may submit change requests concerning the Services to the other party in writing. On receiving each change request, the receiving party will evaluate the request and provide a written response. If the response is acceptable the parties shall execute a written change order to reflect the change request.

5. *Support.* In connection with Services, Sembly shall provide to Customer technical support in accordance with its standard support terms. Customer will designate one or more employees or independent contractors as a support contact for the support services, which designation may be amended from time to time by notice to Sembly.

6. *Delays and Errors.* Sembly will use commercially reasonable efforts to process and deliver Data between Customer and Sembly. However, Customer acknowledges that delays and errors in processing Data may result from various causes that are beyond Sembly's control, including internet delays, congestion and service interruptions. Sembly is not responsible for any delays or errors in processing or delivering Data that are not directly caused by Sembly. Customer shall promptly notify Sembly of any delays and errors of which Customer becomes aware.

7. *Local Software.* Sembly shall provide the number of Local Software licenses described in the applicable Order to Customer within thirty (30) calendar days after the Effective Date; provided that all network information required for Local Software configuration has been earlier provided to Sembly by Customer. Sembly shall, within a commercially reasonable time after notification, repair or replace defective Local Software; provided that Customer has not used the Local Software in violation of this Agreement or the Documentation.

8. *Data Backup.* Sembly will backup and archive the Data in accordance with procedures and requirements mutually agreed to by the parties in writing.

C. CUSTOMER RESPONSIBILITIES

1. *Compliance with Laws; Consent to Recordings.* Customer is responsible for all activity occurring under any applicable user accounts and Customer shall abide by all applicable local, state, federal and foreign laws, treaties and regulations in connection with Customer's use of the Services and Software, including those related to data privacy, international communications and the transmission of technical or personal data. Without limiting the foregoing, Customer acknowledges that the Software will record the contents of virtual meetings and other communications. Customer acknowledges that several laws prohibit the recording of audio and/or video communications without the consent of all participants, and Customer shall be solely responsible for ensuring that Customer and all of Customer's Registered Users provide and obtain the consent of all meeting participants. In this regard, Customer shall, and shall train and cause all Registered Users to, announce to all participants in any meeting or communication

in respect of which the Software is deployed that such meeting or communication is being recorded by the Software.

2. *Cooperation by Customer.* While Sembly will use reasonable efforts to complete its work in accordance with the estimated schedules and charges set out in the Statement(s) of Work, timing and cost requirements are subject to factors beyond Sembly's control, including force majeure events and delays caused by third parties and Customer. Sembly shall not be responsible for any delays, cost overruns, or liability resulting from such factors. To facilitate prompt and efficient completion of the work, Customer and its personnel shall cooperate fully with Sembly and its personnel in all respects, including, without limitation, providing information as to Customer requirements, providing access to the facilities and equipment/hardware on which the Local Software is to be installed, and providing access to all necessary information regarding Customer's systems and facilities. Customer shall be responsible for making, at its own expense, any changes or additions to Customer's current systems, software, and hardware that may be required to Customer's access to and use of the Software.

3. *Support.* In connection with Sembly's provision of technical support to Customer in accordance with this Agreement, Customer shall designate one or more of its employees or independent contractors as a contact for support, which designation may be amended from time to time by notice to Sembly.

4. *License to Use Customer Data.* Customer grants Sembly (a) a non-exclusive, non-transferable (except as permitted herein), royalty-free, perpetual and fully paid license to use, reproduce, modify and transmit Data provided by Customer for the purpose of performing Services, and (b) a non-exclusive, non-transferable (except as permitted herein), perpetual, royalty-free, fully-paid license to use, reproduce, display, modify, create derivative works of, disclose and distribute any usage data derived by Sembly from the provision of Services to Customer ("Usage Data") for the purpose of performing the Services, including improving Software and the Services, provided that the Usage Data is disclosed to third parties only in an aggregate form.

5. *Delays and Errors.* Customer shall promptly notify Sembly of any errors or defects in Software of which Customer becomes aware.

6. *Local Software.* Customer shall use Local Software solely to receive Services. Local Software shall remain the property of Sembly, and Customer shall have no right, title, or interest therein except for the license rights as expressly provided in this Agreement. Customer shall keep Local Software free and clear from any liens.

D. TERM AND TERMINATION

1. *Term.* The initial term of this Agreement shall commence on the Effective Date and shall continue for an initial period of one (1) year. Thereafter, this Agreement shall automatically renew for successive renewal terms of one (1) year each unless: (a) either Party provides written notice of its intention not to renew at least 90 calendar days prior to the

expiration of the then-current term; or (b) the Agreement is otherwise terminated in accordance with Section D(2), below.

2. *Termination.* This Agreement may be terminated:

(a) At any time by mutual written agreement of the Parties;

(b) By Sembly, effective immediately upon written notice to Customer, if Customer (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) days after Sembly's delivery of written notice thereof or (ii) breaches any of Customer's confidentiality obligations or the restrictions on use of the Software set forth in this Agreement;

(c) By either Party, effective as specified in a written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(d) By either Party, effective immediately upon written notice to the other Party, if such other Party (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

3. *Effect of Termination.* Promptly upon termination or expiration of this Agreement for any reason, Customer shall return all Local Software to Sembly. Termination of this Agreement shall be in addition to and not in limitation of any other rights and remedies to which either Party is or may become entitled, including, without limitation, Sembly's right to be paid any fees that become due and owing before the termination or expiration. Further, the terms of this Agreement that must survive to have their intended meaning (including, without limitation, Customer's confidentiality obligations and Sembly's rights to utilize the Customer Data) shall survive any termination or expiration of this Agreement.

E. FEES AND CHARGES

1. *Fees.* Customer shall pay all fees or charges in accordance with the fees, charges and billing terms in effect at the time a fee or charge is due and payable. The initial fees and charges are described in the applicable Order. Unless otherwise agreed in writing by the parties, all fees and charges are due and payable thirty (30) days after receipt of invoice by Customer. Fees for Services will be charged on an as-quoted basis. Customer shall provide Sembly with complete and accurate billing and contact information and Customer shall update such information within thirty (30) calendar days of any change to it. Sembly shall be entitled to charge interest on overdue unpaid fees due hereunder at the rate of the lesser of (a) 12% per annum or (b) the highest amount permitted by applicable law.

2. *Taxes.* Fees listed in the applicable Order are exclusive of taxes and Customer agrees to pay any sales, value-added, or other similar taxes imposed by applicable law that Sembly must pay based on the Software or the Services, except for taxes based on Sembly's income. Notwithstanding the foregoing, if Customer is exempt from the payment of such taxes, Customer shall provide Sembly with documentary proof of exemption issued by the appropriate taxing authorities.

3. *Audit Rights and Required Records.* Customer agrees to maintain complete and accurate records during the term of this Agreement, and for a period of two (2) years after the termination or expiration of this Agreement, with respect to matters necessary to accurately determine amounts owing to Sembly hereunder. Sembly may, at its own expense and on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Sembly with respect to any amounts due and payable, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section E(1) above. Customer shall also pay for the costs of the audit if the audit determines that Customer's underpayment equals or exceeds ten percent (10%) of the amount owing for any calendar quarter.

F. OWNERSHIP

1. *Sembly IP.* All right, title and interest in and to Software and all portions thereof, including all intellectual property rights therein, and all other Confidential Information (as defined below) or trade secrets of Sembly that may be disclosed to Customer hereunder (collectively, "Sembly Confidential Information"), are and shall remain with Sembly and its suppliers (as applicable). Customer understands and agrees that all intellectual property rights, and all rights incident thereto, in respect of the Sembly Confidential Information are and shall remain with Sembly including all applicable rights to: (a) copyrights, including all rights incident to copyright ownership, such as all rights of publication, registration and rights to create derivative works; (b) patents; (c) trademarks; and (d) trade secrets (including, without limitation, all know-how, ideas, logic, formulas and confidential information embodied in or reflected in Software). Sembly shall own, and Customer hereby agrees to assign free and clear to Sembly, any improvements on or derivations of the Sembly Confidential Information.

2. *Customer IP.* All right, title and interest in and to Data provided by Customer, and all related information provided to and accessed by Sembly, including all intellectual property rights therein, are and shall remain with Customer (subject to the limited licenses granted to Sembly hereunder).

3. *Proprietary Notices.* Customer shall not permit its employees, officers, agents, subcontractors, or independent contractors to remove any proprietary or other legal or restrictive notice contained on or included in Software.

G. PROTECTION OF PROPRIETARY RIGHTS IN THE SOFTWARE

Customer acknowledges and agrees that the Software and any Sembly Confidential Information therein is a commercially valuable asset of Sembly, the development of which

required the investment of substantial time, effort and cost by Sembly. Customer further acknowledges and agrees that Software contains trade secrets of Sembly that must be kept strictly confidential to maintain protection under applicable law. Accordingly, Customer hereby agrees to use the highest degree of care to maintain the confidentiality of the Software and related Sembly Confidential Information. Customer shall take all actions necessary to comply with the obligations in this Section, including (and without limiting the generality of the foregoing) by limiting the use of and access to the Software and related Sembly Confidential Information only to those employees, officers, agents, subcontractors and independent contractors who require such use and access in the ordinary course of their respective employment or representation. Customer shall immediately notify Sembly of any unauthorized use, copying, or disclosure of the Software or related Sembly Confidential Information of which it becomes aware and further agrees to immediately take such actions as are necessary to end and prevent any such further use, copying and disclosure. Each Party acknowledges and agrees that any breach of any provision of this Section by Customer, or its employees, officers, agents, subcontractors, or independent contractors, shall cause immediate and irreparable injury to Sembly, and in the event of such breach, Sembly shall be entitled to seek and obtain injunctive relief, without bond or other security, and to all other remedies available at law and in equity.

H. MUTUAL CONFIDENTIALITY OBLIGATIONS

1. *Definition.* “Confidential Information” means any information, whether oral, written, electronic, or in any other format, and whether technical or business in nature, regarding this Agreement, Sembly’s or Customer’s products or business, including Software, information regarding composition, formulation, specifications, packaging, manufacturing processes, equipment, pricing, marketing and business plans, other information not generally known to the public and any other information received under circumstances reasonably interpreted as imposing an obligation of confidentiality; provided that, “Confidential Information” shall not include any of such information which: (i) was publicly available at the time of disclosure by the disclosing Party; (ii) became publicly available after disclosure through no fault of the receiving Party; (iii) was known to the receiving Party prior to disclosure by the disclosing Party; or (iv) was rightfully acquired by the receiving Party after disclosure by the disclosing Party from a third-party who was lawfully in possession of the information and was under no legal duty to the disclosing Party to maintain the confidentiality of the information.

2. *Protection of Confidential information.* In addition to Customer’s obligations under Section G, above, each Party shall:

(a) maintain the confidentiality of the Confidential Information of the other Party;

(b) take steps to minimize the dissemination or copying of the Confidential Information of the other Party except to the extent necessary to perform its obligations under this Agreement;

(c) use the same care to prevent disclosure of the Confidential Information of the other Party to third-parties as it employs to avoid disclosure, publication, or dissemination of its own information of a similar nature, but in no event less than a reasonable standard of care;

(d) use the Confidential Information of the other Party solely for the purpose of performing its obligations under this Agreement;

(e) not acquire any express or implied right or license under any patent, copyright, trade secret, or other right or assert any lien against Confidential Information of the other Party;

(f) promptly return, or provide a copy of, as the requesting Party directs, Confidential Information upon the request of the other Party (provided that Sembly may retain such Confidential Information as it requires in order to perform the Services for so long as it is required to perform such Services); and

(g) use its commercially reasonable efforts to inform its employees, officers, agents, subcontractors and independent contractors who perform duties with respect to this Agreement about these restrictions.

3. Each Party may disclose Confidential Information of the other Party to its employees, officers, agents, subcontractors and independent contractors who have: (a) a need to know such Confidential Information in order to perform their duties; and (b) a legal duty to protect the Confidential Information. A Party receiving Confidential Information of the other Party assumes full responsibility for the acts and omissions of its employees, officers, agents, subcontractors and independent contractors with respect to such Confidential Information.

4. *Required Disclosures.* Either Party may disclose Confidential Information to the extent disclosure is based on the good faith written opinion of such Party's legal counsel that disclosure is required by law or by order of a court or governmental agency; provided that, the Party that is the recipient of such Confidential Information shall use all commercially reasonable efforts to maintain the confidentiality of the Confidential Information by means of a protective order or other similar protection and shall give the owner of such Confidential Information prompt notice in order that it have every opportunity to intercede in such process to contest such disclosure and shall use all commercially reasonable efforts to cooperate with the owner of such Confidential Information to protect the confidentiality of such Confidential Information. The owner of such Confidential Information reserves the right to obtain a protective order or otherwise protect the confidentiality of such Confidential Information. Each Party shall be responsible for its own costs with respect to the performance of its obligations under this Section.

5. *Notification.* In the event of any unauthorized disclosure or loss of Confidential Information, the receiving Party shall notify the disclosing Party as soon as possible.

6. *Injunctive Relief.* Each Party acknowledges that any breach of any provision of this Section by either Party, or its employees, officers, agents, subcontractors, or independent contractors, may cause immediate and irreparable injury to the other Party, and in the event of such breach, the injured Party shall be entitled to seek and obtain injunctive relief to the extent provided by a court of applicable jurisdiction, without bond or other security, and to any and all other remedies available at law or in equity.

7. *Return of Confidential Information.* Unless it is expressly authorized by this Agreement to retain the other Party's Confidential Information, a Party shall promptly return or

destroy, at the other Party's option, the other Party's Confidential Information, including materials prepared in whole or in part based on such Confidential Information to the extent containing Confidential Information, and all copies thereof, at the other Party's request, and an officer of such Party shall certify to the other Party that it no longer has in its possession or under its control any Confidential Information in any form whatsoever, or any copy thereof.

I. WARRANTIES AND LIMITATION OF LIABILITY

1. *Legal Authority.* Each Party represents and warrants to the other Party that: (a) such Party is an entity duly organized, validly existing and in good standing under the laws of the state of its incorporation; (b) such Party has the full and unrestricted power and authority to execute and deliver this Agreement and to carry out the transactions contemplated hereby; and (c) the performance of such Party's obligations and duties hereunder does not and shall not conflict with or result in a breach of any other agreement of such Party or any judgment, order, or decree by which such Party is bound.

2. *Service Warranty.* For so long as Customer is paying the fees owed hereunder, Sembly warrants that it shall have and maintain sufficient resources, facilities, capacity and personnel to ensure that the Services shall be performed in accordance with the terms and conditions of this Agreement in a timely, workmanlike and professional manner by qualified personnel. Non-substantial variation of performance from the Documentation does not establish a warranty right.

3. *Customer Data.* Customer represents and warrants that it is the right and authority to provide all Customer Data and software to be hosted by Sembly hereunder, and that all such Customer Data and software shall be free from viruses, spyware, and other similar harmful and destructive code.

4. *Hardware Warranty.* Customer acknowledges that Sembly does not manufacture the Hardware that may be sold, provided or otherwise made available to Customer hereunder. Accordingly, any warranty with respect to Hardware shall be limited to the warranty provided by the original manufacturer of the Hardware, if such manufacturer's warranty is by its terms capable of being passed through to Customer.

5. *Compliance With Laws.* Sembly warrants that the Services and Software will not be in violation of any applicable law, rule, or regulation, and Sembly shall have obtained all permits required to comply with such laws, rules and regulations.

6. *Disclaimer.* EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SOFTWARE, HARDWARE AND THE SERVICES ARE PROVIDED TO CUSTOMER IN THEIR THEN-EXISTING CONDITION, AS IS, WHERE IS AND WITH ALL FAULTS. CUSTOMER ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES WITH RESPECT TO HARDWARE SHALL BE LIMITED TO ANY WARRANTIES PROVIDED BY THE ORIGINAL MANUFACTURER OF THE HARDWARE (TO THE EXTENT SUCH WARRANTIES ARE PROVIDED TO CUSTOMER SEPARATELY, OR BY THEIR TERMS SUCH WARRANTIES MAY BE PASSED THROUGH BY PROVIDER TO CUSTOMER). EXCEPT FOR THE FOREGOING LIMITED WARRANTIES, PROVIDER EXPRESSLY

DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE, HARDWARE OR ANY SERVICES WILL BE SECURE, UNINTERRUPTED, OR ERROR FREE, OR MEET CUSTOMER'S EXPECTATIONS, THAT ANY STORED DATA WILL BE ACCURATE OR COMPLETE, OR THAT ANY ERRORS OR DEFECTS IN SOFTWARE OR HARDWARE WILL BE CORRECTED.

7. *Internet Delays.* ACCESS TO THE SOFTWARE AND HARDWARE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. PROVIDER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

8. *Limitation of Liability.* NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, LOST REVENUES OR OPPORTUNITIES, DOWNTIME, OR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR SPECIAL DAMAGES OR COSTS, RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE (INCLUDING STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, EVEN IF EITHER OR BOTH OF THEM KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID BY CUSTOMER TO PROVIDER IN THE SIX (6) FULL CALENDAR MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED. NOTWITHSTANDING THE FOREGOING OR ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, THE LIMITATIONS UPON THE TYPES AND AMOUNTS OF EACH PARTY'S LIABILITY, AND THE EXCLUSIONS OF CERTAIN TYPES OF DAMAGES, SET FORTH IN THE THIS SECTION, SHALL NOT APPLY TO THE FOLLOWING: (A) DAMAGES RESULTING FROM A BREACH OF SECTION F (OWNERSHIP), SECTION G (PROTECTION OF PROPRIETARY RIGHTS) OR SECTION H (CONFIDENTIALITY); AND (B) CLAIMS SUBJECT TO OR AMOUNTS PAYABLE PURSUANT TO SECTION J (INDEMNIFICATION).

J. INDEMNIFICATION

1. *By Sembly.* Sembly shall indemnify, defend and hold Customer and its owners, directors, officers, employees, agents, successors and assigns (collectively "Affiliated Indemnitees") harmless from and against all liability, claims and costs, including reasonable attorneys' fees connected therewith, on account of any claims brought by a third-party arising out of: (a) a claim that the Software infringes any intellectual property rights of a third-party; (b) negligent acts or omissions or intentional misconduct of Sembly, or its agents or employees, in connection with the provision of the Services; or (c) Sembly's violation of any applicable laws.

2. *By Customer.* Customer shall indemnify, defend and hold Sembly and its Affiliated Indemnitees harmless from and against all liability, claims and costs, including reasonable attorneys' fees connected therewith, on account of any claims brought by a third-party arising out of: (a) any Customer Data or software provided by Customer to Sembly or hosted for Customer by Sembly; (b) negligent acts or omissions or intentional misconduct of Customer, its agents or employees, in connection with the Services or Software; or (c) Customer's violation of any applicable laws.

3. *Mitigation.* If the Software becomes, or in Sembly's opinion are likely to become, the subject of an infringement claim, Sembly may, in its sole and exclusive discretion, either (a) procure for Customer the right to continue to receive the Services or use Software (as applicable), or (b) replace or modify the Software so that it becomes non-infringing, without materially affecting the functionality thereof. If the alternatives specified in (a) or (b) above are not commercially reasonable in Sembly's sole and exclusive discretion, then Sembly may terminate this Agreement, and Customer shall receive a pro-rated refund of all advance fees paid by Customer for access to and use of the Software for the remaining term of this Agreement. This Section provides Customer's sole and exclusive remedy for any infringement claims based on the Services and Software.

4. *Indemnity Conditions.* A Party's obligation to indemnify as provided in this Agreement is conditioned upon the Party seeking indemnification (the "Indemnified Party"): (a) promptly notifying the other Party (the "Indemnifying Party") of the claim in writing, no later than thirty (30) calendar days after the Indemnified Party receives written notice of the claim; (b) giving the Indemnifying Party the sole control of the defense and any settlement negotiations; provided that, no settlement of a claim that involves a remedy other than the payment of money by the Indemnifying Party shall be entered into without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed; and (c) providing the Indemnifying Party with the information, authority and reasonable assistance the Indemnifying Party needs to defend or settle the claim.

K. MISCELLANEOUS

1. *Export Control.* Customer assumes complete responsibility and liability for complying with applicable United States export laws (including any required notices or clearances to or from government agencies) regarding Software and the performance of the Services, and Customer shall indemnify, defend and hold Sembly harmless from and against any violations of United States export laws.

2. *Governing Law; Venue; Severability.* This Agreement shall be governed, construed and enforced in accordance with the laws of the State of New York without reference to conflicts of law principles. The Parties agree that the exclusive jurisdiction of any actions arising out of, relating to, or in any way connected with this Agreement, shall be in the state or federal courts, as applicable, located in New York, New York. In the event that one or more of the provisions herein shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforcement of the remaining provisions shall not be affected or impaired.

3. *Assignment.* Customer shall not assign this Agreement or any rights or obligations hereunder, without the express written consent of Sembly. Any assignment or transfer in violation of the foregoing will be null and void. Sembly reserves the right to assign this Agreement to any affiliate or any entity in connection with the sale, combination, or transfer of all or substantially all of the assets or capital stock or from any other corporate form of reorganization by or of Sembly. Subject to all of the terms and conditions hereof, this Agreement inures to the benefit of and is binding upon the Parties hereto and their successors and assigns.

4. *Force Majeure.* Any delays in or failure of performance of either Party to this Agreement shall not constitute a default under this Agreement or give rise to any claim for damages to the extent such delays or failure of performance are caused by a force majeure event, including acts of god, fire, flood, explosion, war, pandemics, terrorism, strikes, or other concerted work stoppages of labor, inability to obtain raw material, equipment or transportation, breakage or failure of equipment or apparatus, or loss of any necessary utility. The time for performance so delayed will be deemed extended for the period of such delay; provided that, in the event the delay extends beyond 90 calendar days, the other Party shall be entitled to terminate this Agreement without penalty.

5. *Waiver.* The failure to enforce or the waiver by either Party of one default or breach of the other Party shall not be considered to be a waiver of any subsequent default or breach.

6. *Publicity.* Subject to the prior review and written approval of Customer, Sembly will have the right to issue a press release announcing the transaction entered into pursuant to this Agreement and disclose to third-parties that Customer is a customer of Sembly.

7. *Notices.* All notices required or permitted hereunder shall be in writing, delivered personally, by certified or registered mail, or by nationally recognized overnight courier (e.g., FedEx) at the Parties' respective addresses set forth in the signature lines to this Agreement. All notices shall be deemed effective upon personal delivery; or on the business day following receipt by telephonic facsimile; or when received if sent by certified or registered mail or by overnight courier.

8. *Remedy.* The rights and remedies of the Parties will be cumulative (and not alternative). In the event of any litigation between the Parties relating to this Agreement, the prevailing Party will be entitled to recover its reasonable attorneys' fees, expert witness fees and court costs from the other Party.

9. *Entire Agreement.* This Agreement, and each schedule and exhibit hereto, together constitute the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written and oral agreements with respect to the subject matter. No modification of this Agreement shall be binding on either Party unless it is in writing and signed by both Parties. In the event of any conflict or inconsistency between this Agreement and any schedule or exhibit, the terms and conditions of this Agreement shall prevail.

10. The parties acknowledge and agree that (a) this Agreement and any amendments to the Agreement, can be entered into electronically and enforceable in accordance with laws applicable to the recognition of electronic signatures, including without limitation the Electronic Signatures in Global and National Commerce Act (the E-SIGN Act) (collectively, “**Electronic Signature Laws**”); (b) the electronic signature utilizing the method designated by Sembly or otherwise complying with applicable Electronic Signature Laws constitutes the individual’s signature, acceptance and agreement the same as if actually signed in writing; (c) this Agreement shall constitute “original” documents when printed from electronic files and records established and maintained by either party in the normal course of business; and (d) the individual signing this Agreement electronically is authorized to enter into this Agreement on behalf of the party to this Agreement.

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