



Catchpoint Systems, Inc.
Terms and Conditions of Service

These Terms and Conditions of Service (these “Terms and Conditions”) govern all Service Orders between Catchpoint Systems, Inc. (“Catchpoint Systems”), a Delaware corporation having a principal place of business at 150 W. 30th Street, Third Floor, New York, New York 10001, and the company named in the Service Order (“Customer”).

1. SERVICE. Subject to Customer's compliance with the terms and conditions of this Agreement, Catchpoint Systems shall (i) provide Customer with the service described in one or more Catchpoint Systems Service Orders between the parties (each, a “Service Order”; and the services described, collectively, the “Service” or the “Services”); and (ii) perform the Services in a professional and workmanlike manner. Each Service Order shall be signed by both parties, and governed by these Terms and Conditions, which are hereby incorporated by reference. The “Agreement” shall mean these Terms and Conditions, together with all Service Orders in effect.

2. WEB-BASED LICENSE. Catchpoint Systems hereby grants to Customer a non-transferable, non-exclusive, non-assignable right and license, subject to these Terms and Conditions, to access the Service during the term of the relevant Service Order via the Internet by means of a username and password, for Customer's internal business purposes only. All rights not expressly granted to Customer under this Agreement are reserved to Catchpoint Systems and its licensors.

3. CUSTOMER OBLIGATIONS. Customer shall: (i) use the Service in accordance with the Service's operating instructions and protocols, which shall be communicated to Customer by Catchpoint Systems; (ii) if applicable, maintain the equipment provided by Catchpoint Systems in good working condition during the term of the relevant Service Orders and, if applicable, procure and maintain the appropriate operating system license for any virtual machine provided by Catchpoint Systems; (iii) be prohibited from making the Service, including its content or documentation, or any portion thereof available for access or use by any third party; (iv) be prohibited from modifying, reverse engineering, disassembling, decompiling, reproducing or creating derivative works from or in respect of the Service or any Catchpoint Systems product, or any component thereof; and (v) be prohibited from accessing or using the Service in order to (A) develop a competitive or similar product or service; (B) copy the features, functionality or design of the Service or of its underlying software; (C) interfere with or disrupt or attempt to interfere with or disrupt the integrity or the performance of the Service or any information or materials therein; (D) gain or provide unauthorized access to the Service or its related systems or networks; or (E) present as the Service's reporting any results that are modified from the results actually reported by the Service.

4. DATA. Unless otherwise expressly set forth in a Service Order, as between Customer and Catchpoint Systems, Customer shall own the data collected by Catchpoint Systems hereunder on behalf of Customer (“Customer Data”); provided, however, that Customer hereby grants Catchpoint Systems a non-exclusive, royalty-free right and license to use the Customer Data: (i) to provide the Services under this Agreement; (ii) to operate, manage, maintain and improve the Service and technology; and (iii) to include the Customer Data in aggregated statistics about the scope of the Service for use by Catchpoint Systems in its sales and marketing efforts (provided that the Customer Data will not be identified or identifiable in any statistics compiled). In addition,

Catchpoint Systems may disclose the Customer Data to a third party under the circumstances allowed in Section 8.3. Catchpoint Systems will maintain commercially reasonable administrative, physical, and technical safeguards to protect the security, confidentiality, and integrity of Customer Data.

5. PROPRIETARY RIGHTS. Apart from the limited licenses granted in Sections 2 and 4, each party will own and retain their respective intellectual property rights. Customer acknowledges that the Service and its associated technology, and all patent, copyright, trademark, and all other intellectual property and proprietary rights in, to and associated with the foregoing, are the sole and exclusive property of Catchpoint Systems and its licensors. Customer acknowledges and agrees that any developments resulting from any professional services provided to Customer under a Service Order, and all associated technology, and patent, copyright, trademark, and all other intellectual property and proprietary rights in, to and associated with the foregoing, are the sole and exclusive property of Catchpoint Systems and its licensors. Notwithstanding any other provision in this Agreement, if Customer provides any ideas, suggestions, or recommendations regarding the Services (“Feedback”), Customer will be deemed to have granted Catchpoint Systems a non-exclusive, royalty-free, fully paid up, perpetual, irrevocable, worldwide license in the Feedback and Catchpoint Systems is free to use, disclose, modify, reproduce, license, distribute, commercialize and otherwise freely exploit without restriction of any kind such Feedback in its products, without payment of royalties or other consideration to Customer. Each party retains all other rights not expressly granted in this Agreement.

6. TERM AND TERMINATION.

6.1. This Agreement commences on the Effective Date and continues in full force and effect until all Service Orders have terminated, unless otherwise terminated in accordance with the termination rights set forth in this Agreement (the “Term”).

6.2. Either party may terminate this Agreement if the other party has materially breached its obligations hereunder and such breach has not been cured within thirty (30) days after such other party's receipt of written notice of such breach. Notwithstanding the foregoing, Catchpoint Systems may suspend the Service or terminate this Agreement immediately upon written notice to Customer in the event that: (i) Customer fails to pay Service Fees when due; or (ii) Customer breaches the terms of Section 3 or 8 hereof. Upon termination or expiration of this Agreement, all rights and licenses granted herein will terminate immediately and Customer will immediately cease accessing and using the Service; Customer has no obligation to return the equipment provided by Catchpoint Systems, and Catchpoint Systems will no longer have any access to such equipment. The following provisions shall survive the termination or expiration of this Agreement: Sections 5, 6, 7, 8, 10.2, 12, and 16.

7. SERVICE FEES AND PAYMENT SCHEDULE.

7.1. The fees applicable to the Services are specified in the applicable Service Order. Customer shall pay the invoiced amount within thirty (30) days after the date of the applicable invoice. Unless Customer notifies Catchpoint Systems in writing of a dispute within fifteen (15) days following its receipt of an invoice, Customer shall be deemed to have accepted such invoice. At no time may Customer withhold payment for any invoiced amount that is not subject to a good faith dispute, timely raised, between the parties.

7.2. Late payments may be subject to a rate of one and one-half percent (1.5%) per month or the maximum interest allowed by law, whichever is less. In the event of a late payment and upon subsequent notice, Catchpoint Systems may suspend Customer's use of the Service until the invoiced amount is paid. Additionally, Catchpoint Systems shall be entitled to recover from Customer any reasonable sums expended in connection with the collection of overdue amounts, including all collection agency fees, attorneys' fees and expenses.

7.3. Except for taxes on Catchpoint System's income, all payments to be made under this Agreement by Customer shall be made free and clear of, and without deduction for or on account of, any sales, use, value-added and withholding taxes, and any other taxes, duties, tariffs, charges, fees, and penalties of any nature now or hereafter imposed by any national, state or local government that are applicable to transactions under this Agreement (collectively, "Taxes"). If Customer is compelled to make any such deduction, it will pay Catchpoint Systems such additional amounts as are necessary to ensure that Catchpoint Systems receives the full amount which Catchpoint Systems would have received but for the deduction.

7.4. In the event Customer acquires or is acquired by another existing Catchpoint customer during the Term, the fees applicable to Customer shall be as set forth in the Service Order during the Term. The fees applicable to the relevant existing Catchpoint customer shall be as set forth in the service order applicable to that existing customer for the term of such service order.

8. CONFIDENTIAL INFORMATION.

8.1. Each party may receive Confidential Information of the other party. "Confidential Information" means any information or material, whether in verbal, written, graphic, or electronic form, that is disclosed, provided or made accessible by, or on behalf of, Catchpoint Systems or Customer to the other party, and which is identified as "confidential" or "proprietary" or which, given the nature of the information or material, or the circumstances surrounding its disclosure, should reasonably be understood by the receiving party to be confidential or proprietary to the disclosing party. Without limiting the generality of the foregoing, the "Confidential Information" of Catchpoint Systems specifically includes, but is not limited to the Services, and the associated technology, software, features, user interface details, capabilities, passwords, documentation, know-how, trade secrets, and source code. The terms of the Service Orders (although not the existence of this Agreement) will be deemed to be the Confidential Information of each party and will not be disclosed without the prior written consent of the non-disclosing party.

8.2. Each of the parties receiving Confidential Information shall: (i) exercise the degree of care, but in no event less than reasonable care, used to protect and restrict disclosure and use of its own information of like kind and importance to protect the confidential nature of the Confidential Information of the other

party; (ii) not disclose the other party's Confidential Information to third parties; (iii) limit disclosure of the other party's Confidential Information within such receiving party's organization only to those officers, directors, employees, agents, consultants, or subcontractors with a need to know in furtherance of this Agreement; and (iv) use the Confidential Information of the other party solely for the purpose of carrying out its responsibilities and obligations under the terms of this Agreement. The obligations set forth in this Section 8.2 shall continue throughout the Term and for a period of two (2) years thereafter.

8.3. Neither party's obligations of confidentiality hereunder shall extend to any of the following: (i) information that was previously known, without obligation of confidentiality, by the receiving party, prior to any disclosure from the other party; (ii) information that is or otherwise becomes available in the general public through no breach of this Agreement by the receiving party; (iii) information that was received without restriction from any person or entity that the receiving party reasonably believes is not in violation of any duty of non-disclosure on the part of such person or entity; or (iv) information that the receiving party developed independently of any disclosures of such information by the disclosing party. In the event a party is required by law, government regulation or other process to disclose any Confidential Information, the party seeking to make such disclosure will notify the other party promptly in writing upon receipt of such document requiring disclosure, so that such other party may seek to obtain a protective order.

9. COMPLIANCE WITH LAWS. Customer's use of the Service shall comply with all applicable laws, rules and regulations, and industry best practices related to privacy and security. If Customer breaches the obligation set forth in the preceding sentence, Catchpoint Systems may, upon written notice to Customer, immediately suspend Customer's access to the Service.

10. WARRANTIES.

10.1. Each of Catchpoint Systems and Customer hereby represents and warrants to the other that it has all necessary rights and authority: (i) to enter into this Agreement; and (ii) to perform its obligations hereunder.

10.2. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY OF THE SERVICE FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, OR FROM A COURSE OF DEALING OR USAGE IN TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, CATCHPOINT SYSTEMS SPECIFICALLY DISCLAIMS ANY REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR THE CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICE, AND CATCHPOINT SYSTEMS DOES NOT REPRESENT OR WARRANT THAT: (A) THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE OR SECURE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (B) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (C) THE REPORTED DATA WILL BE ACCURATE OR RELIABLE; (D) THE PRODUCTS, SERVICES,

INFORMATION, OR OTHER MATERIAL RECEIVED BY CUSTOMER THROUGH THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (E) ERRORS OR DEFECTS WILL BE CORRECTED; OR (F) THE SERVICE AND ITS ASSOCIATED TECHNOLOGY OR EQUIPMENT ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. CATCHPOINT SYSTEMS IS NOT RESPONSIBLE AND SHALL HAVE NO LIABILITY FOR: (I) ANY DELAYS, DELIVERY FAILURES; OTHER DAMAGE RESULTING FROM SUCH PROBLEMS, (II) BY REASON OF A FORCE MAJEURE EVENT (DEFINED BELOW); OR (III) ANY ACTS OR OMISSIONS DUE TO ANY OTHER CAUSES OR CIRCUMSTANCES BEYOND ITS REASONABLE CONTROL.

11. INDEMNIFICATION.

11.1. Each party shall indemnify and hold the other party harmless from and against any and all losses, damages, liabilities, costs and expenses, including but not limited to reimbursement for reasonable attorneys' fees and disbursements, incurred by the indemnified party in connection with any action, claim or proceeding brought by a third party based on an allegation that, if true, would constitute a breach of a representation, warranty, covenant or obligation under this Agreement by the indemnifying party.

11.2. The party seeking indemnification must promptly notify the other party in writing of the third-party claim or action (it being understood, however, that failure to provide such notification shall not relieve the indemnifying party of its indemnification obligations hereunder, except to the extent it has been materially prejudiced by the delay). The party seeking indemnification shall reasonably cooperate with the indemnifying party in the defense of the matter. The indemnifying party shall control the defense of the indemnified claim, including through choice of counsel, provided that the indemnified party may appear at its own expense through its own counsel. The indemnifying party shall not acquiesce to any settlement that imposes any liability or substantive obligation on an indemnified party without such indemnified party's prior written consent, which consent shall not be unreasonably withheld, delayed, or conditioned.

12. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF DATA, 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. CATCHPOINT SYSTEMS' MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED FIFTY PERCENT (50%) OF THE TOTAL AMOUNT OF FEES RECEIVED BY CATCHPOINT SYSTEMS HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN LIABILITY, IN SUCH JURISDICTIONS THE LIABILITY OF CATCHPOINT SYSTEMS SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 12 SHALL APPLY REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF

ACTION, WHETHER IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE) OR OTHERWISE.

13. SUBCONTRACTORS. Catchpoint Systems may use subcontractors in connection with its performance of the Services; provided that: (i) each subcontractor is bound to terms and conditions that are consistent with the requirements of this Agreement and the applicable Service Order with respect to the services the subcontractor performs; and (ii) Catchpoint Systems shall be liable for the acts or omissions of any such subcontractor. Customer shall be liable for the acts or omissions of any subcontractor, consultant, third-party service provider and/or agent engaged by Customer in connection with Customer's use of the Services.

14. FORCE MAJEURE. If, and to the extent that, either Party cannot perform any of its obligations (other than the obligation to make payments under this Agreement) hereunder because of an act or regulation of public authority, fire, riot or civil commotion, lockout or strike or other labor dispute, terrorist act, act or declaration of war, substantial interruption in, or substantial delay or failure of, technical facilities, war conditions, act of God, a public health emergency, disease outbreak, epidemic, pandemic (as designated by the Center for Disease Control and Prevention (CDC), the World Health Organization (WHO) and/or other similar domestic or international agencies) or other occurrence outside the reasonable control of a Party ("Force Majeure Event"), each Party shall have no obligation or liability whatsoever to the other Party as a result thereof.

15. NOTICE. Catchpoint Systems may give notice by means of a general notice on the Service (for routine operational communications), electronic mail to Customer's e-mail address on record in Catchpoint Systems' account information, or by written communication sent by first class mail or pre-paid post to Customer's address on record in Catchpoint Systems' account information. Such notice shall be deemed to have been given upon the expiration of three (3) business days after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). Customer may give notice to Catchpoint Systems (such notice shall be deemed given when received by Catchpoint Systems) at any time by any of the following: letter sent by confirmed facsimile to Catchpoint Systems at the following fax number: + 1 (212) 918-9302, letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Catchpoint Systems at the address set forth above, addressed to the attention of "Legal."

16. ASSIGNMENT. Neither party may assign its rights or obligations under this Agreement, whether voluntarily or by operation of law or otherwise, without the other party's prior written consent. Notwithstanding the foregoing, either party may assign this Agreement to an entity that is not a direct competitor, and is not an affiliate of a direct competitor, of the non-assigning party, in connection with an acquisition, sale or transfer of all or substantially all of its assets, stock or business by sale, merger, consolidation, or similar transaction. Any purported assignment or transfer in violation of this section shall be void. Subject to the foregoing restrictions, this Agreement will bind and benefit the parties and their successors and permitted assigns.

17. GENERAL. This Agreement, together with its formation, performance, termination and enforcement, and any related claims (whether under contract, tort or otherwise), shall be governed, construed and enforced in accordance with the laws of the State



of New York, without reference to its conflict of law principles. For any disputes arising out of this Agreement, the parties consent to personal and exclusive jurisdiction of and venue in the state or federal courts within the state and county of New York. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision, with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between and Catchpoint Systems as a result of this Agreement or use of the

Service. The failure of Catchpoint Systems to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Catchpoint Systems in writing. This Agreement comprises the entire agreement between Customer and Catchpoint Systems and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. This Agreement may only be modified by a subsequent written agreement executed by authorized representatives of both parties.