

HARNESS SUBSCRIPTION TERMS

These Harness Subscription Terms (collectively, the “Agreement”) between Harness Inc., a Delaware corporation, with its principal place of business at 55 Stockton St., San Francisco, CA 94105, U.S.A. (“Harness”, “we”, “us” or “our”) and you (“Customer”, “you” or “your”) applies to your use of the Software (as defined below). By clicking on the designated button, entering an Order Form (as defined below), or by downloading, installing, accessing or using the Software, you agree to the terms of this Agreement. If you are entering into this Agreement on behalf of your organization or entity, you represent that you have the authority to bind such organization or entity, and the terms “Customer”, “you” and “your” will refer to such organization or entity. If you do not agree to the terms of this Agreement, or if you are not authorized to accept this Agreement on behalf of your organization or entity, do not download, install, access or use the Software. “Software” means the downloadable and/or online software products that are specified in the applicable Order Form, and subsequent updates thereto made generally available by Harness under this Agreement.

1. Software License.

- 1.1. License Grant. Subject to payment of the applicable fees, Harness’s receipt of a purchase order number from Customer (if needed), and Customer’s ongoing compliance with this Agreement and compliance with the terms of this Agreement, Harness grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license to access and use the Software for internal business purposes in accordance with the Documentation (as defined below) during the applicable License Term, only for the number of License Units (as defined below) as specifically authorized by the applicable Order Form. “License Term” means the duration of your subscription or license to the applicable Software beginning and ending on the start and end dates, respectively, specified in the applicable Order Form, which include the Initial Term (as defined in Section 5), and all Renewal Terms (as defined in Section 5), as applicable. “License Unit” means the measurement of Software use (e.g., aggregate daily volume of data indexed, number of search and/or compute units, number of monitored accounts, virtual CPUs, user seats, use cases, applications, storage capacity, etc.), as measured by Harness in its sole discretion, and as set forth in the applicable Order Form. All Order Forms are hereby incorporated into, supplement, and form a part of this Agreement. “Order Form” means an ordering document or online order that sets forth the applicable Software or Services (as defined below), fees and payment terms and start and end dates (as applicable) and is entered into between Customer and Harness, or Customer and an authorized reseller.
- 1.2. Restrictions on Use. Except as otherwise expressly provided in this Agreement, Customer shall not (and shall not permit any third party to): (a) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any external commercial use of, outsource, use on a timeshare or service bureau basis, or use in an application service provider or managed service provider environment, or otherwise generate income from the Software; (b) copy the Software onto any public or distributed network, except for an internal and secure cloud computing environment; (c) cause or permit the decompiling, disassembly, or reverse engineering of any portion of the Software, or attempt to discover any source code or underlying algorithms or other operational mechanisms of the Software (except where such restriction is expressly prohibited by law without the possibility of waiver, and then only upon prior written notice to Harness); (d) modify, adapt, translate or create derivative works based on all or any part of the Software; (e) use any Third Party Software (as defined below) provided with the Software other than with the Software; (f) modify any proprietary rights notices that appear in the Software or components thereof; (g) publish the results of any benchmarking tests run on any Third Party Software; (h) use the Software in violation of any applicable laws or regulations (including any export laws, restrictions, national security controls and regulations) or outside of the license scope set forth in Section 1.1 (License Grant); (i) use the Software in support of any nuclear proliferation, chemical weapon, biological weapon or missile proliferation activity; (j) configure the Software to collect or transmit any (1) social security numbers or other government- issued identification numbers, (2) health information, biometric data, genetic data, consumer or third party personal data, or payment/financial information, (3) any data relating to a person under the age of thirteen (13) years old, or (4) any other data that is subject to regulatory or contractual handling requirements (e.g., PCI, HIPAA, or state and federal data security laws) (collectively, “Prohibited Data”); (k) use the Software to (1) store, download or transmit infringing, libelous, or otherwise unlawful or tortious material, or malicious code or malware, or (2) engage in phishing, spamming, denial-of-service attacks or other fraudulent or criminal activity, (3) interfere with or disrupt the integrity or performance of third party systems, or the Software or data contained therein, or (4) attempt to gain unauthorized

access to the Software or Harness's systems or networks, or (5) perform, or engage any third party to perform, authenticated or unauthenticated penetration testing, vulnerability assessments or other security assessments on the SaaS deployment of the Software; (l) create a Harness customer account, access or use the Software in order to (1) monitor the Software's availability, performance, or functionality for competitive purposes, (2) copy ideas, features, functions, or graphics, (3) develop competing products or services, or (4) perform any other form of competitive analysis, as determined by Harness in its sole discretion; or (m) disclose or, except as reasonably necessary to use the Software, use any non-public information regarding Harness or the Software. Additionally, Customer shall not export or re-export, directly or indirectly, any Software or technical data or any copy, portions or direct product thereof (i) in violation of any applicable laws and regulations, (ii) to any country for which the United States or any other government, or any agency thereof, at the time of export requires an export license or other governmental approval, including Cuba, Libya, North Korea, Iran, Iraq, or Rwanda or any other Group D:1 or E:2 country (or to a national or resident thereof) specified in the then current Supplement No. 1 to part 740 of the U.S. Export Administration Regulations (or any successor supplement or regulations, without first obtaining such license or approval) or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders. Customer shall, at its own expense, obtain all necessary customs, import, or other governmental authorizations and approvals.\

- 1.3. Free Trial. If the Software is provided to Customer on a limited trial or beta basis for evaluation purposes ("Free Trial"), Customer agrees that such use and access of the Software is governed by this Agreement. Harness shall have the right to downgrade, limit or otherwise modify the Software provided for a Free Trial at any time without notice to Customer, and Harness shall have no warranty, indemnity, maintenance or support obligations to Customer with respect to any such Free Trial. Customer may only use the number and type of License Units for the specified duration indicated by Harness prior to Customer downloading or accessing the Software with respect to any such Free Trial. Harness may immediately revoke and terminate any Free Trial at any time and without any notice to Customer. Customer agrees to provide feedback related to the Software as reasonably requested by Harness with respect to any Free Trial. Customer agrees that a Free Trial is not a guarantee of future Software or Harness product features, and will not be relied upon by Customer in making any purchasing decisions.
- 1.4. Unauthorized Use. Customer shall notify Harness promptly of any unauthorized use or access of the Software (including unauthorized users or unauthorized disclosure of any password or account), or any other known or suspected breach of security or misuse of the Software. Customer is responsible for use of the Software (and all other acts or omissions) by its employees, contractors, Affiliates or other users that it allows to use or access the Software.\
- 1.5. Support. During the License Term, Harness shall provide support to Customer in accordance with Harness's then-current support policy, and as identified in an Order Form. In the event that the level of support is not identified in the Order Form, Customer shall receive a "standard" level of support that is included with the Software at no additional cost. For any support tier above standard support, the applicable support fees will be a percentage of all of Customer's Software-based fees, and will be prorated for mid-year expansions based on the remaining months in the then current Initial Term or Renewal Term. Further, Customer agrees to facilitate any connections and access necessary for Harness to (i) deliver, deploy and provide the Software as provided hereunder and (ii) to perform its obligations hereunder (including any support obligations). Notwithstanding anything to the contrary in this Agreement, Harness has no warranty, indemnity or other obligation or liability with respect to modifications made to the Software or Documentation (as defined below) by Customer or on Customer's behalf other than the generally available updates provided by Harness.
- 1.6. Purchasing Through Authorized Resellers. If you purchase a subscription to the Software or any Services through a Harness authorized reseller, this Agreement and any agreed upon usage limitations will govern the use of such Software and Services unless otherwise agreed by Harness and Customer. You also agree that Harness is an express third party beneficiary of your agreement with any authorized reseller. Your payment obligations for the Software and Services will be with the authorized reseller, not Harness, and you will have no direct fee payment obligations to Harness, provided that Harness may terminate this Agreement if you breach any of your payment obligations to such authorized reseller for the Software and Services. Any terms agreed to between you and the authorized reseller that are in addition to or inconsistent with this Agreement are solely between you and the authorized reseller. No agreement between you and an authorized reseller is binding on Harness, nor will it have any force or effect with respect to the rights in, or the operation, use or provision of, the Software or Services.

- 1.7. Contractors and Third Party Providers. You may permit your authorized consultants, contractors, and agents (“Third Party Providers”) to access and use the Software, but only on your behalf in connection with providing the Software to you, and subject to the terms and conditions of this Agreement. Any access or use by a Third Party Provider will be subject to the same limitations and restrictions that apply to you under this Agreement, and you will be responsible for any Third Party Provider’s actions or omissions relating to its use of the Software. The aggregate use by you and all of your Third Party Providers must not exceed the allotted License Units (without paying the overage fees set forth in Section 2.1), and nothing in this Section is intended to or will be deemed to increase such License Units.
- 1.8. Services. Harness will use commercially reasonable efforts to provide the Services as described in an applicable Order Form (or statement of work referencing this Agreement entered into between the parties (“SOW”)), if any. Harness will retain all right, title and interest in and to the deliverables and other results of the Services under this Agreement, and, subject to payment of the applicable fees and compliance with the terms of this Agreement, Harness hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license to use such deliverables and results solely for Customer’s internal business purposes and only in connection with Customer’s permitted use of the Software. The Services (and any deliverables or other results) are not subject to any acceptance procedure. All Services will be provided, subject to the agreed-upon fees set forth in the applicable Order Form or SOW. Harness will not charge in excess of the total time purchased without prior written approval (email to suffice) from Customer. If the Services purchased have been consumed, fully used or otherwise exhausted, Harness will cease providing Services until additional Services have been purchased by Customer. If Customer elects not to purchase additional Services, then the Services will be deemed complete. Pre-purchased Services and expenses expire twelve (12) months after the date purchased (unless otherwise set forth in the applicable Order Form or SOW). Customer agrees to reasonably cooperate with Harness and provide the necessary information for Harness to perform the Services. Customer will reimburse Harness for travel and expenses incurred in connection with providing the Services (if any) by the applicable due date. Services will be performed on Monday through Friday, excluding national holidays, from 9am to 5pm, in the location where the Services are delivered. If Customer cancels or delays any scheduled Services less than ten (10) business days before the start date of such Services, then Harness will deduct from Customer’s pre-purchased Services or Customer will pay for, as applicable, the amount of Services that were canceled or delayed during any of the ten (10) business days following the date of cancellation (or notification of the delay, as applicable), and Customer will fully reimburse Harness for any reasonable travel and expenses incurred by Harness for such Services (and for any Services rescheduled by Customer) for which Harness is unable to obtain a refund. During the License Term under the applicable Order Form or for the term of the applicable SOW, as applicable, and for a period of twelve (12) months thereafter, Customer will not solicit for employment or consulting work any Harness employees who participated in or performed the Services under such Order Form or SOW, unless Harness’s prior written consent has been obtained. “Services” mean any training, enablement, consulting, installation and/or other professional services described in the applicable Order Form or SOW.
- 1.9. Customer Affiliates. Customer Affiliates may purchase and use the Software and Services subject to the terms of this Agreement by executing Order Forms or SOWs hereunder that incorporate by reference the terms of this Agreement. In each such case, all references in this Agreement to Customer shall be deemed to refer to such Customer Affiliate for purposes of such Order Form(s) or SOW(s), and Customer Affiliate agrees to be bound by this Agreement. “Affiliate” means, with respect to Harness or Customer, any entity that directly or indirectly controls, is controlled by, or is under common control with Harness or Customer, respectively. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

2. Fees

- 2.1. Pricing. You agree to pay all fees specified in the Order Form and/or SOW, or as otherwise agreed upon by the parties. Fees are non-cancelable, non-refundable, and due and payable either within thirty (30) days from the date of the invoice, or as otherwise specified in the Order Form. All payments due shall be made through automated clearing house (ACH) transfers, or wire transfers, to Harness’s designated account, unless otherwise agreed by Harness. Fees do not include any customizations of the Software (nor support for any such customizations, unless otherwise agreed in writing). If Customer’s use of the Software exceeds the number of License Units set forth in the Order Form, Customer will be billed for and Customer will pay those overages at a pro-rated amount for the

remainder of the applicable License Term under the Order Form, based on the pricing specified in the applicable Order Form. If Harness believes in good faith that Customer's use of the Software exceeds the number of License Units set forth on the Order Form, Harness may (i) audit Customer's use of the Software (not more frequently than twice per calendar year), upon at least twenty-four (24) hours' notice, and (ii) require that Customer provide Harness with all relevant records within five (5) business days of such request in order to determine if Customer's use of the Software exceeds the number of authorized License Units. Customer acknowledges that purchases made under this Agreement are neither contingent on the delivery of any future functionality or features of the Software nor dependent on any oral or written public comments made by Harness regarding future functionality or features of the Software. All fees shall be fixed during the Initial Term (as defined in Section 5) unless Customer purchases additional License Units. If the number of purchased License Units does not increase upon renewal, then all Software and support fees will increase by the percentage specified in the Order Form at the start of each applicable Renewal Term (as defined in Section 5). If Customer is overdue on any payment, then Harness may (i) require that Customer pay a late fee equal to the lesser of 1.5% of the then-outstanding unpaid balance per month or the maximum amount allowable by law, and/or (ii) suspend Customer's use of and access to the Software and/or Services associated with Customer's account until such non-payment is corrected. Customer represents and warrants that the billing and contact information provided to Harness is complete and accurate, and Harness shall have no responsibility for any invoices that are not received due to inaccurate or missing information provided by Customer.

- 2.2. Credit Cards. If Harness authorizes you to pay by credit or debit card in writing, you: (i) will provide Harness or its designated third-party payment processor with valid credit or debit card information; and (ii) hereby authorize Harness or its designated third-party payment processor to charge such credit or debit card for all items listed in the applicable Order Form or SOW or as otherwise agreed by the parties. Such charges must be paid in advance or in accordance with any different billing frequency stated in the applicable Order Form or SOW (if applicable). You are responsible for providing complete and accurate billing and contact information and notifying Harness in a timely manner of any changes to such information.
- 2.3. Taxes. The fees paid by Customer are exclusive of all taxes, levies, or duties ("Taxes") imposed by taxing authorities, if any, and Customer shall be responsible for payment of all such Taxes, excluding taxes based on Harness's income. Customer represents and warrants that the billing and contact information provided to Harness is complete and accurate, and Harness shall have no responsibility for any invoices that are not received due to inaccurate or missing information provided by Customer.

3. Confidentiality

- 3.1. Confidential Information and Restrictions. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as "confidential" or "proprietary," or that, given the nature of the information or circumstances surrounding its disclosure, should reasonably be understood to be confidential. "Confidential Information" does not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. The Receiving Party will: (i) not use the Disclosing Party's Confidential Information for any purpose outside of this Agreement; (ii) not disclose such Confidential Information to any person or entity, other than its Affiliates, employees, consultants, agents and professional advisers ("Representatives") who have a "need to know" for the Receiving Party to exercise its rights or perform its obligations hereunder, provided that such employees, consultants, and agents are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this Section 3; and (iii) use reasonable measures to protect the confidentiality of such Confidential Information. The Receiving Party shall be liable for any breach of this section by its Representatives. If the Receiving Party is required by applicable law or court order to make any disclosure of such Confidential Information, it will first give written notice of such requirement to the Disclosing Party, and, to the extent within its control, permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Further, this Section 3 will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt without any restriction on its disclosure;

(ii) is or has become public knowledge or publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

- 3.2. Equitable Relief. The Receiving Party acknowledges that unauthorized disclosure of the Disclosing Party's Confidential Information could cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient remedy and, therefore, that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or equity.
- 3.3. Feedback. Customer acknowledges and agrees that (a) any questions, comments, suggestions, ideas, feedback or other information about Harness, the Software, the Services, the Documentation or other materials provided by Harness (collectively, "Feedback") provided by Customer are non-confidential, (b) Harness will have full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality, and (c) Harness will have the full, unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with its products and services.
4. Proprietary Rights. Harness owns and shall retain all proprietary rights, including all copyright, patent, trade secret, trademark and all other intellectual property rights, in and to the Software (and all derivatives, improvements or enhancements thereof), the Services, the Documentation, and any materials generated by Harness. Customer acknowledges that the rights granted under this Agreement do not provide Customer with title to or ownership of the Software, in whole or in part. Certain "free" or "open source" based software (the "FOSS Software") and third party software included with the Software (the "Third Party Software") is shipped with the Software but is not considered part of the Software hereunder. Use, reproduction, and distribution of FOSS Software is governed by the terms of the applicable open source software license and not this Agreement. Harness will provide Customer with a list of the FOSS Software and Third Party Software embedded in the Software upon request. With respect to Third Party Software included with the Software, such Third Party Software suppliers are third party beneficiaries of this Agreement. The Software and Third Party Software may only be used and accessed by Customer as prescribed by the instructions, code samples, on-line help files and technical documentation made publicly available by Harness for the Software, as may be updated from time to time by Harness (the "Documentation"). Harness will not be responsible for any act or omission of any third party, including the third party's access to or use of any Customer data or the performance of the Software in combination with such Third Party Software.
5. Term and Termination. This Agreement will be in full force and effect beginning on the earlier of the start date of the first Order Form entered into hereunder and the date you first access or otherwise use the Software, and will remain in effect until this Agreement is terminated pursuant to this Section. Termination of a specific Order Form will not affect the effectiveness of this Agreement or any other Order Form. Unless indicated otherwise in an Order Form, each Order Form shall be valid from the earliest start date therein through the initial end date therein (the "Initial Term"), and shall automatically renew for additional successive twelve (12) month terms (each, a "Renewal Term"), unless either party provides notice of non-renewal no less than thirty (30) days prior to the end of then-current Initial Term or Renewal Term, as applicable. If either party commits a material breach of this Agreement, and such breach has not been cured within thirty (30) days after receipt of written notice thereof, the non-breaching party may terminate this Agreement, except that Harness may immediately terminate this Agreement and/or terminate or suspend Customer's use of and access to the Software associated with Customer's account upon Customer's breach of Section 1.2 (Restrictions on Use) or Section 2.1 (Payment). Additionally, Harness may temporarily suspend access to the Software if Customer's use poses a security risk or adversely impacts Harness's business. Either party may also terminate this Agreement upon written notice if (a) the other party suspends payment of its debts or experiences any other insolvency or bankruptcy-type event or (b) there are no Order Forms or SOWs then in effect. Upon expiration or termination of an Order Form, for any reason, all rights granted to Customer with respect to such Order Form shall terminate and Customer shall destroy any copies of the Software and Documentation provided under such Order Form within Customer's possession and control. Upon any termination of this Agreement, each Receiving Party will return or destroy, at the Disclosing Party's option, the Disclosing Party's Confidential Information in the Receiving Party's possession or control. All payment obligations that have accrued as of such expiration or termination, any other rights or obligations that by their nature should survive, and Sections 1.2, 1.3, 1.4, 1.6, 2, 3, 4, 5, 6.2 and 7 through 11, will survive any expiration or termination hereof.

6. Warranties.

- 6.1. **Software Warranty.** Harness warrants that during the first thirty (30) days after the beginning of a License Term under the applicable Order Form, the Software will, in all material respects, conform to the functionality described in the then-current Documentation for the applicable version of the Software. Harness's sole and exclusive obligation, and Customer's sole and exclusive remedy, for a breach of this warranty shall be that Harness will use commercially reasonable efforts to repair or replace the Software to conform in all material respects to the Documentation, and if Harness is unable to materially restore such functionality within thirty (30) days from the date of written notice of breach of this warranty by Customer, Customer shall be entitled to terminate the applicable Order Form upon written notice to Harness, and Harness shall promptly provide a pro-rata refund of the subscription fees under such Order Form that have been paid in advance for the remainder of the License Term under such Order Form (beginning on the date of termination). To be eligible for the foregoing remedy, Customer must notify Harness in writing of any warranty breaches within such warranty period, and Customer must have installed (if applicable), used and configured the Software in accordance with this Agreement and the Documentation.
- 6.2. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, ALL SOFTWARE, DOCUMENTATION, SERVICES, MAINTENANCE AND SUPPORT ARE PROVIDED "AS IS," AND HARNESS AND ITS SUPPLIERS EXPRESSLY DISCLAIM ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH RESPECT THERETO, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE ACCESS TO OR OPERATION OF THE SOFTWARE. HARNESS EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR DATA ACCESSED OR USED IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, SERVICES, MAINTENANCE OR SUPPORT. Additionally, Harness is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the Internet, and Customer acknowledges that the Software, Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities. The Software is not fault-tolerant and is not designed or intended for use in hazardous environments, including without limitation, in the operation of aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles or weaponry systems, or any other application in which failure of the Software could lead to death or serious bodily injury of a person, or to severe physical or environmental damage (each, a "High Risk Use"). Harness expressly disclaims any express or implied warranty or representation of fitness for High Risk Use. Harness shall not be liable to Customer for any loss, damage or harm suffered by Customer that is directly or indirectly caused by Customer's unauthorized use of the Software to process Prohibited Data.
- 6.3. **Mutual Warranty.** Each party hereby represents and warrants to the other that: (a) such party has the right, power, and authority to enter into this Agreement and to fully perform all of its obligations hereunder; and (b) entering into this Agreement does not and will not violate any agreement or obligation existing between such party and any third party.
- 6.4. **Beta Software.** From time to time, Customer may have the option to participate in a program with Harness where Customer is given access to alpha or beta software, services, products, features and documentation (collectively, "Beta Software") offered by Harness. The Beta Software is not generally available and may contain bugs, errors, defects or harmful components. Accordingly, Harness is providing the Beta Software to Customer "as is." Notwithstanding anything to the contrary in this Agreement, Harness makes no warranties of any kind with respect to the Beta Software, whether express, implied, statutory or otherwise, including any implied warranties of merchantability, fitness for a particular purpose, or non-infringement, and has no indemnity or other obligation or liability with respect to Beta Software. Harness does not warrant that the Beta Software will meet any specified service level, or will operate without interruptions or downtime.

7. Indemnification.

- 7.1. By Harness. Harness agrees to defend, at its expense, Customer against (or, at Harness's sole option, settle) any third party claim to the extent such claim alleges that the Software infringes or misappropriates any patent, copyright, trademark or trade secret of a third party, and Harness shall pay all costs and damages finally awarded against Customer by a court of competent jurisdiction as a result of any such claim. In the event that the use of the Software is, or in Harness's sole opinion is likely to become, subject to such a claim, Harness, at its option and expense, may (a) replace the applicable Software with functionally equivalent non-infringing technology, (b) obtain a license for Customer's continued use of the applicable Software, or (c) terminate the applicable Order Form and provide a pro-rata refund of the subscription fees under such Order Form that have been paid in advance for the remainder of the License Term under such Order Form (beginning on the date of termination). The foregoing indemnification obligation of Harness will not apply: (1) if the Software is or has been modified by Customer or its agent; (2) if the Software is combined with other non-Harness products, applications, or processes, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Software or breach of this Agreement; or (4) if Customer fails to install or use any functionally equivalent non-infringing Software that would have avoided the alleged infringement. The foregoing shall be Customer's sole remedy with respect to any claim of infringement of third party intellectual property rights.
- 7.2. By Customer. Customer agrees to defend, at its expense, Harness and its Affiliates, its suppliers and its resellers against any third party claim to the extent such claim alleges, arises from, or is made in connection with Customer's breach of Section 1 (Software License) or Section 10 (Data Collection), any High Risk Use, or Customer's negligence or willful misconduct. Customer shall pay all costs and damages finally awarded against Harness by a court of competent jurisdiction as a result of any such claim.
- 7.3. Indemnification Requirements. In connection with any claim for indemnification under this Section 7, the indemnified party must promptly provide the indemnifying party with notice of any claim that the indemnified party believes is within the scope of the obligation to indemnify, provided, however, that the failure to provide such notice shall not relieve the indemnifying party of its obligations under this Section 7, except to the extent that such failure materially prejudices the indemnifying party's defense of such claim. The indemnified party may, at its own expense, assist in the defense if it so chooses, but the indemnifying party shall control the defense and all negotiations related to the settlement of any such claim. Any such settlement intended to bind either party shall not be final without the other party's written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Customer's consent shall not be required when Harness is the indemnifying party if the settlement involves only the payment of money by Harness.
8. Limitation of Liability. The limits below will not apply to the extent prohibited by applicable law. EXCEPT FOR LIABILITY ARISING FROM VIOLATIONS OF SECTION 1.2 (RESTRICTIONS ON USE), UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY (A) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, OR FOR ANY AND ALL OTHER INDIRECT DAMAGES OR LOSSES, EVEN IF SUCH PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, OR (B) EXCLUDING PAYMENT OBLIGATIONS, DIRECT DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE INCIDENT OR CLAIM UNDER THE APPLICABLE ORDER FORM OR SOW. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
9. Force Majeure. Except for payment obligations, neither party hereto will be liable for defaults or delays due to acts of God, or the public enemy, acts or demands of any government or governmental agency, fires, earthquakes, floods, accidents, or other unforeseeable causes beyond its reasonable control and not due to its fault or negligence.
10. Data Collection. Customer understands, acknowledges and agrees that Harness's Software stores, in encrypted form, sensitive data components involved in Customer's own software delivery processes (including passwords, keys, and credentials). In addition, Harness captures logs, performance monitoring data, and test results to verify the success or failure of deployments of the Software, and collects data and metrics on Customer's activities, such as how and which features of the Software Customer uses. If Customer provides Harness with any personally identifiable information

("Personal Data"), Customer represents and warrants that such information has been collected by Customer in accordance with the provisions of all applicable data protection laws and regulations, and that Customer has all right and consents necessary to provide such Personal Data to Harness. Notwithstanding anything herein to the contrary, Harness shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the Software and related systems and technologies (including, without limitation, information concerning Customer and data derived therefrom), and Harness will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Software and for other development, diagnostic and corrective purposes in connection with the Software and other Harness offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. Harness will employ physical and electronic safeguards for all data in its possession and control according to industry standards.

11. Miscellaneous. This Agreement shall be governed by and construed under the laws of the State of California, U.S.A, as if performed wholly within the state and without giving effect to the principles of conflict of law. The parties consent to the exclusive jurisdiction and venue of the courts located in and serving San Francisco, California. Failure by either party to exercise any of its rights under, or to enforce any provision of, this Agreement will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this Agreement will remain in full force and effect. This Agreement (including each Order Form and SOW) represents the entire agreement between the parties and supersede any previous or contemporaneous oral or written agreements or communications regarding the subject matter of this Agreement. The person signing or otherwise accepting this Agreement for Customer represents that s/he is duly authorized by all necessary and appropriate corporate action to enter this Agreement on behalf of Customer. The Uniform Computer Information Transactions Act (UCITA) nor the United Nations Convention for the International Sale of Goods will apply to this Agreement. This Agreement shall control over additional or different terms of any purchase order, confirmation, invoice, statement of work or similar document (other than the Order Form or SOW, which will take precedence), even if accepted in writing by both parties, and waivers and amendments to this Agreement shall be effective only if made by non-pre-printed agreements clearly understood by both parties to be an amendment or waiver to this Agreement. All capitalized terms used but not defined in an Order Form or SOW shall have the meanings provided to them in the Agreement. For purposes of this Agreement, "including" means "including without limitation." The rights and remedies of the parties hereunder will be deemed cumulative and not exclusive of any other right or remedy conferred by this Agreement or by law or equity. No joint venture, partnership, employment, or agency relationship exists between the parties as a result of this Agreement or use of the Software. Harness reserves the right to perform its obligations from locations and/or through use of Affiliates, contractors and subcontractors, worldwide, provided that Harness will be responsible for such parties. Customer may not assign this Agreement without the prior written consent of Harness, and any purported assignment in violation of this Section 11 shall be void. Harness may assign, transfer or subcontract this Agreement in whole or in part without Customer's consent. Upon any assignment of this Agreement by Customer that is approved by Harness or other corporate transaction involving Customer that would materially increase its Licensee Unit usage, if the Order Form contains a subscription for an "unlimited" amount of Licensee Units, such subscription will, with respect to Customer or the successor entity, as applicable, be capped at the monthly average of authorized Licensee Units used by Customer under such Order Form during the three full calendar months prior to such assignment (or if the Software has been used for fewer than three full calendar months, then the monthly average based on a pro rata calculation of such use). Customer agrees that Harness may refer to Customer by its trade name and logo, and may briefly describe Customer's business, in Harness's marketing materials and website. Additionally, Customer and Harness shall collaborate in good faith for the purpose of executing various co-marketing activities (e.g., customer testimonial videos, case study write ups, conference speaking slots, serving as a referenceable customer, etc.). The parties agree that all co-marketing activities will be contingent on a successful deployment of the Software. Harness may give notice to Customer by electronic mail to Customer's email address as provided by Customer on the Order Form or on record in Customer's account information, or by written communication sent by first class mail or pre-paid post to Customer's address as provided by Customer on the Order Form or on record in Customer's account information. Customer may give notice to Harness at any time by any letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Harness at the following address or such other address as may be notified to Customer from time to time: Harness, 55 Stockton St., San Francisco, CA 94105, Attn.: Legal Department. Notice under this Agreement shall be deemed given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next-day delivery by a recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Harness may update this Agreement from time to time by providing you with prior written notice of material updates at least thirty (30) days

in advance of the effective date. Such notice will be given in accordance with this section. Except as otherwise specified by Harness, (a) updates will be effective upon the effective date indicated at the top of this Agreement or in such notice, (b) your continued access or use of the Software or Services on or after the effective date of such updates constitutes your acceptance of such updates and (c) if you do not agree to such updates, you should stop using the Software and Services. However, if you have paid for a subscription to the Software, and we update this Agreement during your License Term, the updates with respect to that subscription will be effective upon your next Renewal Term, if applicable, and in this case, if you object to the updates, as your sole and exclusive remedy, you may choose not to renew, in accordance with the terms hereof. The updated version of the Agreement will supersede all prior versions.