SERVICE SUMMARY

1.   Terms of Use. This Service Summary outlines the services to be provided under this agreement. Customer agrees that Customer's access to and use of the Service (as defined in Section 3 below) shall at all times be subject to the Virtual Instruments Corp. ("**Virtual Instruments**") Terms of Use, which can be found in Exhibit A. This Service Summary and the Virtual Instruments Terms of Use are referred to collectively as the "**Service Agreement**." Capitalized terms that are not defined in this Service Summary are defined in the Terms of Use. By agreeing to the Terms of Use and accessing the Service, Customer agrees to the terms and conditions of the Service Agreement. Virtual Instruments will provide the Service subject to the quantity and other access limitations set forth in the order executed between Virtual Instruments and Customer (the "**Order**"), subject to Customer's ongoing compliance with the Terms of Use. To the extent of any conflict, the order of preference shall be the Order, followed by the Service Summary, and then the Terms of Use, other than to the extent one document expressly states it shall prevail with respect to a specific term.

2.   Purpose. Customer acknowledges and agrees that the Service provided under this Service Agreement is to be used in support of Customer's internal business purposes only as expressly permitted hereunder (the "**Purpose**"). Use for any reason other than the Purpose is expressly prohibited.

3.   Service. The "**Service**" will include the following:

3.1 *Analytics Service*: Virtual Instruments will provide Customer with online access via a standard web browser to the domain metricly.com or the successor domain established by Virtual Instruments (the "**Virtual Instruments Site**"), which will host the Virtual Instruments' analytics software product (the "**Analytics Service**"). The Analytics Service may be used by Customer for direct uploading of IT performance, usage, cost, and other related numerical data ("**Analytical Data**") from Customer's location(s) to Virtual Instruments third party hosted cloud environment, and subsequent analysis of and reporting on such Analytical Data. Analytical Data may only be analyzed for the specific quantities of elements ("**Elements**") or host servers ("**Hosts**") stated in the Order and subject to any other limitations set forth therein.

3.2 *Analysis and Reporting*: Customer may use the Analytics Service to perform analysis and run reports based on the Analytical Data. The output of analysis and reporting by the Analytics Service shall be referred to herein as "**Reports**".

3.3 *On-site Data Collection*: Virtual Instruments shall, if agreed in the Order, provide Customer with a license to one copy of Virtual Instruments' on-site data collection tool (the "**Remote Collector**"), licensed solely for use during the Term, which Customer will be required to install at Customer's location(s) to collect certain Analytical Data from Customer's on-site data sources monitoring the Elements or Hosts, as applicable, and, using Customer's Internet access, transmit the Analytical Data to the Analytics Service.

3.4 *Storage*: Virtual Instruments will store the Analytical Data collected in a database (the "**Analytics Database**"). Such stored Analytical Data will be available for use by the Analytics Service only during the paid service period. At the end of the paid service period the Analytical Data may, at Virtual Instruments' discretion, be purged and deleted from Analytics Database.

3.5 *Third-party Hosting:* Virtual Instruments will engage a reputable, secure, third-party hosting service to provide the physical computing resources to install and host the Analytics Service and Storage on the Virtual Instruments Site (or Virtual Instruments Site).

3.6 *Tools*: Virtual Instruments may, at its discretion, provide Customer with access to Virtual Instruments' proprietary tools and other documentation ("**Tools**") to further assist with the optimization of data collection, importing or exporting of data or results, or other matters related to the Analytics Service.

3.7 *Support*: Virtual Instruments will provide unlimited web and email support ("**Support Services**"). Virtual Instruments will use commercially reasonable efforts to respond to such support requests within 48 hours. Response times and correction of defects are not guaranteed, but to the extent that Support Services are not performed with reasonable technical skill and diligence, Virtual Instruments will re-perform the Support Services to the extent necessary to correct any defective performance, and Customer acknowledges that re-performance shall be Customer's sole and exclusive remedy for such

defective performance. Notwithstanding the foregoing, if Customer has purchased the Service through an authorized Virtual Instruments reseller, such reseller shall be responsible for first-level support and any other support terms set forth in Customer's subscription with such reseller.

4. Subscription Term. The Effective Date of the Service Agreement will be the date the Service is first made available to the Customer. The Termination Date of the Service Agreement will be the date on which Virtual Instruments disables Customer's access to the Service in accordance with the Terms of Use. The period from the Effective Date through the Termination Date, inclusive, shall be referred to as the "**Term**". Please read the Terms of Use carefully regarding access to Analytical Data once the Data Retention Period or the Service Agreement terminates.

5. Service Fees. The Service shall be provided in exchange for timely payment of the fees set forth in the Order (the "**Service Fees**").

EXHIBIT A

Virtual Instruments Corp.
SOFTWARE-AS-A-SERVICE AGREEMENT
TERMS OF USE

This Service Agreement is made between the "**Customer**" whose authorized representative electronically accepted the Service Summary and these Terms of Use prior to be granted access to use the Service, and Virtual Instruments Corp. (formerly Metricly, Inc.) ("**Virtual Instruments**"), having a principal place of business 2331 Zanker Road, San Jose, CA 95131. Capitalized terms that are not defined in this Terms of Use are defined in Service Summary.

1. SERVICE

1.1 Provision of Services. Virtual Instruments will use commercially reasonable efforts to provide the Service described in the Order. Virtual Instruments grants Customer a non-exclusive, non-transferable, non-sublicensable, limited right, during the Term (a) to use the Analytics Service (and related user documentation) to upload Analytical Data to the Virtual Instruments Site, (b) to store Analytical Data on Virtual Instruments' third party hosted site for the duration of the applicable Data Retention Period, (c) to access the Virtual Instruments Site for Support Services, and (d) to run Reports. If Virtual Instruments provides Customer with a copy of the Remote Collector pursuant to an Order, then Virtual Instruments grants Customer a non-exclusive, non-transferable, non-sublicensable, limited right, during the Term to use the Remote Collector and applicable Tools to facilitate the uploading of Analytical Data. All use of the Service by Customer shall be permitted solely for the Purpose identified in the Service Summary. The rights of Customer under this Section 1.1 to use the Virtual Instruments Site and the Service, is subject to and conditioned on Customer's compliance with the terms and conditions of the Service Agreement.

1.2 Login Accounts. Virtual Instruments will provide Customer with valid login accounts and individual passwords ("**Login Accounts**"), which Customer must use in order to access and use the Service in accordance with the rights granted by Virtual Instruments in this Service Agreement. Customer bears sole responsibility for protecting the Login Accounts, and will be liable for any unauthorized use thereof.

1.3 Restrictions. Use by Customer of the Virtual Instruments Site, Services, Remote Collector, Tools, and Reports must be in accordance with the applicable user manual and documentation. Use of the Virtual Instruments Site and submission of data to Virtual Instruments through the Service will be subject to this Service Agreement and Virtual Instruments' privacy policy, as currently located at https://www.virtualinstruments.com/privacy/ Customer may use the Virtual Instruments Site, Services, Remote Collector, Tools, and Reports solely in accordance with all

applicable laws, rules, and regulations and Section 1.1. Customer will not (and will not have the right to), and will not permit any third party to: (a) translate, modify, adapt, enhance, decompile, disassemble or reverse engineer the Services and Tools or otherwise determine or attempt to determine source code or protocols from the executable code of the Service, Remote Collector, or Tools or create any derivative works based upon the Service, Remote Collector, or Tools; or (b) extract ideas, algorithms, procedures, workflows or hierarchies from the Service, Remote Collector, or Tools or otherwise use the Service, Remote Collector, or Tools for the purpose of creating another product or service. Customer will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Virtual Instruments Site, Services, Remote Collector, Tools, and Reports. Customer will not transmit through the Analytics Service or the Virtual Instruments Site any program, routine or device which is designed to delete, disable, deactivate, interfere with or otherwise harm any software, program, data, device, system or service, including without limitation, any 'time bomb', virus, drop dead device, malicious logic, worm, Trojan horse or trap or back door.

1.4   Virtual Instruments Obligations. Virtual Instruments shall: (i) make the Service available to Customer in accordance with the user documentation made available by Virtual Instruments during the term of this Service Agreement and pursuant to the terms and conditions of the Service Agreement; and (ii) Virtual Instruments shall not use Analytical Data except to provide the Service (or to prevent or address service or technical problems) in accordance with this Service Agreement and the user documentation made available by Virtual Instruments, as expressly permitted by this Service Agreement or in accordance with Customer's instructions.

1.5   Customer Obligations.   Customer is responsible for its employees' and authorized third parties' use of the Service and compliance with this Service Agreement. Customer shall not attempt to gain access to the Service or its related systems or networks in a manner not set forth in the user documentation made available by Virtual Instruments. Customer may not allow a third party to use the nonpublic portions of the Service unless such third party has agreed, in writing, to terms at least as protective of Virtual Instruments as this Service Agreement, including without limitation, disclaimers of warranties and limitations of liability for the benefit of Virtual Instruments that are no less protective of Virtual Instruments than those set forth in the Service Agreement. Where necessary for performance of the Service, Customer is responsible for authorizing and enabling Virtual Instruments to submit Customer's authentication information to any third party services, websites or APIs, that Customer designates, for the purposes of retrieving Analytical Data. Customer acknowledges and agrees that when Virtual Instruments is accessing and retrieving Analytical Data from third parties, Virtual Instruments is doing so at Customer's request in order to provide the Service. Pursuant to the foregoing, Customer represents and warrants that it has the legal right to provide Virtual Instruments with access to all Analytical Data for the purpose of providing the Service.

1.6   Customer Internet Access.   Customer will be responsible for procuring and maintaining all hardware, software and telecommunications facilities that connect Customer's network to the Service, including without limitation browser software that supports the protocol used by Virtual Instruments (including Secure Socket Layer (SSL) protocol or other protocols accepted by VI). Virtual Instruments is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such hardware, software or telecommunications facilities (including but not limited to the Internet) that are not owned by Virtual Instruments. Customer will be responsible for paying all third-party access charges (*e.g.*, Internet service provider fees).

2.   FEES AND INVOICING.

2.1   Fees. All Orders are final, non-cancelable, and non-refundable unless otherwise expressly stated in the Order or this Service Agreement. Customer will pay Virtual Instruments the Service Fees in accordance with the Order. For non-credit card Orders, payment terms are net 30 from the receipt of the invoice, unless stated otherwise in the Order. Any undisputed sums not paid when due may accrue interest from the date when due until actually

paid at rate of one- and one-half percent (1.5%) per month or the highest rate allowed by law, whichever is less. Without limitation of Virtual Instruments' other remedies hereunder or at law or equity, Virtual Instruments reserves the right to suspend Customer's access to the Service should payment not be received within five business days of written notice from Virtual Instruments that a payment is delinquent. Customer will be responsible for all taxes related to the Service Fees or its use of the Service, excluding taxes based on Virtual Instruments' net income, employees and facilities.

2.2 Credit Card Orders. Customers paying by credit card agree and are subject to the terms and conditions at https://www.virtualinstruments.com/legal.   Further, Customers paying by credit card, as indicated on the applicable Order, are responsible for maintaining a valid credit card on file with Virtual Instruments at all times during the subscription term. Customers wishing to update their credit card information should contact dl-accounting@virtualinstruments.com to initiate that process. Late fees as indicated in Section 2.1 above may be applied to all late payments due to invalid credit card information on file.

2.3 Additional Functionality. Virtual Instruments may offer substantial newly developed functionality to Customer for a modified payment that reasonably reflects the value of the Service with the addition of new functionality. Virtual Instruments has no obligation to provide this new functionality to Customer until mutual agreement is reached with respect to the pricing thereof. Once Customer accepts the new functionality in writing via a modified or restated Order, the Service Fees will include the price of the new functionality and Customer will pay the new Service Fees in accordance with the terms of the Order and this Agreement.

3.   OWNERSHIP

3.1 Virtual Instruments Ownership. Virtual Instruments has and will own all right, title and interest, including all intellectual property rights, in and to the Virtual Instruments Site, the Services, the Remote Collector, the Tools, the structure and format of any Reports, Virtual Instruments' trademarks, and the Confidential Information of Virtual Instruments.

3.2 Customer Ownership. Customer will retain ownership, right, title and interest, including all intellectual property rights in and to the raw Analytical Data uploaded by Customer to the Service, the Reports related to such Analytical Data generated by the Tools, the Customer's trademarks, and the Confidential Information of Customer. Notwithstanding the foregoing, Virtual Instruments owns the aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (the "**Aggregated Data**"). Nothing herein shall be construed as prohibiting Virtual Instruments from utilizing the Aggregated Data for purposes of operating Virtual Instruments' business, provided that Virtual Instruments' use of Aggregated Data will not reveal the identity, whether directly or indirectly, of Customer or specific data entered by Customer into the Service.

3.3 Rights Granted to Virtual Instruments. Customer agrees that, so long as no Customer Confidential Information is publicly disclosed, Virtual Instruments may: (i) access and use the Analytical Data to refine, supplement or test Virtual Instruments' product and service offerings; (ii) include anonymized Analytical Data in any publicly available reports, analyses and promotional materials; and (iii) retain anonymized, non-attributable Analytical Data following any termination of this Service Agreement for use in connection with the foregoing. Logs will be generated for audit purposes in order to document such access by Virtual Instruments personnel.

3.4 Feedback. Virtual Instruments welcomes Customer's suggestions and feedback on how to improve the Service. If Customer provides any suggestions, feedback, or improvements to the Virtual Instruments Site, Service, Remote Collector, Tools, or Reports, Virtual Instruments will have the right to use and have others use such

suggestions, feedback, and improvements for any purpose, provided that Virtual Instruments' use of the foregoing will never identify Customer or its users as the source of the suggestion, feedback or improvement.

3.5 Use of Customer's Name. Unless otherwise stated in an Order, Virtual Instruments may use Customer's name and logo in its marketing materials and on its web site. Virtual Instruments shall not make or publish any representations on behalf of Customer without obtaining prior, written permission.

3.6 Third Party Content. Virtual Instruments may make software and other materials available through the Service or at the Virtual Instruments Site, including, but not limited to, agents, libraries, and application program interfaces (APIs) to support Customer's use of and access to the Service (collectively, "**Agents**"). To the extent that Agents do not contain Third Party Technology, as defined herein, Virtual Instruments provides access to such Agents solely for use with the Service, and has no liability for uses of such the Agents which are not in conjunction with the Service. In addition, Virtual Instruments may provide access or links to Agents which may contain third party content governed by other license terms, including open source licenses that may expand or limit Customers' rights to use such content ("**Third Party Technology**").   Customer is not required to use such Third Party Technology to use the Service, but in the event Customer elects to use such Third Party Technology for its purposes in conjunction with the Service, Customer agrees to comply with such third-party terms, as applicable, and Virtual Instruments has no liability with respect to third-party content under this Agreement.   If there are provisions in third-party terms that expressly conflict with these Terms of Use, the applicable third-party terms will apply. Please review our license page for the licenses governing our Agents and third party technology at: https://www.virtualinstruments.com/legal. ANY THIRD PARTY TECHNOLOGY DOWNLOADED OR OTHERWISE OBTAINED BY CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF THE SERVICE IS DONE SO AT CUSTOMER'S DISCRETION AND RISK, AND CUSTOMER WILL BE SOLELY RESPONSIBLE FOR AND HEREBY WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO ANY DAMAGES RESULTING FROM SUCH USE, INCLUDING DAMAGE TO CUSTOMER'S INTERNAL NETWORK, COMPUTER SYSTEMS, INTERNET ACCESS, OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH THIRD PARTY TECHNOLOGY.

4.   TERM AND TERMINATION

4.1   Term. Unless earlier terminated in accordance with this Service Agreement, and unless otherwise set forth in the applicable Service Summary, the Term will commence on the Effective Date and continue until the Termination Date. Unless stated otherwise in the Order, the Service Agreement will thereafter be renewed automatically for a length of time equal to the expiring Term at the pricing agreed in the Order, or Virtual Instruments' then-current pricing, as applicable, unless written notice of non-renewal is given by either party no later than thirty (30) days prior to the end of the expiring Term or any subsequent term extension.   Such notice may be provided via email to dl-accounting@virtualinstruments.com, using the subject line "notice of non-renewal".

4.2   Termination. This Service Agreement will remain in effect until Customer's Term expires, or until the Service Agreement is terminated. Either party may terminate this Service Agreement if: (i) the other party is in material breach of the Service Agreement and fails to cure that breach within 30 days after receipt of written notice or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days. Non-payment of any Service Fees or other fees due to Virtual Instruments will be considered a material breach. If Customer materially breaches the Service Agreement, Virtual Instruments may, without limitation of its other rights and remedies, withhold further performance of its obligations under the Service Agreement.

4.3   Effect of Termination. Upon termination or expiration of the Service Agreement for any reason:

(a)   All licenses and other rights granted to Customer hereunder will immediately terminate. If Virtual Instruments has provided Customer with a copy of the Remote Collector for licensed use hereunder, Customer will promptly, upon request by Virtual Instruments, but in no event within more than thirty (30) calendar days from the receipt of such request, deliver a written certification that all copies of the Remote Collector and any Tools provided have been completely deleted off of all Customer systems such that they cannot be reinstalled or copied for future use.

(b)   Upon termination of this Service Agreement by Customer for uncured material breach by Virtual Instruments, Virtual Instruments will refund a pro-rated portion of any pre-paid Service Fees to reflect services actually rendered. No other Service Fees set forth in the Order will be cancelable or refundable, and shall be due and payable in accordance with the payment terms set forth in the Order.

(c)   Upon expiration or termination of the Service Agreement, or any Data Retention Period within the term of the Service Agreement, Virtual Instruments will have no obligation to maintain any, and will have the right to delete all Analytical Data related to the expired or terminated Service Agreement or Data Retention Period, and Virtual Instruments will have no further obligation to make such Analytical Data available to Customer.

4.4   Survival. The provisions of 1.3 (Restrictions), 2 (Fees and Invoicing), 3 (Ownership), 4.3 (Effect of Termination), 4.4 (Survival), 5 (Limited Warranties; Disclaimers), 6 (Confidentiality), 7 (Limitation of Liability), 8 (Indemnification), and 9 (General Terms) will survive the expiration or termination of this Service Agreement.

5.   LIMITED WARRANTIES; DISCLAIMERS

5.1   Limited Warranty. Virtual Instruments warrants to Customer that the Service, when used properly in accordance with Virtual Instruments' documentation and the terms and conditions of this Service Agreement, will function materially in accordance with the user documentation made available by Virtual Instruments. Customer must promptly report any issues with the Service or Remote Collector to Virtual Instruments so Virtual Instruments will have the opportunity to research and resolve such issues. Customer's sole and exclusive remedy for any breach of this warranty is for Virtual Instruments to re-perform the applicable Service at the request of Customer. Notwithstanding the foregoing, Virtual Instruments disclaims any representations or warranties that the Virtual Instruments Site, Service, Remote Collector, Tools, or Reports will meet Customer's requirements or be uninterrupted or error-free. Further, Virtual Instruments disclaims any representations or warranties on the Tools, the use of which if provided at Virtual Instruments' discretion, is provided on an as-is basis.

5.2   Use of Analytical Data. Customer warrants to Virtual Instruments that (a) Customer has the right to provide to Virtual Instruments the Analytical Data and Virtual Instruments has the right to use such Analytical Data in the manner described in this Service Agreement, and (b) Customer has provided all necessary notices to, and obtained all necessary permissions from the owners of such Analytical Data (if Customer is not the owner) related to the use of such Analytical Data in the manner described in this Service Agreement, including without limitation in compliance with all applicable privacy and other laws.

5.3   Security. Virtual Instruments uses Secure Socket Layer (SSL) encryption on all its web pages where Analytical Data is collected to protect its transmission over the Internet. As of the Effective Date, Virtual Instruments uses Amazon Web Services as its platform hosting service provider ("**Hosting Provider**"). For information on the security provided by Amazon Web Services, please see the Amazon Web Services Security Center page (*http://aws.amazon.com/security/*). Customer acknowledges, however, that no data transmission over the Internet or data storage system can be guaranteed to be 100% secure and Virtual Instruments cannot ensure the security of data transmitted to it or that it stores.

5.4 Availability. Virtual Instruments uses a third party service provider to host the Analytics Service and Storage components of the Service. As of the Effective Date, Virtual Instruments uses Amazon S3, which offers robust durability and availability. Virtual Instruments retains the right to substitute an alternate qualified Hosting Provider at any time. Virtual Instruments makes no representations or warranties regarding the Amazon S3 service, its durability, or availability. For more information on the Amazon S3 service and its performance standards, please see the Amazon site (http://aws.amazon.com/s3/).

5.5 Backups. Customer acknowledges and agrees that Virtual Instruments will have no responsibility (or related liability) for backing up any information that Customer provides to Virtual Instruments.

5.6 DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTY PROVIDED IN SECTION 5.1, VIRTUAL INSTRUMENTS MAKES NO, AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE: (A) WITH RESPECT TO THE VIRTUAL INSTRUMENTS SITE, SERVICE, REMOTE COLLECTOR, TOOLS, REPORTS, OR RELATED DOCUMENTATION AND SERVICES, INCLUDING WITHOUT LIMITATION, THAT ANY OF THE FOREGOING WILL BE ERROR-FREE, RELIABLE, COMPLETE OR SECURE. WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, CUSTOMER ACKNOWLEDGES AND AGREES THAT VIRTUAL INSTRUMENTS IS PROVIDING A SERVICE THAT IS INTENDED ONLY TO ASSIST CUSTOMER IN OPERATING CUSTOMER'S OWN BUSINESS AND THAT CUSTOMER IS SOLELY RESPONSIBLE FOR (AND VIRTUAL INSTRUMENTS ASSUMES NO RESPONSIBILITY AND WILL HAVE NO LIABILITY OF ANY KIND FOR) THE DECISIONS MADE BASED ON USE OF THE VIRTUAL INSTRUMENTS SITE, SERVICE, REMOTE COLLECTOR, TOOLS, REPORTS, OR RELATED DOCUMENTATION AND SERVICES, OR ANY EFFECTS ON BUSINESS THAT MAY RESULT FROM SUCH USE. VIRTUAL INSTRUMENTS MAKES NO WARRANTIES TO ANY THIRD PARTY. VIRTUAL INSTRUMENTS WILL NOT BE LIABLE FOR ANY DEFICIENCY IN PERFORMING UNDER THIS AGREEMENT IF SUCH DEFICIENCY RESULTS FROM FAILURE BY CUSTOMER TO PROVIDE COMPLETE AND ACCURATE INFORMATION OR OTHER COOPERATION REASONABLY NECESSARY FOR VIRTUAL INSTRUMENTS' PERFORMANCE HEREUNDER (INCLUDING WITHOUT LIMITATION THE PROVISION OF ANALYTICAL DATA).

6. CONFIDENTIALITY

6.1 Confidential Information. Each party ("**Receiving Party**") may have access to Confidential Information of the other party ("**Disclosing Party**"), its licensors, or customers ("**Confidential Information**"). Confidential Information includes all nonpublic information of a party that is disclosed in connection with this Service Agreement that is marked or otherwise identified as confidential or proprietary or that a reasonably prudent business person would understand to be confidential in light of nature of the information and the circumstances of its disclosure. For further clarity, Virtual Instruments' Confidential Information will include, without limitation (a) the Analytics Service, the Remote Collector, the Tools, and all related documentation, applications and tools made available to Customer; (b) nonpublic know-how, inventions (whether or not patentable), techniques, methods, algorithms, product and software design and architecture, computer code, documentation, design and functional specifications, product requirements, problem reports, performance information, interfaces, and other technical or business information relating to the Service; (c) information pertaining to Login Accounts issued pursuant to this Service Agreement; and (d) all terms and conditions of this Service Agreement, including, but not limited to pricing information which may be provided. Notwithstanding the foregoing, the Analytical Data, resulting metrics and visualization and results of analyses will be deemed Customer's Confidential Information and the materials and information in (a) and (c) will be deemed Virtual Instruments' Confidential Information, in each case, with no requirement of marking or identification.

6.2 Use and Disclosure Restrictions. Except as otherwise permitted herein each party (as Receiving Party) agrees: (a) the same care and discretion to avoid disclosure, publication or dissemination of the Confidential Information of the Disclosing Party as it uses with its own similar information that it does not wish to disclose, publish or disseminate, but in no event less than reasonable care; (b) to use such Confidential Information only for the performance of its obligations and exercise of its rights hereunder; and (c) disclose Confidential Information of the Disclosing Party only to those of the Receiving Party's employees, consultants or contractors who have a need to know such information and are bound by obligations of confidentiality at least as stringent as those contained herein with respect to such Confidential Information. Further, Customer agrees not to design or develop, or authorize the design or development of, any other product, software, materials or services using any of the algorithms, methods, or techniques contained in the Service.

6.3 Exclusions. The foregoing restrictions pertaining to the Confidential Information will not apply to the extent any information: (a) was or becomes publicly known through no act or omission of the Receiving Party; (b) was known by the Receiving Party before receipt from the Disclosing Party; or (c) becomes known to the Receiving Party without confidential or proprietary restriction from a source other than the Disclosing Party. In addition, the Receiving Party may use or disclose Confidential Information to the extent it is legally compelled to disclose such Confidential Information, provided, however, that, prior to any such compelled disclosure it will cooperate fully with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information.

7. LIMITATION OF LIABILITY

7.1 TO THE EXTENT ALLOWED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY, EXCEPT WITH RESPECT TO MISUSE OF THE SERVICE, REMOTE COLLECTOR, OR TOOLS BY CUSTOMER (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF USE OR DATA, OR INTERRUPTION OF BUSINESS, OR FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND ARISING FROM OR RELATING TO THIS SERVICE AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, HOWEVER CAUSED; AND (B) LIABILITY FOR DAMAGES ARISING FROM OR RELATING TO THIS SERVICE AGREEMENT, UNDER ANY LEGAL THEORY (WHETHER IN CONTRACT, TORT, INDEMNITY OR OTHERWISE), WILL NOT EXCEED THE GREATER OF (I) AMOUNTS ACTUALLY RECEIVED BY OR PAYABLE TO VIRTUAL INSTRUMENTS UNDER THIS SERVICE AGREEMENT DURING THE APPLICABLE TERM, OR (II) ONE HUNDRED DOLLARS.

8. INDEMNIFICATION

8.1 Virtual Instruments Indemnity. Virtual Instruments will defend Customer from, and pay finally awarded damages or reasonable settlement amounts resulting from, any third party claim brought against Customer that the unmodified Analytics Service, Remote Collector, Tools and Reports as made available by Virtual Instruments and used in accordance with this Service Agreement infringe such party's copyright or misappropriate such party's trade secrets.

8.2 Customer Indemnity. Customer will defend Virtual Instruments from, and pay finally awarded damages or reasonable settlement amounts resulting from, any third party claim brought against Virtual Instruments in connection with any breach by Customer of this Service Agreement or the licenses granted hereunder.

8.3 Procedures. The party entitled to be indemnified (the "**Indemnified Party**") will give prompt written notice to the other party (the "**Indemnifying Party**") of any claim for which indemnification may be required under this Section 8. Failure to give such notice will not relieve the Indemnifying Party of its obligation to provide indemnification except if and to the extent that such failure materially and adversely affects the ability of the

Indemnifying Party to defend the applicable claim. If the Indemnified Party notifies the Indemnifying Party of any claim asserted by a third party against the Indemnified Party that the Indemnifying Party acknowledges is a claim for which it must indemnify the Indemnified Party under this Service Agreement, the Indemnifying Party will be entitled to assume the defense and control of any such claim at its own cost and expense and the Indemnified Party will have the right to be represented by its own counsel at its own cost in such matters. Neither the Indemnifying Party nor the Indemnified Party will settle or dispose of any such matter in any manner that would adversely affect the rights or interests of the other party (including the obligation to indemnify hereunder) without the prior written consent of the other party, which will not be unreasonably withheld or delayed. Each party will reasonably cooperate with the other party and its counsel in the course of the defense of any such suit, claim or demand, such cooperation to include without limitation using reasonable efforts to provide or make available documents, information and witnesses.

8.4   Virtual Instruments' liability for infringement of third party intellectual property rights shall be limited to breaches of rights subsisting in the United States or European Union. Virtual Instruments shall have no liability under this Section to the extent that the alleged infringement arises out of or relates to: (1) the use or combination of the Service with third party products or services not supplied by Virtual Instruments, (2) use for a purpose or in a manner for which the Service was not designed, supplied, or licensed, (3) any modification to the Service made by anyone other than Virtual Instruments or its authorized representatives, (4) any modifications to the Service made by Virtual Instruments pursuant to Customer's specific instructions, (5) any evaluation products. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND VIRTUAL INSTRUMENTS' ENTIRE LIABILITY FOR THIRD PARTY INFRINGEMENT CLAIMS.

9.   GENERAL TERMS

9.1   Governing Law. This Service Agreement is to be construed in accordance with and governed by the internal laws of the State of California, without regard to its conflict of laws principles, and will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Nothing in this Service Agreement will prevent either party from seeking injunctive relief (or any other provisional remedy or equitable relief) from any court having jurisdiction in order to protect any and all of such party's respective rights.

9.2   Assignment. Neither party may, without the prior written consent of the other party (which shall not be unreasonably withheld), assign this Service Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to do so shall be a material default of this Service Agreement and shall be void. Notwithstanding the foregoing, a party may assign its rights and benefits and delegate its duties and obligations under this Service Agreement without the consent of the other party (1) if necessary to satisfy the rules, regulations and/or orders of any federal, state or local governmental agency or body, (2) in connection with a merger, reorganization or sale of all or substantially all relevant assets of the assigning party, or (3) in the case of Customer, to an affiliate; in each case provided that such successor assumes the assigning party's obligations under this Service Agreement.

9.3   Force Majeure. Neither party will be liable under this Service Agreement because of any failure or delay in the performance of its obligations (except for payment of money) on account of riots, fire, flood, storm, earth quake, acts of God, hostilities, Internet or other network delays or failures, power failures, unanticipated product development problems, or any other cause directly affecting such failure or delay and beyond such party's reasonable control.

9.4 Government Rights. If Customer is, or is entering into this Service Agreement on behalf of, any agency or instrumentality of the United States Government, the Service is "commercial computer software" and "commercial computer software documentation," and pursuant to FAR 12.212 or DFARS 227.7202, and their successors, as applicable, use, reproduction, and disclosure of the Application are governed by the terms of this Service Agreement.

9.5 Notice. Notices to Virtual Instruments or Metricly must be sent via email to dl-legal@virtualinstruments.com, or in writing to Virtual Instruments Corp., 2331 Zanker Road, San Jose, CA 95131, Attn: Legal Department, via certified mail, or reputable overnight courier. Notices to Customer may be sent to the applicable account email address. Notices sent via any of the permissible methods are deemed given when sent.

9.6 Severability and Waiver. In the event that any provision of this Service Agreement (or any portion hereof) is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or portion thereof) will be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, will be deemed to be severed and deleted from this Service Agreement, while the remainder of this Service Agreement will continue in full force. The waiver by either party of any default or breach of this Service Agreement will not constitute a waiver of any other or subsequent default or breach.

9.7 Terms Modification. Virtual Instruments may revise this Service Agreement from time to time and the most current version will always be posted on the Virtual Instruments website. If a revision, in Virtual Instruments' sole discretion, is material, Virtual Instruments will notify Customer (by, for example, sending an email to the email address associated with the applicable account). By continuing to access or use the Services after revisions become effective, Customer agrees to be bound by the revised Service Agreement. If Customer does not agree to the revised Service Agreement terms, Customer may terminate the Service within 30 days of receiving notice of the change.

9.8 Entire Agreement. Except as agreed to otherwise in writing by the parties that references this Service Agreement, this Service Agreement (including any Orders, which are incorporated herein by this reference) constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Service Agreement. No cancellation, amendment, or modification of this Service Agreement or any provision of this Service Agreement will be effective unless in writing and signed by a duly authorized signatory of both parties. This Service Agreement will not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties; the parties will at all times be and remain independent contractors.

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