

## Terms and Conditions

**1. Definitions.** Certain definitions used in this Agreement are set forth below; other capitalized terms used herein shall have the respective meanings set forth elsewhere in this Agreement.

1.1. **"Anonymized Data"** means data that does not identify and cannot be used to identify Customer or any Authorized Users. Sisu may use Anonymized Data for lawful business purposes such as product improvement, sales and marketing.

1.2. **"Authorized User"** means any employee of Customer who has been assigned a unique username-password combinations to access and use the Sisu Platform and registered online to access and use the Sisu Platform.

1.3. **"Confidential Information"** means business, technical and financial information of the disclosing party that is designated in writing as confidential, or is disclosed such that a reasonable person would understand the confidentiality of the information disclosed. The Sisu Platform, any software used by Sisu to provide the Sisu Platform, any Sisu documentation, and all enhancements and improvements thereto, and the results of any performance test of the Sisu Platform, and Anonymized Data constitute the Confidential Information of Sisu. The Customer Data constitutes the Confidential Information of Customer. This Agreement is the Confidential Information of each Party. Confidential Information does not include information that: (i) is previously rightfully known to the receiving party without restriction on disclosure; (ii) is or becomes known to the general public, through no act or omission on the part of the receiving party; (iii) is disclosed to the receiving party by a third party without breach of any nondisclosure obligation; or (iv) is independently developed by the receiving party.

1.4. **"Customer Data"** means any content, data or information Customer posts, uploads or otherwise makes available on or via the Sisu Platform, and specifically any data that Customer inputs into the Sisu Platform; Customer Data includes all content, data or information provided by Authorized Users in connection with their use of the Sisu Platform.

1.5. **"Evaluation Service"** means any service, or a feature or functionality of a service, that Sisu offers to Customer on an evaluation basis.

1.6. **"Feedback"** means any feedback, comments, or suggestions Customer provides to Sisu regarding Sisu's current or future products or services.

1.7. **"Objective"** means a dependent variable or business metric that is measured and/or analyzed using Customer Data entered into the Sisu Platform.

1.8. **"Order Form"** means the cover page to this Agreement, an amendment to this Agreement or a supplemental order, which shall be in writing, signed by both parties, and shall specify the services to be purchased by Customer from Sisu.

1.9. **"Professional Services"** means the professional services provided by Sisu in connection with the Sisu Platform, pursuant to an Order Form.

1.10. **"Project"** means a collection of Objectives.

1.11. **"Services"** means Customer's right to access and use the Sisu Platform, Support, Evaluation Service, and the Professional Services.

1.12. **"Sisu Platform"** means Sisu's software-as-a-service, as described in an Order Form, designed to allow Customer to input and analyze data, with an option to share certain outputs of such data with other individuals.

1.13. **"Support"** means Sisu's standard or premier maintenance and technical support services.

## **2. Access and Use of the Sisu Platform**

2.1. **Access and Use.** Subject to Customer's compliance with the terms and conditions of this Agreement, Sisu will provide Customer access to and use of the Sisu Platform during the Term solely for Customer's internal business purposes in accordance with the scope of use set forth in the applicable Order Form, including Customer's Objective and related Projects. Customer has the right to view, export, and/or print all outputs and reports from the Sisu Platform containing Customer Data during the Term of this Agreement. Customer shall use the Sisu Platform in compliance with all applicable laws and regulations. Sisu shall also provide Customer with any Professional Services and Support described in any Order Form.

2.2. **Restrictions.** Customer shall not attempt to interfere with or disrupt the Sisu Platform or any Sisu or third party software used by the Sisu to provide the Sisu Platform or attempt to gain access to any systems or networks that connect thereto (except as required to access and use the Sisu Platform). Customer shall not allow access to or use of the Sisu Platform by anyone other than Customer or its Authorized Users. Customer shall not, and shall not permit any Authorized User to: (a) use the Sisu Platform in any manner beyond the scope of rights expressly granted in this Agreement; (b) copy, modify or distribute any portion of the Sisu Platform; (c) rent, lease, or provide access to the Sisu Platform on a time-share or service bureau basis; (d) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Sisu Platform, in whole or in part; (e) use the Sisu Platform or Sisu documentation in any

manner or for any purpose that infringes, misappropriates, or otherwise violates any patent rights, copyrights, moral rights, trade secrets, know-how and any other intellectual property rights recognized in any country or jurisdiction in the world ("Intellectual Property Rights") or other rights of any third party, or that violates any applicable law; or (f) transfer any of its rights hereunder. Customer shall keep confidential and not disclose to any third parties any user identifications, account numbers and account profiles established in order to use the Sisu Platform. Customer shall be responsible and liable for all acts and omissions of its Authorized Users in using the Sisu Platform.

## 2.3. Evaluation Use.

2.3.1. *Access and Use.* If Customer uses any Evaluation Service pursuant to Customer's election on the applicable Order Form, the terms of this Section 2.3 govern that use, and control over any conflicting provision of these Terms and Conditions. The term "Services" includes an Evaluation Service in all provisions of these Terms and Conditions that are not in conflict with the provisions of this Section 2.3. Customer may use an Evaluation Service only: (a) for internal testing and evaluation purposes (such as considering whether to purchase such Evaluation Service from Sisu and not for any other purposes or any productive use); and (b) for a period of thirty (30) days (unless Sisu agrees otherwise in writing in its sole discretion) beginning on the date Sisu provides Customer login credentials for or access to the Evaluation Service (the "Evaluation Period"). Customer will not have access to the Evaluation Service or to any data or content in the Evaluation Service after the Evaluation Period ends. Customer may use the Services documentation provided with an Evaluation Service solely in support of its authorized use of the Evaluation Service.

2.3.2. *Warranties and Disclaimer.* Sisu will provide the Evaluation Service: (a) free of charge; (b) without support; (c) "AS IS"; and (d) without indemnification, warranty, or condition of any kind. Without limiting the foregoing, Sisu does not represent or warrant to Customer that: (i) use of the Evaluation Service during the Evaluation Period will meet any requirements; and (ii) use of the Evaluation Service during the Evaluation Period will be uninterrupted, timely, secure or free from error.

2.3.3. *No Support.* No Support commitment will apply to the Evaluation Service.

2.3.4. *Use of Data.* Any Data Processing Addendum does not apply to use of an Evaluation Service or feature within an Evaluation Service that is not generally available to Sisu customers. Customer must not put production data or data regulated by law or regulation into an Evaluation Service. If Customer puts that data into an Evaluation Service, Customer does so at its own risk, and Sisu will not be responsible for the consequences of that use.

2.3.5. *No Commitment; Modification and Termination.* Certain features or functionality of Services may not be available in an Evaluation Service. Providing any Evaluation Service, or any feature or functionality in an Evaluation Service, does not constitute Sisu's commitment to offer the Evaluation Service or that feature or functionality on a generally available basis. Sisu may modify or terminate an Evaluation Service at any time, and any modification or termination will not be deemed a material, detrimental change.

2.3.6. *Limitation of Liability.* Notwithstanding any other provision in this Agreement or these Terms and Conditions to the contrary, the aggregate liability (excluding indirect damages, for which Sisu expressly disclaims all liability) of Sisu, and its affiliates and suppliers, for any claim arising from use of an Evaluation Service will not exceed five-thousand (\$5,000) USD.

2.4. *Feedback.* From time to time Customer or its employees, contractors, or representatives may provide Sisu with Feedback with regard to the Sisu Platform. Customer hereby grants Sisu a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Sisu's business purposes, including, without limitation, the testing, development, maintenance and improvement of the Sisu Platform.

## 3. Customer Data

3.1. *License Grant.* Customer grants to Sisu a non-exclusive, non-transferable, worldwide, royalty-free license, with the right to sublicense, to reproduce, distribute copies of, process, format, transmit, prepare derivative works based upon, and display to Customer and its Authorized Users, and otherwise use the Customer Data solely to provide the Services to Customer and Authorized Users, and in connection with creation of Anonymized Data as applicable, and to perform its obligations under this Agreement.

3.2. Security of Customer Data. Sisu shall at all times maintain an information security program that complies with applicable law and includes reasonable administrative, technical, and physical measures designed to secure and protect the confidentiality, integrity and availability of all Customer Data in its possession against unauthorized, unlawful or accidental access, disclosure, transfer, destruction, loss or alteration.

3.3. Loss of Customer Data. In the event of any loss or corruption of Customer Data during the Term, Sisu shall use its commercially reasonable efforts to restore the lost or corrupted Customer Data from the latest backup of such Customer Data maintained by Sisu in accordance with Sisu's archival procedures. Sisu shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Customer Data caused by any third party. SISU'S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER DATA PURSUANT TO THIS SECTION 3.3 SHALL CONSTITUTE SISU'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER DATA.

#### **4. Customer Obligations**

Customer shall at all times: (a) provide Sisu with access to such information, facilities, and equipment as may be reasonably required by Sisu in order to provide the Services, including, but not limited to, providing Customer Data, security access, information, software interfaces to its business applications, and the ability for Sisu to run queries in Customer databases; (b) comply with the terms and conditions of this Agreement; and (c) acquire and maintain, at Customer's expense, all Internet services and other hardware and software required to access and use the Sisu Platform. Customer shall also notify Sisu of any suspected or alleged violation of the terms and conditions of this Agreement and cooperate with Sisu with respect to investigation by Sisu of any suspected or alleged violation of this Agreement. Notwithstanding Section 6.2, Sisu may immediately suspend or terminate access to the Sisu Platform in the event that Sisu reasonably determines that Customer has violated the terms and conditions of this Agreement.

#### **5. Confidentiality**

Neither Party will use the Confidential Information of the other Party except as necessary for the performance of this Agreement and will not disclose such Confidential Information to any third party. Each Party will use all reasonable efforts to maintain the confidentiality of the other's Confidential Information, but in no event less than the efforts that it ordinarily uses with respect to its own proprietary information of similar importance. The foregoing obligations will not restrict the parties from disclosing Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Party receiving the Confidential Information gives reasonable notice to the Party disclosing the Confidential Information to enable them to contest the order or requirement. In addition, Sisu may disclose this Agreement to its advisors, accountants, attorneys, current and prospective investors and potential acquirers, provided that any such third parties shall execute a binding agreement to keep such information confidential or be subject to a professional obligation to maintain the confidentiality of such information.

#### **6. Term and Termination**

6.1. Term. This Agreement commences on the Effective Date and continues for the term specified in the initial Order Form or any subsequent Order Form(s) (the "Term"), unless terminated earlier as provided in this Agreement.

6.2. Termination. Either Party may terminate this Agreement: (a) if the other Party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach; or (b) upon thirty (30) days' written notice, if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

6.3. Effect of Termination. Upon expiration or termination of this Agreement: (a) Customer's right to access and use the Sisu Platform shall immediately terminate, Customer shall immediately cease all use of the Sisu Platform and return and make no further use of any Sisu Confidential Information, materials, or other items (and all copies thereof); and (b) Sisu shall delete any Customer Data loaded into the Sisu Platform. The rights and obligations of Sisu and Customer contained in Sections 5 (Confidentiality), 6.3 (Effect of Termination), 8 (Ownership), 10.3 (Warranty Disclaimer), 11 (Indemnification), 12 (Limitation of Liability), and 14 (General) shall survive any expiration or termination of this Agreement.

#### **7. Fees and Payment**

7.1. Fees. All fees for the Services are set forth in an Order Form. Unless otherwise agreed in an Order Form, Sisu shall invoice fees for Services upon the Effective Date. Customer shall pay fees for Services annually, in advance, unless otherwise agreed upon in writing by Sisu and Customer. Sisu shall bill to Customer reasonable expenses approved in advance, if and as incurred. Unless otherwise stated in the Agreement, all fees are non-cancellable, non-refundable, and exclusive of taxes. Customer shall be responsible for the remittance of taxes, if and as applicable. Customer shall pay all invoices within thirty (30) days of date of invoice.

Payments due to Sisu under this Agreement must be made in U.S. dollars by check, wire transfer of immediately available funds to an account designated by Sisu or such other payment method mutually agreed by the Parties. Overdue payments shall be subject to a late fee of 1% per month, or the maximum amount permissible by law.

7.2. **Suspension of Services.** In addition to any other remedy available at law or in equity, Sisu reserves the right to suspend and/or terminate the Services in the event that payment is more than thirty (30) days past due. Sisu shall notify Customer of its intent to suspend or terminate Services at least seven (7) days prior to suspending or terminating the Services.

## **8. Ownership**

8.1. **Sisu Ownership.** The Sisu Confidential Information, the Sisu Platform, Anonymized Data, Feedback, any Sisu documentation (and all copies thereof), and all Intellectual Property Rights therein or relating thereto, are and shall remain the exclusive property of Sisu or its licensors. All rights not expressly granted by Sisu are hereby reserved.

8.2. **Customer Ownership.** The Customer Confidential Information and the Customer Data are and shall remain the exclusive property of Customer.

## **9. Support.**

Sisu will provide Customer with the appropriate Support for the Sisu Platform in accordance with Customer's election as set forth in the applicable Order Form.

## **10. Warranty and Disclaimer**

10.1. **By Both Parties.** Each Party represents and warrants to the other that: (i) it is an entity that is duly organized and validly existing under the laws of the jurisdiction in which it is established; (ii) it has full corporate power and authority, and has obtained all corporate approvals, permissions and consents necessary, to enter into this Agreement and to perform its obligations hereunder; (iii) this Agreement is legally binding upon it and enforceable in accordance with its terms; and (iv) the execution, delivery and performance of this Agreement does not and will not conflict with any agreement, instrument, judgment or understanding, oral or written, to which it is a party or by which it may be bound.

10.2. **By Sisu.** Sisu warrants that: (a) any Professional Services will be performed in a professional and workmanlike manner consistent with applicable industry standards; (b) the Sisu Platform shall substantially conform to the Sisu documentation for the Sisu Platform; and (c) the Sisu Platform will not infringe upon or misappropriate a third party's Intellectual Property Rights. Customer's exclusive remedy, and Sisu's sole liability, for any alleged breach of the warranties in Sections 10.2(a) and 10.2(b), is for Sisu to reperform and/or replace, as applicable, any Services that do not conform to these warranties at no additional cost to Customer upon prompt notice of any alleged breach of this warranty from Customer. This warranty will be in effect for a period of thirty (30) days from the completion of any Professional Services. Customer's exclusive remedy, and Sisu's sole liability for any alleged breach of Section 10.2(c) is set forth in Section 11.1.

10.3. **Disclaimer.** EXCEPT AS EXPRESSLY STATED ABOVE, THE SERVICES ARE PROVIDED "AS IS." TO THE MAXIMUM EXTENT PERMITTED BY LAW, SISU AND ITS LICENSORS SPECIFICALLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, OR THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE OR BUG-FREE. CUSTOMER ASSUMES SOLE RESPONSIBILITY AND LIABILITY FOR CONCLUSIONS AND RESULTS OBTAINED FROM THE USE OF THE SISU PLATFORM. SISU SHALL HAVE NO LIABILITY FOR ANY CLAIMS, LOSSES, OR DAMAGE: (A) CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION PROVIDED TO SISU BY CUSTOMER OR ANY ACTIONS TAKEN BY SISU AT CUSTOMER'S DIRECTION; OR (B) ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S USE OF ANY THIRD-PARTY PRODUCTS, SERVICES, SOFTWARE OR WEBSITES THAT ARE ACCESSED VIA LINKS FROM WITHIN THE SISU PLATFORM.

10.4. **By Customer.** Customer represents and warrants that it has all required permissions and authority to provide the Customer Data to Sisu hereunder.

## **11. Indemnification**

11.1. **By Sisu.** Sisu shall defend (or settle) indemnify and hold harmless Customer, its officers, directors and employees, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that the Sisu Platform infringes or misappropriates the Intellectual Property Rights of any third party. Sisu's obligations under this Section 11.1 are contingent upon: (a) Customer providing Sisu with prompt written notice of such claim; (b) Customer providing reasonable cooperation to Sisu, at Sisu's expense, in the defense and settlement of such claim; and (c) Sisu having sole authority to defend or settle such claim. In addition, if any Service is, or in Sisu's opinion is reasonably

likely to be, held to be infringing, then Sisu will, at its expense and option, make commercially reasonable efforts to either: (i) procure the right for Customer to continue using the Service; or (ii) replace Service with a non-infringing equivalent or modify them to make them non-infringing. If neither of the foregoing options is possible after the expense of reasonable efforts, then Sisu will cease the applicable Service and refund to Customer any fees prepaid for such infringing and unused Service. THE FOREGOING STATES THE ENTIRE OBLIGATION OF SISU AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SISU PLATFORM. Sisu shall have no liability under this Section 11.1 to the extent that any third-party claims described herein are based on use of the Sisu Platform in a manner that violates this Agreement or the instructions given to Customer by Sisu.

11.2. Indemnification by Customer. Customer shall defend (or settle), indemnify and hold harmless Sisu, its officers, directors and employees, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that: (a) a third party has suffered injury, damage or loss resulting from Customer's use of the Sisu Platform; or (b) Customer has used the Sisu Platform in breach of Section 2 of this Agreement. Customer's obligations under this Section 11.2 are contingent upon: (x) Sisu providing Customer with prompt written notice of such claim; (y) Sisu providing reasonable cooperation to Customer, at Customer expense, in the defense and settlement of such claim; and (z) Customer having sole authority to defend or settle such claim.

## **12. Limitation of Liability**

EXCEPT FOR LIABILITY ARISING FROM CUSTOMER'S BREACH OF SECTION 2 OR EITHER PARTY'S BREACH OF SECTION 5 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION:

(A) FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR COST OF SUBSTITUTE SERVICES, OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PROVISION OF THE SERVICES, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; OR

(B) FOR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF THE TOTAL FEES PAID OR PAYABLE BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM OR ACTION.

## **13. Marketing and Publicity**

Customer agrees to participate in reasonable marketing activities that promote the benefits of the Sisu Platform to other potential customers and to use of Customer's name and logo on Sisu's website. Customer agrees to participate with prior written consent in additional Sisu promotional activities, which may include case studies, quotes, and testimonials. Customer agrees that Sisu may identify Customer as a customer of Sisu.

## **14. General**

14.1. Entire Agreement. This Agreement, including any Order Forms and exhibits or addenda attached hereto, is the complete and exclusive understanding and agreement between the parties regarding its subject matter, and supersedes all proposals, understandings or communications between the parties, oral or written, regarding its subject matter.

14.2. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to or application of conflict of laws rules or principles. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in the Northern District of California and the Parties irrevocably consent to the personal jurisdiction and venue therein.

14.3. Assignment. Neither party may assign or transfer this Agreement or any rights granted hereunder without the other party's prior written consent, and any attempt by either party to do so, without such consent, will be void. Notwithstanding the foregoing, either party may assign this Agreement without the other party's prior written consent in the events of a merger, acquisition or sale of all or substantially all assets. Sisu may freely assign this Agreement. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the Parties and their respective successors and permitted assigns.

14.4. Notices. All notices or approvals required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by overnight delivery service, or by certified mail, and in each instance will be deemed given upon receipt.

14.5. Waivers. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Any waiver, modification or amendment of any

provision of this Agreement will be effective only if in writing and signed by authorized representatives of both parties.

14.6. Severability. In the event that any of the terms of this Agreement are in conflict with any law or otherwise unenforceable, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement.

14.7. Force Majeure. Neither Party will be responsible for any failure or delay in the performance of its obligations under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, which may include, without limitation, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics, epidemics, public health emergencies, governmental orders and acts (including government-imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God.

14.8. Subcontracting. Sisu may use subcontractors, and other third-party providers ("Subcontractors") in connection with the performance of its own obligations hereunder as it deems appropriate; provided that Sisu remains responsible for the performance of each such Subcontractor. Notwithstanding anything to the contrary in this Agreement, with respect to any third-party vendors including any hosting (e.g. AWS) or payment vendors (e.g. PayPal), Sisu shall use commercially reasonable efforts to guard against any damages or issues arising in connection with such vendors, but shall not be liable for the acts or omissions of such third-party vendors except to the extent that it has been finally adjudicated that the Losses are caused directly from the gross negligence or willful misconduct of Sisu.

14.9. Export Regulation. Customer will comply with all applicable federal laws, regulations and rules that prohibit or restrict the export or re-export of the Sisu Platform, or any Customer Data (including Objectives and Projects), outside the United States (the "Export Rules"), and will complete all undertakings required by Export Rules, including obtaining any necessary export license or other governmental approval.

14.10. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in this Agreement shall be construed to establish any partnership, joint venture or agency relationship between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other Party's prior written consent.

14.11. No Third-Party Beneficiaries. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity other than the Parties and their respective successors and assigns.

14.12. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.