



## Agreement for Software and Services

This Agreement for Software and Services (the "MSA") is made between Titan Cloud Software, LLC, a Tennessee limited liability company with its principal offices at 4031 Aspen Grove Dr., Ste 240, Franklin, TN 37067 ("Titan") and the contracting party identified on the Order Form ("Client"), as of the date on the Order Form. Titan and Client are hereafter collectively referred to as the "Parties." In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

**Titan Software and Services:** Titan agrees to provide Client with the services and access to software as described in detail on Order Form to the Agreement on a non-exclusive basis and on the terms described in this Agreement (collectively, the "Software and Services"). To the extent applicable, Titan hereby grants to Client during the Term of this Agreement a limited, non-exclusive, non-transferable right to remotely access through Titan's website and use the software described on Order Form only for the internal business purposes of Client at the designated locations. All rights in and to Titan's software shall remain the property of Titan. Client shall not take or allow any act or omission that would result in an infringement of, or impairment of Titan's right in and to, Titan's software or any intellectual property rights related thereto. Client, along with any affiliated third party granted access to the software on behalf of Client, shall be subject to Titan's electronic end user license agreement (EULA) and general terms of use for those users (and their employers) provided login access to the software. The general terms of use for Software and Services may be revised at any time by Titan. Upon login, Client will be required to click and accept the EULA.

Titan has the right to de-identify and aggregate any data and/or information (collectively, the "Anonymized Data") that is provided by Client, or stored using, inputted in, processed through, and/or otherwise derived from the Software and Services (collectively, the "Client Data"). Such Anonymized Data is the property of Titan and Titan may use it for any lawful business purpose, which may include without limitation for the purpose of product improvement (in particular, product features and functionality, workflows and user interfaces), development of new Titan products and services, improving resource allocation and support, internal demand planning, training and developing machine learning algorithms, improving product performance, verification of security and data integrity identification of industry trends and developments, creation of indices and anonymous benchmarking.

Titan may provide Beta Services or access to functional features at no charge. Client may choose to utilize such Beta services at their sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not fully supported, and may be subject to additional terms. Beta Services are not considered "Services" under this Agreement, however, all restrictions, Titan reservation of rights and Client obligations concerning the Services, and use of any related Non Titan Cloud Applications and Content, shall apply equally to Client use of Beta Services. Unless otherwise outlined in a separate scope of work, any Beta Services trial period will expire upon the earlier of 6 months from the trial start date or the date that a version of the Beta Services becomes generally available. Titan may discontinue or suspend Beta Services at any time and will have no liability for any harm or damage arising out of or in connection with a Beta Service. Any data Client provides through the Beta Services and any customizations made to the services by or for the Client during the Beta Service agreement period may permanently deleted unless otherwise supported through a continued paid Service agreement, subscription, or upgraded services before the end of trial period. Notwithstanding section outline warranties, support, and disclaimers, during the Beta Service period the services and features are provided "as-is" without any warranty.

**Client Obligations:** Titan requires the engagement and cooperation of Client with regard to the implementation of the Software and Services. In addition to compliance with the terms of this Agreement, Client will upon reasonable request provide Titan with any and all information pertaining to Client assets and operations as needed by Titan, including but not limited to access to personnel, sites, data, paper and electronic files and any other information required to implement the Software and Services. Client will complete needed hands-on training required to use Software and Services. If any other specific Client obligations are required of Client, those obligations will be contained in separate Addendums to this Agreement.

**Confidentiality:** Titan and Client acknowledge that each may reveal to each other proprietary or other confidential information, including, but not limited to information relating to data, assets, operations, customers, business plans, technical information, the Software and Services, the terms of this Agreement and the pricing of Software and Services during the course of this Agreement (collectively, "Confidential Information"). The receiving party will safeguard the confidentiality of the Confidential Information of the disclosing party, including at least those safeguards taken to protect its own confidential information and those that the disclosing party each may reasonably request in writing from time to time. It is understood and agreed that money damages would not be a sufficient remedy for any breach of this Agreement by the receiving party and that the disclosing party shall be entitled to equitable relief, including injunction (without having to post a bond) and specific performance, as remedies for any such breach. Confidential Information does not include information that (a) was in the public

domain at the time of disclosure, (b) was disclosed to the receiving party by a third party without confidentiality obligations to either party, (c) is required to be disclosed by official process, order or legal demand such that the disclosing party has given non-disclosing party adequate notice to oppose the disclosure, and (d) is information independently developed. Any Confidential Information in the possession of the receiving party will be returned upon request of the disclosing party. This provision shall survive the termination of this Agreement.

**Data Retention:** Subject to the terms of this Agreement, Client can access Client Data at any time during the Term. Client may export and retrieve Client Data in a standard format. Export and retrieval may be subject to technical limitations, in which Agreement for Software and Services case Titan and Client will find a reasonable method to allow Client access to Client Data. Before the Term expires, Client may use Titan's export tools (as available) to perform a final export of Client Data from the Software and Services, which shall constitute a return of Client Data to Client. At the end of the Term, Client must request within 90 days for Titan to delete Client Data from any and all servers hosting the Software and Services, which Titan may so remove within a reasonable time period (not to exceed 6 months) after the end of the Term, except to the extent otherwise required by applicable law.

**Pricing and Payment for Software and Services:** Fees charged for the Software and Services for the Original Term and for each Renewal Term shall be earned in full at the start of each such Term based on the number of sites listed in the addendum, and are payable in installments, all as further described in the Addendum(s) to this Agreement. Titan will invoice periodically to Client in advance of access to the Software and Services, and/or as more specifically described in Addendum(s). Unless Client has obtained credit approval from Titan, timely payment for Software and Services will be required in advance of access to the Software and Services. For Clients that have obtained credit from Titan, payment is due in accordance with the terms set forth on the Order Form. Payments made by methods other than what is set forth by the Order Form are subject to penalty. Any payments received by Titan that are past the due date are subject to financing fee of 1.5% per month or the maximum rate allowed by law, whichever is lower. Client is responsible for all sales, use or VAT taxes.

**No Warranties; Limitation of Liability:** TITAN DISCLAIMS ANY AND ALL WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, INCLUDING WITHOUT LIMITATION ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS OF PURPOSE. CLIENT REMAINS FULLY RESPONSIBLE FOR REGULATORY COMPLIANCE OF ITS TASKS. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT TO THE CONTRARY, (A) IN NO EVENT WILL TITAN BE LIABLE TO CLIENT OR ANY OTHER PARTY FOR ANY REASON WHATSOEVER, WHETHER IN CONTRACT OR TORT OR OTHERWISE, FOR ANY FORM OF INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, DAMAGE OR EXPENSE (INCLUDING, BUT NOT LIMITED TO, LOSS DUE TO INABILITY TO OBTAIN DATA, LOSS OF BUSINESS OR LOSS OF PROFITS) IN CONNECTION WITH OR ARISING OUT OF THE SERVICES PROVIDED UNDER THIS AGREEMENT OR THE LICENSING OR USE OF ANY SOFTWARE RELATED THERETO, EVEN IF CLIENT OR OTHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF, AND (B) TITAN'S LIABILITY FOR ALL DAMAGES OF ANY KIND SHALL NOT EXCEED IN THE AGGREGATE THE TOTAL FEES SET FORTH IN THIS AGREEMENT PAID BY THE CLIENT IN THE THREE-MONTH PERIOD PRECEDING THE ACTION GIVING RISE TO THE CLAIM.

**Mutual Indemnification:** Subject to the terms of this Agreement, the Parties agree to defend, indemnify and hold harmless each other, their respective employees, officers, directors, representatives and agents from and against any and all third-party claims, liabilities, damages and expenses, including actual legal costs, arising from or in connection with the indemnifying party's gross negligence or intentional misconduct in the performance of its obligations under this Agreement, except to the extent caused by the gross negligence or willful misconduct of indemnified party. The indemnified party shall provide prompt written notice of any such claim to the indemnifying party. The indemnifying party shall have the right to control the defense and monetary settlement of any such indemnified claim. This indemnity shall survive the termination of this Agreement for a period of one (1) year.

**Insurance; Force Majeure:** Titan, at its expense, will maintain comprehensive general liability insurance covering personal injury and property damage with a combined single limit of one million dollars (\$1,000,000). Neither party shall be responsible for failure to perform (except payment obligations) due to a force majeure event or other condition beyond the impaired party's reasonable control.

**Relationship:** Titan and all persons employed by Titan for the purpose of fulfilling the obligations of this Agreement are and shall remain the employees of Titan; it being expressly understood that nothing in this Agreement shall be construed to create a partnership, joint venture, agency or any other relationship. This Agreement does not authorize or otherwise form the basis for either Party to be the agent or legal representative of the other Party for any purpose whatsoever.

**Entire Agreement; Amendment; Severability:** This Agreement constitutes the entire agreement of the Parties and supersedes all previous and contemporaneous agreements, representations or understandings between the Parties, both written and oral, concerning the subject matter of this Agreement. This Agreement may be



amended only in writing. If any provision of this Agreement is for any reason held invalid, ineffective, and unenforceable or contrary to public policy, the remainder of this Agreement shall be deemed severable from such provision and shall remain in full force and effect.

**Governing Law; Waiver; Notices; Assignment:** This Agreement is governed by Tennessee law without regard to any conflict of law principles. The parties agree that venue for all actions arising under this Agreement shall be the state courts located in, and the federal courts serving, Williamson County, Tennessee. Failure to enforce its rights under this Agreement shall not constitute a waiver of such rights by either party. Notices under this Agreement shall be sent to the other party (per the addresses set forth above, or as updated from time to time in writing by either party) and will be deemed delivered to the receiving party upon three (3) days after being placed in the U.S. Mail, postage pre-paid, on actual receipt upon hand delivery, or the next day upon overnight carrier. This Agreement and/or any rights hereunder cannot be assigned by Client without the express written consent of Titan. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY AGREEMENT FOR SOFTWARE AND SERVICES APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**Term, Renewal, Breach and Termination:** This Agreement shall become effective as of the date first set forth on the Order Form upon its execution by Titan and Client and shall remain in effect for the period of time set forth on the Order Form. This Agreement shall renew each year thereafter for successive twelve (12) month terms (each a "Renewal Term")(The Original Term and all Renewal Terms are collectively, the "Term"), unless either Party provides the other with at least ninety (90) days written notice prior to the end of the then current term of its intent to end the Agreement upon the expiration of the then current Term. The price increase specified on the Order Form shall occur on each anniversary of the effective date of this Agreement. This Agreement can only be terminated for cause during a continuing breach by the other party, provided, that the other party breaches any of the material terms of this Agreement and does not cure such breach(es) within thirty (30) days after notice of such breach(es). In the event the term of this Agreement expires or the Agreement is terminated for breach after a thirty (30) day opportunity to cure, Titan shall allow Client to retrieve all Client data present in the Titan Cloud platform once Client has paid in full any and all remaining amounts owed. In the event of Titan's termination of this Agreement for Client's breach, all fees for the Software or Services scheduled under this Agreement during the remainder of the then current Term shall become immediately due and payable in full. Titan is entitled to recover legal fees and litigation costs incurred in pursuing collection of outstanding fees under this Agreement.