

## MASTER SUBSCRIPTION TERMS

THESE MASTER SUBSCRIPTION TERMS GOVERN CLIENT'S PURCHASE AND USE OF PIXALATE SERVICES. BY EXECUTING A SERVICE ORDER THAT INCORPORATES THESE MASTER SUBSCRIPTION TERMS (COLLECTIVELY, SUCH SERVICE ORDER AND THESE MASTER SUBSCRIPTION TERMS SHALL BE REFERRED TO HEREIN AS THE "**AGREEMENT**"), THE INDIVIDUAL EXECUTING ON BEHALF OF CLIENT REPRESENTS THAT SHE OR HE HAS THE AUTHORITY TO BIND CLIENT, AND AGREES ON BEHALF OF THE CLIENT TO THE TERMS AND CONDITIONS OF THE AGREEMENT.

IF THE INDIVIDUAL EXECUTING THE SERVICE ORDER DOES NOT HAVE AUTHORITY TO BIND CLIENT, OR DOES NOT AGREE WITH THE TERMS AND CONDITIONS OF THE AGREEMENT, SUCH INDIVIDUAL MUST NOT EXECUTE THE SERVICE ORDER AND NEITHER CLIENT NOR ITS PERSONNEL MAY ACCESS OR USE THE SERVICES. CAPITALIZED TERMS NOT DEFINED IN THE BODY OF THE AGREEMENT WILL HAVE THE MEANINGS SET FORTH IN SECTION 22 (DEFINITIONS) OF THESE MASTER SUBSCRIPTION TERMS.

These Master Subscription Terms were last updated on and are effective as of October 22, 2024.

### 1. Subscriptions to Pixalate Services.

Pixalate, Inc. ("**Pixalate**") offers its clients rights to purchase Subscriptions to access and use the Service(s) specified on the applicable Service Order(s), in the form provided by Pixalate, and Pixalate is willing to grant the Subscription rights set forth herein, subject to and conditioned upon Client's compliance with the terms and conditions of this Agreement.

### 2. Scope of Agreement.

- 2.1. Terms and Conditions. This Agreement sets forth the terms and conditions under which Client may access and use the Service(s) specified on the applicable Service Order(s), in the form provided by Pixalate, for the applicable Fees and during the Term specified in such Service Order(s).
- 2.2. Order of Precedence. In the event of any conflict or inconsistency between the terms and conditions of these Master Subscription Terms and the terms and conditions of:
  - (a) the applicable Service Order, the terms and conditions of the applicable Service Order shall govern, and the conflicting or inconsistent provision(s) in these Master Subscription Terms will have no force or effect with respect to such Service Order; and
  - (b) the attached Exhibits, the terms and conditions of the attached Exhibits shall govern, and the conflicting or inconsistent provision(s) in these Master Subscription Terms will have no force or effect.

### 3. Services.

- 3.1. License Grant. Subject to and conditioned upon Client's compliance with the terms and conditions of the Agreement, including payment of all applicable Fees, Pixalate grants Client the applicable licenses set forth in Exhibit A hereto to access and use the Services and other Pixalate Materials

specified in the applicable Service Order.

3.2. Account Access, Credentials and Users.

3.2.1. PixaLATE will provide Client with an Account and Credentials for the applicable Service(s). Client agrees not to share its Credentials with anyone other than its Authorized Users, not to let anyone other than its Authorized Users access its Account, or not to do anything else that might jeopardize the security or confidentiality of its Account or Credentials.

3.2.2. Client agrees to notify PixaLATE promptly if:

- (a) its Credentials are lost, stolen, or disclosed to any unauthorized Third Party,
- (b) there is any unauthorized access to or use of its Account; or
- (c) it learns of any other breach of security in relation to any PixaLATE Materials. Client is solely responsible and liable for all activities that occur through the use of its Account, and all acts and omissions of users of its Account.

3.3. Proprietary Rights.

3.3.1. PixaLATE and its Third Party licensors, as applicable, own and will retain all right, title and interest in and to Intellectual Property Rights in the Service(s) and all other PixaLATE Materials and other technology used to deliver the Service(s), whether such rights are registered or unregistered, present or future, and wherever in the world those rights may exist ("**PixaLATE Rights**"). Neither PixaLATE nor its Third Party licensors, as applicable, intends to grant, and neither PixaLATE nor its Third Party licensors, as applicable, does actually grant in connection with this Agreement any license or other right that is not expressly stated in this Agreement with respect to any Intellectual Property Rights licensed by PixaLATE or such Third Party licensor, whether by implication, statute, inducement, estoppel or otherwise. Client shall not commit any act or omission, or permit or induce its Affiliates or any Third Party to commit any act or omission, inconsistent with the PixaLATE Rights.

3.3.2. All materials embodied in, or comprising, the PixaLATE Materials, including application programming and visual interfaces, graphics, images, code, applications, and text, as well as the design, structure, selection, coordination, expression, "look and feel," arrangement of such PixaLATE Materials, as well as the associated PixaLATE Marks, are owned by PixaLATE or its Third Party licensors. Title to PixaLATE Materials shall not pass from PixaLATE to Client, and, as between Client and PixaLATE, PixaLATE Materials shall at all times remain the sole and exclusive property of PixaLATE.

3.3.3. Other than as set forth expressly herein, there are no other rights or licenses granted in connection with the PixaLATE Materials. All PixaLATE Rights are expressly reserved by PixaLATE and its Third Party licensors, as applicable.

3.4. Restrictions. Client will not, and will not permit or induce its Affiliates or any Third Party to:

- (a) access or use any PixaLATE Materials in a manner not expressly authorized under this Agreement;
- (b) attempt to breach, disable or circumvent any security mechanisms used by or on PixaLATE Materials or otherwise attempt to gain unauthorized access to any portion or feature of any

Pixalate Materials by any means, including hacking or password “mining;”

- (c) decompile, reverse engineer, disassemble or otherwise attempt to reconstruct or discover the source code, underlying ideas or algorithms of any Pixalate Materials;
- (d) copy, alter, translate, adapt in any way, or otherwise make Modifications to, Pixalate Materials without first obtaining Pixalate’s prior express written consent;
- (e) offer, rent, lend, lease, network, loan, pledge, encumber, sublicense, sell, distribute, disclose, assign or otherwise transfer rights in or to any Pixalate Materials;
- (f) fail to cooperate with Pixalate regarding – or otherwise cause unreasonable delay in connection with – applicable Service(s) integration(s) and/or other go live requirements;
- (g) use any Pixalate Materials in commercial timesharing, rental or other sharing arrangements;
- (h) use any “deep-link,” “page-scrape,” “robot,” “spider” or other automatic device, program, algorithm or methodology, or any comparable manual process, to access, acquire, copy, or monitor any portion of any Pixalate Materials;
- (i) use any device, software or routine to interrupt or interfere with, or attempt to interrupt or interfere with, the proper operation and working of any Pixalate Materials, or with any Third Party’s use of any Pixalate Materials;
- (j) use or attempt to use any Pixalate Materials in a way that is intended to avoid incurring Fees or exceed usage limits;
- (k) track or seek to trace, derive any Personal Data about, or build a profile about, any consumer or household;
- (l) forge headers or otherwise manipulate identifiers in order to disguise Client’s identity, or the origin of any message or other communication that Client sends to Pixalate, in connection with any Pixalate Materials;
- (m) pretend that Client is, or represents, any Third Party;
- (n) use any Pixalate Materials for any illegal purpose, for soliciting the performance of any illegal activity, or as otherwise prohibited by this Agreement or Applicable Laws;
- (o) send, upload or transmit Malicious Content to, through, or in connection with any Pixalate Materials; or
- (p) fail to notify Pixalate promptly if Client becomes aware that any Pixalate Materials are being used by Client, its Affiliates or any Third Party for any unauthorized purpose, or in violation of Applicable Laws.

#### **4. Client Responsibilities, Client Data, and Feedback.**

4.1. Client Responsibilities. As between Client and Pixalate, Client is responsible for:

- (a) obtaining, provisioning, configuring, securing, maintaining and paying for all computer hardware, software, and communications equipment reasonably required to access and

use PixaLte Materials governed by this Agreement;

- (b) ensuring that its Personnel abide by all Applicable Laws, including those related to Client's and its Authorized Users' access to and use of such PixaLte Materials;
- (c) ensuring that the websites, applications, platforms and other online services of Client and of any Third Party under Client's control or operating on Client's behalf are compliant with all Applicable Laws, including Applicable Laws governing the privacy of children's Personal Data (e.g., COPPA, GDPR); and
- (d) Client Data.

#### 4.2. Client Data.

4.2.1. As between Client and PixaLte, Client retains all right (other than the limited license rights expressly granted herein), title and interest in, and is responsible for the accuracy and quality of all Client Data. Client is also responsible for ensuring that its collection, use, processing, and disclosure of Client Data complies with all Applicable Laws.

4.2.2. Client hereby:

- (a) agrees that PixaLte may use Client Data for purposes of providing the Services, including to provide any associated Reports to Client and its Authorized Users;
- (b) grants PixaLte and its Third Party service providers the limited right and license, during the applicable Term, to use, reproduce, store, transmit, modify, adapt, reformat, display and create derivative works of Client Data solely to provide the applicable Service(s) to Client and its Authorized Users, and for PixaLte's legitimate internal business purposes, including maintaining and improving Services and other PixaLte Materials; and
- (c) authorizes PixaLte, in its reasonable discretion, to hash, encrypt, pseudonymize, de-identify, desensitize, delete, and/or anonymize Client Data where PixaLte believes in good faith that such actions are required by Applicable Laws (e.g., COPPA; GDPR).

4.3. Feedback. Client hereby grants PixaLte a non-exclusive, royalty-free, worldwide, transferable, sub-licensable (through multiple tiers of sub-licensees), irrevocable, perpetual license to Feedback received pursuant to this Agreement, including the right to use such Feedback in connection with, or incorporate it into, PixaLte Materials.

### 5. **Term, Termination, and Suspension.**

#### 5.1. Term.

5.1.1. This Agreement shall commence on the first day of the Trial Period or Initial Period, as applicable, and shall continue for any Trial Period, and thereafter for the Initial Period and successive renewal periods of one (1) year, or any other period of time if specified expressly in the Service Order (each a "**Renewal Period**"), unless earlier terminated in accordance with this Agreement.

5.1.2. Either Party shall be entitled to terminate this Agreement:

- (a) during the Trial Period, if applicable, provided it gives Legal Notice of such termination on

or before the fourteenth (14<sup>th</sup>) day prior to and inclusive of the last date of the Trial Period, in which case this Agreement will terminate at the end of the Trial Period; or

- (b) during the Initial Period or a Renewal Period, provided it gives Legal Notice of such termination on or before the thirtieth (30<sup>th</sup>) day prior to and inclusive of the last date of the Initial Period or applicable Renewal Period, in which case this Agreement will terminate at the end of the Initial Period or applicable Renewal Period.

5.1.3. Notwithstanding the foregoing, the effectiveness of a Client's Legal Notice to terminate this Agreement during the Trial Period will be subject to the Client's engagement with and use of the Service(s) as outlined in the applicable Service Order.

## 5.2. Termination.

5.2.1. Either Party may, but is under no obligation to, terminate this Agreement immediately by giving Legal Notice to the other Party in the event that:

- (a) the other Party materially breaches this Agreement and does not remedy such breach within thirty (30) calendar days following the breaching Party's receipt of a Legal Notice requiring remedy of such breach; or
- (b) an order is made or resolution passed for the other Party to be wound up (other than for the purposes of a business reorganization or other solvent restructuring); the other Party is otherwise an insolvent entity or unable to pay its debts; the other Party makes an assignment for the benefit of creditors or an arrangement pursuant to any insolvency law; the other Party discontinues or dissolves its business; or a trustee, receiver, examiner or administrator is appointed in respect of the insolvency of the other Party.

5.2.2. In addition, pursuant to MRC requirements, Pixalate may, but is under no obligation to, terminate this Agreement immediately if Client does not, in Pixalate's reasonable determination, make a good faith effort to use the information provided by the applicable Service(s) in order to lower IVT on Client's site(s), app(s) and/or platform(s), as applicable, provided that Pixalate transmits Email Notice to Client of Pixalate's intent to terminate this Agreement for such reasons and Client does not take material steps to remedy such non-use (as determined by Pixalate in its reasonable discretion) within ten (10) calendar days of the date on which Client receives Email Notice from Pixalate of such violation.

## 5.3. Effects of Termination.

5.3.1. Upon the termination of this Agreement for any reason:

- (a) Client shall cease access to and use of Pixalate Materials immediately;
- (b) Pixalate's obligations to provide access to and use of Pixalate Materials shall cease immediately; and
- (c) Client shall pay to Pixalate the full amount of any outstanding Fees due and payable hereunder within five (5) calendar days following such termination.

5.3.2. For avoidance of doubt, no refunds will be due to Client in the event of a termination of this Agreement unless expressly stated otherwise in this Agreement.

5.3.3. Notwithstanding the foregoing, the following Master Subscription Terms shall survive the termination of this Agreement, together with any other terms which by their nature are reasonably intended to survive such termination: Sections 2.2 (Order of Precedence), 3.2 (Account Access, Credentials and Users) (last sentence only), 3.3.1 – 3.3.3 (Proprietary Rights), 3.4 (Restrictions), 4 (Client Responsibilities; Client Data; and Feedback), 5.3 (Effects of Termination), 6 (Fees, solely until all Fees and/or Taxes due and payable are paid), 7 (Representations and Warranties; and Disclaimers of Warranties), 8 (Indemnification), 9 (Limitation of Liability), 10 (Confidentiality and Publicity), 12 (Export), 13 (Governing Law and Jurisdiction), 14 (Notices), 15 (Force Majeure), 16 (Permitted Affiliates), 17 (Assignment), 18 (Amendments), 19 (Waiver and Severability), 20 (Independent Contractors), 21 (No Third Party Beneficiaries), 22 (Definitions and Interpretation), 23 (Entire Agreement), and Exhibit A (solely with respect to applicable provisions regarding termination, post-termination rights and obligations, and additional representations and warranties).

#### 5.4. Suspension.

5.4.1. Picalate Materials may be unavailable at certain times, including during Force Majeure Events. Picalate will use commercially reasonable efforts to provide information regarding any such interruptions and the restoration of use of, and access to, Picalate Materials following any such interruption, as per the service levels set forth in Exhibit B hereto.

5.4.2. Picalate reserves the right to suspend or terminate Client's access to Picalate Materials if Picalate reasonably determines that:

- (a) there is a threat or attack on such Picalate Materials (including a denial of service attack) or other event that may create a risk to Picalate Materials, Picalate, Client, or any Third Party;
- (b) Client's or its Personnel's use of Picalate Materials disrupts or poses a security risk to Picalate Materials, Picalate or any Third Party, may harm Picalate's systems, or may subject Picalate or any Third Party to liability;
- (c) Client or any of its Authorized Users are using Picalate Materials for fraudulent or illegal activities;
- (d) Client or any of its Authorized Users are using Picalate Materials in breach of this Agreement, including any breach of Section 3.4 (Restrictions) of these Master Subscription Terms; or
- (e) Client is in default of its Fee payment obligations hereunder, (collectively, "**Service Suspensions**").

5.4.3. Picalate will make commercially reasonable efforts, circumstances permitting, to provide Email Notice to Client of any Service Suspension, and to provide updates regarding resumption of Client's access to Picalate Materials following any Service Suspension. Notwithstanding the foregoing, Picalate may immediately effectuate a Service Suspension in accordance with this Section 5.4; and, for avoidance of doubt, any such Service Suspension shall not relieve Client of its obligation to pay all Fees that would otherwise be applicable to such period of Service Suspension.

## **6. Fees and Payment Terms.**

### **6.1. Fees.**

6.1.1. Unless otherwise specified in the applicable Service Order, all Fees are:

- (a) payable in United States dollars, and
- (b) exclusive of all Taxes now or hereafter levied against the provision of access to or use of Pixalate Materials.

6.1.2. For Clients with Self-Service Fraud API Subscriptions that do not have any other then-current Subscriptions, Fees shall be paid utilizing Pixalate's Third Party credit card processor via recurring calendar-monthly payments.

6.1.3. Taxes will be invoiced and collected by Pixalate if and to the extent required by any applicable taxing jurisdiction and Client will bear ultimate financial responsibility for the payment of any such Taxes.

6.1.4. Pixalate will invoice Client as specified in a Service Order and Client shall pay all invoices within fifteen (15) days of receipt. Without limiting any other remedies, payments not reasonably in dispute that are received later than fifteen (15) days after the invoice due date will accrue late charges at a rate of one and one quarter percent (1.25%) per month, until such amount is paid; and, under such circumstances, Client will also be liable for all collection agency fees and reasonable attorneys' fees and costs payable by Pixalate or its Affiliates in connection with enforcing Client's payment obligations, initiating any legal and/or arbitration proceedings, and/or enforcing any orders, awards, or judgments for the recovery of monies determined to be owed to Pixalate.

6.1.5. Except as otherwise mutually agreed upon by the Parties in writing or as stated expressly herein:

- (a) each Party is responsible for its own expenses under this Agreement, and
- (b) all Fees payable under this Agreement are non-refundable.

6.2. Changes to Fees. Pixalate shall implement a 10% annual increase in Fees payable by Client; provided however, that such change will not take effect for Client until the start of the next Renewal Period(s). Pixalate may further change its Fees and payment terms at its discretion and will provide prior Email Notice to Client of any changes to applicable Fees.

### **6.3. Failures to Pay Fees when Due.**

6.3.1. Notwithstanding anything to the contrary in this Agreement, Pixalate shall have the right to initiate litigation in a court of competent jurisdiction to recover any and all Fees that become more than thirty (30) days overdue under this Agreement.

6.3.2. The Parties hereby agree to waive any and all rights to a jury trial for any Fee-recovery litigation under this Section 6.3.

6.3.3. Each Party will bear its own legal fees and costs in any Fee-recovery litigation pursuant to

this Section 6.3; provided, however, that the judge in any litigation pursuant to this Section 6.3 shall award the prevailing Party its reasonable attorney's fees and costs.

## **7. Representations and Warranties; and Disclaimers of Warranties.**

### **7.1. Representations and Warranties.**

7.1.1. Each Party represents and warrants to the other Party that it has:

- (a) the full power and authority to enter into, and carry out its obligations under, this Agreement;
- (b) complied, is currently in compliance, and will in the future comply, with all Applicable Laws in connection with the execution, delivery and performance of this Agreement, including Applicable Laws relating to data protection and privacy; and
- (c) all rights, permissions and consents reasonably required to grant the other Party the rights granted herein.

7.1.2. Client represents and warrants to Pixalate that:

- (a) it will not engage in any illegal or fraudulent business practices in connection with its access to and use of Pixalate Materials;
- (b) this Agreement does not conflict with or violate any other agreement that Client may have with any Third Party;
- (c) it will make commercially reasonable efforts to ensure that Client Data provided hereunder will be kept true, accurate and complete, in all material respects;
- (d) it is not engaged in, and will not in the future engage in, activity designed to produce IVT;
- (e) it is not in breach of, and will not breach, Section 3.4 (Restrictions) of these Master Subscription Terms; and
- (f) it will use commercially reasonable efforts to prevent any Malicious Content from being introduced into Pixalate Materials.

### **7.2. DISCLAIMERS OF WARRANTIES.**

7.2.1. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT:

- (a) PIXALATE MATERIALS ARE PROVIDED TO CLIENT ON AN "AS IS," "WHERE IS," AND "AS AVAILABLE" BASIS, WITH ANY AND ALL FAULTS, AND WITHOUT ANY WARRANTY OF ANY KIND TO CLIENT OR ANY THIRD PARTY; AND
- (b) PIXALATE, ON BEHALF OF ITSELF AND ITS SUPPLIERS AND LICENSORS, EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ARISING FROM COURSE OF DEALING,



## PERFORMANCE OR USAGE.

7.2.2. PIXALATE DOES NOT WARRANT THAT PIXALATE MATERIALS WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE OPERATION OF PIXALATE MATERIALS WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN PIXALATE MATERIALS WILL BE CORRECTED.

7.2.3. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT:

- (a) THE USE OF PIXALATE MATERIALS AND ALL RESULTS OF SUCH USE ARE SOLELY AT CLIENT'S OWN RISK; AND
- (b) IVT, VIEWABILITY AND OTHER DESIGNATIONS THAT MAY BE PRESENT IN PIXALATE MATERIALS REFLECT PIXALATE'S OPINIONS WITH RESPECT TO FACTORS THAT PIXALATE BELIEVES MAY BE USEFUL TO ITS CLIENTS, AND, WHILE GROUNDED IN PIXALATE'S PROPRIETARY TECHNOLOGY AND ANALYTICS, THESE DESIGNATIONS ARE MERELY PIXALATE'S OPINIONS (I.E., THEY ARE NEITHER FACTS NOR GUARANTEES)
- (c) OPINIONS OR ASSESSMENTS PROVIDED BY PIXALATE, INCLUDING ASSESSMENTS OF COPPA RISK OR POTENTIAL CHILD DIRECTEDNESS UNDER COPPA, ARE NOT LEGAL CONCLUSIONS AND DO NOT IMPLY A LAW VIOLATION OR SUFFICIENCY OF COMPLIANCE WITH APPLICABLE LAWS.
- (d) PIXALATE IS NOT A COPPA SAFE HARBOR APPROVED BY THE U.S. FEDERAL TRADE COMMISSION (FTC), AND, THEREFORE, USE OF PIXALATE'S SERVICES OR ASSESSMENTS DOES NOT SATISFY CLIENT'S COMPLIANCE OBLIGATIONS UNDER APPLICABLE LAWS.

7.2.4. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PIXALATE OR ITS AUTHORIZED REPRESENTATIVES SHALL CREATE A REPRESENTATION OR WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE WARRANTIES PROVIDED HEREIN.

7.2.5. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF IMPLIED WARRANTIES OR CONDITIONS, OR ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO CLIENT. IN SUCH AN EVENT, PIXALATE'S WARRANTIES AND CONDITIONS WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAWS IN SUCH JURISDICTION.

## 8. Indemnification.

- 8.1. By Client. Client shall defend PixaIate, its Affiliates and its and their respective directors, officers and employees (collectively, the "**PixaIate Indemnitees**") against any Third Party claims, actions, demands, proceedings and suits against any PixaIate Indemnitee ("**PixaIate Indemnitee Claims**"), and indemnify the PixaIate Indemnitees for all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by such PixaIate Indemnitees arising out of any PixaIate Indemnitee Claims, to the extent such PixaIate Indemnitee Claims allege: (i) that Client Data or its use by PixaIate in

the provision of Services and other Pixalate Materials hereunder infringes, violates or misappropriates any Third Party's Intellectual Property Rights, privacy rights, rights of publicity or other similar rights; (ii) Client's violation of Applicable Laws in connection with this Agreement; (iii) Client's or Client's Personnel's gross negligence, willful misconduct, fraud or misrepresentation; or (iv) Client's breach of any representation or warranty made herein. Pixalate will use reasonable commercial efforts to:

- (a) promptly notify Client in writing of the Pixalate Indemnitee Claim;
- (b) grant Client sole control of the defense and settlement of the Pixalate Indemnitee Claim; and
- (c) provide Client, at Client's reasonable cost and expense, with all assistance, information and authority reasonably required for the defense and settlement of the Pixalate Indemnitee Claim.

Client will not enter into a settlement of any Pixalate Indemnitee Claim that would result in liability to, or adversely affect the rights of, Pixalate without Pixalate's prior written consent, which Pixalate shall not delay or withhold unreasonably.

- 8.2. By Pixalate. Pixalate shall defend Client and its directors, officers and employees (collectively, the "**Client Indemnitees**") against any Third Party claims, actions, demands, proceedings and suits against any Client Indemnitee ("**Client Indemnitee Claims**") and indemnify Client Indemnitees for all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by such Client Indemnitees arising out of any Client Indemnitee Claims, to the extent such Client Indemnitee Claims allege that Pixalate Materials infringe or misappropriate any U.S. patent issued prior to the Effective Date, copyright, or trade secret. Client will:

- (a) promptly notify Pixalate in writing of the Client Indemnitee Claim;
- (b) grant Pixalate sole control of the defense and settlement of the Client Indemnitee Claim; and
- (c) provide Pixalate, at Pixalate's reasonable cost and expense, with all assistance, information and authority reasonably required for the defense and settlement of the Client Indemnitee Claim.

Pixalate will not enter into a settlement of any Client Indemnitee Claim that would result in liability to, or adversely affect the rights of, Client without Client's prior written consent, which Client shall not delay or withhold unreasonably.

- 8.3. Exceptions. Pixalate's obligations in Section 8.2 (By Pixalate) of these Master Subscription Terms do not apply to any Client Indemnitee Claim arising from use of Pixalate Materials by Client:

- (a) beyond the scope of licenses granted in this Agreement;
- (b) in breach of Section 3.4 (Restrictions) of these Master Subscription Terms;
- (c) with Modifications made by or for Client or any Authorized User (without Pixalate's prior express written consent);

- (d) after release of a superseding, non-infringing version by Pixalate or any other mitigation remedies provided by Pixalate pursuant to Section 8.4 (Mitigation) below; or
- (e) with any technology, software or hardware not supplied by Pixalate, if such alleged infringement would be avoided by use of Pixalate Materials without such technology, software or hardware.

#### 8.4. Mitigation.

8.4.1. If a Client Indemnatee Claim occurs that is subject to Section 8.2 (By Pixalate) and not subject to the exceptions in Section 8.3 (Exceptions), or if Pixalate determines that a Client Indemnatee Claim is likely to occur, Pixalate may, in its sole discretion:

- (a) procure for Client the right or license to continue to use Pixalate Materials, free of the Client Indemnatee Claim; or
- (b) replace or modify the affected Pixalate Materials to make them non-infringing, provided that the replacement Pixalate Materials substantially conform to Pixalate's then-current specification for such Pixalate Materials.

8.4.2. If these remedies are not reasonably available in Pixalate's opinion, Pixalate may elect to terminate this Agreement, or the applicable portion thereof, in which case Client shall be entitled to a *pro rata* refund of applicable Fees already prepaid to Pixalate for the then-current Initial Period or Renewal Period, as applicable.

#### 8.5. Exclusive Remedy. Sections 8.2 through 8.4 of these Master Subscription Terms state the sole and exclusive obligations and liability of Pixalate for any Third Party Intellectual Property Rights infringement and are in lieu of any warranties of non-infringement.

### 9. **Limitation of Liability.**

9.1. EXCLUSIONS OF LIABILITY. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, OR BREACHES OF SECTIONS 3 OR 10 OF THESE MASTER SUBSCRIPTION TERMS, OR CLIENT'S LIABILITY TO PAY ALL FEES DUE UNDER THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE HEREUNDER, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR RELIANCE DAMAGES, INCLUDING ANY COSTS OF PROCUREMENT OF SUBSTITUTE DELIVERABLES OR OTHER PRODUCTS OR SERVICES AND ANY LOST DATA, LOSS OR INTERRUPTION OF BUSINESS, LOSS OF USE AND LOST PROFITS OR GOODWILL, ARISING FROM OR RELATING TO THIS AGREEMENT OR PICALATE MATERIALS, REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED AND EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF, OR COULD REASONABLY HAVE PREVENTED, SUCH DAMAGES. THIS EXCLUSION INCLUDES ANY LIABILITY THAT MAY ARISE OUT OF THIRD PARTY CLAIMS. FURTHERMORE, NEITHER PARTY SHALL BE RESPONSIBLE FOR ANY DAMAGES ASSOCIATED WITH THE FRAUD, WILLFUL MISCONDUCT OR OTHER INTENTIONAL ILLEGAL ACTIVITY OF THE OTHER PARTY.

9.2. LIMITATION OF DAMAGES. EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, OR BREACHES OF SECTIONS 3 OR 10 OF THESE MASTER SUBSCRIPTION TERMS, OR CLIENT'S LIABILITY TO PAY ALL FEES DUE UNDER THIS AGREEMENT, EACH PARTY'S TOTAL CUMULATIVE LIABILITY (WHETHER ARISING IN CONTRACT, TORT (INCLUDING

NEGLIGENCE) OR OTHERWISE) ARISING FROM OR RELATED TO THIS AGREEMENT WILL NOT EXCEED AT ANY POINT IN TIME THE AMOUNT OF FEES PAID OR PAYABLE BY CLIENT TO PIXALATE IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE FOREGOING LIMITATION IN THIS SECTION IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT, AND THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THAT LIMIT. CLIENT AGREES NOT TO ASSERT ANY CLAIMS AGAINST PIXALATE'S SUPPLIERS AND LICENSORS UNDER, OR AS A RESULT OF, THIS AGREEMENT.

- 9.3. JURISDICTIONAL ISSUES. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY. IN SUCH AN EVENT, LIABILITY FOR SUCH DAMAGES UNDER THIS AGREEMENT WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAWS IN SUCH JURISDICTION.
- 9.4. ALLOCATION OF RISK. THE SECTIONS OF THIS AGREEMENT THAT ADDRESS INDEMNIFICATION, LIMITATIONS OF DAMAGES AND EXCLUSIONS OF LIABILITY, AND THE DISCLAIMER OF WARRANTIES, ALLOCATE THE RISK BETWEEN THE PARTIES. THIS ALLOCATION OF RISK IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH PARTY ACKNOWLEDGES THAT THESE LIMITATIONS AND EXCLUSIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## **10. Confidentiality and Publicity.**

- 10.1. Confidential Information. Confidential Information may include services, pricing information, computer programs, source code, names and expertise of employees and consultants, know-how, and other technical, business, financial and product or service development information, but does not include any information that the Receiving Party can demonstrate by its written records:
- (a) was rightfully known to it without obligation of confidentiality prior to its disclosure hereunder by the Disclosing Party;
  - (b) is or becomes publicly known through no wrongful act of the Receiving Party;
  - (c) has been rightfully received without obligation of confidentiality from a Third Party authorized to make such a disclosure; or
  - (d) is independently developed by the Receiving Party without reference to confidential information disclosed hereunder. Pixalate's Confidential Information includes Pixalate Materials, and any other aspect of the business or operations of Pixalate, including any information or materials relating to the operations, clients, Personnel, distributors, or marketing plans of Pixalate.
- 10.2. Obligation of Confidentiality.
- 10.2.1. Neither Party will use any Confidential Information of the other Party except as expressly permitted by this Agreement or as expressly authorized in writing by the Disclosing Party.
- 10.2.2. The Receiving Party shall use the same degree of care to protect the Disclosing Party's

Confidential Information as it uses to protect its own Confidential Information of like nature, but in no circumstances less than a reasonable standard of care.

10.2.3. The Receiving Party may not disclose the Disclosing Party's Confidential Information to any person or entity other than to those of its Personnel who:

- (a) are subject to a written agreement with the Receiving Party that includes use and confidentiality restrictions that are at least as protective as those set forth in this Agreement, and
- (b) need access to such Confidential Information solely for the purpose of fulfilling the Receiving Party's obligations or exercising the Receiving Party's rights hereunder. Receiving Party will remain responsible for any noncompliance by such Personnel.

10.2.4. The foregoing obligations will not restrict the Receiving Party from disclosing Confidential Information of the Disclosing Party:

- (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Receiving Party required to make such a disclosure gives reasonable notice to the Disclosing Party prior to such disclosure (if reasonably permissible under Applicable Laws); and
- (b) on a confidential basis to its legal and financial advisors.

10.2.5. With respect to any Confidential Information disclosed after the Effective Date, the terms of this Agreement supersede any previous non-disclosure agreements or any other preliminary representations or understandings that have been entered into by the Parties. Pixalate may disclose the existence and terms of this Agreement to Third Parties in connection with any merger or sale of all or substantially all of Pixalate's assets.

### 10.3. Publicity.

10.3.1. Client agrees it will not, without prior written approval of Pixalate in each instance:

- (a) make any use of Pixalate Marks, including in advertising, publicity, promotional materials or otherwise;
- (b) make any public statements or issue press releases or similar announcements about this Agreement or Pixalate Materials; or
- (c) represent, directly or indirectly, that any product or any service provided by Client has been used, approved or endorsed by Pixalate.

10.3.2. Pixalate acknowledges that no rights or licenses are being granted to Pixalate with respect to any Client Marks, except that Pixalate may:

- (a) use Client Marks in connection with the provision of Services to Client; and
- (b) include Client Marks on its client lists (in equal prominence to other clients).

## **11. Data Protection and Security.**

11.1. Data Collection. Client acknowledges and agrees that in order to deliver Analytics Services under any Service Order, Picalate may use tracking technologies, including JavaScript snippets and tracking pixels which Client must embed in applicable digital advertising traffic, in connection with Picalate's Software and Analytics Services in order to collect and receive certain data (whether or not such data includes Personal Data) about end user systems and devices.

### **11.2. Privacy Policy.**

11.2.1. Client agrees that it is solely responsible and liable for providing any and all notices to, and obtaining any and all required consents from, end users about the collection and processing of Client Data by Picalate in connection with the Software and Analytics Services in compliance with all Applicable Laws.

11.2.2. Client agrees that: (i) it has the right to transfer, or provide access to, the Client Data to Picalate for receiving, transferring and processing in accordance with this Agreement; (ii) that it has undertaken as required under any Applicable Laws, all such data protection impact assessments and/or security assessments to facilitate the transfer of Client Data to Picalate and that nothing shall prohibit Picalate from accessing, receiving, storing, using or otherwise processing the Client Data in accordance with this Agreement.

11.2.3. Client will include on each web page, and/or landing page associated with its application(s) or platform(s), as applicable, a readily accessible privacy policy that includes accurate disclosures concerning the data processing activities undertaken in connection with this Agreement, which complies with Applicable Laws and discloses at a minimum:

- (a) the collection and use of Client Data for fraud detection, fraud prevention, and legal compliance;
- (b) use of tracking technologies to collect and process Client Data for these purposes; and
- (c) a description of the types of data that are collected and processed, including Personal Data.

11.3. Data Protection. Each Party will maintain a security program with commercially reasonable physical, technical and organizational measures designed to protect Client Data and Picalate Data, as applicable, against accidental or unauthorized destruction, loss, alteration, disclosure or access. Picalate will provide reasonable assistance to Client in order to assist Client in complying with this Section 11.3.

## **12. Export.**

12.1. Picalate Materials may include technology, software or information that is subject to the customs and export control laws and regulations of the United States and every country in which Picalate Materials provided. Client may not use or otherwise export or re-export Picalate Materials except as authorized by U.S. law and the laws of the jurisdiction in which Picalate Materials were accessed or used.

12.2. By using Picalate Materials, Client represents and warrants that:

- (a) Client is not located in a country that is subject to a U.S. government embargo, or that has been designated by the U.S. government as a “terrorist supporting” country; and
- (b) Client is not on any U.S. government list of prohibited or restricted parties.

### 13. Governing Law and Jurisdiction.

13.1. Governing Law. This Agreement and all claims relating to the relationship of the Parties contemplated herein will be construed and interpreted in all respects in accordance with the laws of the State of California, without reference to its choice of law rules.

13.2. Dispute Resolution and Jurisdiction.

13.2.1. In the event that, at any time during the Term of this Agreement, a disagreement, dispute, controversy or claim (other than a claim pursuant to Section 6.3 of these Master Subscription Terms) should arise out of or relating to the interpretation of this Agreement, or performance by a Party under this Agreement, or a breach of this Agreement by a Party, or any claim by a Party that any provision of this Agreement is invalid (each, a “**Dispute**,” and, collectively, “**Disputes**”), one Party shall give Email Notice to the other Party that a Dispute exists (or Disputes exist) and the Parties will then attempt in good faith to resolve their differences before resorting to arbitration in accordance with the remainder of this Section 13.2. If the Parties cannot resolve the Dispute(s) within thirty (30) days after such Email Notice, then either Party shall be free to submit the Dispute(s) to binding arbitration in accordance with the remainder of this Section 13.2.

13.2.2. Each Party agrees to resolve any Dispute(s) arising out of or relating to this Agreement through binding arbitration. Any Dispute(s) subject to arbitration pursuant to this Section 13 must be submitted to binding arbitration under the Rules of Arbitration (“**Rules**”) of the International Chamber of Commerce (“**ICC**”).

13.2.3. Such arbitration shall be conducted before a single arbitrator appointed in accordance with and administered by the ICC pursuant to the Rules. The arbitrator will be bound by and will strictly enforce this Agreement, including any limitations and exclusions of liability contained herein, and may not limit, expand or otherwise modify any of the provisions of the foregoing.

13.2.4. Any arbitration will be held in San Francisco, California, unless otherwise agreed upon by the Parties in writing.

13.2.5. Each Party will bear its own expenses in the arbitration and will share equally the costs of the arbitration; provided, however, that the arbitrator shall award the prevailing party its reasonable attorney’s fees and costs, and the arbitrator shall award the applicable Party any attorney’s fees and costs to which it may be entitled to under Section 8 of these Master Subscription Terms in connection with an indemnification claim.

13.3. Equitable Relief. Notwithstanding anything in this Agreement to the contrary, each Party may seek injunctive or other equitable relief, in addition to other remedies afforded by law, in any court of competent jurisdiction to protect any actual or threatened misappropriation or infringement of its Intellectual Property Rights or those of its licensors, and each Party hereby submits to the jurisdiction of such courts and waives any objection thereto on the basis of improper venue, inconvenience of the forum or any other grounds. Client agrees that any breach of the license

restrictions or other infringement or misappropriation of Picalate Rights may result in immediate and irreparable damage to Picalate or its Third Party licensors for which there may be no adequate remedy at law.

**14. Notices.**

- 14.1. All Legal Notices required or permitted to be given by a Party must be in writing and sent by commercial delivery service or certified mail, return receipt requested and shall be deemed to have been given on the date set forth in the records of the delivery service or on the return receipt.
- 14.2. Email Notices will be deemed to have been given upon receipt of the email (regardless of whether the email is opened).

**15. Force Majeure.**

Neither Party will be liable for any failure or delay in performing any obligation (except the requirement to pay Fees) to the extent such failure or delay is attributable to a Force Majeure Event.

**16. Permitted Affiliates.**

Unless expressly set out in the applicable Service Order, and notwithstanding anything else in this Agreement to the contrary, no Affiliates of Client shall be entitled to enjoy the benefit of this Agreement, whether accessing or using the Services and/or as sub-licensees of the other Picalate Materials provided pursuant to this Agreement or otherwise, other than to the extent that such Affiliate is a Permitted Affiliate. Client shall remain responsible and liable for the acts and omissions of any Permitted Affiliates in respect of this Agreement and shall absolutely, unconditionally and irrevocably guarantee such Permitted Affiliate's performance and discharge of its obligations with the terms of this Agreement. Client's obligations shall be independent of its Permitted Affiliate's obligations and separate actions may be brought against Client. As guarantor, Client authorizes amendments to and waivers of provisions of this Agreement without affecting its guarantee. Client waives any right to require Picalate to pursue any other remedy before enforcing Client's guarantee. Client's guarantee shall not be affected by (i) any disability or defense of its Permitted Affiliate, (ii) the cessation for any reason of its Permitted Affiliate's liability under this Agreement, (iii) the impairment or loss of Client's reimbursement, subrogation or similar rights against its Permitted Affiliate, (iv) any law providing that a guarantor's obligations to a lender may not be greater than the obligations of the principal debtor whose obligations are guaranteed, and (v) any law providing that a guarantor is released from liability for guaranteed obligations to the extent that the principal debtor is not liable for such obligations. Where a Permitted Affiliate ceases to be an Affiliate of the Client, any rights of such Permitted Affiliate to enjoy the benefit of this Agreement shall also cease.

**17. Assignment.**

- 17.1. Client may not assign any rights or delegate any obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of Picalate (which will not be withheld or delayed unreasonably).
- 17.2. Picalate may assign this Agreement to any party upon Email Notice to Client. Subject to Section 17.1 of these Master Subscription Terms, this Agreement shall be binding upon, and inure to the



benefit of, the successors and assigns of the Parties hereto.

**18. Amendments.**

Except as otherwise specified in this Agreement, this Agreement may be amended or supplemented only by a written and executed amendment that refers explicitly to this Agreement and that is signed by the authorized representatives of both Parties.

**19. Waiver and Severability.**

- 19.1. Neither Party's acts or omissions shall constitute a waiver of any provision herein or affect that Party's ability to enforce such right in the future, unless such waiver is in writing and signed by an authorized representative of the Party.
- 19.2. If any term of this Agreement is found invalid or unenforceable that term will be enforced to the maximum extent permitted by law and the remainder of this Agreement will remain in full force.

**20. Independent Contractors.**

The Parties are independent contractors, and nothing contained herein shall be construed as creating an agency, partnership, employee/employer relationship, or joint venture between the Parties. Accordingly, neither Party will have the authority, either express or implied, to make any contract, commitment or representation, or incur any debt or obligation on behalf of the other Party.

**21. No Third Party Beneficiaries.**

This Agreement shall not be interpreted or construed to confer any rights or remedies on any Third Parties.

**22. Definitions and Interpretation.**

- 22.1. The following capitalized terms, when used in this Agreement, will have the corresponding meanings provided below.
  - (a) **"Account"** means Client's account and the associated Credentials required in order for Authorized Users to access and use the Service(s) specified in the applicable Service Order(s).
  - (b) **"Affiliate"** means any entity that directly or indirectly (through one or more intermediaries) Controls, is Controlled by, or is under common Control with Pixalate or Client, as applicable.
  - (c) **"Analytics Code"** means code, together with any Modifications thereto, that is embedded within a digital advertisement for the purpose of transmitting Client Data to Pixalate's Processing Software.
  - (d) **"Analytics Data"** means data sets generated by utilization of the Processing Software upon Client Data, Pixalate Data and Third Party Data, as applicable. Visual presentation of Analytics Data will be displayed in a manner determined by Pixalate in its sole discretion.
  - (e) **"Analytics Services"** means IVT detection Services provided by Pixalate, as further

described at the following URL: <https://www.pixalate.com/products/analytics/>.

- (f) “**API**” means an application programming interface provided by Pixalate hereunder.
- (g) “**Applicable Laws**” means all applicable national, state, provincial and/or local laws, regulations, rules, ordinances and other decrees of any governmental authority.
- (h) “**Authorized Users**” means Client’s Personnel who have been issued Credentials to access and use the applicable Service(s) in accordance with this Agreement.
- (i) “**Client**” means the person or legal entity listed on the Service Order.
- (j) “**Client Data**” means any data that Pixalate receives from Client, Client’s systems, or any Third Party’s systems under Client’s control, in connection with this Agreement, including Personal Data.
- (k) “**Client Mark**” means any name, logo, trademark, service mark, or other distinctive service brand features, owned by Client.
- (l) “**Confidential Information**” means all information or materials provided or otherwise disclosed by or on behalf of the Disclosing Party to the Receiving Party hereunder, whether orally or in writing, that are designated as confidential or proprietary or that reasonably should be understood to be confidential or proprietary, given the nature of the information disclosed and the circumstances of such disclosure.
- (m) “**Control**” means ownership or control, directly or indirectly, of more than fifty percent (50%) of the voting interests of the subject entity, or the legal power to direct or cause the direction of the general management of such entity, whether by contract or otherwise.
- (n) “**COPPA**” means, collectively, the Children’s Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6506, and the Children’s Online Privacy Protection Rule, 16 C.F.R. Part 312, including all amendments thereto.
- (o) “**CPM**” means cost per thousand Events.
- (p) “**Credentials**” means any log-in credentials (e.g., usernames and passwords) and any other security information that may be required to access and use the applicable Service(s) or other Pixalate Materials in accordance with this Agreement.
- (q) “**Dashboard**” means the then-current Pixalate user interface through which Client may access Client’s Account for Analytics Services, any associated Reports and Analytics Data.
- (r) “**Disclosing Party**” means the Party that provides Confidential Information to the Receiving Party (or on behalf of which Confidential Information is provided) in connection with this Agreement.
- (s) “**Documentation**” means any of Pixalate’s proprietary documentation made available to or accessible by Client in connection with access to and use of the Service(s) specified on the applicable Service Order(s).
- (t) “**Email Notice**” means: (i) in the case of notice from Client to Pixalate, emails to the email address of the Pixalate Primary Contact specified in the applicable Service Order, as well as [legal@pixalate.com](mailto:legal@pixalate.com); or (ii) in the case of notice from Pixalate to Client, an email to the email address of the Client Primary Contact specified in the applicable Service Order, or the email address that Pixalate has on file with respect to the applicable Service(s).
- (u) “**Event**” means Pixalate’s registering of impressions, clicks, and/or conversions resulting

from the execution (a.k.a. “firing”) of a tag – either JavaScript or 1x1 pixel, as applicable – via the platform(s) and/or ad server(s) specified in the applicable Service Order(s).

(v) “**Events Spike**” means an increase in daily Events in excess of 33% over the moving average of daily Event totals for the immediately preceding 30 days. For avoidance of doubt, Events Spike calculations and notifications shall not be required during the first 30 days of Analytics Services.

(w) “**Feedback**” means any information, suggestions, ideas, enhancement requests, recommendations, comments and other feedback that Client or any of Client’s Personnel may disclose, transmit, provide or offer to Picalate with respect to Picalate Materials.

(x) “**Fees**” means any amounts due and payable from Client to Picalate pursuant to the applicable Service Order(s), including Subscription fees and any other fees stated on such Service Order(s).

(y) “**Force Majeure Event**” means a circumstance whereby a Party’s delay in performing its obligations hereunder is due to causes beyond such Party’s reasonable control, including fire, flood, earthquake, acts of God, acts of war, acts of a public enemy, labor disruptions affecting employers generally, acts of a nation or any state, territory, or other political division, terrorism, riots, civil disorders, pandemics, epidemics, theft, quarantine restrictions, and internet or other service disruptions involving hardware, software or power systems that are not within such Party’s possession or reasonable control, including unauthorized network intrusions and denial of service attacks. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either Party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a Party’s financial inability to perform its obligations hereunder.

(z) “**Fraud**” means any deliberate activity that prevents proper delivery of digital advertisements to the intended browser, system or device at the intended time and place, and, in accordance with the definition published by the MRC, “is not intended to represent fraud as defined in various laws, statutes and ordinances or as conventionally used in ... legal proceedings, but rather a custom definition strictly for advertising measurement purposes.”

(aa) “**Fraud Detection Data**” means data, other than Client Data, underlying Picalate’s IVT opinions, which Picalate detects, gathers, derives, processes, analyzes and/or assembles via its Software and Services. For avoidance of doubt, Picalate’s Fraud Detection Data constitutes Picalate Confidential Information, and is subject to trade secret and other Intellectual Property Rights.

(bb) “**GDPR**” means the European Union (EU)’s General Data Protection Regulation (GDPR) 2016/679.

(cc) “**IAB**” means the Interactive Advertising Bureau.

(dd) “**IPv4**” means Internet Protocol version 4.

(ee) “**IPv6**” means Internet Protocol version 6.

(ff) “**Initial Period**” means the period of time specified on the applicable Service Order as the initial period.

(gg) “**Intellectual Property Rights**” means any and all patents, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights and all other intellectual property

rights existing now or in the future, internationally.

(hh) “**IVT**” means invalid traffic, which, in accordance with the definition published by the MRC, is “traffic that does not meet certain ad serving quality or completeness criteria, or otherwise does not represent legitimate ad traffic that should be included in measurement counts. Among the reasons why ad traffic may be deemed invalid is it is a result of non-human traffic (spiders, bots, etc.), or activity designed to produce fraudulent traffic.”

(ii) “**Legal Notice**” means written notification to the following addressees: (i) if from Client to Picalate, then to “Picalate, Inc., Attention: Legal Affairs, 1775 Greensboro Station Place, McLean, VA 22102,” with a copy via Email Notice; or (ii) if from Picalate to Client, then to the address that Client has specified in the applicable Service Order, “Attention: Legal Department,” with a copy via Email Notice.

(jj) “**Malicious Content**” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

(kk) “**Media Ratings Terminal**” or “**MRT**” means a Picalate Service that provides digital advertising supply ratings across approximately 500 metrics, as further described at the following URL: <https://www.picalate.com/products/mrt/>.

(ll) “**Modifications**” means changes, upgrades, updates, modifications, fixes or enhancements to, or derivative works of, Picalate Materials.

(mm) “**MRC**” means the Media Rating Council, Inc.

(nn) “**OTT**” means over-the-top video content, including digital advertising traffic associated with such content.

(oo) “**Party**” means Client or Picalate, individually, as applicable; and “**Parties**” means Client and Picalate, collectively.

(pp) “**Permitted Affiliate**” means an Affiliate of Client that has entered into an Affiliate Adoption Agreement with Picalate that entitles such Affiliate to enjoy the benefit of this Agreement, other than as may be expressly modified in such Affiliate Adoption Agreement.

(qq) “**Personnel**” means agents, employees, officers, directors or contractors of a Party who are employed, engaged or appointed by such Party hereunder. For avoidance of doubt, Client’s Personnel include Authorized Users.

(rr) “**Personally-Identifying Information**” means Personal Data that reasonably identifies a natural person.

(ss) “**Personal Data**” means any information that: (i) identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with any particular consumer or household, and (ii) is defined as “personal data,” “personal information,” “personally identifiable information,” or other substantially similar terminology under Applicable Laws.

(tt) “**Picalate Data**” means any data, other than Client Data, that is generated or received by Picalate hereunder, including usage, log, performance and Fraud Detection Data.

(uu) “**Picalate Mark**” means any name, logo, trademark, service mark and other distinctive brand features of any Picalate Materials or otherwise owned by Picalate.

(vv) “**Picalate Materials**” means Picalate Data, Services, Dashboards, Reports, Analytics Data,

Software and Documentation, and includes Modifications to any of the foregoing.

(ww) “**Pre-Bid Blocking Services**” means the Services provided by Pixalate that enable Client to block certain IVT across certain media channels, as further described at the following URL: <https://www.pixalate.com/products/blocking/>.

(xx) “**Processing Software**” means Pixalate software and Modifications thereto that analyze Client Data, Third Party Data and Pixalate Data, as applicable, and generate Reports therefrom.

(yy) “**Receiving Party**” means the Party that receives Confidential Information from the Disclosing Party in connection with this Agreement.

(zz) “**Reports**” means Processing Software output, including the organization and presentation structure of such output, which is made available to Client via the Dashboard(s) or is otherwise transmitted to Client by Pixalate. Reports will contain standard graphs and/or statistics as determined by Pixalate in its sole discretion.

(aaa) “**Real Time Fraud API Services**” means the Services provided by Pixalate to enable subscribers to make API requests to retrieve probability risk scores, which clients may use to determine whether an end user IP address, deviceID or user agent may be associated with IVT; additional details regarding these Services are available at the following URL: <https://developer.pixalate.com/?version=latest#ef3c146d-16b6-489f-9d7d-302ac9422093>.

(bbb) “**Service**” or “**Services**” means the Pixalate software service(s) identified on the applicable Service Order, including the Pixalate-developed or Pixalate-procured infrastructure and tools used to deliver, deploy and support such Pixalate software service(s).

(ccc) “**Service Order**” means: (i) an ordering document executed by Pixalate and Client, under which Client purchases Subscriptions to one or more Services; or (ii) online forms published by Pixalate that have been “accepted” or “agreed to” electronically by an authorized representative of Client.

(ddd) “**Software**” means the Analytics Code and Processing Software.

(eee) “**Subscription**” means the right to access and use a Service during the applicable Term, subject to and conditioned upon payment of Fees as set forth in the applicable Service Order.

(fff) “**Taxes**” means any direct or indirect federal, state and/or local sales, use, excise, withholding, stamp or similar taxes and any duties, tariffs, levies and other similar governmental assessments or charges, but excluding income tax assessed against the actual or potential income of Pixalate.

(ggg) “**Term**” means the time period specified on the applicable Service Order when the applicable Subscription is in effect, which may include a Trial Period, an Initial Period, and one or more Renewal Periods.

(hhh) “**Third Party**” means an entity or person that is neither a Party, nor an Affiliate of a Party.

(iii) “**Third Party Data**” means data licensed to Pixalate by a Third Party for use in connection with Services.

(jjj) “**Trial Period**” means the time period specified on the applicable Service Order as a trial period.

22.2. In this Agreement, unless where otherwise specified:

- (a) headings are included for ease of reference only and shall not affect the construction;
- (b) a reference to writing or written includes email;
- (c) references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (d) references to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise;
- (e) any phrase introduced by “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding them;
- (f) the words “include,” “including” and “for example,” and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words “without limitation;” and
- (g) words used herein in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular herein shall apply to such words when used in the plural where the context so permits and vice versa.

## **23. Entire Agreement.**

- 23.1. This Agreement represents the entire agreement between the Parties relating to its subject matter and supersedes all prior and/or contemporaneous representations, discussions, negotiations and agreements, whether written or oral, except to the extent Pixalate makes any software or other services available to Client under separate written terms.
- 23.2. Pixalate shall have the right to, in its sole discretion, update these Master Subscription Terms from time to time by posting updated terms to the Pixalate website at the following URL: <https://info.pixalate.com/legal>. If such changes have a materially adverse effect on your use of the Services, you shall promptly notify Pixalate of your objection to such modifications and the previous Master Subscription Terms shall continue to apply until the end of the then-current Initial Period or Renewal Period, as applicable.
- 23.3. Each Party acknowledges and agrees that it does not rely on, and shall have no remedy in respect of, any representation made (whether innocently or negligently) by the other Party or any other person except as set out in this Agreement. The terms on any purchase order, confirmation, or similar document submitted by Client to Pixalate will have no effect and are hereby rejected.
- 23.4. This Agreement may be entered into in one or more counterparts, each of which will be deemed an original, and all of which taken together shall constitute one and the same instrument.
- 23.5. The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

## Exhibit A – Service Specific Terms

### Analytics Services-Specific Terms and Conditions:

#### 1. Analytics Services-Specific Licenses and Restrictions.

Subject to and conditioned upon Client's compliance with the terms and conditions of this Agreement, including the applicable terms of the relevant Service Order(s), Pixalate hereby grants Client a limited, revocable, non-transferable, non-exclusive, non-sublicensable license, during the applicable Term of Client's Subscription to the Analytics Services, to: (i) install, copy and embed Analytics Code into digital advertisements that Client owns or is otherwise authorized to embed it into, solely as reasonably required to use the Analytics Service, and (ii) access and use the applicable Pixalate Materials to receive and store Reports.

Client will: (i) use the Analytics Services solely for its own internal use; (ii) ensure that information regarding issuance of Credentials to Authorized Users of the Analytics Service is kept accurate, complete and up to date, and (iii) prohibit Authorized Users from sharing their Analytics Service Credentials. Client hereby grants Pixalate the limited right and license, during the applicable Term, to use, reproduce, store, transmit, modify, adapt, reformat, display and create derivative works of Client Data as reasonably required to provide the applicable Services and associated Reports to Client and its Authorized Users, and to maintain and improve the Services. Pixalate may also use aggregated Client Data: (i) to detect IVT and generate digital advertising inventory quality-related rankings, indices and Reports; and (ii) as required by Applicable Laws or legal process. With respect to such IVT-related processing, Client hereby grants Pixalate a non-exclusive, royalty-free, worldwide, perpetual license to use, reproduce, distribute, store, transmit, modify, adapt, reformat, display, and create derivative works of such aggregated Client Data; provided, however, that: (i) any public disclosure of aggregated data will not be made in a manner that identifies, or could reasonably be used to identify, Client, or otherwise associates Client with such aggregated data, and (ii) Pixalate will not combine any pseudonymized or aggregated Client Data with other information with the purpose of deriving Personally-Identifying Information from such Client Data.

#### 2. Analytics Reporting API License

Subject to and conditioned upon Client's compliance with the terms and conditions of this Agreement, including the applicable terms of the relevant Service Order(s), Pixalate hereby grants Client a limited, revocable, non-transferable, non-exclusive, non-sublicensable license, during the applicable Term of Client's Subscription to the Analytics Services, to access and use the Post-Bid Analytics Reporting API for the sole purpose of downloading Analytics Data. Client will be limited to:

- 30-day look back window
- 1 terabyte ("TB") of data processed per month

If Client exceeds the monthly TB limit, Pixalate may, at its sole discretion, invoice Client and Client agrees to pay the rate of \$ 0.10 per gigabyte ("GB") processed for every GB over the monthly 1 TB limit.

#### 3. Suspension.

Further to Section 5 of the Master Subscription Terms, Pixalate reserves the right to temporarily suspend or terminate Client's access to the Analytics Services, with or without notice, if Pixalate reasonably determines that there is an unusual spike or increase in Client's use of such Service.

#### 4. Additional Representations and Warranties.

Client represents and warrants that it: (i) has and will maintain throughout the applicable Term all rights, authorizations and licenses that are required with respect to the applicable digital advertisements to permit Picalate to provide the applicable Services; (ii) complies with and has obtained, or had obtained on its behalf, any and all required consents, authorizations and clearances from owners and end users of the websites, applications and platforms upon which advertisements containing the Analytics Code appear and the ad servers upon which such digital advertisements are hosted to allow Picalate to collect and use the Fraud Detection Data, and as may otherwise be required for Picalate to provide the Service(s); (iii) will notify Picalate as soon as reasonably practicable if it anticipates an Events Spike; and (iv) will not (and will not permit or induce its Affiliates or Third Parties acting on its behalf to) use Picalate Materials to track end users or their devices or collect Personal Data, nor will Client (or will Client permit or induce its Affiliates or Third Parties acting on its behalf to) associate any Picalate Data with any Personally-Identifying Information from any source as part of Client's use (or such Affiliates' or Third Parties' use) of Picalate Materials. If Client fails to provide Picalate with reasonable advance notice of an Events Spike, Picalate shall calculate, in good faith, the actual incremental processing costs for such Events Spike, and invoice Client for such costs. Client shall pay such invoiced amounts within the payment terms period specified in the Agreement.

#### 5. Termination; Expiration.

Upon any termination or expiration of this Agreement, Client's and any Permitted Affiliates' right to access and use any Analytics Services to which it has a then-current Subscription will cease immediately, and Client will delete all copies of the Analytics Code from all digital advertisements and certify such deletion in writing within three (3) business days of such termination. Any outstanding Fees balance through the date of termination will be immediately due and payable in full. For the avoidance of doubt, Client agrees to pay a \$ 0.20 CPM rate for any: (i) Event overages, and (ii) requests made to any Services or Software due to Client not removing Analytics Code tags upon termination of this Agreement.

#### 6. Rankings and Indexes

Notwithstanding anything to the contrary in this Agreement, the Parties hereby agree that: (i) Client Data (i.e., first-party data) will not be used for the purposes of ranking Client's platform(s) or app(s) on Picalate's applicable index(es); and (ii) Client will continue to appear on any then-current Picalate indexes for which Client qualifies, based on then-current Third Party data sources.

Client expressly agrees and acknowledges that Picalate's indices are based on Picalate's opinions rendered via its proprietary systems and methods, which includes the processing of data provided by various Third Parties. Picalate does not make any guarantees, representations or warranties related to the indexes. Client expressly acknowledges and agrees that it shall not initiate any dispute, claim or proceeding (legal or otherwise) against Picalate related to the above-referenced indexes, including Client's position in, or absence from, the rankings provided therein.

#### 7. Analytics Data-Related Reports.

Picalate will provide aggregate Reports (via a self-service Dashboard) by advertiser, campaign, partners, ad size and performance metrics in the daily updated Dashboard, as defined by applicable IAB standards and/or MRC guidelines. Subject to Client's compliance with the terms and conditions of this Agreement, including the applicable terms of the relevant Service Order(s), Client may use and distribute the Picalate-authorized output from the Analytics Services (such as a Report) for Client's business purposes,



provided that Client properly acknowledges Picalate as the source of such output, and does not: (i) resell such output; (ii) provide output obtained for or on behalf of Third Parties (other than Client's clients in the ordinary course of Client's business); or (iii) modify the output in a manner which changes or misrepresents the results. Notwithstanding the foregoing, Client may not use any output relating to the Analytics Services in connection with litigation or advertising claims without Picalate's prior written consent.

#### **Pre-Bid Blocking Services-Related Additional Terms and Conditions:**

##### **1. License to Use Pre-Bid Blocking Feeds.**

Subject to and conditioned upon Client's compliance with the terms and conditions of this Agreement, including the applicable terms of the relevant Service Order(s), Client may use the data feeds distributed to Client by Picalate during the applicable Term of Client's Subscription to the Pre-Bid Blocking Services for Client's legitimate and lawful business purposes, provided that Client properly acknowledges Picalate as the source of the feeds and does not: (i) sublicense, resell or otherwise distribute the feeds; (ii) provide the feeds to, or deploy them on behalf of, Third Parties; or (iii) modify the feeds in a manner which substantially changes or misrepresents the results that would otherwise occur from their proper application and use.

##### **2. Third Party Services.**

The Pre-Bid Blocking Services provide the results of Picalate's IVT analysis, including analysis of information from Third Party sources. Picalate does not make any representations or warranties regarding the accuracy or completeness of such Third Party information. Client assumes all risk in connection with its use of such analysis and acknowledges and agrees that Picalate shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with Client's use of or reliance on the Pre-Bid Blocking Services, including any such Third Party information.

##### **3. Update Frequency by Feed.**

- App ID – daily
- Datacenter – weekly
- Mobile Device ID – twice daily
- OTT Device ID – twice daily
- Domains – daily
- IPv4 – twice daily
- IPv6 – twice daily
- User Agent – weekly and daily
- Defase Apps – daily
- Mobile Apps Deemed Child-Directed Data – weekly
- Mobile Apps Deemed At Risk for COPPA Non-Compliance – weekly
- CTV Apps Deemed Child-Directed Data – weekly
- CTV Apps Deemed At Risk for COPPA Non-Compliance – weekly

##### **4. Termination; Expiration.**

Upon any termination or expiration of this Agreement, Client's and any Permitted Affiliates' right to access and use any Pre-Bid Blocking Services to which it has a then-current Subscription will cease immediately, and Client will delete all Pre-Bid Blocking Services-related Picalate Materials in its possession (and in the possession of any Permitted Affiliates, as applicable).

### **Real Time Fraud API Services-Related Additional Terms and Conditions:**

#### **1. Real Time Fraud API License.**

Subject to and conditioned upon Client's compliance with the terms and conditions of this Agreement, including the applicable terms of the relevant Service Order(s), Pixalate hereby grants Client a limited, revocable, non-transferable, non-exclusive, non-sublicensable license, during the applicable Term of Client's Subscription to the Real Time Fraud API Services, to access and use Real Time Fraud API Services for the sole purpose of sending click or impression data to Pixalate and receiving back a real time fraud probability score for that impression or click.

#### **2. License to Use API Impression or Click Scoring Results.**

Subject to and conditioned upon Client's compliance with the terms and conditions of this Agreement, including the applicable terms of the relevant Service Order(s), Client may use and distribute the authorized output from the Real Time Fraud API Services (such as a Report) for Client's business purposes, provided that Client properly acknowledges Pixalate as the source of the output, and does not: (i) resell such output; (ii) provide output obtained for or on behalf of Third Parties; or (iii) modify the output in a manner which changes or misrepresents the results.

#### **3. Termination; Expiration.**

Upon any termination or expiration of this Agreement, Client's and any Permitted Affiliates' right to access and use any Real Time Fraud API Services to which it has a then-current Subscription will cease immediately, and Client will delete all Real Time Fraud API Services-related Pixalate Materials in its possession (and in the possession of any Permitted Affiliates, as applicable).

### **MRT-Related Additional Terms and Conditions:**

#### **1. MRT License.**

Subject to and conditioned upon Client's compliance with the terms and conditions of this Agreement, including the applicable terms of the relevant Service Order(s), Pixalate hereby grants Client a limited, revocable, non-transferable, non-exclusive, non-sublicensable license, during the applicable Term of Client's Subscription to the MRT Service, to access and use the MRT Service for Client's internal business purposes. Client will: (i) ensure that information regarding issuance of Credentials to Authorized Users of the MRT Service is kept accurate, complete and up to date, and (ii) prohibit Authorized Users from sharing their MRT Service Credentials.

#### **2. Termination; Expiration.**

Upon any termination or expiration of this Agreement, Client's and any Permitted Affiliates' right to access and use any MRT Services to which it has a then-current Subscription will cease immediately, and Client will delete all MRT Services-related Pixalate Materials in its possession (and in the possession of any Permitted Affiliates, as applicable).

## Exhibit B - Service Level Agreement

1. Service Levels. Pixalate will make reasonable commercial efforts to provide the applicable Services and/or APIs in accordance with the following:

Service Level	Monthly Service Availability Goals
Level 1	99.9%
Level 2	99.0%
Level 3	98.0%

Availability shall be measured on the basis of twenty-four hours per day, seven (7) days per week during each calendar month of the applicable Term, except during times of scheduled Service Maintenance or Force Majeure Events.

2. Service Maintenance. Pixalate shall use commercially reasonable efforts to notify Client of any routine maintenance at least five (5) days prior to taking the applicable Service(s) or API(s) offline for routine scheduled maintenance and shall use commercially reasonable efforts to perform such maintenance at such times as agreed upon by Client and when user traffic is at its lowest (such period being "Service Maintenance"). In no event will the applicable Service(s) or API(s) be offline for Service Maintenance more than a total of sixty (60) business minutes per month.

3. Response Times based upon Severity. Once notified by Client of an error in the applicable Service(s) or API(s), Pixalate will respond within the following timeframes:

Severity of Error	Initiate Response to Problem
Severity 1 Error	Within 60 business minutes of notification
Severity 2 Error	Within 2 business hours of notification
Severity 3 Error	Within 4 business hours of notification

4. Additional Definitions:

- (a) "Business Hours" means 9:00 a.m. to 6:00 p.m. (Pacific Time), Monday through Friday, exclusive of U.S. federal holidays.
- (b) "Severity 1 Error" means an error that causes complete unavailability of the applicable Service(s) or API(s).
- (c) "Severity 2 Error" means an error that causes the material unavailability of a particular feature or functionality of the applicable Service(s) or API(s).
- (d) "Severity 3 Error" means an error that causes a reduction of the average performance of a particular feature or functionality of the applicable Service(s) or API(s).
- (e) "Level 1" means Service Availability without a Severity 1 Error.
- (f) "Level 2" means Service Availability without a Severity 2 Error.
- (g) "Level 3" means Service Availability without a Severity 3 Error.