

## Shift5 End User License Agreement

This End User License Agreement (this "Agreement") governs your ("Customer") use of the Subscription Services (as defined below), which are made available to you by Shift5, Inc. ("Shift5"). We and you are each referred to herein as a "Party," and together are referred to herein as the "Parties." BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, OR (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SUBSCRIPTION SERVICES.

### The Parties hereby agree as follows:

1. **DEFINITIONS.** The definitions for some of the defined terms used in this Agreement are set forth below. The definitions for other defined terms are set forth elsewhere in this Agreement.
  - 1.1. "Affiliate" means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, is controlled by, or is under common control with, such entity. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.
  - 1.2. "Authorized User" means any of your current employees, or agents whom you authorize to access and use the Shift Product(s) pursuant to the terms and conditions of this Agreement; provided, however, that any current employees or agents' access to and use of the Shift Product(s) will be limited to their provision of services to you. You are responsible for the acts and omissions of your Authorized Users and any other person who accesses and uses the Shift Product(s) using any of your or your Authorized Users' access credentials. In no event will access and use exceed the authorized number of licenses identified in the applicable Purchase Order.
  - 1.3. "Confidential Information" means: (i) with respect to Shift5, the Subscription Services, the Documentation, and any and all source code, object code and executable code relating thereto and any other non-public information or material including but not limited to our legal or business affairs, our business process, intellectual property, trade secrets, proprietary information, financing, customers, properties, pricing, or data; (ii) with respect to you, the Customer Data and any nonpublic information or material regarding your legal or business affairs, financing, customers, properties, or data; and (iii) with respect to each Party, the terms and conditions of this Agreement. Notwithstanding any of the foregoing, Confidential Information does not include information which: (a) is or becomes public knowledge without any action by, or involvement of, the Party to which the Confidential Information is disclosed (the "Receiving Party"); (b) is documented as being known to the Receiving Party prior to its disclosure by the other Party (the "Disclosing Party"); (c) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (d) is obtained by the Receiving Party without restrictions on use or disclosure from a third party.

- 1.4. "Customer Data" means any data from Customer: (i) ingested by the Subscription Service; or (ii) uploaded to Subscription Service, in either case before any translation, organization, conversion or analysis by Shift5 in any way, but specifically excluding any Feedback (as defined below).
- 1.5. "Destructive Elements" means computer code, programs, or programming devices that are intentionally designed to disrupt, modify, access, delete, damage, deactivate, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the Shift5 Product(s), or any other associated software, firmware, hardware, computer system, or network (including, without limitation, "Trojan horses," "viruses," "worms," "time bombs," "time locks," "devices," "traps," "access codes," or "drop dead" or "trap door" devices) or any other harmful, malicious, or hidden procedures, routines or mechanisms that would cause the Shift5 Product(s), to cease functioning or adversely impact or damage or corrupt data, storage media, programs, hardware, or communications, or otherwise interfere with operations.
- 1.6. "Documentation" means technical, repair, and end-user materials made generally available by Shift5 to its licensees for use of the Licensed Software as they may be updated by Shift5 from time to time. Documentation may include product and software manuals; installation, maintenance, operating and end user manuals, instructions and diagnostics, system administrative materials, configuration guides, training materials and product guides. Documentation includes, if applicable, materials provided by Shift5's vendors and/or licensors.
- 1.7. "Enriched Data" means the data created or developed from Customer Data or on the basis of Customer's use of the Subscription Services, and shall include all translations, enrichments, modifications, compilations, derivative works and results from processing (including analyses, anomaly detections, usage statistics and patterns, datasets, databases, reports, recommendations and visual representations).
- 1.8. "Hardware" means the hardware component of the Shift5 Product(s).
- 1.9. "Fees" means the fees set forth in the applicable Purchase Order.
- 1.10. "Supplier" means the third-party supplier of Hardware.
- 1.11. "Privacy Policy" means our privacy policy set forth on the Website.
- 1.12. "Prohibited Content" means content that: (i) is illegal under applicable law; (ii) violates any third party's intellectual property rights, including, without limitation, copyrights, trademarks, and trade secrets; (iii) contains indecent or obscene material; (iv) contains libelous, slanderous, or defamatory material, or material constituting an invasion of privacy or misappropriation of publicity rights; (v) promotes unlawful or illegal goods, services, or activities; (vi) contains false, misleading, or deceptive statements, depictions, or sales practices; (vii) contains Destructive Elements; or (viii) is otherwise objectionable to us in our sole, but reasonable, discretion.
- 1.13. "Purchase Order" means a purchase order that is either mutually executed by the Parties or that matches the final quote issued by Shift5 and sets forth: (i) the Subscription Services being ordered; (ii) whether such Subscription Services are being made available as On-Prem Software or as a SaaS Service; (iii) whether the Hardware is purchased or leased; (iv) the applicable Subscription Term; (v) the applicable number of Authorized Users and quantity; (vi) the applicable fees; and (vii) other mutually-agreed upon written terms and conditions. The Purchase Order is deemed incorporated into and made a part of this Agreement. To the extent any provision set forth in the Purchase Order conflicts with any provision set forth elsewhere in this Agreement, the provision set forth in this Agreement shall govern, unless the Purchase Order is signed by both parties, specifically states that it is intended to govern, includes a reference to the section numbers of this Agreement that the Parties agree no longer govern or are modified for the matters covered thereby.
- 1.14. "Subscription Services" means (i) the Shift5 licensed products that are described on the Purchase Order, which may be provided by Shift 5 via cloud-based software delivery ("SaaS Services") or as software in object code form only, as indicated on the Purchase Order ("On-Prem Software"); and (ii) any Updates to the On-Prem Software that Shift5 makes generally available to its

Customers from time to time; and (iii) Support Services.

- 1.15. "Shift5 Reports" means any reports generated by Authorized Users through their use of the Subscription Services.
- 1.16. "Specifications" means the technical and functional specifications for all Licensed Software and Hardware as set forth in Documentation provided to Customer.
- 1.17. "Subscription Term" means the term for which you are subscribing to the Services as set forth in the applicable Purchase Order.
- 1.18. "Updates" means any corrections, fixes, patches, workarounds, and minor modifications denominated by version changes to the software that is part of the Subscription Services that Shift5 generally provides to its licensees in connection with this Agreement. All version numbers shall be reasonably determined by Shift5 in accordance with normal industry practice.

## **2. LICENSE AND SUBSCRIPTION.**

- 2.1. **License and Subscription to Subscription Services.** Subject to the terms and conditions of this Agreement and the applicable Purchase Order, Shift5 grants Customer a non-exclusive, nontransferable, worldwide license, without the right to grant sublicenses, to authorize Authorized Users to access and use the Subscription Services in accordance with the Documentation solely for Customer's internal business purposes for the applicable Subscription Term, subject to early termination pursuant to Section 6.2 below and as set forth in any U.S. Federal Government Purchase Order. The Subscription Services shall only be used in compliance with this agreement. Customer may copy and use (and permit the Authorized Users to copy and use) the Documentation solely in connection with the use of the Subscription Services under this Agreement. To the extent that the Subscription Services include SaaS Subscription Services, Shift5 will be responsible for hosting such Subscription Services, and Customer will be responsible for obtaining Internet connections and other third-party software and services necessary for it to access the SaaS Services. All rights not expressly granted to Customer herein are expressly reserved by Shift5.
- 2.2. **Support Services.** During the Subscription Term, Shift5 shall provide Support Services associated with the Subscription Services in the form of responses to questions by email or telephone to Customer. Customer support can be provided by telephone **+1-703-810-3320** during normal business hours (EST) and as specified in the applicable Purchase Order. Customer support email is [info@shift5.io](mailto:info@shift5.io).
- 2.3. **Incorporated Terms.** Customer and its Authorized Users use of the Services is governed by this Agreement, as well as the [Terms of Use](#) (the "Terms of Use") and [Privacy Policy](#) (the "Privacy Policy") each of which may be updated from time to time by Shift5 without notice to Customer. The Terms of Use and the Privacy Policy, as amended (collectively, the Incorporated Terms"), are incorporated into this Agreement by this reference and made a part hereof. In the event of any inconsistency or conflict between the Incorporated Terms and the terms of this Agreement, the terms of this Agreement shall prevail.
- 2.4. **Intellectual Property; Limitations.** The Subscription Services are provided under license to Customer and not sold or offered for sale. The Subscription Services contain material that is protected under trade secret, patent, copyright or other intellectual property laws, and may be subject to export restrictions. All rights not expressly granted to Customer under this Agreement are reserved by Shift5.

## **3. USE AND LIMITATIONS OF USE.**

- 3.1. **Restrictions on Use.** You will not (and will not authorize, knowingly permit, or encourage any third party to): (i) allow anyone other than Authorized Users to access and use the Services and

Documentation; (ii) exceed authorized access, reverse engineer, decompile, disassemble, modify or create derivative works of the Subscription Services or Documentation. or otherwise attempt to discern the source code, object code or executable code or interface protocols of the Subscription Services; (iii) modify, adapt, or translate the Subscription Services Documentation; (iv) make any copies of the On-Prem Software except as expressly authorized hereunder; (v) resell, distribute, or sublicense or export the Subscription Services Documentation; or use any of the foregoing for the benefit of anyone other than you; (vi) save, store, or archive any portion of Shift5 Confidential or Information; (vii) remove or modify any proprietary markings or restrictive legends on the Subscription Services and Documentation; (viii) use the Subscription Services or Documentation in violation of any applicable law or regulation, or for any purpose not specifically permitted in this Agreement; or (ix) introduce, post, or upload to the Subscription Services any Prohibited Content. Penetration testing of any kind may not be conducted without the express written consent and scoping by Shift5.

- 3.2. **Compliance with Law.** Customer shall be solely responsible for ensuring that Customer's use of the Subscription Services is in compliance with all applicable foreign, federal, state and local laws, rules, and regulations.
- 3.3. **Further Limitations.** Customer shall not use, or allow or authorize, the Subscription Services, Documentation or Shift5 Confidential Information whether directly or indirectly to be used to compete with Shift5 or to challenge or question the validity of any Shift5 intellectual property; any such action shall be a material and non-curable breach of this Agreement.
- 3.4. **Onboarding of Authorized Users.** With respect to SaaS Services, during the initial registration, you will be prompted to create an account, which includes a sign-in name ("Sign-In Name"), a password ("Password"), and certain additional information, including a valid email address, that will assist in authenticating your account when your Authorized Users log in in the future ("Unique Identifiers"). When creating an account, you must provide true, accurate, current, and complete information. You are solely responsible for the security, confidentiality and use of all Sign-In Names, Passwords, and Unique Identifiers, as well as for any use, misuse, or communications entered through the Subscription Services. You will promptly inform us of any need to deactivate any Password or Sign-In Name or change any Unique Identifier. We reserve the right to delete or change any Password, Sign-In Name, or Unique Identifier at any time and for any reason. Shift5 shall not be liable for any unauthorized use of your account.

#### 4. **HARDWARE AND SOFTWARE.**

- 4.1. **Delivery of Hardware.** You can either purchase or lease the Hardware from us. Upon acceptance of the applicable Purchase Order, Shift5 shall deliver the Hardware to Customer on the delivery date set forth in the applicable Purchase Order or as otherwise agreed upon in writing by the Parties. All risk of loss of, or damage to, the Hardware shall be borne by Shift5 until Customer's receipt of delivery of such Hardware. Hardware delivery terms, shipping & handling, and integration processes and costs will be provided to Customer in the applicable Purchase Order.
- 4.2. **Hardware Inspection, Testing, and Acceptance.** Customer may inspect and test the Hardware within fifteen (15) calendar days of Customer's receipt thereof to determine whether the Hardware conforms in all material respects with the Hardware Specifications. During such time period, Customer shall notify Shift5 in writing indicating acceptance of the Hardware. If Customer rejects the Hardware, the rejection notice shall identify the non-conformities contained therein and Customer shall return the Hardware to Shift5 at Shift5's expense. Upon receipt of a rejection notice, Shift5 shall have thirty (30) calendar days to ship replacement Hardware to Customer. For any Hardware that is not rejected within such timeframe, it shall be deemed accepted by Customer. Any replaced Hardware may be evaluated over an additional fifteen (15) calendar days from

receipt and accepted or rejected by Customer in accordance with the provisions of this Section 4.2.

**4.3. Leased Hardware.**

- 4.3.1.** If you lease any Hardware through us you shall pay the additional Fees set forth on the applicable Purchase Order in connection with such lease.
- 4.3.2.** If you lease any Hardware through us, you acknowledge and agree that the Hardware is being leased to you, at the prices set forth on the applicable Purchase Order, for use solely in connection with the Services pursuant to this Agreement. You shall not (and shall not permit any third party) to use any leased Hardware for any purpose other than to access and use the licensed Software and related Subscription Services. You shall use any leased Hardware solely for their authorized and intended purpose in a commercially reasonable manner in conformity with their instructions and manuals and all applicable laws. In addition, you shall not use any leased Hardware in any manner that could reasonably be expected to adversely affect or impair the applicability of Shift5's and/or suppliers' warranties or render them unfit for their originally intended use nor permit any person other than authorized and competent personnel to operate it.
- 4.3.3.** Title to any leased Hardware shall, at all times, remain in Shift5. You shall have no right, title, or interest in or to any leased Hardware except the right to possession and use thereof during the Software License Term and pursuant to terms and the conditions in this Agreement. Any leased Hardware shall remain Shift5 personal property, notwithstanding the manner in which it may be affixed to any Customer's real property. You shall, at all times, protect and defend, at your own cost and expense, the title and interest of Shift5 from and against all claims, liens, and legal processes of any trustee in bankruptcy, receiver, creditor, or other successor of Customer and keep any leased Hardware free and clear from all such claims, liens, processes, and any other encumbrance. You shall not sublease, transfer, or dispose of any leased Hardware or grant or permit any lien on them. You agree that you will not mortgage or otherwise encumber any leased Hardware.
- 4.3.4.** We shall have the right to mark any leased Hardware in a distinct and conspicuous manner with the name of Shift5 followed by the words "Property of Shift5, Inc" or other appropriate words designated by us. You shall not alter, deface, or remove any of our ownership identification plates or markings and, upon our request, you shall affix or re-affix such identification.
- 4.3.5.** Any leased Hardware shall be located at your place of business or installed on a system owned or controlled by you, and you shall not remove, or permit (by act or omission) the leased Hardware to be removed without our prior written consent.
- 4.3.6.** You shall immediately notify Shift5 of any problems with any leased Hardware, and shall use commercially reasonable efforts to work with Shift5 to pursue any warranty claims that Shift5 may have in relation to them in accordance with Section 9.4. As between the Parties, Shift5 shall be responsible for all repair and maintenance of any Leased Hardware during the Hardware Warranty Period; provided, however, that you shall be solely responsible for the costs of any repairs and maintenance necessitated by your negligence or misuse of such leased Hardware.
- 4.3.7.** Upon the termination of this Agreement, or at any other time upon demand by us, you, at your sole expense, shall, as directed in writing by Shift5, either (i) return any leased Hardware to us by delivering it in a manner consistent with the Shift5's recommendations and practices, to such place or on board such carrier (packed properly and in accordance with the Shift5's instructions) as we shall specify in writing; or (ii) fully cooperate with us in the disposition of any leased Hardware. You shall ensure that any leased Hardware will be returned to us free and clear of all claims, liens, processes, and any other encumbrances and in the same condition as when delivered to you, reasonable wear and tear excepted. At any time, upon any total or partial loss of or damage to any leased Hardware during the Software License Term, you shall be responsible for the value to replace or repair of any

leased Hardware.

- 4.4. **Delivery of Software.** Upon acceptance of the applicable Purchase Order, Shift5 make the Subscription Services available to Customer on the delivery date set forth in the applicable Purchase Order or as otherwise agreed upon in writing by the Parties.

## 5. FEES AND PAYMENT

- 5.1. **Fees and Taxes.** All Fees shall be set forth in the applicable Purchase Order and are due and payable as set forth in the applicable Purchase Order. Fees and other charges described in the Purchase Order are in addition to and do not include any federal, provincial, or local sales, PST, GST, HST, VAT, foreign withholding, use, property, excise, service, or similar transaction taxes ("Taxes") now or hereafter levied, all of which will be for your account. If we are required to collect and remit Taxes on your behalf, we will invoice you for such Taxes, and you will pay us for such amounts in accordance with the payment terms set forth in the invoice. You hereby agree to defend, indemnify, and hold harmless us, our hosting providers, and our and their respective officers, directors, managers, employees, contractors and agents from any and all liabilities, costs, and expenses (including reasonable attorneys' fees) in connection with any Taxes and related costs, interest, and penalties paid or payable by us for your benefit or on your behalf. Shift5 shall only be responsible for any taxes related to our income, property, franchise, or employees.
- 5.2. **Non-Refundable.** Unless otherwise expressly provided for in this Agreement or the applicable Purchase Order, all Fees paid under this Agreement and all Purchase Orders are non-refundable.
- 5.3. **No Contingency for Future Commitments.** Unless otherwise expressly provided for in the applicable Purchase Order, you agree that payment of the Fees under this Agreement and any applicable Purchase Order is not contingent on the delivery of any future product functionalities, or features, or any other future commitments.

## 6. TERMINATION AND SUSPENSION

- 6.1. **Term.** The term of this Agreement (the "Term") commences on the Effective Date as set forth in the purchase order and will continue in effect thereafter until terminated in accordance with Section 6.3.
- 6.2. **Auto-Renewal.** With exception of the US Federal Government customer, unless otherwise expressly provided in the Purchase Order (i) all subscriptions automatically renew (without the need to go through the Portal-interface "check-out" or execute a renewal Purchase Order) for additional periods equal to one (1) year or the preceding term, whichever is shorter; and (ii) the per-unit pricing during any automatic renewal term will remain the same as it was during the immediately prior term. Either party shall provide the other notice of nonrenewal at least thirty (30) calendar days before the end of a subscription term to stop the subscriptions from automatically renewing.
- 6.3. **Termination.** Either Party may terminate this Agreement on written notice to the other Party at any time when there are no Purchase Orders then in effect. In addition, either Party may terminate this Agreement and/or any Purchase Orders: (i) upon thirty (30) calendar days' notice to the other Party if the other Party breaches a material term of this Agreement, and the breach remains uncured at the expiration of such thirty (30) day period; or (ii) immediately, if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors. For U.S. Federal Government customers, such termination rights are in addition to those set forth in the applicable Purchase Order.
- 6.4. **Suspension for Non-Payment.** We may suspend the Subscription Services upon written notice to you if any undisputed invoiced amount due to us is more than 60 calendar days past due. We

will not suspend the Subscription Services while you are disputing any invoiced amount due to us reasonably and in good faith and are cooperating diligently to resolve the dispute. If the Subscription Services are suspended for non-payment, we may charge a reactivation fee to reinstate the Subscription Services. You will promptly reimburse us for any reasonable expenses of collection, including costs, disbursements, and reasonable outside legal fees we incur, to the extent necessitated by your refusal to pay any invoiced amounts that you are not disputing in good faith.

- 6.5. **Effect of Termination or Expiration of Agreement.** Upon any termination or expiration of this Agreement: (i) we will stop providing the Subscription Services, and you will stop all access to and use of the Subscription Services and Documentation; (ii) you will promptly return any leased Hardware, On-Prem Software and Documentation as per our written directions; (iii) you will promptly pay all unpaid Fees and applicable Taxes due through the end of the Term; and (iv) each Party will either return to the Disclosing Party (or, at such Disclosing Party's instruction, destroy and provide such Disclosing Party with written certification of the destruction of) all documents, computer files, and other materials containing any of such Disclosing Party's Confidential Information that are in the Receiving Party's possession or control. Customer shall provide Shift 5 with a signed written statement confirming that the On-Prem Software and any leased Hardware has been permanently removed from Customers systems and platforms.
- 6.6. **Survival.** The following provisions will survive termination of this Agreement: Section 1 ("Definitions"), Section 4.3 ("Leased Hardware"), Section 5 ("Fees and Payment") until you have paid all Fees and applicable Taxes, Section 6.5 ("Effect of Termination"), Section 7 ("Confidentiality; Feedback"), Section 8 ("Intellectual Property"), Section 9.5 ("Disclaimer"), Section 10 ("Limitation of Liability"), Section 11 ("Indemnification"), Section 12 ("General Provisions"), and this Section 6.6 ("Survival").

## 7. CONFIDENTIALITY; FEEDBACK

- 7.1. **Confidentiality.** At all times the Receiving Party will protect and preserve the Confidential Information of the Disclosing Party as confidential, using no less care than that with which it protects and preserves its own confidential information including, but not limited to, proprietary information (but in no event less than a reasonable degree of care), and will not use the Confidential Information for any purpose except to perform its obligations and exercise its rights under this Agreement and applicable Purchase Orders. The Receiving Party may not disclose, distribute, or disseminate the Disclosing Party's Confidential Information without written approval of the Disclosing Party and provided that the Receiving Party reasonably establishes that the individual(s) has a need to know and are bound by confidentiality obligations at least as restrictive as those contained herein. The Receiving Party will at all times remain responsible for any violations of this Agreement including, but not limited to the Trade Secrets Act (18 U.S.C. section 1905 and the Computer Fraud and Abuse Act 18 U.S.C. section 1030). If the Receiving Party is legally compelled to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will provide the Disclosing Party prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section. If such protective order or other remedy is not obtained or the Disclosing Party waives compliance with the provisions of this Section, the Receiving Party may furnish only that portion of the Confidential Information which it is advised by its counsel is legally required to be disclosed and will use its best efforts to insure that confidential treatment will be afforded such disclosed portion of the Confidential Information.
- 7.2. **Specific Performance and Injunctive Relief.** The Receiving Party acknowledges that in the event of a breach of Section 6.1 by the Receiving Party or its Representatives, substantial injury could result to the Disclosing Party and money damages will not be a sufficient remedy for such

breach. Therefore, in the event that the Receiving Party or its Representatives engage in, or threaten to engage in, any act which violates Section 6.1, the Disclosing Party will be entitled, in addition to all other remedies which may be available to it under law, to seek injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the terms of Section 6.1. The Disclosing Party will not be required to post a bond or other security in connection with the granting of any such relief.

- 7.3. **Feedback.** During the Term, you may elect to provide us with feedback, comments, and suggestions with respect to the Subscription Services ("Feedback"). You agree that Shift5 will be free to use, reproduce, disclose, and otherwise exploit any and all such Feedback without compensation or attribution to you.

## **8. INTELLECTUAL PROPERTY**

- 8.1. **Intellectual Property.** All right, title, and interest in and to the Subscription Services, Documentation, and the Hardware (if leased) including all modifications, improvements, adaptations, enhancements, or translations made thereto, and all intellectual property rights therein, will be and remain the sole and exclusive property of Shift5.
- 8.2. **Customer Data.** All right, title, and interest in and to non-anonymized Customer Data, including to the extent contained within the Enriched Data, and all proprietary rights therein, will be and remain Customer's sole and exclusive property. Subject to the terms and conditions of this Agreement, Customer hereby grants Shift5 a non-exclusive, worldwide, fully paid-up, royalty-free right and license, with the right to grant sublicenses through multiple tiers to vendors providing services to us (such as hosting providers), to reproduce, execute, use, store, archive, modify, perform, display, and distribute the Customer Data (i) as necessary to provide the Subscription Services; (ii) to research, develop, and improve Shift5's products and services; (iii) as directed or instructed by Customer; and (iv) provided that the Customer Data does not identify Customer, other purposes including marketing. Customer will have sole responsibility for the accuracy, quality, and legality of the Customer Data. Customer agrees to provide Shift5 with access to the Customer Data upon request.
- 8.3. **Enriched Data.** As between the Parties, except to the extent it constitutes Customer Data, Shift5 owns all right, title and interest in and to Enriched Data and the Shift5 Reports, and all proprietary rights therein. Subject to the terms and conditions of this Agreement, Customer hereby grants Shift5 a non-exclusive, worldwide, fully paid-up, royalty-free right and license, with the right to grant sublicenses through multiple tiers to vendors providing services to us (such as hosting providers), to reproduce, execute, use, store, archive, modify, perform, display, and distribute the Enriched Data and Shift5 Reports solely for internal purposes and as necessary to use the Services.

## **9. REPRESENTATIONS AND WARRANTIES; OUR DISCLAIMER.**

- 9.1. **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement and Purchase Orders; (ii) the execution, delivery, and performance of this Agreement, and Purchase Orders and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party; and (iii) it has the full power, authority, and right to perform its obligations and grant the rights it grants hereunder.
- 9.2. **Our Additional Representations and Warranties.** In addition to the representations and warranties set forth in Section 9.1, we represent and warrant to you that: (i) the Subscription Services will conform in all material respects with the applicable Specifications during the Term; and (ii) the Hardware will be free from defects in materials and workmanship for a period of



thirty-six (36) months from the initial Hardware Acceptance Date or for so long as the Hardware is leased from Shift5 to Customer ("Hardware Warranty Period").

- 9.3. **Error Correction.** If the Subscription Services do not perform as warranted in Section 9.2, Customer shall notify Shift5 in writing and Shift5 will, correct, replace or modify the Subscription Services at Shift's expense (such corrections, replacements or modifications to be part of Support Subscription Services) so as to provide Customer with Subscription Services that performs as warranted. This warranty does not apply to (i) any defect, error, or malfunction caused by Customer Data, (ii) any defect, error, or malfunction caused by Customer's or any Authorized User use of the Subscription Services in breach of this Agreement or not in accordance with the Documentation; or (iii) modifications to the Subscription Services or any portion thereof not made by Shift5. Customer must use commercially reasonable efforts to provide Shift5 with access to facilitate the identification and resolution of the error. Shift5's ability to identify and resolve the error may be delayed without access. Shift5 has the option to refund Fees paid for nonconforming Subscription Services and Customer will return the all nonconforming On-Prem Software to Shift5. THIS SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND SHIFT5'S SOLE AND EXCLUSIVE LIABILITY FOR SHIFT5'S BREACH OF WARRANTIES SET FORTH IN SECTION 9.2.
- 9.4. **Leased Hardware Warranty Claims .** In accordance with the terms of this Agreement, during the Warranty Period, Shift5 shall coordinate with the Supplier the replacement and/or repair of the Hardware, and any component thereof, that fails to meet or remain in compliance with applicable Hardware Specifications, at no additional cost to Customer. Shift5 shall designate and identify to Customer a principal point of contact for receiving such requests from Customer, and will respond to any request in accordance with Section 3.3.6. Shift5 has the option to refund Fees paid for the nonconforming Hardware upon return of such Hardware to Shift5. This warranty will be void if there is evidence of damage, misuse, or modification of Hardware by Customer. For purposes of use or modification of the Hardware, whether in and of itself or in combination with other components, devices, software, application or environment which exceeds, or is outside the scope of the technical specifications or performance capabilities of the Hardware, as expressly stated in any Documentation.
- 9.5. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9.1 AND SECTION 9.2, THE SERVICES, THEIR COMPONENTS, ANY DOCUMENTATION, THE HARDWARE, THE SHIFT5 REPORTS, THE ENRICHED DATA, THE CONTENT, AND ANY OTHER MATERIALS PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND SHIFT5 MAKES NO WARRANTIES WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT OR ANY PURCHASE ORDER AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT SHIFT5 MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW. SHIFT5 SHALL NOT BE LIABLE FOR FAILURES CAUSED BY THIRD PARTY OR CUSTOMER'S HARDWARE AND SOFTWARE, MISUSE OR CUSTOMER NEGLIGENCE OR WILLFUL MISCONDUCT.

10. **LIMITATION OF LIABILITY.** IN NO EVENT WILL SHIFT5 BE LIABLE TO CUSTOMER

OR ANY OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR PROFITS) ARISING FROM OR RELATING TO THIS AGREEMENT OR ANY PURCHASE ORDER, REGARDLESS OF WHETHER SHIFT5 WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. SHIFT5'S AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT OR ANY PURCHASE ORDER WILL NOT EXCEED THE FEES PAID BY YOU HEREUNDER DURING THE PERIOD SIX (6) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THIS AGREEMENT OR ANY PURCHASE ORDER MAY BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER SUCH ACTION HAS ACCRUED.

## 11. INDEMNIFICATION.

- 11.1. **Indemnification by Shift5.** Subject to Section 11.2, we will defend, indemnify, and hold harmless you and your Representatives from any and all liabilities, costs, and expenses (including reasonable attorneys' fees) in connection with any third-party action, claim, or proceeding (each a "Third-Party Claim") alleging that your authorized access and use of the Subscription Services in accordance with this Agreement infringes or misappropriates any third-party copyrights or trade secrets; provided, however, that the foregoing obligation will be subject to your: (i) promptly notifying us within 30 calendar days of the Third-Party Claim; (ii) providing us, at our expense, with the information, authority and assistance required in the defense of the Third-Party Claim; and (iii) providing us with sole control over the defense and negotiations for a settlement or compromise of the Third-Party Claim. Provided that for the U.S. Federal Government, the control of the defense and settlement is subject to 28 U.S.C. section 516.
- 11.2. **Exceptions to Our Indemnification Obligations.** We are not obligated to indemnify, defend, or hold you and your Representatives harmless with respect to any Third-Party Claim to the extent: (i) the Third-Party Claim arises from or is based upon your, and/or your Authorized Users' or individuals using your authorized user's credentials, use of: (a) the Software, Portal and/or the Website not in accordance with this Agreement or Purchase Order; or (b) any unauthorized modifications, alterations, or implementations of the Software, Portal and/or the Website made by you or at your request (other than by us); (ii) the Third-Party Claim arises from use of the Software, Portal and/or the Website in combination with modules, apparatus, hardware, software, or services not supplied or specified in writing by us; or (iii) the Third-Party Claim arises from any use of the Subscription Services for which they were not intended or designed.
- 11.3. **Infringement Claims.** In the event that we reasonably determine that the Subscription Services are likely to be the subject of a Third-Party Claim, we will have the right (but not the obligation), at our own expense, to: (i) procure for you the right to continue to use the Subscription Services as provided in this Agreement and any applicable Purchase Order; (ii) replace the infringing components of the Subscription Services with other components with equivalent functionality; or (iii) modify the Subscription Services so that they are non-infringing and functionally equivalent. If none of the foregoing options are available to us on commercially reasonable terms, we may terminate this Agreement without further liability to you and refund you a pro-rated portion of any applicable pre-paid Fees. This Section 11.3, together with the indemnity provided under Section 11.1, states your sole and exclusive remedy, and our sole and exclusive liability, regarding any Third-Party Claim.
- 11.4. **Indemnification by You.** You will defend, indemnify, and hold harmless us, our Affiliates, and our and their respective employees, directors and agents from any and all liabilities, costs, and expenses (including reasonable attorneys' fees) in connection with any Third-Party Claim arising

from: (i) your or any of your Authorized Users' or those using your Authorized Users credentials breach or violation of this Agreement or any Purchase Order; or (ii) your or any of your Authorized Users' gross negligence or willful misconduct; provided, however, that the foregoing obligation will be subject to our: (i) promptly notifying you of the Third-Party Claim; (ii) providing you, at your expense, with reasonable cooperation in the defense of the Third-Party Claim; and (iii) providing you with sole control over the defense and negotiations for a settlement or compromise of the Third-Party Claim. With respect to the U.S. Federal Government, the foregoing indemnification shall not apply as to the United States indemnifying Shift5 or any other party; however, Shift5 reserves the right to seek indemnification from the U.S. Federal Government in accordance with the preceding paragraphs should statute permit such indemnification.

## 12. GENERAL PROVISIONS.

- 12.1. **Assignment.** Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other Party; provided, however, that a Party may, upon written notice to the other Party and without the consent of the other Party, assign or otherwise transfer this Agreement: (i) to any of its United States owned and or controlled Affiliates; or (ii) in connection with a change of control transaction (whether by merger, consolidation, sale of equity interests, sale of all or substantially all assets, or otherwise), to a United States owned and or controlled entity; provided that in all cases, the assignee agrees in writing to be bound by the terms and conditions of this Agreement. Any assignment or other transfer in violation of this Section will be null and void and will be considered a breach of the license. Subject to the foregoing, this Agreement and any Purchase Order will be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.
- 12.2. **Waiver, Remedies, and Modifications.** Subject to the limitations herein, no failure or delay by either Party in exercising any right or remedy or enforcing any provision under this Agreement will operate, or be deemed to operate, as a waiver of any such right or remedy or prejudice a Party's right to enforce that provision in accordance with the license terms. All waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein.
- 12.3. **Governing Law.** With the exception of U.S. Federal Government Customers, this Agreement will be governed by and construed in accordance with the laws of the State of Virginia, without regard for choice of law provisions thereof.
- 12.4. **Exclusive Forum.** The Parties hereby consent and agree to the exclusive jurisdiction of the state and federal courts located in the Commonwealth of Virginia for all suits, actions, or proceedings directly or indirectly arising out of or relating to this Agreement or any Purchase Order, and waive any and all objections to such courts, including but not limited to, objections based on improper venue or inconvenient forum, and each Party hereby irrevocably submits to the exclusive jurisdiction of such courts in any suits, actions, or proceedings arising out of or relating to this Agreement or any Purchase Order. To the maximum extent permitted by law, the Parties waive any right to a jury trial.
- 12.5. **Notices.** All notices required under this Agreement or any Purchase Order (other than routine operational communications) must be in writing and will be delivered either personally or by email, national overnight courier or the U.S. Postal Service to each Party's notices contact and address listed in the applicable Purchase Order. Notices will be effective upon: (i) actual delivery to the other Party, if delivered in person or by email, or national overnight courier; or (ii) five (5) business days after being mailed via the U.S. Postal Service, postage prepaid.
- 12.6. **Independent Contractors.** As between themselves, the Parties are independent contractors. Neither Party will be deemed to be an employee, agent, partner, joint venturer, or legal representative of the other Party for any purpose, and neither Party will have any right, power, or

- authority to obligate the other Party.
- 12.7. **Severability.** If any provision of this Agreement or any Purchase Order is found invalid or unenforceable by a court of competent jurisdiction, that provision will be amended to achieve as nearly as possible the same economic effect as the original provision, and the remainder of this Agreement or the Purchase Order will remain in full force and effect. Any provision of this Agreement or any Purchase Order, which is unenforceable in any jurisdiction, will be ineffective only as to that jurisdiction, and only to the extent of such unenforceability, without invalidating the remaining provisions hereof.
  - 12.8. **Excusable Delays, Force Majeure.** With the exception of the U.S. Federal Government, except for your obligations to pay any Fees and Taxes hereunder, and the default of our Suppliers, vendors, or licensors, neither Party will be deemed to be in breach of this Agreement or any Purchase Order for any failure or delay in performance to the extent caused by reasons beyond its reasonable control, include, but are not limited to, acts of God, acts of any governmental body, war, insurrection, sabotage, armed conflict, terrorism, embargo, fire, flood, strike or other labor disturbance, pandemics quarantine restrictions, unplanned unavailability of or interruption or delay in telecommunications or third-party services, In the event that performance of this Agreement is hindered, delayed, threatened to be delayed, or adversely affected by reasons of the type described above, then the Party whose performance is so affected shall immediately notify the other Party in writing, including all relevant information with respect thereof, and shall likewise notify promptly of any subsequent change in the circumstances, and as mutually agreed to by both parties, this Agreement shall be completed with such adjustments to delivery schedule as are reasonably required by the existence of such reason or this Agreement may be terminated by either party upon 90 calendar days written notice. This provision does not excuse either party from taking reasonable steps to implement recovery procedures and does not affect Customer's obligation to pay for products and services provided. For the U.S. Federal Government, FAR 52.212-4 shall apply.
  - 12.9. **Third-Party Beneficiaries.** Except as set forth in Section 11.1 and Section 11.4, there are no third party beneficiaries under this Agreement or any Purchase Order.
  - 12.10. **Publicity.** During the Term, we may refer to you as a customer and user of the Subscription Services. In connection therewith, we may use your name and corporate logos. Any goodwill arising from the use of such name and logos will inure solely to your benefit. All publicity regarding this Agreement and any Purchase Order will be mutually coordinated and approved in writing by the Parties.
  - 12.11. **Export.** You will not authorize or knowingly permit Authorized Users, or any third parties to access or use the Subscription Services in violation of any United States export laws, export embargo, prohibition, or restriction.
  - 12.12. **United States Federal Government Customers Only.** Licensed Software is commercial computer software as defined at FAR 2.101 and DFARS 252.227-7014(a) (1). For Licenses entered into by or on behalf of the Department of Defense (including but not limited to, the Military Services, Defense Agencies and Components), acquisitions of Shift5 commercial software services and/or commercial software documentation is subject to the terms of this Agreement and governed by DFARS 227.7202- 3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. As required by 227.7202-3, the Government's rights to use, modify, reproduce, release, perform, display, or disclose computer software or computer software documentation shall be identified in a license agreement. For acquisitions by or on behalf of any civilian agency, Shift5 commercial computer software and/or commercial computer software documentation is subject to the terms of this Agreement and governed under FAR 12.212, Computer Software.
  - 12.13. **Complete Understanding.** This Agreement and all Purchase Orders constitute the final and complete agreement between the Parties regarding the subject matter hereof, and supersede any

prior or contemporaneous communications, representations, or agreements between the Parties, whether oral or written, including, without limitation, any confidentiality or non-disclosure agreements. To the extent of any conflict or inconsistency between this Agreement and any term contained in a Purchase Order, the terms of this Agreement will govern, unless such Purchase Order includes the section numbers of this Agreement that the Parties expressly agree no longer govern or are modified for the matters covered thereby. No term included in any confirmation, acceptance, purchase order, or any other similar document from you will change this Agreement or any Purchase Order or have any force or effect. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by authorized representatives of both parties.