

# Arrowlytics Aspire Master Service Agreement

*Last Updated: February 2021*

**This Terms of Service Agreement** (the “Agreement”) is made by and between Arrowlytics LLC, a North Carolina limited liability company (“Arrowlytics”), and the subscriber who will be invoiced for associated costs (“Subscriber”) and sets forth the terms and conditions under which Arrowlytics will provide, and Subscriber and its Authorized Users will use, the Arrowlytics Platform (as defined below) and related services (collectively, the “Services”). Access to and use of the Services by Subscriber or its Authorized Users shall constitute continued acceptance of the terms and conditions of this Agreement. In consideration of the above premises and the mutual promises set forth below and subject to the terms and conditions hereof, the parties hereto agree as follows:

**1. THE ARROWLYTICS ASPIRE PLATFORM.** For purposes of this Agreement, the term “Arrowlytics Platform” shall mean any and all of the following: (a) the Arrowlytics proprietary SaaS-based software platform accessed and made available via the Internet (the “Software”), including, as applicable, any update, correction, modification, enhancement, upgrade or new releases of the Software that Arrowlytics makes generally available to its clients (the “Updates”), (b) any and all materials, content and/or information made available to the Subscriber via the Software, including documentation and support material (including any online training materials) designed to assist Subscriber in the understanding, application, capability, maintenance, or use of the Arrowlytics Platform (collectively, “Content and Materials”), (c) information generated or resulting from Subscriber’s use of the Software (“Information”), and (d) any revision, enhancement, modification, translation, abridgment, condensation or expansion of the foregoing or any form in which any of the foregoing may be recast, transferred, or adapted (each, a “Derivative Work”). “Information” excludes any Protected Health Information (as such term is defined by 45 CFR § 160.103) of Subscriber.

**2. RIGHTS TO ACCESS AND USE.** Arrowlytics hereby grants, and Subscriber hereby accepts (on its own behalf and on behalf of each person who Subscriber invites to use the Services (the “Authorized Users”), subject to the terms and conditions of this Agreement, a limited, non-exclusive, non-sublicensable, non-transferable right, during the term of this Agreement, to access and use the Arrowlytics Platform via the Internet as set forth herein solely for its own internal business purposes (the “Subscription”). Arrowlytics and its licensors own all right, title and interest in and to the Services and Subscriber shall not have any rights to the Arrowlytics Platform except as expressly granted in this Agreement. Arrowlytics reserves to itself all rights to the Arrowlytics Platform not expressly granted pursuant to this Agreement. The Subscription granted hereunder shall include all Updates released by Arrowlytics from time to time and Arrowlytics is authorized to release all such Updates to Subscriber’s account as they are released to other users of the Arrowlytics Platform.

**3. COPYRIGHT AND TITLE.** The Arrowlytics Platform and any copy thereof, in whole or in part, and all copyrights, trade secrets and other proprietary rights therein, including any Derivative Work are and will remain the sole property of Arrowlytics or its licensors, regardless of the use made by Subscriber of the same and in any format; and are protected by certain United States and international copyright laws and trademark laws. The Subscription confers no title of ownership in the Arrowlytics Platform and is not a sale of any rights in the Arrowlytics Platform. Subscriber shall treat the Arrowlytics Platform with at least the same standard of care as it treats any other material copyrighted and/or trademarked by a third party, in no case less than a reasonable standard of care. Subscriber agrees not to, and to use best efforts to cause its customers and Authorized Users not to, challenge Arrowlytics’s ownership in or enforceability of

Arrowlytics's rights in and to any Licensed Deliverable or any related information technology. Subscriber shall not copy any of the Arrowlytics Platform.

**4. END-USER TERMS OF SERVICE.** Subscriber acknowledges that each Authorized User will be required to enter into Arrowlytics' end-user terms of service upon accessing the Arrowlytics Platform, which shall govern their use of the Services. Subscriber will promptly notify Arrowlytics of any breach of the end-user terms of service by any Authorized User. Notwithstanding the foregoing, Subscriber acknowledges and agrees that it shall be responsible and liable for all acts and omissions of its Authorized Users, including without limitation, any breach or violation of the terms of this Agreement.

**5. USE OF ARROWLYTICS PLATFORM.** The Arrowlytics Platform is solely for Subscriber's and its Authorized User's use for Subscriber's internal business purposes. Use of the Arrowlytics Platform is subject to the terms of use set forth in Sections 11(**TRADE SECRETS**), 12 (**CONFIDENTIALITY**) and 13 (**OTHER RESTRICTIONS**) below, and the restrictions set forth in those Sections will survive the termination of this Agreement. If there is unauthorized use by anyone who obtained access to the Arrowlytics Platform directly or indirectly through Subscriber or any of its Authorized Users, Subscriber shall take all steps reasonably necessary to terminate the unauthorized use. Subscriber will cooperate and assist with any actions taken by Arrowlytics to prevent or terminate such unauthorized use. Subscriber will indemnify, defend and hold Arrowlytics harmless from any and all liability, loss, damage, expense or other costs resulting from such access.

**6. TERM.** The initial term of the Subscription granted herein shall commence on the date of first payment made by Subscriber to Arrowlytics and continue until expiration of the initial term identified in the proposal/work order submitted by Subscriber and accepted by Arrowlytics. Following the initial term, this Agreement will automatically renew on an annual basis for consecutive, one-year terms, unless (i) terminated in accordance with Section 7 (**TERMINATION**) below, or (ii) either party provides written notice to the other of non-renewal at least ninety (90) days before the end of the initial term or any such renewal term.

**7. TERMINATION.** Either party may terminate this Agreement immediately and without further notice if the other party fails to cure any breach of any term or condition of this Agreement within 30 days after written notice of such breach. Upon any termination of this Agreement, Subscriber shall cease all use of the Arrowlytics Platform and destroy all copies of the Arrowlytics Platform then in Subscriber's possession. Termination for any reason shall not relieve Subscriber of the obligation to pay any fees accrued or due and payable to Arrowlytics prior to the effective date of termination. Upon termination for cause by Arrowlytics, all future amounts due under this Agreement shall be accelerated and become due and payable immediately.

**8. FEES AND PAYMENT.** In consideration of the Subscription granted herein, Subscriber shall pay to Arrowlytics the fees set forth on the Payments page of Subscriber's Arrowlytics Service Dashboard, which fees will be due and payable in advance. Unless otherwise set forth in the applicable Payments page of Subscriber's Arrowlytics Service Dashboard, the fees for any subsequent term shall be at the then-current term price unless Arrowlytics notifies Subscriber of a price change at least thirty (30) days before the end of the then-current term and shall be due at the commencement of such subsequent term. Subscriber authorizes Arrowlytics to make recurring charges to the credit/debit card listed in the Payments page of Subscriber's Arrowlytics Service Dashboard and if necessary to initial adjustments for any transactions credited or debited in error. This authority will remain in effect until Subscriber cancels this Subscription through the Payments page of Subscriber's Arrowlytics Service Dashboard or changes the method of payment through the Payments page of Subscriber's Arrowlytics Service

Dashboard, in which case this authorization will then apply to such new method of payment as set forth herein. All amounts payable hereunder by Subscriber shall be payable in United States funds. Subscriber agrees to pay any and all fees, assessments, and taxes associated with the amounts due under this Agreement. A finance charge shall be imposed on all account balances outstanding over 30 days. The finance charge is 1<sup>1</sup>/<sub>2</sub>% per month or the highest rate allowed under applicable law, whichever is lower. All payment obligations under this Agreement are non-cancelable and all payments under this Agreement are non-refundable.

**9. RECORDS; AUDIT RIGHTS.** During the term of this Agreement and for three (3) years thereafter, Subscriber will keep current, complete, and accurate records regarding the reproduction, installation, and use of the Arrowlytics Platform. Subscriber will provide such information to Arrowlytics and certify that it has paid all fees required under this Agreement within 15 business days of any written request, so long as no more than one request is made in any 12-month period. Subscriber will, after reasonable prior notice from Arrowlytics, provide Arrowlytics and its representatives reasonable access to Subscriber's premises, records, and personnel so that Arrowlytics may audit and confirm that Subscriber complies with this Agreement. If an audit reveals any reproduction, installation, use, or distribution of the Software or any Arrowlytics Platform that is not compliant with this Agreement, Subscriber will promptly comply with this Agreement and make an additional payment as contemplated by this Agreement, plus interest at the rate specified in the **FEES AND PAYMENTS** Section above. If the amount of the underpayment is 5% or greater, Subscriber will promptly reimburse Arrowlytics for its reasonable costs of conducting such audit.

**10. ASSIGNMENT.** Subscriber shall not assign or otherwise transfer the Subscription granted hereby or the rights granted hereunder without the prior written consent of Arrowlytics, which shall be in Arrowlytics' absolute, complete and unqualified discretion. Any attempt to assign or otherwise transfer any of the rights, duties or obligations hereunder without compliance with this Section is and shall be void ab initio.

**11. TRADE SECRETS.** The Arrowlytics Platform are trade secrets of Arrowlytics or its licensors and contain valuable proprietary products and trade secrets of Arrowlytics and its licensors, embodying substantial creative efforts and confidential information, ideas, and expressions. Subscriber shall take appropriate action to protect the confidentiality of the Arrowlytics Platform and the components and functions thereof. In furtherance of the foregoing, Subscriber shall not permit access to the Arrowlytics Platform or any portion thereof by any party who is not an Authorized User of the Arrowlytics Platform. Subscriber shall not modify, translate, disassemble, create Derivative Works based on, reverse-assemble, reverse-compile, decompile or otherwise reverse-engineer the Arrowlytics Platform in whole or in part, or otherwise use, copy, reproduce or distribute any Licensed Deliverable except as expressly permitted hereunder. The provisions of this Section shall survive the termination of this Agreement.

**12. CONFIDENTIALITY.** All information that either party receives from the other that is marked "confidential" by the disclosing party ("Disclosing Party") or that should reasonably be considered confidential by a party experienced in the industry ("Confidential Information") shall be kept confidential, and each party agrees to treat (and take precautions to ensure that its employees and Authorized Users treat) the Confidential Information as confidential in accordance with the confidentiality requirements and conditions set forth below. Each party agrees to keep confidential all Confidential Information disclosed to it by the other party in accordance herewith, and to protect the confidentiality thereof with at least the same standard of care with which it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable standard of care in the protection of Confidential Information); provided, however, that neither party shall have any such obligation with respect to

the use or disclosure to third parties of such Confidential Information as can be established to: (a) have been known publicly; (b) have been known generally in the industry on a non-confidential basis before communication by the Disclosing Party to the recipient ("Recipient"); (c) have become known publicly; (d) have been lawfully known otherwise by the Recipient before communication by the Disclosing Party; (e) have been received by the Recipient without any obligation of confidentiality from a source (other than the Disclosing Party) lawfully having possession of such information. Except as prohibited by applicable law or legal process or to the extent part of an examination by a regulatory or self-regulatory body, if the Recipient is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas, regulatory processes (including those of self-regulatory organizations), or similar process) in connection with any proceeding to disclose or otherwise becomes legally compelled to disclose any Confidential Information, the Recipient shall provide the Disclosing Party with prompt written notice and, if requested by the Disclosing Party after receipt of such notice, the Recipient shall provide Disclosing Party with reasonable assistance (subject to reimbursement by the Disclosing Party of all reasonable and out-of-pocket expenses incurred by the Recipient in providing such assistance) so as to enable the Disclosing Party to seek a protective order or other appropriate remedy or waive compliance with this Agreement. To the extent this Agreement applies, if such a protective order or other remedy is not obtained or if the Disclosing Party waives compliance with this Agreement, the Recipient may disclose Confidential Information, but only such Confidential Information as it is legally required to disclose in the reasonable opinion of counsel to the Recipient, and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information disclosed. Subscriber's obligations under this paragraph will survive the termination of this Agreement or of any Subscription granted under this Agreement for whatever reason.

**13. OTHER RESTRICTIONS.** Subscriber may not: (i) rent, loan, license, sublicense, market, or sell the Arrowlytics Platform or copies thereof, in whole or in part, to any party, (ii) offer in a service bureau, or otherwise make the Services available to any third party, other than to Authorized Parties as permitted herein, (iii) frame or mirror any content forming part of the Services, other than on Subscriber's own intranets for its own internal business purposes as permitted in this Agreement, (iv) access the Services in order to build any commercially available product or service; or (v) copy any features, functions, integrations, interfaces or graphics of the Services. Subscriber shall notify its employees and agents who may have access to the Arrowlytics Platform of the restrictions contained in this Agreement and ensure their compliance with such restrictions.

**14. SUBSCRIBER INPUT.** Arrowlytics shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Services any Subscriber Input (as defined below). Arrowlytics shall have no obligation to include any Subscriber Input in any Update. Subscriber shall have no obligation to provide Subscriber Input. "Subscriber Input" means suggestions, enhancement requests, recommendations or other feedback provided by Subscribers or its Authorized Users relating to the operation or functionality of the Services.

**15. SERVICE DATA USE.** Arrowlytics owns the Service Data (as defined below) derived from the operation of the Services. Nothing herein shall be construed as prohibiting Arrowlytics from utilizing the Service Data for purposes of operating Arrowlytics's business. Notwithstanding the foregoing, in no event whatsoever, will Arrowlytics disclose to any third party any Service Data that reveals the identity or Confidential Information, whether directly or indirectly, of Subscriber. Arrowlytics's internal use of Service Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by or on behalf of Subscriber into the Services. The provisions of this Section shall survive the termination of this Agreement.

**“Service Data”** means the statistical data derived from the operations of the Services, including without limitation, the number of records in the Services, the number and types of transactions, configurations and reports processed in the Services and the performance results for the Services. Service Data shall not include any Protected Health Information (as such term is defined by 45 CFR § 160.103) of Subscriber.

**16. RETURN OF SUBSCRIBER DATA.** Upon request by Subscriber made within thirty (30) days after any expiration or termination of this Agreement, to the extent Arrowlytics has any stored the electronic data or information submitted by Customer to the Services (“Subscriber Data”), Arrowlytics will make such Subscriber Data available to Subscriber for download. After such thirty (30) day period, Arrowlytics and its hosted service provider shall have no obligation to maintain or provide any Subscriber Data and may thereafter, unless legally prohibited, delete all Subscriber Data in its systems or otherwise in its possession or under its control. The provisions of this Section shall survive the termination of this Agreement.

**17. SURVIVING PROVISIONS.** In addition to any other Sections specifically identified as surviving termination, the following provisions of this Agreement shall also survive termination or expiration of this Agreement: Sections 3, 7, 8, 9, 11-16 and 19-34.

**18. COMPLIANCE WITH LAWS.** Subscriber will comply with all applicable export and import control laws and regulations and obtain at its expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities in its use of the Arrowlytics Platform and, in particular, Subscriber will not export or re-export the Arrowlytics Platform without Arrowlytics’ prior written consent, and, if such consent is granted, without Subscriber first obtaining all required United States and foreign government licenses. Subscriber will also be responsible for ensuring that Subscriber’s and each Authorized User’s use of the Arrowlytics Platform and the Services, complies with all other applicable laws, including but not limited to the rules, policies and regulations of the Federal Communications Commission (FCC); the Telephone Consumer Protection Act of 1991 (TCPA); the Junk Fax Prevention Act of 2005; the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act of 2003; the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and all other federal, state, local and foreign laws relating to Do-Not-Call provisions; unsolicited marketing; unsolicited telephone calls, facsimiles, SMS or other messages; the use of automated telephone equipment to place certain calls; the placing of commercial messages; telemarketing; faxing; email marketing; spamming or phishing; data security or privacy; international communications; account or debt collection; recording of calls or conversations; export of technical or personal data; end user, end-use, and destination restrictions imposed by the United States and any foreign government; consumer protection; pornography; trade practices; false advertising; unfair competition; anti-discrimination; harassment; defamation; intellectual property; or securities. Subscriber represents, warrants and covenants that all content, communications, files, information, data, and other content provided for transmission through the Arrowlytics Platform or the Services will be provided solely for lawful purposes, and in no event shall any communications or any content thereof be in violation of any of the foregoing laws. Subscriber further represents, warrants and covenants that it will (i) obtain prior express written consent from each customer, client or patient to whom communications are transmitted using the Arrowlytics Platform or the Services to receive pre-recorded/artificial voice messages calls and/or use of an automatic dialing device, text messages and/or emails from the Authorized User, Subscriber, Arrowlytics and any of its subcontractors at any telephone number or email address provided by such customer, client or patient to Subscriber, and (ii) immediately notify Arrowlytics of any revocation of such consent. Notwithstanding anything to the contrary set forth herein, Arrowlytics, at its sole option and discretion and without notice, may suspend Subscriber’s or any Authorized User’s use of the Arrowlytics Platform or the Services if it determines that Subscriber or any

Authorized User is in violation of any of the foregoing provisions. To the extent permitted by applicable law, Subscriber will defend, indemnify, and hold harmless Arrowlytics and its affiliates, directors, officers, managers, members, employees, contractors, agents and representatives from and against any losses, damages, liabilities, expenses (including reasonable attorneys' fees), judgments and claims that arise out of or relate to any violation of such laws or regulations by Subscriber, any Authorized User, or any of their respective officers, directors, managers, members, employees, agents or representatives.

**19. DISCLAIMER OF WARRANTY.** THE SERVICES AND ARROWLYTICS PLATFORM ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUBSCRIBER BEARS ALL RISK RELATING TO QUALITY AND PERFORMANCE OF THE LICENSED MATERIALS AND TO THE ACCURACY AND USE OF THE INFORMATION. WITHOUT LIMITING THE FOREGOING, ARROWLYTICS DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE ARROWLYTICS PLATFORM SHALL BE UNINTERRUPTED OR ERROR-FREE. Because some states may not allow the exclusion of implied warranties, such limitation may not apply in its entirety to Subscriber. Any warranties made in this Agreement are for the benefit of Subscriber only.

**20. LIMITATION ON LIABILITY.** IN NO EVENT WILL ARROWLYTICS, ITS SUPPLIERS, MEMBERS, SHAREHOLDERS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY LOST PROFITS, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES DUE TO LOSS OF DATA OR GOODWILL, ARISING OUT OF THIS AGREEMENT OR THE USE OF OR RELIANCE UPON THE SERVICES, ARROWLYTICS PLATFORM OR INFORMATION, EVEN IF ARROWLYTICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL ARROWLYTICS BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES OR ANY UNAUTHORIZED USE OR MISUSE OF ANY SERVICES, ARROWLYTICS PLATFORM OR INFORMATION, EXCEPT IN THE CASE OF ARROWLYTICS'S GROSS NEGLIGENCE WITH RESPECT TO SUCH USE OR MISUSE. SUBSCRIBER ASSUMES RESPONSIBILITY FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE ARROWLYTICS PLATFORM. UNDER NO CIRCUMSTANCES WILL ARROWLYTICS'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY SUBSCRIBER TO ARROWLYTICS DURING THE IMMEDIATELY PRECEDING TWELVE MONTH PERIOD (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION). THE PARTIES AGREE THAT THIS SECTION SHALL SURVIVE AND CONTINUE IN FULL FORCE AND EFFECT DESPITE ANY FAILURE OF CONSIDERATION OR OF AN EXCLUSIVE REMEDY. THE PARTIES ACKNOWLEDGE THAT THE PRICES HAVE BEEN SET AND THE AGREEMENT ENTERED INTO IN RELIANCE UPON THESE LIMITATIONS OF LIABILITY AND THAT ALL SUCH LIMITATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. BECAUSE SOME STATES MAY NOT ALLOW THE EXCLUSION OR LIMITATION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, SUCH LIMITATIONS MAY NOT APPLY TO SUBSCRIBER.

**21. GOVERNING LAW.** This Agreement shall be governed by the laws of the State of North Carolina, U.S.A., without regards to any choice of laws provisions thereof.

**22. REMEDIES.** Subscriber agrees that the obligations of Subscriber provided herein are necessary and reasonable in order to protect Arrowlytics and its business interests, and Subscriber expressly agrees that monetary damages alone may be inadequate to compensate

Arrowlytics for any breach by Subscriber of its covenants and agreements set forth herein. Accordingly, Subscriber acknowledges that the unauthorized use, transfer, or disclosure of the Arrowlytics Platform, or copies thereof will (a) substantially diminish the value to Arrowlytics of the proprietary interest that are the subject of this Agreement; (b) render Arrowlytics's remedy at law for such unauthorized use, disclosure or transfer inadequate; and (c) cause irreparable injury in a short period of time. If Subscriber breaches any of its obligations with respect to the use of the Arrowlytics Platform, Arrowlytics shall be entitled to equitable relief to protect its interest therein, including but not limited to, preliminary and permanent injunctive relief without requirement of a bond. For such purposes, the parties hereto agree to submit to the exclusive jurisdiction of the federal and state courts found within the State of North Carolina, and they do agree that venue shall be proper in the Mecklenburg County in the State of North Carolina. In addition to any other remedies that may be available, in law, in equity or otherwise, Arrowlytics shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by Subscriber, without the necessity of proving actual damages.

**23. ARBITRATION.** Any controversy or claim arising out of or relating to this Agreement, including, without limitation, the making, performance, or interpretation of this Agreement, shall be settled by binding arbitration in Mecklenburg County, North Carolina, except any action for injunctive relief that may be brought pursuant to the terms of Section on REMEDIES. Unless otherwise agreed, the arbitration shall be conducted in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be held before three arbitrators, one arbitrator chosen by each of the parties and the third arbitrator chosen by the two arbitrators. Each of the arbitrators shall be chosen from a panel of attorneys knowledgeable in the field of business law in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties agree that the arbitrators shall have no jurisdiction to consider evidence with respect to or render an award or judgment for punitive damages (or any other amount awarded for the purpose of imposing a penalty) or any other damages inconsistent with the terms and provisions of this Agreement. The parties agree that all facts and other information relating to any arbitration arising under this Agreement shall be kept confidential to the fullest extent permitted by law. Any ruling rendered by the arbitrators shall be final and non-appealable and shall be enforceable in any court of competent jurisdiction.

**24. ATTORNEY FEES.** In case of arbitration or action to enforce any rights or conditions of this Agreement, or appeal from said proceeding, it is mutually agreed that the losing party in such suit, action, proceeding or appeal shall pay the prevailing party's reasonable attorney fees and costs incurred.

**25. ENTIRE AGREEMENT; AMENDMENT.** This Agreement constitutes the entire agreement and understanding of the parties, whether oral or written, relating to the subject matter hereof; are intended as the parties' final expression and complete and exclusive statement of the terms hereof, superseding all prior or contemporaneous agreements, representations, communications, and understandings, whether written or oral; and may be amended or modified only by an instrument in writing or by Arrowlytics by posting an amended agreement to Subscriber's Arrowlytics Service Dashboard with prior notice of the effectiveness thereof.

**26. NON-WAIVER.** No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or any other provision or of the right to enforce such provision or any other provision.

**27. NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties to this Agreement, any right or remedy of any nature whatsoever.

**28. SEVERABILITY; BINDING EFFECT.** If any provision of this Agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this Agreement shall not be in any way impaired. This Agreement shall be binding on and inure to the benefit of the parties and their heirs, personal representatives, successors, and, to the extent permitted by the Section on ASSIGNMENT.

**29. FORCE MAJEURE.** Arrowlytics will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond Arrowlytics's reasonable control, so long as Arrowlytics uses all commercially reasonable efforts to avoid or remove such causes of non-performance.

**30. RELATIONSHIP OF PARTIES.** Both parties agree that they are independent entities. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the parties. Neither party shall have power or authority to obligate or bind the other party in any manner whatsoever, except as specifically provided herein. Each party is responsible for the supervision, management and direction of its own employees. Each party is responsible for the payment of compensation to its employees and for any injury to them occurring in the course of their employment for which their employer is responsible and neither party shall be responsible for the supervision, management and direction of the employees of the other party.

**31. NOTICES.** All notices, consents, and other communications permitted or required to be given hereunder ("Notice") shall be delivered by electronic mail to Arrowlytics at [info@Arrowlytics.com](mailto:info@Arrowlytics.com) and to Subscriber at the electronic mail address set forth on the Payments page of Subscriber's Arrowlytics Service Dashboard. Any party may change its email address for notification purposes by giving the other party notice of the new email address and the date upon which it will become effective in accordance with the terms of this Section.

**32. INDEMNIFICATION.** In addition to any other indemnification obligations contained herein, Subscriber shall indemnify, defend and hold harmless Arrowlytics and its affiliates, directors, officers, managers, members, employees, contractors, agents and representatives from and against any losses, damages, liabilities, expenses (including reasonable attorneys' fees), judgments and claims that arise out of or relate to (a) any breach by Subscriber of any representation, warranty or covenant of Subscriber contained in this Agreement and (b) Subscriber's or any Authorized User's use of the Arrowlytics Platform or the Services. Arrowlytics will: (a) give Subscriber prompt written notice of the claim; (b) grant Subscriber full and complete control over the defense and settlement of the claim; (c) assist Subscriber with the defense and settlement of the claim as Subscriber may reasonably request and at Subscriber's expense; and (d) comply with any settlement or court order made in connection with the claim.

**33. USE OF SUBSCRIBER NAME.** Arrowlytics may identify Subscriber in Arrowlytics advertising and marketing materials. Subscriber hereby grants Arrowlytics a non-exclusive right to use Subscriber's trademarks, logos, and other materials provided by Subscriber to Arrowlytics for this purpose.

**34. MUTUAL WARRANTIES.** Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding



agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.