

MASTER SOFTWARE SUBSCRIPTION SERVICES AGREEMENT
Software as a Service (SaaS)

THIS MASTER SOFTWARE SUBSCRIPTION SERVICES AGREEMENT (the “*Agreement*”) governs Your acquisition of the services described in signed or authenticated order that identifies the services and other terms and conditions by which You will be provided the Services (an “*Order Form*”) between You as the customer and the Catalis entity that is providing the Services (referred to in this Agreement as “*Catalis*.”) Capitalized terms have the definitions set forth in this Agreement. “*Customer*” or “*You*” or “*Your*” is the legal entity that is entering into an agreement with the Catalis entity that is providing the Services described in an Order Form. The “*Effective Date*” of this Agreement is the date on the Order Form unless the Order Form specifies a different effective date. Customer and Catalis may each be referred to individually as a “*Party*” and together as the “*Parties*.” Any Schedules to this Agreement are those that are part of the Order Form.

1. DEFINITIONS.

The following definitions shall apply in this Agreement:

1.1. *Confidential Information*. All information disclosed by a party (“*Discloser*”) to the other party (“*Recipient*”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information includes Customer Data; Catalis Confidential Information includes the Software and associated services; and Confidential Information of each party includes the terms and conditions of this Agreement and all schedules (including pricing) in an Order Form, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to Recipient prior to its disclosure by Discloser without breach of any obligation owed to Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by Recipient.

1.2. *Customer Data*. All data of Customer, whether proprietary or non-proprietary to Customer, converted for use with the Catalis Deliverables.

1.3. *Customer Materials*. All materials supplied by Customer in connection with this Agreement.

1.4. *Deliverables*. Those components, milestones, and/or materials, including, without limitation, the Software, documentation, maintenance modifications, and enhancements to be completed by one Party and delivered or otherwise provided to the other Party in accordance with the terms of this Agreement. Deliverables can mean either Deliverables required from Catalis (“Catalis Deliverables”) or Deliverables required from Customer (“Customer Deliverables”).

1.5. *Documentation*. The written description of the functions and use of the Software.

1.6. *Error*. (i) any error or defect resulting from an incorrect functioning of Software caused by the Software’s failure to meet a Functional Specification; or (ii) any error or defect resulting from an incorrect or incomplete statement in Documentation caused by the failure of the Software and/or the documentation to meet a Functional Specification.

1.7. *Functional Specifications*. The functions and/or criteria for the Software described as documentation related to the Software or as described in an Order Form.

1.8. *Intellectual Property*. All interests of any kind including: (i) trade secrets, (ii) copyrights, (iii) derivatives, (iv) documentation, (v) patents, (vi) the Software, (vii) technical information, (viii) technology, and (ix) any and all proprietary rights relating to any of the foregoing.

1.9. *New Product*. Any change or addition to Software, Services and/or related documentation that: (i) has a value or utility separate from the use of the Software, Services and documentation; (ii) may be priced and offered separately from the Software, Services and documentation; and (iii) is not made available to Catalis’ customers generally without separate charge. In the event of any disagreement between the Parties with respect to whether a change or addition constitutes a New Product, the good faith determination of such issue by Catalis shall be final, binding, and conclusive.

1.10. *Statement of Work*. The schedule or addendum to an Order Form that provides the written description and specifications for the services to be provided by Catalis to Customer, including the Deliverables and milestone, delivery, and acceptance schedules.

1.11. *Software*. The Catalis software supplied by Catalis pursuant to this Agreement as described in an Order Form. The term “Software” does not include New Products except to the extent added to the Software by separate agreement of the Parties and the payment to Catalis of the additional fees and under additional terms and conditions, if required by Catalis.

1.12. *Software Acceptance Date*. The date of acceptance of the Catalis Deliverables by Customer as described in this Agreement or the date that Customer uses the Software in a live environment, whichever is sooner.

1.13. *Taxes.* All federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar taxes), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other taxes of any kind, including without limitation any interest, penalty, or additions, whether or not disputed.

1.14. *Test Validation Criteria.* The acceptance criteria for the Catalis Deliverables pursuant to the normal implementation methodology applied by Catalis, or as agreed by the Parties in the Statement of Work.

1.15. *Warranty Period.* The thirty (30) day period commencing on the installation of the Software

2. SUBSCRIPTION LICENSE.

2.1. *License.* Catalis grants the Customer a license to access and use the Catalis Software and Catalis Deliverables described in an Order Form during the Term of this Agreement and in accordance with the terms and conditions of this Agreement (the “Services”). As part of the subscription by Customer, Catalis will perform the services described in this Agreement.

2.2. *Scope of License Limited.* The right of Customer to use the Software and associated documentation is for Customer’s internal use only and limited to the field of use described in an Order Form. No title or ownership in the Software or documentation is transferred to Customer. Customer shall not copy or in any way duplicate the Software, except for necessary backup and archival procedures approved by Catalis in advance and in writing. Only Customer’s employees and necessary contractors acting in the proper scope of their services to Customer may access or use the Software or documentation. Customer shall not adapt, modify, reverse engineer, decompile, or disassemble, in whole or in part, any of the Software and/or any documentation.

2.3. *Additional Services.* Customer may subscribe to additional Services in a subsequent Order Form.

2.4. *Restrictions.* Customer shall not remove, edit, alter, abridge or otherwise change in any manner any Catalis Intellectual Property notices. Customer may not, and may not permit others to reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the software or Service; modify, translate, adapt, alter, or create derivative works from the Service; copy (other than one back-up copy), distribute, publicly display, transmit, sell, rent, lease or otherwise exploit the Service; or distribute, sublicense, rent, lease, loan or grant any third party access to or use of the Service to any third party.

2.5. *Installation at Customer’s Location or Designated Data Center.* The Services will be hosted at and operated from a third-party data center. The data center will meet industry standard certifications or processes for data security.

3. FEES, INSTALLATION CHARGES, AND TAXES.

3.1. *Subscription Fees.* The subscription fees for the Services are set forth on the Order Form. Subsequent orders shall be at the fees in effect at the time of receipt by Catalis of any subsequent Order Form which identifies additional software to be included under this Agreement. Catalis will give notice to Customer of any fee increases for a renewal term after the Initial Term as defined below.

3.2. *Configuration, Installation and Services Fees.* Customer shall also pay for configuration and installation of Services and any other services required under this Agreement or requested by Customer as described in this Agreement at the then prevailing fees, plus any travel expenses required, including reasonable mileage, airfare, meals, lodging, and similar expenses. Meals will be billed at the applicable GSA per diem rate.

3.3. *Taxes.* Customer is additionally liable for any applicable federal, state, or local Taxes (exclusive of income or gross receipts Taxes properly payable by Catalis) and other fees or assessments incurred as a result of the use of the Software by Customer.

3.4. *Currency.* All Fees listed shall be interpreted as being in United States dollars (USD), unless otherwise stated.

4. DELIVERY AND ACCEPTANCE.

4.1. *Delivery, Testing and Installation.* Each Party shall timely perform delivery of its required Deliverables in accordance with the Statement of Work, including any specified delivery schedule. Testing of Catalis Deliverables shall be completed by Customer in accordance with the Test Validation Criteria within fifteen (15) days following initial delivery to Customer. Within thirty (30) days following completion of testing of the Catalis Deliverables, Catalis shall install the Catalis Deliverables at the hosting facility for acceptance testing.

4.2. *Acceptance.* Within ten (10) days following completion of User Acceptance Test (UAT), Customer shall either: (i) accept the Catalis Deliverables in writing; or (ii) reject the Catalis Deliverables and provide Catalis with a statement of Errors resulting

in operation not in conformance with the Test Validation Criteria. Catalis will correct any Error and redeliver the Catalis Deliverables to Customer within thirty (30) days following receipt of the statement of Errors. Customer shall, within ten (10) days following such redelivery, accept or reject the redelivered Catalis Deliverables in accordance with the procedures set forth herein. Failure by Customer to provide a statement of acceptance or statement of Errors within either of the ten (10) day periods specified herein shall be deemed to be acceptance by Customer of the Catalis Deliverables.

5. PAYMENT.

5.1. *Fees for Initial and Renewal Subscription Services.* Payment of Software subscription fees, installation fees, and other fees on the Order Form will be made as provided in the Order Form. All Fees will be billed monthly and are due thirty (30) days after the date of the invoice. Unless Catalis provides advance notice of a different price increase for Services, the pricing during any renewal term will increase above the applicable pricing in the prior term by the greater of three percent (3%) or the increase in the CPI for the prior calendar year. "CPI" means the Consumer Price Index for all Urban Consumers (All Items U.S. City Average 1982–84 equals 100), published by the Bureau of Labor Statistics, United States Department of Labor, Bureau of Labor Statistics.

5.2. *Fees for Subsequent Software Subscription.* Payment of subscription fees, installation fees, and other fees to Catalis will be as specified on any subsequent Order Form.

5.3. *Ancillary Charges and Out of Pocket Expenses.* All additional or ancillary charges (e.g., additional training charges) and all out of pocket expenses of Catalis (e.g., travel expenses) which are payable by Customer hereunder shall be due and payable within thirty (30) days following invoice by Catalis.

5.4. *Failure of Payment.* In the event payment is not made as specified in this Agreement, Customer shall pay interest at the rate of one and one-half percent (1.5%) per month (or the highest applicable legal rate, whichever is lower) on the outstanding overdue balance for each month that such sum is overdue; provided, however, that if Customer is a governmental agency or authority subject to a "Prompt Payment" or similar statutory requirement for the transaction contemplated in this Agreement, such statutory requirement shall control to the extent the same is inconsistent with the requirements of this section 5.4.

6. WARRANTY, EXCLUSIONS, AND DISCLAIMER.

6.1. *Services Warranty.* Catalis warrants that the Services shall conform to the Functional Specifications and will be free of Errors during the Warranty Period. Catalis' sole obligation and responsibility to Customer under the foregoing warranty is to remedy, at no cost to Customer, any such Error reported to Catalis during the Warranty Period.

6.2. *Warranty Exclusions.* The foregoing warranties do not apply to any (i) damage arising from any cause beyond Catalis' reasonable control, including improper operation or use or misuse of Software by Customer, (ii) Errors caused by software or hardware not supplied by Catalis, or (iii) problems due to Customer's operating environment, including, without limitation, temperature, humidity, dust, or static charge.

6.3. *WARRANTY DISCLAIMER.* EXCEPT FOR THE EXPRESS WARRANTIES STATED IN THIS SECTION 6 OF THIS AGREEMENT, CATALIS DISCLAIMS AND CUSTOMER WAIVES ALL WARRANTIES ON THE SOFTWARE AND SERVICES FURNISHED UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CATALIS LICENSES THE SOFTWARE "AS IS" AND "WITH ALL FAULTS."

7. FUNCTIONAL SPECIFICATIONS.

Customer understands that such Functional Specifications shall be defined in accordance with Catalis standard applications and that any application and/or communication and/or functions not currently supported by Catalis shall be considered "customized" and, as such, may incur additional costs and delivery schedules beyond those stated and agreed to by Catalis.

8. TRAINING.

Catalis shall provide training in the operation and maintenance of the Services. The number of training days is described in the Order Form. Customer may request additional training time and/or additional personnel to be trained, provided that any such additional training shall be chargeable to Customer at Catalis' then current fee for the requested training, plus reasonable travel expenses if such training occurs anywhere other than Catalis' facilities.

9. RESTRICTIONS UPON DISCLOSURE OF CONFIDENTIAL INFORMATION.

9.1. *Protection.* Recipient shall use commercially reasonable care, but in no event less than the same degree of care it uses to protect its own most confidential and proprietary information, to prevent the unauthorized use, disclosure, publication, or dissemination of Discloser's Confidential Information. Recipient shall provide Discloser's Confidential Information to its employees and necessary contractors only on a "need to know" basis, and always subject to the terms of this Agreement. Recipient agrees to accept and use Discloser's Confidential Information solely in connection with Recipient's participation in, and solely with respect to, this Agreement. Recipient shall inform its employees and necessary contractors of these confidentiality obligations and shall take such steps as may be reasonably requested by Discloser to prevent unauthorized disclosure, copying, or use of Discloser's Confidential Information. Recipient acknowledges that, in the event of a breach by Recipient of its obligations under this section 9, in addition to any other right or remedy available to Discloser, at law or in equity, Discloser will suffer irreparable injury, and shall be entitled to preliminary and final injunctive relief (without bond except as otherwise required by applicable law) in order to prevent any further or other breach or any unauthorized use of Discloser's Confidential Information. Recipient shall notify Discloser immediately upon discovery of any prohibited use or disclosure of any of Discloser's Confidential Information or any other breach of these confidentiality requirements (including by any third parties) and shall fully cooperate with Discloser to assist Discloser in regaining possession of its Confidential Information and to prevent further unauthorized use or disclosure of the same.

9.2. *Limited Disclosure.* Recipient may disclose Confidential Information of Discloser if and to the extent required by any judicial or administrative governmental request, requirement, or order, provided that Recipient shall take reasonable steps to provide Discloser sufficient prior notice in order to enable Discloser to contest such request, requirement, or order. Recipient shall, except as otherwise expressly provided by the terms of this Agreement, return all tangible Discloser Confidential Information, including, without limitation, all computer programs, documentation, notes, plans, drawings, and copies thereof, to Discloser immediately upon Discloser's request.

9.3. *Ownership.* All Discloser Confidential Information, including, without limitation, any and all adaptations, enhancements, improvements, modifications, revisions, or translations thereof created by Discloser or Recipient, shall be and remain the property of Discloser, and no license or other rights to such Confidential Information is granted or implied hereby. Except as otherwise expressly provided in this Agreement, all Discloser Confidential Information is provided "AS IS" and without any warranty, express, implied, or otherwise, regarding its accuracy or performance.

10. INTELLECTUAL PROPERTY INDEMNITY.

10.1. *Indemnification of Intellectual Property Infringement Claims.* In the event of any actual or threatened claims by a third party that the Catalis Deliverables infringe upon any Intellectual Property of such third party, Catalis will indemnify Customer with respect to such claims. Customer shall immediately notify Catalis of any such claim. The foregoing indemnity shall be ineffective if any of the Services have been modified, altered, or otherwise changed by Customer (or on behalf of Customer by any person other than Catalis). Catalis will have no liability or obligation under this section 10 if any claim of infringement is based upon: (i) the combination, operation, or use of the Software or Services with any component other than Catalis Intellectual Property, if such claim would have been avoided but for such combination, operation, or use; and/or, (ii) any derivative of any Catalis Intellectual Property created by any person other than Catalis. Catalis shall have sole control over the selection of counsel and the defense and settlement of any legal proceeding or other claim and Customer shall provide Catalis with all reasonable assistance in the defense of the same.

10.2. *Indemnification by Customer.* Customer will defend Catalis against any claim, demand, suit or proceeding made or brought against Catalis by a third party alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, or arising from Customer's use of the Software, services, and/or content in violation of this Agreement, Order Form, or applicable law (each a "Claim Against Catalis"), and Customer will indemnify Catalis from any damages, attorney fees, and costs finally awarded against Catalis as a result of, or for any amounts paid by Catalis under a settlement approved by Customer in writing of, a Claim Against Catalis, provided Catalis (i) promptly gives Customer written notice of the Claim Against Catalis, (ii) gives Customer sole control of the defense and settlement of the Claim Against Catalis (except that Customer may not settle any Claim Against Catalis unless it unconditionally releases Catalis of all liability), and (iii) gives Customer all reasonable assistance, at Customer's expense.

10.3. *Remedy.* In the event of a third party claim that the Catalis Deliverables infringe the intellectual property rights of a third party, Catalis shall have the right, as Customer's sole and exclusive remedy against Catalis, at Catalis' sole election, to: (i) modify the allegedly infringing Catalis Deliverables to be non-infringing, provided that such modification does not adversely impact the functionality of the Software in any material respect; (ii) obtain a license or other rights to enable Customer to continue to use the applicable Software as contemplated in this Agreement, or (iii) to terminate this Agreement and return to Customer any unearned fees paid by Customer to Catalis.

11. RIGHTS IN SOFTWARE, DATA AND MATERIALS.

11.1. *Catalis Ownership.* As between Catalis and Customer, Catalis shall be the sole owner of all right, title, and interest in and to the Software, Services, all Catalis Deliverables, documentation, any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer, and any and all copies or derivatives created by either Party, exclusive only of the Customer Materials. Customer hereby irrevocably grants, transfers, and assigns to Catalis, without reservation, all worldwide ownership rights, title, and interest, including, without limitation, any and all Intellectual Property which Customer may have or acquire, by operation of law or otherwise, in and to any or all of the Software, the Catalis Deliverables, documentation, and in and to any other Intellectual Property of Catalis, along with the good will of the business appurtenant to the use of any of the same. Customer further hereby irrevocably transfers and assigns to Catalis any and all moral rights Customer may have in and to such Software, the Catalis Deliverables, documentation, and in and to any other Intellectual Property of Catalis, and hereby forever waives and agrees never to assert any moral rights it may have during or after termination or expiration of this Agreement. Customer shall, at the request of Catalis, execute any and all documentation necessary to formally transfer such rights to Catalis. Customer shall promptly notify Catalis in writing if it becomes aware of any violation, infringement, or unfair competition related to the Catalis Intellectual Property. Customer agrees to allow Catalis full access to all relevant hardware, software, and material to determine compliance.

11.2. *Customer Ownership.* As between Catalis and Customer, Customer shall be the sole owner of all right, title, and interest in and to all Customer Materials. Catalis hereby irrevocably grants, transfers, and assigns to Customer, without reservation, all worldwide ownership rights, title, and interest, including, without limitation, any and all Intellectual Property rights, which Catalis may have or acquire, by operation of law or otherwise, in and to any or all of the Customer Materials. Catalis further hereby irrevocably transfers and assigns to Customer any and all moral rights Catalis may have in such Customer Materials, and hereby forever waives and agrees never to assert any moral rights it may have or obtain, during or subsequent to the termination or expiration of this Agreement. Catalis shall, at the request of Customer, execute any and all documentation necessary to formally transfer such rights to Customer.

12. SUPPORT AND MAINTENANCE SERVICES.

12.1. *Scope and Definitions.* Catalis shall provide maintenance and support services reasonably necessary to ensure that the Services operate in conformity with Functional Specifications and the documentation as described in this Agreement. The following terms shall apply to this section 12.

12.1.a. Critical Defect. An Error in the Services which renders the Services unable to perform a Functional Specification and for which a workaround is not available.

12.1.b. Non-Critical Defect. A defect in the Services that materially impacts the operation of the Services and for which a workaround is not available.

12.1.c. Telephone Support. The provision of general information and diagnostic advice and assistance concerning the use and operation of the Software and Catalis Deliverables via telephone. Telephone support is intended to be used by a limited number of people designated by Customer to communicate with Catalis about defects or problems. It is not a substitute for training of personnel by Customer.

12.1.d. Basic Maintenance Period. The Basic Maintenance Period is from Monday through Friday of each week, Eastern Time), except on the following recognized holidays (“Holidays”): New Year’s Day, Martin Luther King Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day / Indigenous Peoples’ Day, Veterans Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day. Hours of operation are as set forth in the Order Form.

12.2. *Covered Maintenance.*

12.2.a. General. Maintenance services and telephone support will be performed by Catalis during the Basic Maintenance Period. Maintenance services do not include Customer’s costs necessary to access the Services.

12.2.b. Upgrades. Customer will receive all updated, patches and enhancements to the Services (except any New Product), including all related update releases and associated documentation.

12.2.c. Online Support and Telephone. Telephone support includes: (i) remote diagnostics; (ii) service desk and dispatch; (iii) question and answer consulting; and (iv) non-chargeable user error remedies. Remote diagnostics equipment is required at Customer locations for remote support, which equipment is to be obtained by Customer at its sole expense. Catalis may choose to request a copy of the client database to load in Catalis’ offices in an attempt to either recreate the process or run the application to complete a process if time is of the essence.

12.2.d. Exclusions. Maintenance services do not include maintenance required by: (i) operator error or improper operation or use of the Services by Customer; (ii) modifications, repairs, or additions to the Services performed by

persons other than Catalis, or damage to Services by Customer's employees or third persons; or (iii) training services. Any maintenance service or related service or training other than the maintenance services described above will be charged at Catalis' then current billable call maintenance rates in effect.

12.2.e. Billable Call Maintenance. Any maintenance service or related service or training other than covered maintenance services will be charged at Catalis' then current billable call maintenance rates in effect. Such rates apply to time spent performing maintenance, including travel time. The minimum charge for billable call maintenance is one-half of one hour (1/2 hour). Should billable call maintenance services require travel to the Customer's site, Customer will also be invoiced for actual expenses of travel, including, without limitation, as applicable, mileage, air fare, meals, lodging, and similar expenses; provided, however, that, in the event Customer is a governmental agency or authority, travel expenses shall be limited in amount by applicable federal or state statutory requirements. All charges for billable call maintenance shall be due and payable within thirty (30) days following invoice by Catalis.

13. SUBSCRIPTION TERM, TERMINATION AND EXPIRATION.

13.1. *Term; Renewal.* The initial term ("Initial Term") of this Agreement is specified in the Order form and shall commence on the Effective Date. The term of this Agreement shall automatically renew for the same period as the Initial Term unless either Party gives the other Party not less than one-hundred and eighty (180) days prior to the conclusion of the then current term of Agreement of its decision to not allow the Agreement to renew.

13.2. *Termination for Breach.* In addition to any other rights of termination specified herein, either Party may terminate this Agreement upon sixty (60) days prior written notice to the other in the event of the other's failure to cure a material breach within thirty (30) days after receipt of the terminating Party's written notice of default concerning the same.

13.3. *Termination for Non-payment.* Catalis may terminate Customer's subscription to the Catalis Deliverables for Customer's non-payment of any fees due to Catalis if Customer does not cure any such default within ten (10) days after notice is given to Customer.

13.4. *Effect of Termination.* Upon termination or expiration of the Agreement, Customer shall discontinue all use of the Services and shall immediately return to Catalis all copies of the Software and Catalis Deliverables and all other materials which contain any Confidential Information of Catalis in Customer's possession or control. Customer shall also permanently delete all copies of all such items residing in Customer's on or offline computer memory. Catalis shall be entitled to enter into any location controlled by Customer to repossess and remove all Software, Catalis Deliverables, documentation and any other Confidential Information of Catalis. Customer shall, within five (5) days following the effective date of termination or expiration of Customer's subscription, certify in writing to Catalis, by an executive officer of Customer, that all copies of the Software, Catalis Deliverables and all documentation and any other materials required to be returned to Catalis or to be deleted have been returned or deleted as appropriate.

13.5. *Customer Data Portability and Deletion.* Upon request by Customer made within 30 days after the effective date of termination of a Statement of Work, Catalis will make Customer Data available to Customer. After such 30-day period, Catalis will have no obligation to maintain or provide any Customer Data and will thereafter delete or destroy all copies of Customer Data in Catalis systems or otherwise in Catalis possession or control, unless legally prohibited.

14. EXCUSABLE DELAYS.

Notwithstanding any other term or provision of this Agreement, Catalis shall not be liable for delays in delivery, failure to deliver, or otherwise to perform any obligation hereunder when such delay or failure arises from causes beyond the reasonable control of Catalis, including, without limitation, such causes as acts of God or public enemies, labor disputes, supplier or material shortages, embargoes, rationing, acts of local, state or national governments or public agencies, utility or communication failures, fire, flood, storms, earthquake, settling of walls or foundations, epidemics, riots, terrorism, civil commotion, strikes, or war.

15. LIMITATION OF LIABILITY.

IN NO EVENT SHALL CATALIS' AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE SUBSCRIPTION FEES PAID BY CUSTOMER TO CATALIS DURING THE SIX (6) MONTH PERIOD PRIOR TO THE ACCRUAL OF THE CLAIM.

16. LIMITATION ON DAMAGES.

NEITHER PARTY SHALL BE LIABLE IN ANY EVENT TO THE OTHER PARTY FOR DAMAGES RESULTING FROM LOSS OF DATA, LOSS OF PROFITS, AND/OR LOSS OF USE OF PRODUCT, OR FOR ANY INCIDENTAL, SPECIAL,

OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING NEGLIGENCE.

17. ALLOCATION OF RISKS.

CUSTOMER UNDERSTANDS AND AGREES THAT THE FEES CHARGED BY CATALIS SPECIFICALLY REFLECT THE ALLOCATION OF RISKS AND EXCLUSION OF DAMAGES PROVIDED FOR IN THIS AGREEMENT.

18. MISCELLANEOUS PROVISIONS.

18.1. *ARBITRATION.* UPON THE DEMAND OF EITHER PARTY (UNLESS PROHIBITED BY APPLICABLE LAW), ANY ACTION OR PROCEEDING SEEKING TO ENFORCE OR TO INTERPRET ANY PROVISION OF THIS AGREEMENT OR ANY RIGHT OR OBLIGATION, INCLUDING, WITHOUT LIMITATION, ANY STATUTORY RIGHT OR OBLIGATION, OF ANY PARTY UNDER OR PURSUANT TO THIS AGREEMENT OR ARISING OUT OF CATALIS' RELATIONSHIP UNDER THIS AGREEMENT WITH CUSTOMER, SHALL BE DETERMINED EXCLUSIVELY BY ARBITRATION CONDUCTED BY AND UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION; PROVIDED, HOWEVER, THAT ARBITRATION SHALL NOT BE REQUIRED IN ANY ACTION OR CLAIM BY A PARTY WHICH INCLUDES A REQUEST FOR INJUNCTIVE, EQUITABLE, OR OTHER EMERGENCY RELIEF.

18.2. *Binding upon Successors and Assigns.* This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto.

18.3. *Severability.* If any provision of this Agreement shall be invalid or unenforceable, such provision shall be deemed limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and, in the event no such limiting construction is possible, such invalid or unenforceable provision shall be deemed severed from this Agreement without affecting the validity of any other term or provision hereof.

18.4. *Entire Agreement.* This Agreement, together with the Schedules and/or Addendum(s), constitutes the entire understanding and agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements, understandings, inducements, and conditions, express or implied, written or oral, between the Parties with respect thereto. The express terms hereof control and supersede any course of performance or usage of trade inconsistent with any of the terms of this Agreement. This Agreement may be executed electronically and in any number of counterparts, which will constitute one and the same agreement.

18.5. *Amendment and Waivers.* Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the Party to be bound thereby. The waiver by a Party of any breach or default shall not be deemed to constitute a waiver of any other breach or default. The failure of any Party to enforce any provision shall not be construed as or constitute a waiver of the right of such Party to subsequently enforce such provision.

18.6. *Notices.* Whenever any Party desires or is required to give any notice, demand, consent, approval, satisfaction, statement, or request with respect to this Agreement, each such communication shall be in writing and shall be effective only if it is delivered by delivery service, over-night delivery service or facsimile (followed by another permitted form of delivery) and addressed to the recipient Party at its notice address provided on the cover page of this Agreement. Such communications, when personally delivered, shall be effective upon receipt. Any Party may change its address for such communications to another address in the United States of America by giving notice of the change to the other Party in accordance with the requirements of this section 18.6.

18.7. *Choice of Law; Construction of Agreement.* This Agreement will be construed under the laws of the State of Delaware, exclusive of its conflicts of laws, principles, and has been negotiated by the respective Parties and the language shall not be construed for or against any Party. The titles and headings are for reference purposes only and shall not in any manner limit the construction of this Agreement which shall be considered as a whole.

18.8. *Further Assurances; Cooperation.* Each Party shall execute such further instruments, documents, and agreements, and shall provide such further written assurances, as may be reasonably requested by the other Party to better evidence and reflect the transactions described in and contemplated by, and to carry into effect the intents and purposes of this Agreement.

18.9. *Non-Solicitation.* For a period ending two (2) years following the date of termination or expiration of this Agreement, Customer shall not solicit the employment or services of, nor employ or otherwise retain, any employee or former employee of Catalis who has been directly or indirectly involved in the development, licensing, installation, or support of any Catalis software product.

18.10. *Independent Contractor Status.* It is the intention of the Parties that their relationship is that of independent contractor and this Agreement shall not create any other relationship, whether partnership, joint venture, agency, or otherwise, between the respective Parties. Neither Party has any authority, whether actual, express, implied, or apparent, to bind or otherwise obligate the other Party in any capacity. Catalis shall be entitled to list Customer in any designation of its customers in advertising or other published materials of Catalis.

18.11. *Publicity.* Catalis may list Customer as a user of the Services on its website, in press releases and in other promotional materials after the acceptance of the Services. The Parties will cooperate to produce case studies or testimonials or other public announcements relating to the subject matter of this agreement and the relationship between the Parties and the Parties will not unreasonably withhold or delay their consent.

18.12. *No Third-Party Beneficiary Rights.* No provision of this Agreement is intended or shall be construed to provide or create any third party beneficiary right or any other right of any kind in any person other than the Parties and their proper successors and assigns, and all terms and provisions shall be personal solely between the Parties to this Agreement and such proper successors and assigns.

18.13. *Survival.* The provisions of sections 9 through 11 and sections 14 through 18 shall survive the expiration or termination of this Agreement.

18.14. *Fees and Costs.* In the event of any litigation or arbitration between the Parties in connection with or arising out of this Agreement, or to enforce any right or obligation of either Party under this Agreement, or for a declaratory judgment, or for the construction or interpretation of this Agreement or any right or obligation under or impacted by this Agreement (in each case, a “Proceeding”), the Party which substantially prevails in any such Proceeding shall be entitled to recover from the other Party all of such prevailing Party’s fees and costs, including, without limitation, attorneys’ fees, court costs, and costs of expert witnesses and of investigation, incurred at or in connection with any level of the Proceeding, including all appeals.

18.15. *Cooperative Procurement:* This agreement may be used as a cooperative procurement vehicle by any jurisdiction that is eligible. Catalis reserves the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, scope and circumstances of that cooperative procurement.

[END OF MASTER SOFTWARE SUBSCRIPTION SERVICES AGREEMENT]

A downloadable .pdf copy of these Terms can be accessed using the button below.