

## DATAPUNKT SOFTWARE AS A SERVICE AGREEMENT

BY INDICATING YOUR ACCEPTANCE OF THIS SOFTWARE AS A SERVICE AGREEMENT (“**AGREEMENT**”) OR ACCESSING OR USING ANY DATAPUNKT OFFERINGS, YOU ARE ACCEPTING ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT AND THEY SHALL BE BINDING ON BOTH PARTIES TO THE ORDER FORM (AS DEFINED HEREIN). PLEASE READ THESE TERMS CAREFULLY AS IT GOVERNS YOUR USAGE OF THE DATAPUNKT PLATFORM LICENSED VIA THE ORDER FORM (AS DEFINED HEREIN) SIGNED BY THE PARTIES. FOR THE PURPOSE OF THIS AGREEMENT, THE TERM “DATAPUNKT” REFERS TO THE DATAPUNKT CONTRACTING ENTITY MENTIONED IN THE ORDER FORM AND SIMILARLY THE TERM “CUSTOMER” SHALL REFERTO THE CUSTOMER CONTRACTING ENTITY THAT SIGNED THE ORDER FORM.

Whereas, Datapunkt has created a Software (as defined hereinafter) that helps businesses decode data provided via subscription to the Services (as defined hereinafter) under this Agreement and the Customer confirms that they wished to subscribe to the Services exclusively for their Internal Business Purposes (as defined hereinafter).

Therefore, in consideration of mutual promises, agreements and covenants stated in this Agreement, which are acknowledged by the parties as good and valuable consideration, the Parties agree as follows:

### 1. **Constitutive Elements and Order of precedence.**

This Agreement and any Order Forms (as defined herein) thereunder (“**Constitutive Elements**”) constitute the entire agreement and understanding between the parties. In case of conflict between the Constitutive Elements, the terms of the Order Form shall override the terms of this Agreement.

### 2. **Definitions**

Capitalized terms not otherwise defined in this Agreement or the Order Form are defined as follows:

- a. “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the contracting entity. “Control,” for purposes of this definition, means either:
  - (a) ownership or control of more than 50% of the voting interests of the subject entity; or
  - (b) the power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract, or otherwise.
- b. “**Customer Data**” means all data (including all text, sound, video, image files, and other content of any kind or nature) that can be identified as belonging to the Customer, including any Personal Data for which the Customer is the data controller in relation to this Agreement.
- c. “**Confidential Information**” means and includes non-public data, information and other materials regarding the products, Software, Services, or business of a party (“**Discloser**”) provided to the other party (“**Recipient**”), where such information is marked or otherwise communicated as *proprietary* or *confidential*, or by its nature can be considered confidential and/or proprietary, and shall include without limitation, any information shared in relation to the Software, Service Data and Customer Data.
- d. “**Documentation**” means technical documentation provided with the Software and/or available at <https://simplexoft.com/learn>.

- e. **“Internal Business Purposes”** means purposes related to Customer’s internal business projects and processes that are not used to interact or in any way deliver services to third parties.
- f. **“Intellectual Property Rights”** or **“IPR”** means patents, trademarks, service marks, trade names, registered and unregistered designs, trade or business names, copyright, database rights, design rights, rights in confidential information, and any other intellectual property rights regardless of registration, including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which exist now or will in the future exist in any part of the World.
- g. **“Other Services”** shall mean and include services provided by Datapunkt other than the Services, such as but not limited to, any implementation or maintenance and support services and may include other technical and non-technical services (such as, other professional services, training of Users, etc.) performed or delivered by Datapunkt and which may entail an additional fee under this Agreement.
- h. **“Order Form”** means an ordering document signed by Customer and Datapunkt (including when renewed or re-issued) that specifies:
  - i. number of Software licenses purchased;
  - ii. their prices and other commercial terms as amended from time to time; and
  - iii. the services provided thereunder.
- i. **“Service Data”** means any and all data (other than Customer Data) relating to, either directly or indirectly, the operation, support and/or Customer’s use of the Services including but not limited to query logs.
- j. **“Software”** means the object code of Datapunkt’s proprietary product or computer program (including any updates) as identified in the Order Form and to which the Customer is provided access as part of the Services. For the purposes of the Software, **“updates”** shall mean and include enhancements made to the Software, such as but not limited to, security patches, bug-fixes, plug-ins and other minor day-to-day changes.
- k. **“Subscription Fees”** shall mean the fees mentioned in the Order Form for the SaaS Services subscribed for by the Customer.
- l. **“Subscription Term”** shall mean the period specified in the Order Form for which the Services will be made available to the Customer for use as envisaged by this Agreement and shall include any renewal terms as agreed under subsequent Order Forms.
- m. **“Users”** shall mean the Customer, its employees, consultants, agents or other stakeholders authorized to use the Services. The Customer shall at all times be responsible and liable for the actions or inactions of these Users.

### 3. Ownership

- a. As between the parties, Datapunkt and its licensors/ assigns own the past, present, future and associated Intellectual Property Rights in the Software, Documentation, Service Data and all copies or portions, and any derivative works thereof. In addition, suggestions or feedback

provided by Customer to Datapunkt relating to the Software, data pertaining to Software usage, etc shall be proprietary to Datapunkt and deemed Confidential Information of Datapunkt, and the Customer consents to assignment of suggestions to Datapunkt as required to give effect to this Section 3.A. of the Agreement.

For avoidance of doubt, The Customer does not acquire any ownership rights, express or implied in the foregoing. And the Customer acknowledges that the Software is “work” for the purposes of copyright laws everywhere and embody valuable, confidential, trade secret information of Datapunkt, the development of which requires the expenditure of substantial time and money.

- b. The Customer acknowledges that a breach or threatened violation of Datapunkt’s ownership rights will result in irreparable harm and suffering. Datapunkt shall be entitled to seek injunctive or other relief to enforce the terms of this Agreement and/or against such violation.
- c. Datapunkt may, at any time, modify, novate, change, assign, destroy or in any manner deal with the Software or its rights or obligations as the proprietor of the Software, in order to comply with the applicable laws. It is however clarified that any such change, modification, novation, assignment or destruction to the Software that may affect the Customer’s use of such Software shall be informed to the Customer with reasonable prior notice.

#### **4. Services**

- a. **License.** During the Subscription Term, Datapunkt will grant to the Customer, subject to the terms and conditions stated in the Constitutive Elements, including the timely payment of the Subscription Fees (as defined in the Order Form), a worldwide, royalty free, non-exclusive, non-transferable, non-sublicensable, restricted and revocable, limited license to access and use the Services to process, manage, share, transform Customer Data owned, licensed to, and/or controlled by Customer and its Affiliates exclusively for its Internal Business Purposes and accessed only by the Users.
- b. **Use of third-party Software:** The Customer agrees and acknowledges that the Software provided under the SaaS Services may contain certain third-party and/or open-source software as listed in **Appendix-1** of this Agreement which are subject to the applicable license terms (“**Third-party Software License Terms**”) and hereby being flowed down to the Customer “as is”. The Customer understands and acknowledges that these Third-party Software License Terms are maintained independently by third parties and outside Datapunkt’s control and therefore the Customer is liable to comply with these Third-party License Terms (including by its Affiliates, its and its Affiliates’ Representatives) to use the Software as envisaged by this Agreement.
- c. No other express or implied licenses are granted by Datapunkt under this Agreement. Customer is responsible for all use of the Services which shall be accessed only by the authorized Users on the basis of one User, one set of credentials which shall not be shared or disseminated by the Users in any manner.
- d. If the Customer’s use of the Services hereunder is, or in Datapunkt’s opinion is likely to be, enjoined due to any infringement of any third party’s IPR, Datapunkt may, at its sole option and expense: (a) procure for the Customer the right to continue using the Services under the terms of this Agreement; (b) replace or modify the Services so that it is non-infringing and substantially equivalent in function to the enjoined Services; or (c) if options (a) and (b) above cannot be accomplished within a reasonable time despite Datapunkt’s commercially reasonable efforts, then

Datapunkt may terminate the Customer's rights and Datapunkt's obligations hereunder with respect to such Services and shall provide a refund to the Customer equal to a pro-rata share of the prepaid Subscription Fees based upon the portion of the Term that has been consumed.

- e. **Service Data.** Datapunkt shall be entitled to use Service Data and track, store, publish, share and utilize any manner as it deems fit to improve and modify the existing offerings provided such as, Software usage information does not include information from which the identity of the Customer, its Affiliates, or any of its or their Users, products, services or customers can reasonably be identified or derived.

## 5. Customer Responsibilities

- a. Assistance. Customer shall provide commercially reasonable information and assistance to Datapunkt to enable Datapunkt to deliver the Services. Furthermore, upon request from Datapunkt, Customer shall promptly deliver Customer Data to Datapunkt in an electronic file format specified and accessible by Datapunkt or as otherwise agreed by the parties. Customer acknowledges that Datapunkt's ability to deliver the Services in the manner provided in this Agreement may depend upon the accuracy and timeliness of such information and assistance.
- b. Compliance with Laws. Customer shall comply with all applicable local, state, national and foreign laws in connection with its use of the Services, including those laws related to data privacy, international communications, and the transmission of technical or personal data. Customer acknowledges that Datapunkt exercises no control over the Customer Data transmitted by Customer to the Software or processed via the Services. Customer shall not upload, post, reproduce or distribute any information, software or other material protected by copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.
- c. Unauthorized Use; False Information. Customer shall immediately: (a) notify Datapunkt of any unauthorized use of any password or User id or any other known or suspected breach of security, (b) report and use reasonable efforts to stop any unauthorized use of the Services that is known or suspected by Customer, and (c) not provide false identity information to gain access to or use the Services.
- d. Ownership and use of Customer Data. As between the parties, the Customer Data along with all associated rights, remains the property of Customer and its Affiliates, and Customer and its Affiliates own and retain all right, title and interest, in and to all Intellectual Property Rights in the Customer Data, and all copies or portions, and any derivative works thereof.
- e. Customer Data. Customer is solely responsible for the Customer Data (including without limitation, any Personal Data (as defined in Clause 8 herein) inputted into the Software during the Subscription Term, and for ensuring that the Customer Data does not (i) include anything that actually or potentially infringes or misappropriates the copyright, trade secret, trademark or other intellectual property right of any third party, or (ii) contain anything that is obscene, defamatory, harassing, offensive or malicious.

- f. Restrictions on use of the Services. Customer and/or its Affiliates shall not be permitted to do or cause to do, either directly or indirectly, one or more of the following:
- (i) copy or use the Services or the Software other than as allowed by the Constitutive Elements and in that solely for its Internal Business Purposes;
  - (ii) modify the Software, create derivative works based on the Software, reverse engineer, decompile, decrypt, disassemble, or otherwise reduce the Software to human-readable form;
  - (iii) create programs competing with, similar or identical to the Services or Software basis the Confidential Information disclosed by Datapunkt under this Agreement;
  - (iv) use the Services or Software in violation of any applicable laws or in non-compliance with this Agreement, Third-party License Terms, the Documentation or Datapunkt's instructions;
  - (v) distribute, sell, license or in any manner provide or permit the use of the Services to unauthorized third parties, including without limitation, contractors, consultants or third-party consultants without Datapunkt's prior written consent;
  - (vi) where relevant, install the Software on systems not under control by Customer, or use or permit the Services and/or the Software to perform services for third parties other than its Affiliates, including as a service bureau, SaaS, time sharing basis or otherwise;
  - (vii) Interfere or disrupt, either caused by itself, its Affiliates or its or its Affiliates' Representatives, Datapunkt servers or networks, or disobey any network access or security requirements, policies, procedures or regulations of Datapunkt;
  - (viii) permit the Services to be uses by users exceeding the number set out in the Order Form. In the event that the Customer becomes aware of any unauthorized or illegal usage of the Services, the Customer shall forthwith inform Datapunkt of the same in writing and immediately revoke their access. Any such unauthorized use may be subject to additional subscription fees for the time period of the unauthorized use;
  - (ix) be in breach or default of any and all applicable laws within the duration of this Agreement while using the Services as intended by the Constitutive Elements. In this regard, the Customer shall obtain all such permits, approvals and licenses as may be necessary to use, permit the use the Services, including the processing of Customer Data with the Services;
  - (x) disclose the results of any performance or functional evaluation of the Services, if applicable, including benchmark results or competitive analyses to any third party; or alter or remove proprietary notices or legends contained on or in the Software; and/or
  - (xi) Access or use the Services for (a) illegal activities or activities which are likely to be a security threat to any country; (b) on behalf of or for the benefit of any entity who is legally prohibited by Datapunkt from using the Services whether under this Agreement or otherwise (hereafter "**Prohibited Entity**"). Datapunkt shall inform the Customer of any such Prohibited Entity; and (c) for any activity that may damage or hamper the reputation and/or goodwill of Datapunkt.

For avoidance of doubt, Customer's use of the Services or the Software in breach of the aforesaid restrictions shall void any and all liabilities, indemnities and obligations undertaken by Datapunkt vis-à-vis the Services and the Software.

## 6. Other Services

Subject to the terms and conditions contained in the Constitutive Elements, Datapunkt agrees to provide Customer, Other Services to assist the Customer in the implementation, usage and proper usage of the Services and any other appropriate Other Services agreed by the parties from time to time.

## 7. Confidentiality

- a. The parties agree that the Services (and any performance data, benchmark results, and related technical information, Software usage), the Documentation, Datapunkt's pricing information, the existence of and the terms of the Constitutive Elements are Confidential Information. In addition, Customer Data shared with Datapunkt to perform its obligations under the Constitutive Elements shall also be considered Confidential Information. For avoidance of doubt, Confidential Information shall not include information which: (i) any information which is already in the public domain prior to its disclosure under this Agreement; (ii) the Recipient can demonstrate that it is already in possession of the information without a breach of this Agreement, including disclosure from a third party provided that the third party is not bound by any obligations of confidentiality vis-à-vis the Discloser unless such disclosure is approved by the Discloser in writing; or (iii) the Recipient can demonstrate that the information was independently developed without a breach of this Agreement. For avoidance of doubt, the Recipient may disclose Confidential Information required to be disclosed by the order of a court, or other governmental or regulatory authority provided that: (a) unless prohibited, the Discloser is notified with advance written notice of such disclosure request and assist the Discloser in seeking a protective order to prevent the disclosure; and (b) the disclosure is limited to a minimum.
- b. Maintenance of Confidentiality. The Recipient shall ensure that the confidentiality of the Confidential Information is maintained as per this Agreement or at least in accordance with its practices to maintain its own confidential information of similar and is disclosed only on a need-to-know basis, including without limitation, any disclosure to its employees, directors, officers, consultants and/or agents ("**Representatives**") solely in relation to the Purpose of this Agreement. Unless otherwise authorized in writing by the Discloser, Recipient shall not make any copies, whether electronic or otherwise, of the Confidential Information and shall immediately notify Discloser of any misuse, misappropriation or unauthorized disclosure of Confidential Information as soon as it comes to the Recipient's attention. For avoidance of doubt, Recipient, including its Representatives, shall not modify, reverse engineer, decompile, create other works from or disassemble any software programs contained in the Confidential Information. The Receiving Party shall be liable for the non-compliance of such confidentiality obligations by its Representatives.

## 8. Personal Data

- a. Parties hereby understand and acknowledge that the Services may be used to process Personal Data (as defined in the DPA) and the processing of such Personal Data by Datapunkt shall be carried out according to the terms of the Datapunkt Data Protection Addendum available at <https://simplexoft.com/dpa> incorporated herein by reference as **Appendix 2**.
- b. It is hereby clarified that, unless expressly authorized by the Customer, Datapunkt shall not in any way, will or intends to, process any personal data, whether included in the Customer Data or otherwise. Accordingly, it shall be the Customer's obligation to notify Datapunkt in writing if it shares any personal data with Datapunkt (intentionally or not) or uses Datapunkt's software to process personal data and shall comply with Datapunkt personal data processing policies and processes as notified from time to time. Where the Customer uses the Software to process personal data without Datapunkt's knowledge or consent and without a DPA, as defined in clause (a) above, the Customer shall be solely liable for any breach of any applicable data protection laws.

## 9. Orders



The Customer agrees that the relevant Subscription Fees (as defined in the Order Form) and other charges shall be mentioned in the relevant Order Forms raised from time to time along with or post the execution of this Agreement. Customer may obtain additional Software licenses for Users by submitting a request through Datapunkt's website as stated in the Order Form or via its sales team. Once the requirement is confirmed between the Parties, a new Order Form will then be generated with the updated Subscription Fees agreed by the parties.

## **10. Warranties and Representations**

- A. THE SOFTWARE IS PROVIDED 'AS IS'. DATAPUNKT WARRANTS THAT THE SERVICES, AS DELIVERED BY DATAPUNKT, IS FREE FROM SOFTWARE VIRUSES, WORMS, TROJAN HORSES OR OTHER CODE, FILES, OR SCRIPTS INTENDED TO DO HARM. DATAPUNKT WARRANTS THAT IT WILL COMPLY WITH ALL APPLICABLE LAWS IN ITS PROVISION AND PERFORMANCE OF THE SERVICES HEREUNDER.
- B. CUSTOMER ASSUMES SOLE RESPONSIBILITY FOR ANY RESULTS OBTAINED FROM USING THE SOFTWARE AND/OR THE SERVICES. DATAPUNKT DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INFORMATION, MERCHANTABILITY, ACCURACY OR FITNESS FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT DATAPUNKT KNOWS OR HAS REASON TO KNOW OF SUCH PURPOSE), WHETHER ARISING BY LAW, CUSTOM, USAGE IN TRADE OR BY COURSE OF DEALING. DATAPUNKT AND ITS LICENSORS DO NOT WARRANT THE RESULTS OF ANY USE OF THE SOFTWARE AND/OR THE SERVICES, OR THAT IT IS BUG OR ERROR FREE, OR THAT ITS USE WILL BE UNINTERRUPTED. DATAPUNKT DOES NOT WARRANT THAT THE SERVICES, SOFTWARE OR ANY EQUIPMENT, SYSTEM, OR NETWORK ON WHICH THE SERVICES ARE USED WILL BE FREE OF VULNERABILITY TO INTRUSION OR ATTACK. DATAPUNKT WILL IN NO WAY BE HELD LIABLE FOR ANY INABILITY OF, ERROR, WHETHER OR NOT BY FAULT OF THE CUSTOMER OR ITS AFFILIATES OR ANY THIRD PARTY APPOINTED BY CUSTOMER TO INSTALL/ USE THE SERVICES. DATA UPLOADED TO THE SOFTWARE AND ANY THIRD-PARTY DATABASES, SOFTWARE, HARDWARE, OR SERVICES CONNECTING FROM OR TO THE SOFTWARE (COLLECTIVELY, "**THIRD PARTY MATERIALS**") ARE NOT THE RESPONSIBILITY OF DATAPUNKT AND DATAPUNKT DOES NOT MAKE ANY WARRANTIES OR PROMISES WITH RESPECT TO THE THIRD-PARTY MATERIALS. THE CUSTOMER ACCEPTS ALL RESPONSIBILITY FOR THE SELECTION OF THE CUSTOMER DATA IT USES TO ACHIEVE ITS OBJECTIVES IN THE USAGE OF THE SERVICES AND UNDERSTANDS AND ACKNOWLEDGES THAT THE SERVICES HAVE NOT BEEN DEVELOPED OR CUSTOMIZED SPECIFICALLY TO THE CUSTOMER'S NEEDS.
- C. THE CUSTOMER IS SOLELY RESPONSIBLE FOR ALL USE (WHETHER AUTHORIZED OR NOT) OF THE SERVICES. THE CUSTOMER IS ALSO SOLELY RESPONSIBLE FOR ALL ACTS AND OMISSIONS OF ANYONE WHO HAS ACCESS TO OR OTHERWISE USES THE SERVICE THROUGH OR BY THE CUSTOMER. THE CUSTOMER SHALL TAKE ALL NECESSARY ACTIONS AND PRECAUTIONS TO PREVENT UNAUTHORIZED ACCESS TO OR USE OF THE SERVICES AND SHALL NOTIFY DATAPUNKT FORTHWITH OF ANY UNAUTHORIZED ACCESS OR USE.

## **11. Indemnification**

- a. Datapunkt hereby agrees to indemnify and keep indemnified the Customer, its directors, employees, agents, consultants and licensors and assignees from and against any third-party liabilities,

claims, losses, actions, payments and/or demands (including the reasonable direct costs, expenses, dispute resolution costs and attorney's fees on account thereof) arising from arising from or out of or relating to: (i) any infringement or misappropriation of third party Intellectual Property Rights by Datapunkt in connection with the Services as envisaged by this Agreement, including without limitation its compliance with Third-party License Terms, and (ii) any violation of applicable laws by Datapunkt in connection with the Services.

- b. The Customer hereby agrees to indemnify and keep indemnified Datapunkt, its directors, employees, agents, consultants and licensors and assignees from and against any third party liabilities, claims, losses, actions, payments and/or demands (including the reasonable direct costs, expenses, dispute resolution costs and attorney's fees on account thereof) arising from arising from or out of or relating to (i) any infringement or misappropriation of any Intellectual Property Rights by the Customer in connection with use of the Services as envisaged by this Agreement, including without limitation its compliance with the Third-party License Terms as described under Clause 4b. of this Agreement; (ii) any violation of applicable laws by the Customer in connection with the use of the Services, including without limitation, the applicable Data Protection Laws (as defined in the DPA); and/or (iii) material breach of any terms of this Agreement by the Customer.
- c. Conditions for Indemnification. A party seeking indemnification under this Clause shall: (a) promptly notify the other party of the claim, (b) give the other party sole control of the defence and settlement of the claim, and (c) provide, at the other party's expense for out-of-pocket expenses, the assistance, information and authority reasonably requested by the other party in the defense and settlement of the claim.

## 12. Limitation on Liability

- a. **Exclusion of Non-Direct Damages.** In no event shall either party or its Affiliates or Licensors or suppliers be liable for special, incidental, consequential, punitive, exemplary or tort damages (including, without limitation, any damages resulting from loss of use, data, profits, or business) arising out of or in connection with the Services, the Software or the Constitutive Elements, whether or not Datapunkt has been advised of the possibility of such damages.
- b. **Maximum Liability.** Subject to Clause 12c., the cumulative liability of either party or its Affiliates, whether in contract, tort, or otherwise, arising out of any or all claims in aggregate, arising out of or in connection with the Services, the Software or the Constitutive Elements shall not exceed the amount paid or payable under the relevant Order Form in the twelve months immediately preceding the events giving rise to the liability.
- c. **Exceptions.** The limitations and exclusions set forth in Clauses 12.a and 12.b shall not apply to either party's liability for: (i) gross negligence or intentional misconduct, (ii) fraud or fraudulent misrepresentations, (iii) such party's obligations under Clause 7 (Confidentiality), Clause 8 (Personal Data) or Clause 11 (Indemnification), or (iv) matters for which liability cannot be excluded or limited under applicable law.

## 13. Term and Termination

- a. **Term.** The Services under this Agreement shall commence on the Effective Date and continue until the expiry or termination of the last Order Form signed by the Parties ("**Term**").



- b. **Termination.** Either Party may suspend performance or terminate this Agreement in its entirety or any Order Form: (a) With immediate effect, in the event that any regulation prohibits Datapunkt from providing the Services within that jurisdiction, upon providing written communication; (b) immediately on providing written notice if the other Party becomes the subject of a petition of bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction; or (c) immediately on written notice if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice describing the breach in detail.
- c. **Effect of Termination.** Upon termination of this Agreement for any reason:
  - i. all licenses granted by Datapunkt shall immediately terminate and the Customer shall immediately discontinue use of the Services and destroy all its copies and Documentation in its possession, custody, or control and confirm the same to Datapunkt in writing within 7 (seven) days from the effective date of termination.
  - ii. all payments accrued before or on the date of termination shall become immediately due and payable within 7 days from the effective date of termination.
  - iii. except termination for cause, Datapunkt shall refund to Customer a prorated amount of prepaid, unused fees applicable to the remaining portion of the Term of the then active Order Forms.
  - iv. the Recipient shall return, or as directed by the Discloser, destroy all the Confidential Information in its possession within 10 days of the expiry or termination of the Agreement and certify in writing to the Discloser of the return or destruction. The Recipient may retain copies of Confidential Information that are stored on Recipient's systems as part of its ordinary IT backup and disaster recovery policies provided that it shall maintain its confidentiality as per this Agreement until its deletion in the ordinary course of business.

#### 14. General

- a. **Survival.** All clauses which by their nature must survive its expiry or termination will survive the expiry or termination of this Agreement, including without limitation, Clause 2 (Definitions), Clause 3 (Ownership), Clause 5 (Customer Responsibilities), Clause 7 (Confidentiality), Clause 8 (Personal Data), Clause 10 (Warranties and Representations), Clause 11 (Indemnification), Clause 12 (Limitation on Liability), Clause 13 (Term and Termination) and Clause 14 (General).
- b. **Publicity.** From time to time during the Term, Datapunkt may use the Customer's name, logo and/or any testimonials provided on their experience of the Services in its public domain collaterals.
- c. **Entire Agreement.** The Constitutive Elements constitute the entire agreement and understanding between the parties with respect to the subject matter of the Agreement, and supersede all prior communication made between the Parties, whether written or oral. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any attachment, exhibit, or addendum, the terms of such attachment, exhibit, addendum or Order Form shall prevail.
- d. **Severability.** If any provision of this Agreement or any Order Forms is found to be invalid or unenforceable for any reason, the remaining provisions will remain in full force and effect.
- e. **Waiver.** A waiver of any right or remedy under this Agreement or by law is only effective in writing. The failure of either party to enforce any rights granted hereunder or to take action

against the other party in the event of any breach shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

- f. **Assignment.** Neither this Agreement nor any of the rights and licenses granted under this Agreement may be transferred or assigned by either party without the other party's express written consent (not to be unreasonably withheld or delayed); provided, however, that either party may assign this Agreement and all Order Forms to its Affiliates or to its successor in interest in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the non-assigning party with written notice to the other party of at least 90 days. Any other attempt to transfer or assign this Agreement will be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.
- g. **Notice and other communications.** All notices and other communications under this Agreement will be: (a) in writing; (b) in English; and (c) deemed given when delivered (or the first business day after delivery with confirmation of receipt, for notices permitted by email). All notices except for ordinary business communications will be cc'd to the address stated in OrderForm.
- h. **Dispute Resolution.**  
Notwithstanding anything contained in this Agreement, the Parties hereby agree that they intend to discharge their obligations in utmost good faith and agree that they shall, at all times, make all attempts to resolve all differences, arising out of or in connection with this Agreement by way of each appointing one nominee / representative who shall discuss in good faith to resolve the difference ("**Good Faith Negotiation**"). In case the Good Faith Negotiation does not settle the dispute within 15 (fifteen) calendar days, it shall be referred to arbitration.
- If, after Good Faith Negotiation the parties are unable to resolve the dispute, the parties agree that any and all disputes arising out of or in any way relating to this Agreement, including without limitation its existence, validity or termination, shall be resolved according to Delaware law and exclusively by binding and confidential arbitration before a single arbitrator with the Judicial Arbitration and Mediation Service (JAMS) and pursuant to the then existing arbitration rules at JAMS. If the parties cannot agree upon selection of an arbitrator, then JAMS shall appoint an arbitrator experienced in the enterprise software industry. The place of the arbitration will be Delaware USA. The arbitration will be conducted in English and the proceedings will be confidential. The arbitrator shall provide detailed written findings of fact and conclusions of law in support of any award. Judgment upon any such award may be enforced in any court of competent jurisdiction. Nothing shall preclude either Party from seeking interim or permanent equitable or injunctive relief, or both, from the competent courts, having jurisdiction to grant relief on any disputes or differences arising from this Agreement. The pursuit of equitable or injunctive relief shall not be a waiver of the duty of the Parties to pursue any remedy (including for monetary damages) through the arbitration described in this Clause.
- i. **Independent Contractors.** The Parties are each independent contractors with respect to the subject matter of this Agreement. Nothing contained in this Agreement will be deemed or **construed** in any manner to create a partnership, joint venture, employment, agency, fiduciary, or other similar relationship between the Parties.
- j. **Force Majeure.** If the performance of this Agreement or any obligation hereunder (other than obligations of payment) is prevented or restricted by reasons beyond the reasonable control of a party including but not limited to, computer related attacks, hacking, outbreak of an epidemic, war, acts of god, or acts of terrorism (a "**Force Majeure Event**"), the party so affected shall be excused from such performance and liability to the extent of such prevention or restriction. In case the Force Majeure Event prevents the performance of obligations of the affected party for 30 days or more from the date of notification to the other party, then either party may terminate

this Agreement without any prejudice. For avoidance of doubt, the Customer shall remain liable for accrued payments for the Services to be paid as per this Agreement.

- k. **Insurance.** During the Term of this Agreement, Datapunkt will maintain insurance coverages as detailed in **Appendix 3** attached on the terms described therein.

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## APPENDIX 1: Third-party Software List and License Terms:

Component	
Apache Atlas	<a href="https://atlas.apache.org/1.2.0/license.html">https://atlas.apache.org/1.2.0/license.html</a>
Apache Ranger	<a href="https://www.apache.org/licenses/LICENSE-2.0">https://www.apache.org/licenses/LICENSE-2.0</a>
Prometheus	<a href="https://github.com/prometheus/prometheus/blob/master/LICENSE">https://github.com/prometheus/prometheus/blob/master/LICENSE</a>
Kubernetes	<a href="https://github.com/kubernetes/kubernetes/blob/master/LICENSE">https://github.com/kubernetes/kubernetes/blob/master/LICENSE</a>
Elasticsearch	<a href="https://github.com/elastic/helm-charts/blob/master/LICENSE">https://github.com/elastic/helm-charts/blob/master/LICENSE</a>
Cassandra	<a href="https://opensource.org/licenses/Apache-2.0">https://opensource.org/licenses/Apache-2.0</a>
Python	<a href="https://docs.python.org/3/license.html">https://docs.python.org/3/license.html</a>
Spark	<a href="https://github.com/GoogleCloudPlatform/spark-on-k8s-operator/blob/master/LICENSE">https://github.com/GoogleCloudPlatform/spark-on-k8s-operator/blob/master/LICENSE</a>
Postgres	<a href="https://www.postgresql.org/about/licence/">https://www.postgresql.org/about/licence/</a>
Redis	<a href="https://github.com/postgres/postgres/blob/master/COPYRIGHT">https://github.com/postgres/postgres/blob/master/COPYRIGHT</a> <a href="https://github.com/go-pg/pg/blob/v10/LICENSE">https://github.com/go-pg/pg/blob/v10/LICENSE</a> <a href="https://redislabs.com/legal/licenses/#:~:text=About%20the%20Redis%20Source%20Available,the%20vast%20majority%20of%20users">https://redislabs.com/legal/licenses/#:~:text=About%20the%20Redis%20Source%20Available,the%20vast%20majority%20of%20users</a> <a href="https://github.com/redis/redis/blob/unstable/COPYING">https://github.com/redis/redis/blob/unstable/COPYING</a> <a href="https://github.com/go-redis/redis/blob/master/LICENSE">https://github.com/go-redis/redis/blob/master/LICENSE</a>

## APPENDIX 2: DATA PROTECTION ADDENDUM (DPA)

Refer to Clause 8- Link: <https://simplexoft.com/dpa>

## APPENDIX 3: INSURANCE

Datapunkt and its Affiliates are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as it believes to be prudent and customary to Datapunkt's business as well as required by applicable laws which are further detailed as follows:

- (i) **Statutory Workers' Compensation** in an amount sufficient to meet applicable state statutory liability limits covering its employees, including a waiver of subrogation obtained from the carrier in favor of the Customer. Such insurance will comply with the workers' compensation laws of any state in which Datapunkt does business or otherwise operates.
- (ii) **Commercial General Liability** in an amount no less than \$3,000,000 per each occurrence and \$3,000,000 in the aggregate covering bodily injury, broad form property damage, personal injury, products and completed operations, contractual liability and independent contractors' liability. All Participating Eligible Purchasers, their officers and employees will be included as additional insureds on this policy, and a waiver of subrogation will be obtained from the carrier in favor of all Participating Eligible Purchasers.
- (iii) **Professional Services Errors & Omissions Liability** insurance covering Datapunkt's monetary damages resulting from errors or omissions of the Contractor, its principals or personnel in the course of rendering or failing to render the services to which this Agreement pertains, with a limit of \$2,000,000 per claim/wrongful act and \$2,000,000 in the aggregate. Such insurance shall extend to cover damages arising out of any wrongful acts, errors or omissions of any individual when acting under Contractor's supervision, direction, or control.
- (iv) **Cyber Liability** in an amount no less than \$5,000,000 per claim.

As applicable, the aforesaid policies will be extended to cover the liability of the Customer its officers, directors and employees due to an error or omission by Datapunkt or that may arise from the services provided by Datapunkt according to this Agreement or any Order Form in relation to Commercial General Liability and Professional Services Errors & Omissions Liability insurance coverages. Such insurance will apply as primary insurance and no other insurance will be called upon to contribute to a loss covered thereunder. In addition, such policies will permit Datapunkt to waive, on its own behalf and on behalf of its insurers, any rights of subrogation against the Customer.

The Customer may request for copies for and Datapunkt will provide certificates of insurance evidencing the aforesaid coverages and limits thereof upon 15 days' written notice.

If any such liability policies are on a "claims made" basis, Datapunkt will agree to maintain such coverage in force for 1 year following termination or expiration of this Agreement or to purchase adequate "tail liability" insurance upon the termination of this Agreement.