

This Cloud Service Agreement (this “**Agreement**”) governs Customer’s acquisition and use of Varient’s Cloud Service. Capitalized terms shall have the meanings set forth on Exhibit 1 (Definitions) or elsewhere in this Agreement.

## 1. **THE SOFTWARE**

The Software for which the Cloud Service is provided hereunder shall be set forth in an Order. A description of the Software ordered by Customer as a Cloud Service, and the specific terms and conditions in respect of such Software, is set out in a schedule at: [https://www.varient.com/legal\\_agreements](https://www.varient.com/legal_agreements) under Product Terms (a “**Software Schedule**”), which relevant Software Schedule(s) is/are hereby incorporated by reference.

## 2. **ACCESS TO AND USE OF THE CLOUD SERVICE**

**2.1. Generally.** Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, Varient shall make the Cloud Service available to Customer pursuant to this Agreement. Customer may allow its Subsidiaries to access and use the Cloud Service; provided that, (a) Customer shall cause each such Subsidiary to abide by the terms and conditions of this Agreement and shall remain fully liable for the acts and omissions of such Subsidiaries as if such acts or omissions were or were not taken by Customer and (b) with respect to each Subsidiary, its right to access and use the Cloud Service shall automatically terminate upon the date that such Person is no longer a Subsidiary of Customer.

**2.2. Documentation.** Subject to and expressly conditioned on Customer’s compliance with all of the terms and conditions of this Agreement, Varient hereby grants to Customer a non-exclusive, non-transferable license to use and reproduce the Documentation during the Agreement Term solely for Customer’s and its Subsidiaries’ internal business purposes in connection with their use of the Cloud Service. Customer and its Subsidiaries shall reproduce all copyright and other proprietary notices on all copies of the Documentation in the same form and manner as included in the Documentation by Varient.

**2.3. Restrictions.** Customer, its Subsidiaries, and Authorized Users shall use the Cloud Service only as expressly permitted by this Agreement and in accordance with the Documentation and shall not, and shall not permit or authorize any Person, directly or indirectly, to: (a) modify, copy or create any derivative work based on the Cloud Service or Documentation; (b) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Cloud Service or Documentation available to any third party, other than Authorized Users as permitted herein; (c) decompile or reverse engineer any portion of the Cloud Service or Documentation, including but not limited to, the Software (except to the extent the foregoing restriction is prohibited under applicable Law); (d) make any use of the Cloud Service that violates applicable Law or the privacy rights, Intellectual Property Rights, or other rights of any Person; (e) access the Service or Documentation in order to build any commercially available product or service; (f) damage, disrupt, or impede the operation of Varient’s services or systems; (g) circumvent the user authentication or security of the Cloud Service or any host, network, or account related thereto; (h) transmit any viruses, worms, defects, Trojan horses, or programming of a destructive nature through the Cloud Service; (i) delete, remove, modify, obscure, fail to reproduce, or in any way interfere with any proprietary, trade secret, or copyright notice appearing on or incorporated in the Cloud Service.

**2.4. Changes to Cloud Service.** Varient may modify the Cloud Service from time to time at Varient’s sole discretion and such modifications shall replace prior versions. Except for modifications made to comply with applicable Law, Varient shall not make any modifications to the Cloud Service that shall degrade the security or data protection features or functionality of the Cloud Service.

**2.5. Suspension of the Cloud Service.** Varient may suspend immediately Customer’s or any Authorized User’s account or access to or use of the Cloud Service if such account or activity is (a) disrupting or causing harm to Varient’s or another Person’s computers, systems, or infrastructure or (b) is in violation of [Section 2.3](#), applicable Law, or the Documentation; provided that, Varient shall notify Customer of any such suspension and shall remove such suspension upon resolution to Varient’s reasonable satisfaction of the circumstances giving rise to such suspension.

## 3. **FEES AND PAYMENT**

**3.1. Fees.** In consideration for Customer’s access to and use of the Cloud Service and Documentation and receipt of the Support Services, Customer shall pay to Varient the fees for the Cloud Service set forth in each Order (the “**Fees**”). Customer may add additional Entitlements at any time, subject to the Parties’ execution of an Order for such Entitlements and Customer’s payment of the applicable Fees set forth in such Order; provided however, that if Customer’s use of the Cloud Service exceeds its then-current Entitlements at any time during the applicable Subscription Term, (a) additional Entitlements to cover such use shall be automatically added to this Agreement and (b) the Fees for each such additional Entitlement shall be the applicable Overage Fee set forth in the applicable Order.

**3.2. Payment.** All amounts due hereunder shall be due upon receipt of invoice and payable with thirty (30) days of the invoice date. Except as otherwise expressly set forth herein, all amounts paid under this Agreement are non-refundable.

**3.3. Taxes.** All Fees are exclusive of any customs or other duty, tax, and similar levies imposed by any authority resulting from the transactions contemplated by this Agreement (“**Taxes**”). All Taxes (other than taxes on Varient’s net income), and penalties and interest relating thereto, shall be Customer’s responsibility. Except to the extent that Customer has provided a resale certificate, exemption certificate, direct pay permit, or other appropriate documentation of exemption or explanation of

non-taxability sufficient to confirm the exempt status of Customer or the relevant transaction involving Customer under this Agreement so as to eliminate Varicent's obligation to charge, collect, and remit any Taxes, Varicent shall add to each invoice issued and collect from Customer any such applicable Tax imposed upon the transactions contemplated hereunder or the payment of consideration by Customer to Varicent. If Customer is required to deduct withholding tax from payments to Varicent in accordance with applicable law, Customer shall promptly send to Varicent the official tax certificate certifying such withholding tax deduction. For greater certainty, if a deduction or withholding is so required, Customer shall pay such additional amounts as will ensure that the net amount received and retained by Varicent equals the full amount which it would have received had the deduction or withholding not been required.

**3.4. Late Payment.** Late payments shall accrue interest from the due date at a rate of one and one half percent (1.5%) per month or, if lower, the highest rate allowed by applicable Law. Payments shall first be applied against the payment of any late fees that have accrued, after which any balance remaining shall be applied to payment of the principal due and outstanding. Customer shall pay all reasonable expenses incurred by Varicent related to the collection of late payments, including reasonable attorneys' fees.

**3.5. Suspension for Nonpayment.** Without prejudice to any other right or remedy Varicent may have, if Customer fails to pay any undisputed amounts when due and does not remedy such failure within ten (10) Business Days after the date such amounts were due, Varicent may, without liability, cease performing or making available, as applicable, some or all of the Services, including access to the Cloud Service, until full payment of all undisputed outstanding amounts is received.

**3.6. Payment Disputes.** Should Customer dispute any portion of an invoice, Customer shall notify Varicent within thirty (30) days after receipt of such invoice and shall pay the undisputed amount when due. Customer's failure to give Varicent notice within such time period shall constitute a waiver of any rights which Customer may have to any adjustment, charge, or reimbursement with respect to such amounts. The Parties shall use commercially reasonable efforts to resolve disputes regarding invoices within thirty (30) days after Customer notifies Varicent of the dispute.

**3.7. Verification of Use.** Varicent shall have the right to monitor Customer's use of the Cloud Service for the purpose of verifying Customer's compliance with this Agreement, including the purchase of sufficient Entitlements.

#### **4. SERVICES**

**4.1. Support Services.** Varicent shall provide Customer with technical support for the Cloud Service (the "**Support Services**") in accordance with the terms and conditions set out in the "Support Services Annex" to the Software Schedule for the Software ordered by Customer.

**4.2. Professional Services.** In the event Customer requests Varicent to provide Professional Services, the provision of such Professional Services shall be governed by the terms and conditions of the Professional Services Schedule at: [https://www.varicent.com/legal\\_agreements](https://www.varicent.com/legal_agreements), which are hereby incorporated by reference, and this Agreement.

#### **5. CUSTOMER RESPONSIBILITIES**

**5.1. Accuracy.** Customer shall have sole responsibility for the accuracy and adequacy of all Customer Data used or processed by Customer in connection with the Cloud Service or provided to Varicent for use in connection with the Services. Varicent shall have no obligation to check any Customer Data for accuracy, adequacy, or completeness and may assume that all Customer Data uploaded to the Cloud Service or provided to Varicent is accurate, adequate, and complete as submitted.

**5.2. System Requirements.** The networks, systems, and workstations from which Customer and its Authorized Users access and use the Cloud Service (the "**Customer Systems**") shall meet the requirements described in the Documentation, as such may be amended by Varicent from time to time upon notice to Customer (the "**System Requirements**"). Customer shall keep the Customer Systems current at all times with the then-current System Requirements. Varicent shall have no liability for any failure to access or use the Cloud Service due to the failure of any Customer System to comply with the then-current System Requirements.

**5.3. Compliance with Law.** Customer is solely responsible for ensuring that Customer, its Subsidiaries, Authorized Users, and their respective activities, applications, and systems comply with applicable Law.

#### **6. BACKUP AND DISASTER RECOVERY**

**6.1. Data Back-Up.** Varicent shall back up the Cloud Service and Customer Data stored therein daily and copy such back-ups to an off-site location for use if a Force Majeure Event occurs in the primary location. Back-ups shall be encrypted at rest and during transmission to the offsite location.

**6.2. Disaster Recovery.** If a Force Majeure Event occurs that causes the Cloud Service to be unavailable, Varicent shall work to restore Customer's access to the Cloud Service with a return to operation within fourteen (14) days. The environment shall be restored using the most recent data backup, with no more than twenty-four (24) hours of Customer Data loss of the restored Customer Data set.

## 7. DATA SECURITY AND PROCESSING

**7.1. Data Security Standards.** Varient shall use, process, retain, and disclose Customer Data only as necessary for the specific purpose of providing the Cloud Service and in compliance with Varient's data security standards and procedures set forth at: [https://www.varient.com/legal\\_agreements](https://www.varient.com/legal_agreements) (the "Data Security Standards") and applicable Law. Varient shall not sell Personal Data. Customer acknowledges that (a) Varient may modify the Data Security Standards from time to time at Varient's sole discretion and (b) such modifications shall supersede prior versions; provided that, such modified Data Security Standards shall be, except to the extent required to comply with applicable Law, no less protective of the Customer Data than the Data Security Standards in place as of the Effective Date.

**7.2. Customer Responsibilities.** Customer is solely responsible for (a) taking necessary actions to order, enable, and use the available data protection features for the Cloud Service and (b) implementing and managing security and privacy measures for the Customer Systems and any items not provided and managed by Varient within the Cloud Service (such as systems and applications built or deployed by Customer upon the Cloud Service and Customer end-user access control to the Cloud Service).

## 8. TERM AND TERMINATION

**8.1. Automatic Renewal.** Unless terminated as provided in this Agreement or either Party provides the other Party with at least thirty (30) days' advance written notice prior to the end of the then-current Subscription Term that it does not wish to renew such Subscription Term, or otherwise specified in an Order, the Cloud Service will automatically renew for the renewal term duration set forth in such Order.

**8.2. Term of Agreement.** The term of this Agreement shall commence on the date in which Varient notifies Customer that Customer can access the Cloud Service and continue until terminated as set forth herein (the "Agreement Term").

**8.3. Termination by Either Party.** Either Party may terminate this Agreement:

- a. at any time without cause on at least thirty (30) days' written notice to the other Party after the expiration or termination of all Orders and SOWs;
- b. immediately upon written notice if the other Party is in material breach of this Agreement and the breaching Party has failed to cure such breach within thirty (30) days after receipt of notice from the non-breaching Party describing the breach in reasonable detail; or
- c. with immediate effect by giving written notice to the other Party if: (i) the other Party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; (ii) the other Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; (iii) the other Party suspends or threatens to suspend payment of its debts, or is or is deemed to be unable to pay its debts as they fall due for payment, or admits inability to pay its debts or is deemed unable to pay its debts; or (iv) the other Party's financial position deteriorates to such an extent that in the terminating Party's opinion the other Party's capability to adequately fulfil its obligations under this Agreement or the relevant SOW or Order has been placed in jeopardy.

**8.4. Termination by Customer.** Customer may terminate this Agreement upon notice to Varient as explicitly provided in the Data Security Standards.

### 8.5. Effect of Termination.

8.5.1. Commencing on the date of, as applicable, (a) Customer's notice to terminate this Agreement pursuant to clauses 8.3(b) or 8.3(c) or (b) either Party's notice to the other Party that it does not wish to renew this Agreement, Customer shall have a period of thirty (30) days in which to download the Customer Data from the Cloud Service. If Varient terminates this Agreement for reason of Customer's breach of this Agreement, Customer shall have a period of ten (10) days after the date of such termination in which to request from Varient a copy of the Customer Data stored in the Cloud Service, which Varient shall provide within a reasonable period of time after receipt of any such request.

8.5.2. Upon the expiration or termination of this Agreement: (a) Customer shall immediately cease all access to and use of the Services and associated Varient IP and the rights granted in this Agreement with respect to the Services shall automatically terminate; (b) Customer shall immediately pay to Varient all outstanding Fees and other amounts due hereunder; and (c) Varient shall promptly delete all Customer Data from the Cloud Service. Upon the expiration or termination of this Agreement by Customer pursuant to Section 8.4, Customer shall also immediately pay to Varient all Fees that would have been due for the rest of each then-current Subscription Term had Customer not terminated this Agreement.

**8.6. Survival.** The following provisions of this Agreement shall survive the expiration or termination of this Agreement, together with all other provisions that by their plain meaning are intended to survive: Sections 2.3 (Restrictions), 3.2 (Payment), 3.3 (Taxes), 3.4 (Late Payment), 3.6 (Payment Disputes), 5.38.5 (Compliance with Law), and 8.5 (Effect of Termination) through 14 (Miscellaneous).

## **9. PROPRIETARY RIGHTS**

**9.1. Customer Data.** Except for any licenses expressly granted to Varicent under this Agreement, Customer's use of the Services shall not affect Customer's ownership or license rights in the Customer Data. Customer hereby grants to Varicent a limited, non-transferable, non-exclusive, worldwide, fully paid up, royalty-free license to, during the Agreement Term, use, reproduce, display, distribute, publish, perform, create derivative works from, process, transmit, provide, and store the Customer Data for the purpose of providing the Services.

**9.2. Varicent IP.** As between Customer and Varicent, Varicent owns and shall retain all right, title, and interest, including all Intellectual Property Rights, in the Software, Services, Varicent's and its licensors' trademarks, service marks, logos, and other indicia of origin used in connection with the Services, the Usage Data (as defined below), all proprietary information and know-how of Varicent and its licensors incorporated in or used in the provision of the Services, and all updates, modifications, improvements, and derivative works of any of the foregoing (collectively, the "**Varicent IP**"). Except as expressly set forth in this Agreement, Varicent expressly reserves all rights in the Varicent IP. All use of Varicent's and its licensors' trademarks, service marks, logos, and other indicia of origin hereunder shall inure to the benefit of the owner thereof. Varicent may only disclose Usage Data in the aggregate and in an anonymized fashion so that it is not possible to identify Customer, any of its Subsidiaries, or any Authorized User. "**Usage Data**" means all metadata and navigational, transactional, computer (e.g., IP address and browser), statistical, analytical, and similar data collected, generated, or derived from the use of the Services by Customer or its Subsidiaries or on their behalf.

**9.3. Feedback.** Customer grants to Varicent and its Affiliates a worldwide, perpetual, irrevocable, royalty-free, fully paid-up, license to use, copy, modify and distribute, without attribution, including by incorporating into any software or service owned by Varicent, any suggestion, enhancement request, recommendation, correction or other feedback (collectively, "**Feedback**") provided by Customer or users relating to any software or service owned or offered by Varicent.

## **10. REPRESENTATIONS AND WARRANTIES**

**10.1. By Both Parties.** Each Party represents and warrants to the other Party that: (a) it has the right, power, and authority to enter into this Agreement and perform its obligations hereunder; (b) this Agreement is a legal and valid obligation binding upon it and enforceable in accordance with its terms; (c) its entry into this Agreement and performance hereof shall not result in any breach or default under, and do not conflict with, any agreement, instrument, or understanding, oral or written, to which it is a party; and (d) all of its activities under this Agreement shall be performed in compliance with applicable Law.

**10.2. By Varicent.** Varicent represents, warrants, and covenants that (a) it shall use reasonable efforts to scan the Cloud Service for any malicious code, virus, Trojan horse, malware, spyware, adware, worm, or other device, the effect of which is to permit unauthorized access to or disrupt, damage, erase, or otherwise harm, any computer, systems or software or to perform unauthorized actions on a computer system and (c) it shall provide the Services using commercially reasonable care and skill.

**10.3. By Customer.** Customer represents, warrants, and covenants that (a) it owns all right, title, and interest in or has a license to all Customer Data, including Personal Data, and has the right to, and has obtained from all applicable Persons all rights and consents necessary to, grant to Varicent the rights granted in this Agreement and (b) all designs, specifications, instructions, directions, and Customer Data furnished to Varicent by Customer, its Subsidiaries or their respective Representatives, and Varicent's and its Personnel's use, modification, processing, and reproduction thereof in accordance with this Agreement shall comply with all applicable requirements of any licenses between Customer or any of its Subsidiaries and the licensor of such Customer Data and shall not violate applicable Law.

**10.4. Warranty Disclaimer.** EXCEPT FOR THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 10 THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND VARICENT AND ITS AFFILIATES AND THIRD PARTY SUPPLIERS HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, THAT DEFECTS SHALL BE CORRECTED, THAT THE SERVICES SHALL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT ACCESS TO THE SERVICES AND THEIR USE SHALL BE UNINTERRUPTED OR ERROR-FREE.

## **11. INDEMNITY**

**11.1. By Varicent.** If a Third Party asserts a claim against Customer that Customer's use of the Cloud Service in accordance with this Agreement infringes, misappropriates, or violates such Third Party's Intellectual Property Rights (an "**Infringement Claim**"), Varicent shall defend Customer against that Infringement Claim and pay all amounts finally awarded by a court against Customer or included in a settlement; provided that, Customer promptly: (a) notifies Varicent in writing of the Infringement Claim promptly upon learning of it (provided Varicent's indemnification obligations hereunder shall only be lessened to the extent Customer's failure to provide such notice materially impacts Varicent's ability to defend against such claim); (b) supplies information requested by Varicent; and (c) allows Varicent to control, and reasonably cooperates in, the defense and settlement of the Infringement Claim, including mitigation efforts. No settlement may be entered into by Varicent on behalf Customer without Customer's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed), unless such settlement contains an unconditional release of Customer's liability. If there is an Infringement Claim or if Varicent reasonably believes the Cloud Service may infringe, misappropriate, or violate any Intellectual Property Rights, Varicent may in its discretion



and at no cost to Customer: (i) modify the Cloud Service so that it no longer infringes, misappropriates, or violates any Intellectual Property Rights without substantially diminishing or impairing the Cloud Service's functionality; (ii) obtain a license for Customer's continued use of the Cloud Service in accordance with this Agreement; or (iii) terminate this Agreement and refund to Customer any prepaid Fees with respect to the Cloud Service covering the remainder of the Agreement Term after the effective date of termination. Varient's obligations in this [Section 11.1](#) shall not apply to any actions or claims arising as a result of: (A) Customer's or its Subsidiaries' or their respective Representatives' use of the Cloud Service other than as expressly authorized by this Agreement; (B) the alteration or modification of the Cloud Service by any Person other than by or on behalf of Varient; or (C) the combination of the Cloud Service with products or services not provided or authorized by Varient. This [Section 11.1](#) constitutes Varient's entire liability, and Customer's sole remedy, with respect to the infringement, misappropriation, or violation of Intellectual Property Rights and related claims and actions.

**11.2. By Customer.** If a Third Party asserts a claim against Varient or any of its Affiliates or its or their Representatives (the "**Varient Indemnitees**") arising from or relating to any claim that any Varient Indemnitee's use of the Customer Data in accordance with this Agreement infringes, misappropriates, or violates the Intellectual Property Rights or other personal or proprietary rights of any Third Party or applicable Law, Customer shall defend the Varient Indemnitees against any such claim and pay all amounts finally awarded by a court against the Varient Indemnitees in any such action or included in a settlement; provided that, Varient promptly: (a) notifies Customer in writing of the claim promptly upon learning of it (provided Customer's indemnification obligations hereunder shall only be lessened to the extent Varient's failure to provide such notice materially impacts Customer's ability to defend against such claim); (b) supplies information requested by Customer; and (c) allows Customer to control, and reasonably cooperates in, the defense and settlement of the claim, including mitigation efforts. No settlement may be entered into by Customer on behalf any Varient Indemnitee without such Varient's prior written consent (which consent shall not be unreasonably withheld, conditioned, or delayed), unless such settlement contains an unconditional release of all Varient Indemnitees' liability.

## **12. EXCLUSIONS AND LIMITATIONS ON DAMAGES**

**12.1. Exclusion of Certain Damages.** EXCEPT FOR: (A) CLAIMS ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 11 AND (B) CLAIMS THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW, IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON UNDER OR IN CONNECTION WITH THIS AGREEMENT FOR ANY CONSEQUENTIAL OR INDIRECT DAMAGES, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR LOSS OF GOODWILL, WORK STOPPAGE, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, LOSS OF DATA, OR BUSINESS LOSS OF PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**12.2. Limitation of Liability.** EXCEPT FOR: (A) CLAIMS ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 11 AND (B) CLAIMS THAT CANNOT BE EXCLUDED UNDER APPLICABLE LAW, EACH PARTY'S CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ALL CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT OR ANY STATEMENT OF WORK, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY USED, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT OR SUCH STATEMENT OF WORK, AS THE CASE MAY BE, IN THE TWELVE (12) MONTHS PRECEDING THE EVENT, ACT OR OMISSION FOR THE SERVICE THAT IS THE SUBJECT OF THE CLAIM. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION 12 APPLY COLLECTIVELY TO VARIENT, ITS AFFILIATES, AND THEIR RESPECTIVE REPRESENTATIVES, CONTRACTORS, AND SUPPLIERS.

## **13. CONFIDENTIALITY**

**13.1. Confidentiality.** "**Confidential Information**" means any information or materials disclosed to or received by a Party or its Affiliate (the "**Recipient**") from or on behalf of the other Party (the "**Discloser**") in connection with this Agreement that is marked "confidential" or "proprietary" indicating its confidential nature or would be reasonably understood by the Parties as confidential, including the terms of this Agreement. For the avoidance of doubt, the term Confidential Information does not include Customer Data; the confidentiality and security of Customer Data is addressed in the Data Security Standards.

**13.2. Obligations.** During the Agreement Term and for a period of two (2) years after disclosure (other than for trade secrets, which shall be indefinite), Recipient shall: (a) hold Discloser's Confidential Information in confidence using the same degree of care as it uses to protect its own information of like character, but in no event less than a reasonable degree of care; (b) limit disclosure of Discloser's Confidential Information to its Representatives having a need to know such Confidential Information for the purposes of this Agreement and who are bound to Recipient to protect the confidentiality of such Confidential Information in a manner that affords substantially equivalent confidentiality protection as that required of Recipient hereunder; and (c) use Discloser's Confidential Information solely for purposes of this Agreement, in accordance with this Agreement.

**13.3. Exclusions.** Recipient's obligations under this [Section 13](#) shall not apply to information or materials that (a) are or may hereafter be in the public domain (other than through unauthorized disclosure by Recipient); (b) were disclosed or otherwise known to it without any confidentiality obligation prior to disclosure by Discloser hereunder; (c) are lawfully obtained from a third party without confidentiality restriction; or (d) were independently developed by Recipient without reference to or use of Discloser's Confidential Information.

**13.4. Legally Required Disclosures.** Recipient shall not be deemed to be in breach of Section 13.2 if it discloses Discloser’s Confidential Information as may be required by law a court of competent jurisdiction or any governmental or regulatory authority; provided that, to the extent legally permissible, Recipient provides Discloser with prior notice of its intention to make such disclosure and affords Discloser a reasonable opportunity (under the circumstances of any order of a court, government or regulatory authority or other request made upon Discloser) to seek an injunction or other appropriate remedy. Any information disclosed pursuant to this Section 13.4 shall remain Confidential Information for all other purposes.

**13.5. Return or Destruction of Confidential Information.** Upon the expiration or termination of this Agreement or earlier upon Discloser’s written request, Recipient and its Representatives shall, at Recipient’s election, return or destroy all of Discloser’s Confidential Information provided in connection with this Agreement; provided however, that Recipient may retain copies of written or printed Confidential Information of Discloser as is necessary to comply with its own document and information retention policies or as required by applicable Law, in which case, all such retained Confidential Information shall not be used or disclosed for any purpose except as necessary to comply with applicable Law.

**14. MISCELLANEOUS**

**14.1. Injunctive Relief.** Either Party’s breach of Section 13, or Customer’s breach of any restrictions set forth in this Agreement on Customer’s use of the Services, may cause immediate and irreparable harm for which money damages may not constitute an adequate remedy. In such event, the non-breaching Party shall be entitled to injunctive or other equitable relief for any such violation or incident, without proof of actual damages.

**14.2. Publicity.** Varicent shall have the right to identify Customer as a customer and to use Customer’s logo in connection therewith in Varicent’s marketing materials. Except as set forth in the preceding sentence, neither Party shall use any name, trademark, trade name, service name, or service mark, whether registered or not, of the other Party in publicity releases or advertising or in any other manner without the prior written consent of the other Party, unless required by applicable Law.

**14.3. Relationship of the Parties.** Varicent is an independent contractor, not Customer’s agent, joint venturer, partner or fiduciary, and does not undertake to perform any of Customer’s regulatory obligations or assume any responsibility for Customer’s business or operations. Each Party is responsible for determining the direction, control, and compensation of its Personnel, and their respective contractors.

**14.4. Assignment.** Except as expressly permitted in this Agreement, neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party; provided however, that Varicent may assign this Agreement, in whole or in part, to any of its Affiliates or in connection with the sale of substantially all of its business to which this Agreement relates, whether by the sale of assets, equity, or otherwise. Any assignment or purported assignment in violation of this Section 14.4 is null and void. This Agreement shall be binding on and inure to the benefit of the Parties and their respective permitted successors and assigns.

**14.5. Varicent Contracting Entity, Governing Law, and Venue.** The Varicent entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

<b>Customer’s domicile</b>	<b>Varicent entity entering into this Agreement</b>	<b>Governing law</b>	<b>Courts with exclusive jurisdiction</b>
United States of America, Mexico, Central or South America or Caribbean, Asia or the Pacific region	Varicent US OpCo Corporation	New York and controlling United States federal law	Borough of Manhattan, New York, New York, USA
Canada	Varicent Canada OpCo Ltd.	Province of Ontario and the federal laws of Canada applicable therein	Toronto, Ontario, Canada
Europe (excl. Romania) or Middle East	Varicent UK OpCo Limited	England and Wales	London, England
Romania	Varicent ROM OpCo S.R.L.	Romania	Bucharest, Romania
Australia or New Zealand	Varicent US OpCo Corporation	Australia	Sydney, New South Wales, Australia

**14.6. Notices.** All notices, consents, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to be given: (a) when actually received, if delivered personally; (b) two (2) Business Days after the date delivered to a reputable international next-day courier service; (c) three (3) Business Days after first class mailing; or (d) if sent by email, confirmation of receipt. Notices shall be sent to the Parties at their ship to address set forth in the applicable Order or

such other address as either Party may indicate by notice to the other Party. Notices to Varient shall be addressed to the attention of its General Counsel. Notwithstanding the foregoing, any notices that purport to create, amend, add, alter, or incur obligations, terminate this Agreement, any Subscription Term or Entitlements, or any SOW, or provide notice of breach, indemnifiable claim or legal process may not be sent by email.

**14.7. Export.** Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the generality of the foregoing, Customer shall not make the Services available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo; (ii) is listed on any U.S. government list of prohibited or restricted parties; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

**14.8. Waiver.** Subject to [Section 3.6](#), a Party's failure to exercise, delay in exercising, or partial exercise of a right or remedy provided by this Agreement or applicable Law shall not constitute a waiver of such right or remedy, a waiver of other rights or remedies, or a waiver of the further exercise of such right or remedy.

**14.9. Force Majeure.** If the performance by a Party (the "**Affected Party**") of any of its obligations (excluding payment obligations) under this Agreement is prevented, hindered, or delayed due to any cause beyond its reasonable control, including, work stoppages, natural disasters, pandemics, catastrophic weather events, fires, riots, accidents, terrorism, war, unavailability of Third Party materials, or outages of power or communications networks (each a "**Force Majeure Event**"), the Affected Party shall not be liable for such non-performance, hindrance, or delay as long as the Force Majeure Event and its effects on the Affected Party continue. The Affected Party shall promptly notify the other Party in writing of the Force Majeure Event and the effect on the Affected Party's performance. The Affected Party shall employ commercially reasonable efforts to mitigate the effects of the Force Majeure Event and resume performance as soon as practicable.

**14.10. Order of Precedence.** In the event of a conflict between the terms and conditions of this Agreement, any Order, any SOW listed in such Order, the Professional Services Schedule (if referenced in the applicable Order), the following order of precedence governs: (a) first, this Agreement; (b) second, the Professional Services Schedule; and (c) third, the applicable Order or SOW at issue; provided however, that if any of the foregoing documents expressly states that its terms control over certain provisions of this Agreement that are specifically identified therein, such document shall control with respect to those specific terms.

**14.11. Entire Agreement; Amendment.**

14.11.1. This Agreement, including all Orders and SOWs, represents the Parties' entire agreement and supersedes all prior agreements, understandings, and representations, written or oral, between the Parties with respect to its subject matter.

14.11.2. Other than Orders and SOWs, no purchase order or other ordering or confirming document or any handwritten or typewritten text which purports to modify or supplement the text of this Agreement shall add to or vary the terms of this Agreement. This Agreement and any SOW and any Order may only be amended by the written agreement of both Parties.

**14.12. Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall be unimpaired and shall remain in full force and effect, and the invalid, illegal, or unenforceable provision shall be replaced by a valid, legal, and enforceable provision that comes closest to the Parties' intent underlying the invalid, illegal, or unenforceable provision. The Parties shall negotiate in good faith to agree to a replacement provision that, to the extent possible, achieves the intended commercial result of the original provision.

**14.13. Third Party Beneficiaries.** Except as expressly set forth in this Agreement, any Person who is not a Party to this Agreement shall not be entitled to any benefit from or to enforce any right under this Agreement.

**14.14. Interpretation.** The headings of each Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Section. For the purposes of this Agreement: (a) the terms "including", "include", and "includes", shall not limit the generality of any description preceding such term; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto", and "hereunder" refer to this Agreement as a whole; and (d) the words "will" and "shall" are to be interpreted as having the same meaning and are deemed to be a term of command. Unless the context otherwise requires, references herein to (i) an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (ii) a Law means such Law as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption shall apply against the Party who drafted such terms and provisions.

**14.15. Counterparts.** This Agreement, including each Order and SOW, may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any telecopy or other facsimile transmission of any signature shall be deemed an original and shall bind such Party.

**EXHIBIT 1 – Definitions**

**“Affiliate”** means, in relation to a Party, any Person that controls, is controlled by, or is under common control with such Party on the Effective Date or at any time during the Agreement Term, where “control” means possessing (a) directly or indirectly, the power to direct or cause the direction of the management, policies, or operations of a Person, whether through ownership of voting securities, by contract, or otherwise or (b) the ownership of, or the power to vote, more than fifty percent (50%) of the voting stock, shares or interests of such Person.

**“Agreement”** means this Agreement, its Exhibits, Schedules, any SOWs and Orders executed by the Parties in connection with the products and/or services relating thereto, and all Attachments, Exhibits, and Schedules of any of the foregoing.

**“Agreement Term”** has the meaning given in [Section 8.2](#).

**“Authorized User”** means Customer’s and its Subsidiaries’ employees, contractors, and agents (including temporary employees and contract employees) authorized by Customer to access and use the Cloud Service on Customer’s or any of its Subsidiaries’ behalf.

**“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in New York City.

**“Cloud Service”** means the online, Web-based applications of the Software provided by Varient that are ordered by Customer under an Order.

**“Customer”** means the Person identified as “Customer” in the first Order executed by the Parties.

**“Customer Data”** means all Records, Personal Data, documents, content, and other data and information uploaded to the Cloud Service by Customer, any of its Subsidiaries, or any Authorized User.

**“Customer Systems”** has the meaning given in [Section 5.2](#).

**“Data Protection Laws”** means the General Data Protection Regulation 2016/679 (GDPR), the California Consumer Privacy Act, and any other applicable similar privacy or data protection Laws.

**“Data Security Standards”** has the meaning given in [Section 7.1](#).

**“Documentation”** means the documentation for the Cloud Service made available by Varient to Customer, including training materials and user manuals.

**“Effective Date”** has the meaning given in the first Order executed by the Parties.

**“Entitlement”** is the method by which Varient charges for use of the Cloud Service, on a “per Entitlement” basis. What constitutes an “Entitlement” is dependent on the ordered Software for which the Cloud Service is provided, as set forth in the relevant Software Schedule.

**“Fees”** has the meaning given in [Section 3.1](#).

**“Force Majeure Event”** has the meaning given in [Section 14.9](#).

**“Intellectual Property Rights”** means all patents, copyrights, moral rights, database rights, design rights, and rights in trade secrets and know-how, all other intellectual property and proprietary rights, all other equivalent or similar rights which may arise or exist anywhere in the world, in each case, whether registered or unregistered, and all applications for any of the foregoing rights.

**“Law”** means all applicable law, statutes, regulations and codes from time to time in force.

**“Order”** means any order for Services or Entitlements that references this Agreement and is executed by both Parties.

**“Party”** means each of Varient and Customer individually and “Parties” means Varient and Customer collectively.

**“Person”** means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, self-regulatory organization, regulatory authority, or other governmental authority.

**“Personal Data”** means (a) any information that, either alone or in combination with other readily available data, identifies an individual or from which an individual is identifiable, including any name, address, insurance information, financial information, health information, or social security number, and (b) any information that comprises “non-public personal information”, “personal information”, “personal data” or equivalent term, as such terms are defined in applicable Data Protection Laws.

**“Personnel”** means a Person’s employees, independent contractors, and subcontractors.

**“Professional Services”** means the services to be provided by Varient or any of its Affiliates to Customer set forth in any SOW.

**“Record”** means the data that represents any physical or electronic document managed by the Cloud Service, including call detail records, invoices, plans, purchase orders, quotes, receipts, returns, sales orders, schedules, and shipments.

**“Representative”** means a Person’s officers, directors, Personnel, attorneys, accountants, and agents.

**“Services”** means, collectively, the Cloud Service, the Support Services, and any Professional Services.

**“SOW”** means a statement of work for the provision of professional services by Varient to Customer executed by both Parties that references this Agreement.

**“Software”** means the object-code version of Varient’s software programs ordered by Customer in an Order (including any related Varient application programming interfaces).

**“Software Schedule”** has the meaning given in [Section 1](#).

**“Subscription Term”** means the duration of the period during which Customer is entitled to use the Cloud Service, as set out in an Order.

**“Subsidiary”** means, in relation to a Party, any Affiliate that is controlled by such Party at any time during the Agreement Term, for so long as such control exists, where “control” has the meaning given in the definition of “Affiliate”.

**“Support Services”** has the meaning given in [Section 4.1](#).

**“System Requirements”** has the meaning given in [Section 5.2](#).

**“Terms”** has the meaning given in the first paragraph of these Varient Cloud Service Terms and Conditions.

**“Third Party”** means a Person other than Varient, Customer or their respective Affiliates.

**“Usage Data”** has the meaning given in [Section 9.2](#).

**“Varient IP”** has the meaning given in [Section 9.2](#).