SOFTWARE AS A SERVICE SAAS AGREEMENT

This Software-as-a-Service SaaS Agreement **(**the "**SaaS Agreement**") is made and entered into, as of the date in which TOMIA license, or any component thereof, is made available to Customer, by and between Telarix Inc., a Delaware corporation with registered offices at 1950 Old Gallows Rd # 800, Vienna, VA 22182 USA, or any of its Affiliates ("**TOMIA**") and the company set forth in the applicable Proposal referencing this SaaS Agreement ("**Customer**")**.**

TOMIA and Customer may be referred herein individually as a "**Party**" and collectively as the "**Parties**".

TERMS AND CONDITIONS FOR SAAS SOLUTION

1. SCOPE OF THE AGREEMENT.

1.1 **SaaS Agreement and Order Forms**. This SaaS Agreement, including any document referenced herein, establishes the terms and conditions under which TOMIA will provide SaaS Services, and any associated Professional Services, to the Customer, as described in the applicable Order Form or the Documentation. **By using the Service, Customer adheres to these Terms and Conditions for SaaS Solution.**

1.2 **Incorporation by reference.** This SaaS Agreement incorporates by reference (i) the applicable Order Form (ii) the Service Support and Maintenance Terms, ("**Performance Standards**"), available at https://www.tomiaglobal.com/legal/ which is incorporated herein by reference, and (iii) the DPA.

1.3 **Changes.** TOMIA reserves the right to update any document referenced herein or in the Order Form, to reflect changes in the Services, *provided*, *however*, that any such amendments shall not materially degrade the level of Services provided to Customer during the SaaS Term.

1.4 **Order of Precedence.** In the event of conflict, the terms of this SaaS Agreement will prevail over any Order Form or any other document incorporated by reference herein, except to the extent that such amending document specifically references the conflicting section of this SaaS Agreement and clearly states that the amending document will prevail, and such document is signed by an authorized signatory of TOMIA.

1.5 All pre-printed or standard terms of Customer's purchase order or other business processing document shall have no effect.

2. DEFINITIONS. As used in this SaaS Agreement, the following terms shall have the following meanings:

2.1 "**Affiliate**" means any entity or person, which, directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with above entities.

2.2 **"Authorized User"** a person, other than the Customer, authorized by TOMIA to access the Service, to transmit or distribute business information.

2.3 "**Business Day**" means Monday through Friday excluding TOMIA's designated holidays.

2.4 "**Commencement Date**" means the date on which Customer had signed an applicable Order Form or when TOMIA has made the SaaS services, or any part thereof, accessible to Customer, whichever is sooner.

2.5 "**Confidential Information**" means information exchanged in any form or media, if identified as confidential information at disclosure, or if the circumstances of disclosure would reasonably indicate such treatment, including, but not limited to, inventions, know-how, trade secrets, financial information and other proprietary of the Parties or the Users of the Software, any modifications thereof and the Documentation.

2.6 "**Control**" means the power to direct or cause the direction of the management and policies of an entity whether through holding of more than 50% of the equity or voting rights in such entity, the right to appoint a majority of its board of directors or other equivalent body, by contract or otherwise, whether directly or indirectly. The term "Controlled" shall have a correlative meaning.

2.7 "**DPA**" means the Data Processing Agreement available at https://www.tomiaglobal.com/legal/ **("DPA")**, which is incorporated herein by reference,

2.8 **"Documentation"** means, collectively, TOMIA's then-current published guides, manuals, and on-line help (in English) that describe the functions, operation, and use of the TOMIA Services and the Service, as may be updated from time to time by TOMIA.

2.9 "**Intellectual Property**" or "**IP**" means, including but not limited to, copyrights, patents, trademarks, titles, service marks, interests, design rights, trade secrets and all other proprietary rights, whether registered or unregistered.

2.10 "**Object Code**" means the human readable form of the machine-readable code of the Software.

2.11 "**Open Source Software**" means software subject to the provisions of open source licenses, including but not limited to, Apache Software License, BSD License, Mozilla Public License, GPL, GNU or any other similar license.

2.12 "**Order Form(s)**" means each document by which Customer purchases SaaS Services pursuant to an applicable Proposal or purchase order referencing this SaaS Agreement. An Order Form may be referred to in this SaaS Agreement as a "**Proposal**" or "**Purchase Order**", all of which shall have the same meaning. Each Order Form shall be governed by the

terms and conditions of this SaaS Agreement and shall, upon signature by both parties, be deemed to have been incorporated into this SaaS Agreement.

2.13 "**Professional Services**" data conversion, Implementation, site planning, configuration, transition or transformation services, integration and deployment of the Software, training, project management and other consulting services provided by TOMIA under a mutually agreed Order Form.

2.14 "**SaaS**" means TOMIA's online software-as-a-service solution provided to Customer.

2.15 "**SaaS Metrics**" means the limitation on the usage of Software, Third Party Software, or Support Service as designated and/or defined in the applicable Proposal or the financial metric used to calculate applicable fees and designated by a term such as the number of "users", "end users", "calls" and the like.

2.16 "**Services(s)**" means TOMIA's SaaS including support, and related Professional Services. If Customer previously purchased a perpetual license to the on-premise version of the TOMIA branded software product, Customer may not use such TOMIA Software installed on Customer infrastructure except in connection with receipt of SaaS.

2.17 "**Support Services**" means the maintenance and support service provided by TOMIA to Customer as specified in the Service Support and Maintenance Terms available at https://www.tomiaglobal.com/legal/, which is incorporated herein by reference.

2.18 "**Source Code**" means computer programming code in the form not readily perceivable by humans and suitable for machine execution without the intervening steps of interpretation or compilation.

2.19 "**Software**" means any proprietary application version of software, in machine-readable Object Code (server-resident code, database schema, client-resident code) including: (i) the Documentation related to such Software, and (ii) Object Code. The term Software shall exclude Open Source Software.

2.20 **"Third Party Data"** means any data provided, input, or uploaded to the Service.

2.21 "**User**" or "**End User**" means an entity or person that is permitted by TOMIA to download, acquire or use the SaaS for its internal use, and not for resale, lease, loan or redistribution.

2.22 "**User(s)**" means the named or specified (by password or other user identification) individuals authorized by Customer to use the SaaS Services. Users may include the employees of Customer and the employees of third party independent contractors or third party consultants of Customer; provided, however, that any third party's access to and use of the Service is limited to use solely in connection with Customer's business operations. Customer acknowledges and agrees that it is responsible for ensuring that usage of the Service by any third party is in accordance with the terms and conditions of

this SaaS Agreement. A breach of this SaaS Agreement by a User shall be deemed a breach by Customer.

3. **INITIAL TERM AND RENEWALS.**

The term of this SaaS Agreement shall commence on the Commencement Date and shall continue in full force and effect until the expiration or termination of the Order Form (the "**Initial Term**"), unless earlier terminated by agreement of TOMIA and Customer or pursuant to Section 11 below. The Initial Term will be automatically renewed and extended for the same periods") as the Initial Term(each: a "**Renewal Term**, unless either Party gives written notice at least ninety (90) days prior to the end of the Initial Term, or any Renewal Term, of its intention to terminate; provided, that all pricing for each Renewal Term may be adjusted by TOMIA over the pricing in effect for the preceding Initial Term or Renewal Term with at least 90-day written notice prior to the then applicable Renewal Term.

The Initial Term and all Renewal Terms are collectively referred to in this SaaS Agreement as the "**SaaS Term**".

4. **TOMIA SERVICES.**

4.1 **Services.** TOMIA will provide the Services to Customer pursuant to the terms and conditions set forth in the applicable Order Form, this SaaS Agreement and materially in accordance with the Performance Standards. TOMIA shall use commercially reasonable efforts to make the Service generally available for on-line access by Customer on a 24 hour per day, 7 days per week basis ("24/7") and only to allow Customer to exercise its rights under this SaaS Agreement.

4.2 **Changes in the Service.** TOMIA may make any changes in the, that TOMIA determines in its sole discretion to be necessary and/or desirable including, without limitation, changes in computer hardware, systems, and/or applications software, programming languages, data communications and Customer identification procedures. In the event of any such changes that, in TOMIA's reasonable determination, would materially change the operation of the Service, TOMIA will notify Customer in writing of such changes. TOMIA reserves the right to charge Customer for any reintegration work required to make customizations compatible with future versions/releases of the Service.

4.3 **Professional Services.** Customer may request, and TOMIA may agree to provide Professional Services to Customer as agreed to by the Parties in an Order Form.

4.4 **Services Performance.** Services shall be performed as specified in the applicable Order Form and in a professional and workmanlike manner, consistent with generally recognized commercial practices and standards. Customer agrees to provide prompt notice of any deviation by TOMIA from the forgoing, and TOMIA will re-perform any service that, in TOMIA's discretion, fails to meet this standard.

4.5 **Change Request.** Either Party may propose changes to add to, reduce or change the Services and/or the Professional Services provided under an applicable Order Form ("**Change Order"**). Each Change Order shall specify the change(s) to

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the Services, and the effect, if any, on the schedule and on TOMIA's compensation, due to the change. Once executed by both Parties, a Change Order shall become a part of the Order Form and thereby expressly incorporated by reference herein and therein. After any such effective Change Order, references to such Order Form will be deemed to refer to the Order Form, as amended to give effect to such Change.

4.6 **Delay Caused by Customer.** In the event of any delay in Customer's performance of any of the obligations set forth in this SaaS Agreement or any other delays caused by Customer, the milestones, fees and date(s) set forth in the Order Form shall be adjusted as reasonably necessary to accommodate for such delays.

5. LICENSE TO USE THE SERVICES.

5.1 **License Grant.** Subject to the terms and conditions of this SaaS Agreement, TOMIA grants Customer during the SaaS Term a personal, non-exclusive, non-transferable, non-sublicensable, and terminable right and license to access and use the Services and Documentation online, solely for Customer's internal business operations (and not in any resale or outsourcing capacity).

5.2 **License Restrictions.** The license granted to Customer in Section 5.1 above is subject to the condition that Customer does not (and does not allow any affiliate or third party to) (a) copy, modify, adapt, tamper with, or otherwise make any changes to the Services or Documentation or any part thereof; (b) exceed any usage limitations identified in then Proposal; (c) write or develop any derivative works based upon the Services or create internet "links" to/from the Service or the Services (other than on Customer's intranets or otherwise for Customer's internal business purposes as permitted by this SaaS Agreement); (d) reverse engineer, disassemble, decompile, translate, or otherwise attempt to discover any source code, algorithms, tags, specifications, architecture, structure, or other elements of the Services, in whole or in part, for competitive purposes or otherwise; (e) use unauthorized versions of the Services including, without limitation, for the purpose of building a similar or competitive product or service or for obtaining unauthorized access to the Services; (f) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Services or use the Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (g) allow access to, provide, divulge, or make available the TOMIA IP to any user other than authorized users, (h) obliterate, alter, or remove any proprietary or intellectual property notices from the Services or Documentation; (i) disclose or publish, without TOMIA's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Services; or (j) otherwise use or copy the same except as expressly permitted in this SaaS Agreement.

5.3 **Use of De-Identified Data.** The license granted to Customer in Section 5.1 above is subject to the further condition that Customer agrees that TOMIA may collect, aggregate, use and disclose Services data relating to Customer and/or End-User's traffic, routing arrangements, rates etc., so long as such data is de-identified (*i.e.*, cannot be attributed or connected to the End-User).

5.4 **Retention of Rights.** TOMIA expressly reserves all Intellectual Property Rights with respect to the TOMIA IP not expressly granted to Customer by virtue of Section 5.1 above. TOMIA may, in its sole discretion add, delete, or change some or all the features included within the Services, and may change requirements for authorized Users and communicate such changes to any authorized Users, at any time without affecting any commitments previously agreed to in this SaaS Agreement. Without limiting the generality of the foregoing, Customer acknowledges and agrees that (a) TOMIA and its licensors retain all right, title, and interest in and to the TOMIA IP and the Service (including any corrections, updates, adaptations, enhancements to either or authorized copies of either) and to the Services, and Customer shall not acquire any rights, express or implied in the TOMIA IP, and (b) any modifications to the Services made for Customer's benefit shall in no way affect or diminish TOMIA's right, title, and interest in and to the TOMIA IP. Customer acknowledges that TOMIA may create original works for third parties that may appear similar to a deliverable provided hereunder. Customer agrees that, so long as such original work does not embody and is not created with reference to any of Customer's Confidential Information, TOMIA will not be prevented from independently creating original, but similar, works for the benefit of third parties or incorporating a deliverable as part of the general release of the TOMIA Services.

5.5 Customer shall report promptly to TOMIA about any violation of this clause 5 and shall take such further steps as may be reasonably requested by TOMIA to remedy any such violation and to prevent future violations.

6. CUSTOMER'S RESPONSIBILITIES.

6.1 Customer shall provide assistance as reasonably requested by TOMIA in connection with the installation/implementation and configuration of the Services including, if requested, timely providing TOMIA with access to Customer's facilities, network, hardware and software, reasonably requested by TOMIA in order to provide the Services.

6.2 In order to obtain and maintain access and use of the Services, and for setting up the Services by TOMIA, Customer agrees to provide TOMIA with all data required for the provision of the Services, including set up and configuration, in a timely manner; *provided*, *however*, that if the Customer or any third-party not controlled by TOMIA changes its business document format such that changes are required to the template reading the format, Customer will pay TOMIA's Professional Services fees for such additional templates.

6.3 Customer is responsible for acquiring and maintaining internet connectivity in order to access the Service and use the Services, and Customer acknowledges that problems with the internet, including equipment, software, or network failures, impairments, or congestion may prevent, interrupt, or delay

Customer's access to the Services. Customer shall be responsible for ordering, installing, maintaining the proper functioning of, and paying for any communications connections at Customer's terminals or other access devices at Customer's sites.

6.4 Customer acknowledges that the ability of TOMIA to provide the Services requires Customer's cooperation in providing TOMIA with timely, adequate, and accurate responses to requests for data, documents, information, materials, decisions, or approvals. TOMIA may be excused from performing the Services or Professional Services to the extent that Customer delays or refuses to provide TOMIA with such cooperation. Customer shall be responsible for the accuracy, quality, integrity, legality, adequacy, and reliability of all Customer data that Customer furnishes to TOMIA and any results obtained therefrom.

6.5 Customer agrees to use the Services solely for the purposes identified in this SaaS Agreement and only for proper business purposes in accordance with and as contemplated by this SaaS Agreement and applicable legislation including, without limitation, laws and regulations respecting data privacy, international communications, and the exporting and importing of data.

6.6 As a security measure, TOMIA will assign to Customer one or more user IDs to enable Customer's employees to access and use the Service. Customer shall maintain control of, administer, and accept responsibility for all use of such user IDs by Customer and its employees. Customer shall restrict the disclosure of such user IDs to Customer's employees on a need-to-know basis only. Customer shall take reasonable precautions to protect against the theft, loss, or fraudulent use of such User IDs. Customer shall promptly (within one business day) notify TOMIA of any unauthorized use of Customer's User IDs, breach of security, and/or suspected theft, loss, or fraudulent use of such assigned User IDs.

6.7 Customer agrees to use its best efforts to ensure that no SaaS Component (Source Code, Object Code, etc.) is displayed outside or copied outside of the Service environment or distributed in any way to any third party except as may be permitted under the SaaS Agreement.

6.8 Customer agrees to comply with all technical specifications and with all security and operating guidelines, procedures, and protocols provided to Customer by TOMIA including, without limitation, pertaining to use of passwords and as set forth in the Order Form, the Documentation including any document referenced therein.

6.9 Customer agrees that it will not, and its employees will not, attempt to gain or allow access to any data, files, or programs to which they are not entitled under this SaaS Agreement, and that if such access is obtained, and A TOMIA Confidential Information has been compromised, Customer will immediately return such materials to TOMIA and will safeguard the same as TOMIA Confidential Information (as defined in this SaaS Agreement).

6.10 Customer shall be solely responsible for maintaining adequate controls over its processing and data transmissions up to but excluding transmissions within the Service. Customer acknowledges and agrees that TOMIA is not responsible for checking, verifying, or editing the content or completeness of the information transmitted through the SaaS. TOMIA will use reasonable commercial efforts to notify Customer of any detected non-conforming processing and/or transmissions.

6.11 Customer shall report promptly to TOMIA about any violation of this clause 6 and shall take such further steps as may be reasonably requested by TOMIA to remedy any such violation and to prevent future violations.

7. **NO JOINT UNDERTAKING.** The provision and/or use of the Services does not constitute a joint undertaking between Customer and TOMIA to furnish service or services to any other party. TOMIA does not undertake pursuant to this SaaS Agreement to make the Services available to any person or entity other than Customer. TOMIA and Customer are independent parties and shall not be deemed or construed, by virtue of this SaaS Agreement, to be the employee, representative, partner, or joint venturer of the other.

8. **PAYMENTS BY CUSTOMER TO TOMIA.**

8.1 **Fees Generally.** Customer will pay TOMIA the prices specified in the Order Form thirty (30) days from the date of the invoice once the payments have become due, unless otherwise agreed in the Order Form. Customer acknowledges that recurring charges will be invoiced annually in advance commencing upon signature of the applicable Order Form, regardless of issuance of an purchase order by Customer. Recurring fees for the Services are due whether or not Customer uses all the SaaS Metrics in the Payment Period. Unless specifically agreed in writing by TOMIA, Customer may not decrease the SaaS Metrics during the Initial or a Renewal Term. Usage in excess of the SaaS Metrics authorized under the Order Form are subject to TOMIA's then-applicable rates for such usage parameters and shall be invoiced immediately.

8.2 **Fees for Professional Services.** On a "Time and Materials" engagement, if an estimated total amount is stated in the Order Form, that amount is solely a good-faith estimate for Customer's budgeting and TOMIA's resource scheduling purposes and not a guarantee that the work will be completed for that amount. On a fixed fee engagement, in the event of any delay in Customer's performance of any of the obligations set forth in the Order Form or any other delays caused by Customer, the milestones, fees and date(s) set forth in the Order Form shall be adjusted on a T&M basis as reasonably necessary to account for such delays, and the adjustment shall be made by Change Order. Professional Services purchased must be used within, and prices quoted are valid for a period of one year following the effective date of the Order Form. Hours that are not used or have expired are non-refundable.

8.3 **Offset.** No one-sided offset or deduction from the Fee(s) is allowed under no circumstances.

8.4 **Out-of-Pocket Expenses.** Customer shall be responsible for the reasonable costs and expenses for travel, meals, and lodging incurred by TOMIA's employees, contractors, and/or other agents in connection with the installation, provision, training, Support Service, Professional Services, and operation and maintenance of the Service relating to provision of the Services to Customer. Unless otherwise agreed by TOMIA, all such costs and expenses will be invoiced to Customer after being incurred**.**

8.5 Customer acknowledges that prices set forth in the Order Form are based on the requirements and specifications agreed upon by the Parties as of the effective date set forth in the Order Form, and that any subsequent changes in such requirements or specifications requested by Customer will be subject to additional fees and expenses for such changes to be mutually agreed in advance by the Parties**.**

8.6 **Taxes.** The prices set forth in the Order Form do not include foreign or domestic taxes, withholding taxes, duties, charges, assessments, or fees (collectively, ""). If TOMIA is required to pay any Taxes including, without limitation, (i) sales, use, property, value-added, transfer, origin, withholding, repatriation, or other taxes, (ii) any customs or other duties, or (iii) any import, warehouse, or other fees associated with the importation or delivery of the Services, or on the amounts payable to TOMIA under this SaaS Agreement, or on the transfer or exchange of currency, then such Taxes shall be billed to and paid by Customer. If Customer is permitted to declare any such Taxes, Customer shall declare and pay such Taxes and TOMIA shall not be required to invoice Customer. This Section 8.5 shall not apply to TOMIA's income or payroll taxes.

8.7 **Suspension for Late Payments.** Without prejudice to its other rights and remedies, if TOMIA suspends the provision of the Services for non-payment of invoices and subsequently agrees at Customer's request to reconnect the Services, or if customer suspends the Support Services and after a which requests TOMIA to renew them, in addition to any other charges due to TOMIA, Customer shall be charged applicable fees for the period of suspension and pay TOMIA any reconnection fees or other costs imposed on or incurred by TOMIA to reconnect the Services**.**

9. **COMPLIANCE.** At TOMIA's written request, TOMIA may inspect the Services, or at its option request Customer to furnish TOMIA with a document signed by an authorized representative of Customer providing a list of (i) each system or other server of Customer where the SaaS is operational for use by Users; (ii) the number of Users of the SaaS; and (iii) actual use of SaaS Metrics. During the Term of this SaaS Agreement and for a period of one (1) year following its termination, TOMIA reserves the right to audit Customer's compliance with the terms of this SaaS Agreement and applicable Order Forms, no more than once annually at TOMIA's expense. TOMIA or its third-party auditor shall schedule any audit at least ten (10) days in advance. Any such audit shall be conducted during regular business hours at a mutually agreed upon time and date within five (5) Business Days of TOMIA's request at Customer's facilities and shall not unreasonably interfere with Customer's business activities. Customer shall provide such assistance, personnel, records, systems access, and information in an expeditious manner to facilitate the timely completion of such compliance verification. If such audit reveals that Customer has underpaid fees to TOMIA, Customer shall pay to TOMIA such underpaid fees at the then current TOMIA prices plus interest at the rate of Libor plus 1.5% per month, and if such underpayment exceeds more than five percent (5%) of the fee paid by Customer to TOMIA, Customer shall reimburse TOMIA for the costs of performing the audit.

10. **WARRANTIES; DISCLAIMERS; LIMITATION OF LIABILITY.**

10.1 **Service Warranty.** TOMIA warrants that during the SaaS Term, the Services purchased by Customer pursuant to this SaaS Agreement and any part thereof will perform in accordance with its specifications as provided under an applicable Order Form; *provided*, *however*, that (i) use of the Services is entirely at Customer's own risk, and that TOMIA has made no representations or warranties regarding (a) any data that may be provided to Customer via the Services or the accuracy of any information in such data, or (b) the ability of Customer to provide or deliver any product or service or to pay for any product or service using the Services, and (ii) This warranty is given to Customer only and shall not apply and be void to the degree that the malfunction or failure occurs because or resulted from (a) the Software has not been used in accordance with TOMIA's instructions or the Documentation; (b) the Software has been altered, modified or converted by Customer without the prior written approval of TOMIA; (c) of the malfunctioning of Customer's or third-party's hardware or software or site preparation, or site or environmental conditions; (d) accident, abuse or misapplication of the Software; (e) the Licensed Materials have been damaged; or (f) the Software, or a portion thereof, has become inoperative due to any other causes outside the control of TOMIA. TOMIA shall not be required to respond to a warranty claim under this Section 9.1 to the extent that Customer has not timely paid amounts due and owing to TOMIA under this SaaS Agreement.

10.2 **Sole and exclusive Remedy**. The remedies stated in Section 10.1 are Customer's sole and exclusive remedies and TOMIA's entire liability for such breach.

10.3 **Disclaimers.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE AND OTHER LICENSED MATERIALS, THIRD PARTY SOFTWARE, AND SERVICES ARE PROVIDED BY TOMIA "AS IS" AND THAT EXCEPT AS MAY BE SPEICIFICALLY WARRANTED IN THIS SECTION 10, TOMIA AND ITS LICENSORS AND SUPPLIERS HAVE MADE NO REPRESENTATIONS, AND HAVE EXPRESSLY DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES OR REPRESENTATIONS OF EVERY KIND OR NATURE, EITHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE LICENSED MATERIALS AND ANY ANCILLARY OR RELATED PRODUCTS OR SERVICES INCLUDING,

WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, USAGE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. TOMIA DOES NOT WARRANT THAT (I) THE LICENSED MATERIALS WILL MEET CUSTOMER'S REQUIREMENTS, (II) THE SOFTWARE OR THIRD PARTY SOFTWARE OR ANY OPEN SOURCE SOFTWARE USED IN OR WITH THE SOFTWARE, WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS, OR DATA NOT PROVIDED BY TOMIA (EXCEPT AS MAY EXPRESSLY BE SPECIFIED IN WRITING BY TOMIA IN THE DOCUMENTATION), (III) THE OPERATION OF THE LICENSED MATERIALS WILL BE UNINTERRUPTED OR ERROR-FREE, OR (IV) ALL ERRORS WILL BE CORRECTED.

10.4 **LIMITATION OF LIABILITY.** TOMIA SHALL NOT BE LIABLE TO AND CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO SEEK INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES FROM TOMIA OR FROM TOMIA'S EMPLOYEES, LICENSORS, SUPPLIERS, AGENTS OR REPRESENTATIVES ("TOMIA PARTIES"), INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOSS OF BUSINESS, REVENUE, PROFITS, OR GOODWILL, OR FOR ANY ACT OR FAILURE TO ACT BY ANY OF THE TOMIA PARTIES ARISING OUT OF, IN CONNECTION WITH OR RELATING TO THE PERFORMANCE OF THE TOMIA SERVICES, WHETHER SUCH CLAIMS ARE ASSERTED ON THE BASIS OF CONTRACT, TORT, OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Without in any way limiting the foregoing, TOMIA's total liability, including the liability of any of TOMIA's licensors or suppliers, to Customer in connection with this SaaS Agreement for any and all causes of action or claims of every kind or nature for, arising from, or relating in any manner to, directly or indirectly, any action or failure to act by any of the TOMIA Parties including, without limitation, claims for breach of contract, negligence, fraud, and interference with contractual relations, shall be limited to the lesser of (i) proven direct damages, or (ii) the aggregate amount of payments made by Customer for the affected Service or Licensed Materials during the 6-month period immediately preceding the month in which the events giving rise to the claim or cause of action occurred.

11. INTELLECTUAL PROPERTY RIGHTS.

11.1 **No Transfer of Ownership.** No transfer of ownership of any Intellectual Property right will occur under this SaaS Agreement. Without derogating the foregoing, if software deliverables are created by TOMIA specifically for Customer and identified as such in the Order Form, such deliverables shall be deemed as TOMIA IP, and TOMIA hereby grants Customer a worldwide, non-exclusive, fully paid, royalty-free license to use the deliverables as permitted under this SaaS Agreement or the applicable Order Form.

11.2 **Intellectual Property Rights Infringement.** TOMIA will defend and/or settle any claims against Customer that allege that Software supplied under this SaaS Agreement infringes

the Intellectual Property rights of a third party. TOMIA will rely on Customer's prompt notification of the claim and cooperation, on TOMIA's reasonable expenses in accordance with TOMIA internal policies. TOMIA, according to its sole discretion, may either modify the Software or service so as to be non-infringing and materially equivalent, or may procure a license or replace the affected Software, or support item, or portions thereof, with one that is at least functionally equivalent or if not possible or if such solution is impractical for economic or technical reasons, then TOMIA shall accept the return of the Software supplied and shall reimburse a pro-rata portion (based on a five-year straight line depreciation commencing upon Acceptance) of any fees paid by Customer to TOMIA with respect to such Software deemed to infringe, or for Support and Support Services, the balance of prepaid Support Fees paid by Customer at the date of the claim, or for Professional Services, the amount paid. TOMIA is not responsible for claims resulting from any unauthorized use of the products or services which is not consistent with the terms of the Proposal or this SaaS Agreement. TOMIA's undertakings pursuant to the foregoing shall not apply with respect to claims arising where the alleged infringement arises partially or wholly as a result of: (i) the combination of any component of the Software with products, software, data or services not provided by TOMIA; (ii) the unauthorized modification, in any way or form, of any component of the Software by any person other than Company; (iii) use of the allegedly infringing Software, if the alleged infringement could have been avoided by the use of a different version, workaround or fix made available by TOMIA to Customer in a timely manner; (iv) components of the infringing Software complying with or based upon specifications or other information provided solely by Customer or any third party; or (v) the misuse of the infringing Software in a manner not permitted or contemplated by this Agreement. THIS SECTION STATES THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER AND ENTIRE LIABILITY OF TOMIA WITH RESPECT TO INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS AND TOMIA SHALL HAVE NO ADDITIONAL LIABILITY UNDER CONTRACT, TORT, WARRANTY OR ANY OTHER LEGAL THEORY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

11.3 should a Party ("**Indemnified Party**") seeks indemnification from the other Party ("**Indemnifying Party**") under this SaaS Agreement, the Indemnified Party will provide the Indemnifying Party with (i) prompt written notice of any indemnifiable claim; (ii) all reasonable assistance and cooperation in the defense of such indemnifiable claim and any related settlement negotiations, at the Indemnifying Party's expense; and (iii) exclusive control over the defense or settlement of such indemnifiable claim, provided, however, that the Indemnifying Party may settle or reach compromise on any such claim without the Indemnified Party's consent, if and to the extent such settlement or compromise does not impose any liability (monetary, criminal or otherwise) on the Indemnified Party. The Indemnified Party will have the right to

participate, at its own expense, in the defense (and related settlement negotiations) of any indemnifiable claim with counsel of its own selection.

12. CONFIDENTIALITY.

12.1 The Parties agree to hold all Confidential Information in confidence, and agree to use Confidential Information solely for the purpose of this SaaS Agreement and not to disclose such Confidential Information, except as expressly permitted in this SaaS Agreement, to anyone other than their employees, advisors and service providers, with a bona fide need to know, who shall be governed by a parallel confidentiality of equal or greater force. Additionally, each Party agrees to use at least that degree of care which it uses to protect its own information of a similar proprietary nature, but in no event less than reasonable protection.

12.2 Excluded from section 12.1 hereof is information that receiving Party can prove by clear and convincing evidence that: i) it had in its possession without confidential limitation prior to disclosure; or ii) was known or becomes known to the receiving party without obligation of confidentiality; or iii) is independently developed by the receiving party; or iv) which is known or becomes known to the general public without breach of this SaaS Agreement; or v) disclosure is required by law or a governmental agency.

13. CUSTOMER INDEMNIFICATION OF TOMIA.
Customer agrees to indemnify, defend, and hold TOMIA harmless from and against any and all claims, demands, losses, liabilities, actions or causes of action, assessments, damages, fines, Taxes, interest, and penalties asserted by any person against TOMIA or against any of TOMIA's licensors and suppliers, and the reasonable costs and expenses of defending against such claims (including, without limitation, reasonable expenses of investigation and reasonable fees and disbursements of counsel, accountants, and other experts) (collectively, "Losses") and threatened Losses arising from, in connection with, or based upon allegations involving (a) a violation of any Law arising from any use or attempted use of the Licensed Materials, or alleged misuse of information derived from any of the TOMIA Services, by Customer or its employees or agents, (b) the Excluded Matters; (c) violation or infringement on the TOMIA or its licensors IP, or (d) a breach of this SaaS Agreement by Customer or its employees, subcontractors or agents.

14. TERMINATION FOR CAUSE.
Either Party may terminate this SaaS Agreement and any applicable Order Form: (i) upon the breach by the other Party of any term hereof by giving the breaching party a thirty (30) day written notice to cure the breach and upon the expiry of the notice period if the breach is not rectified; (ii) violation or non-compliance of Party's undertakings under Sections 5, 11 or 12 in whole or in part will entitle the other Party to forthwith terminate this SaaS Agreement or (iii) immediately if the other Party had cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets, or shall avail itself of or become voluntarily subject to any proceeding under the applicable bankruptcy laws or any other statute of any state relating to insolvency or the protection of rights and creditors. The termination of this SaaS Agreement by Customer shall not affect any of TOMIA's other rights in respect of the use of the Software by Customer. Customer shall return to TOMIA the Software and all copies and portions thereof and the Licensed Materials. In the event that this SaaS Agreement is terminated by TOMIA for a breach of the SaaS Agreement or applicable Order Form by Customer, Customer is forbidden from using the Service as of the effective date of termination and undertakes to pay the Fees for the Software and maintenance related thereto, until the end of the then current Term.

15. CONTINUING OBLIGATIONS FOLLOWING TERMINATION.

15.1 Customer acknowledges that prices set forth in the Order Form(s) are based on TOMIA's expectation that Customer will utilize the Services for the full SAAS Initial or Renewal Term, and that any earlier termination of the engagement, other than for TOMIA's breach of the SaaS Agreement or with TOMIA's written consent, shall not relieve Customer's obligation to pay for the Services for the full then-current SAAS Initial or Renewal Term and shall entitle TOMIA to immediately invoice Customer for use of the Services for the remainder of the then-current SAAS Term (which Customer acknowledges as liquidated damages reflecting a reasonable measure of actual damages and not a penalty).

15.2 Customer's liability for any charges, payments or expenses due to TOMIA that accrued prior to the termination date shall not be extinguished by termination, and such amounts shall be immediately due and payable on the termination date. Any purported termination by Customer shall only become effective upon Customer's payment of all amounts due to TOMIA under this SaaS Agreement through the date of purported termination.

15.3 Following an event of termination of this SaaS Agreement or any applicable Order Form, Customer shall cease using the Services, and Customer shall certify to TOMIA within thirty (30) days after termination that Customer has destroyed, or has returned to TOMIA, the Documentation and all copies thereof in all types of media and computer memory, whether partial or complete, and whether or not modified or merged into other materials.

15.4 **Partial termination.** Termination of an Order Form does not terminate other Order Forms then in effect; such other Order Forms remain in effect so long as no separate grounds for termination exist.

15.5 The provisions of Sections 8, 9, 10, 11, 12, and any other term that by its nature should survive the termination or expiration of this SaaS Agreement, shall survive any termination of this SaaS Agreement.

16. PERSONAL INFORMATION.
Each party shall comply with their respective obligations under applicable data protection legislation. The DPA available at https://www.tomiaglobal.com/legal/, which is incorporated herein by reference, shall govern the processing, if any, of personal information, by TOMIA.

17. PUBLICITY.
Customer grants to TOMIA the right to use, in TOMIA's online and offline promotional and marketing materials the

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name, logos, and other marks of Customer as a user of Services, including a joint Case-Study, for so long as Customer uses such Services (and for a reasonable period thereafter to remove Customer's name and marks from TOMIA's website).

18. **GLOBAL TRADE AND ANTI-CORRUPTION COMPLIANCE.** The parties acknowledge they are familiar with the US Foreign Corrupt Practices Act, the UK Bribery Act and anti-corruption legislation in other relevant jurisdictions. The parties agree that they will not, in connection with this Agreement: (a) make any payment to; (b) transfer anything of value to; (c) offer, promise or give a financial or other advantage or request to; or (d) agree to receive or accept a financial or other advantage from, in each case either directly or indirectly, (i) any government official or employee (including employees of a government corporation or public international organization); (ii) any political party or candidate for public office or (iii) any other person or entity with an intent to obtain or retain business or otherwise gain an improper business advantage.

19. **GOVERNING LAW AND JURISDICTION.** This SaaS Agreement shall be construed and governed in accordance with the laws of England and Wales without regard to its conflict of laws principles, and the parties agree to submit themselves to the exclusive jurisdiction of the competent courts situated in London, England with any matter arising from or related to this SaaS Agreement.

20. **MISCELLANEOUS**

20.1 **Force Majeure.** Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.

20.2 **Assignment.** Neither this SaaS Agreement or any Order Form may be assigned or transferred by Customer, without the prior written permission of TOMIA and any attempt to do so shall be null and void. Assignment shall be deemed to include (i) all or substantial part of the assets of the Customer being sold or otherwise transferred to any person; (ii) the Customer being merged or consolidated with any other person or entity; and (iii) Customer becoming subject to the control of any firm or company other than the one controlled Customer upon execution of this SaaS Agreement or the Proposal.

20.3 **Delivery.** TOMIA will use all commercially reasonable efforts to deliver the Services in a timely manner.

20.4 **WEEE Directive.** Where authorized under local legislation, the Customer, when importing electronic equipment pursuant to an applicable Order Form, shall be regarded as "Producer" under the Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (OJEU 2012, L197), and shall comply with all its terms.

20.5 **Severability.** Should any court of competent jurisdiction declare any term of this SaaS Agreement void or unenforceable, such declaration shall have no effect on the remaining terms hereof. To the extent legally permissible, any illegal, invalid or unenforceable provision of this SaaS Agreement shall be replaced by a valid provision that will implement the commercial purpose of the illegal, invalid or unenforceable provision. In the event that any provision essential to the commercial purpose of this SaaS Agreement is held to be illegal, invalid or unenforceable and cannot be replaced by a valid provision which will implement the commercial purpose of this SaaS Agreement, this SaaS Agreement and the rights granted herein shall terminate.

20.6 **No Waiver.** 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 hereunder shall not be deemed a waiver by that Party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

20.7 **Counterparts.** This SaaS Agreement may be executed in one or more separate counterparts, each of which shall be considered an original, and all of which together will constitute one and the same instrument.

20.8 **Notices.** All notices, statements and reports required or contemplated herein by one party to the other shall be in writing and shall be effective (i) if mailed, seven (7) days after mailing with registered mail, (ii) if sent by messenger, upon receipt, and (iii) if sent via e-mail, upon confirmation of receipt or (if transmitted and received on a non-Business Day) on the first Business Day following transmission, whichever is earlier.