

## **HOSTED SERVICES AGREEMENT**

**THIS HOSTED SERVICES AGREEMENT**, including all addenda, appendices, attachments, exhibits, and schedules as incorporated herein, (this "**Agreement**") is entered into by and between Macorva, Inc., and its Affiliates, with its principle office located at 4615 Southwest Freeway, Suite 330, Houston, TX 77027 ("**Macorva**"), and "**Customer**", and shall be effective as the date signed by Macorva on the Customer Order ("**Effective Date**"). Customer and Macorva are each referred to in the singular as a "**Party**" or in the plural as the "**Parties**." Capitalized terms used herein, but not defined within the body of this Agreement shall have the meanings ascribed to them in Appendix A (Definitions).

### **RECITALS**

**WHEREAS**, Macorva is in the business of providing those Services referenced herein; and

**WHEREAS**, Customer desires to procure such Services from Macorva in accordance with this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **TERMS AND CONDITIONS**

#### **1. SERVICES.**

- (a) Services. Subject to and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, during the Term of this Agreement, Macorva shall use commercially reasonable efforts, except for Excused Downtime, to host, manage, operate, and maintain the software application or applications and any third-party or other software for remote electronic access to and Use of by Customer and its Authorized Users, and to otherwise provide the services described in a particular Order signed by the Parties (collectively, the "**Services**").
- (b) Service and System Control. Except as otherwise expressly provided in this Agreement, as between the Parties: (i) Macorva shall have and shall retain sole control and ownership over the operation, provision, maintenance, and management of the Services and Macorva Materials, including: (1) the location(s) from where any of the Services are performed; (2) selection, deployment, modification, and replacement of the Services; and (3) the Scheduled Maintenance, Upgrades, and any other corrections, fixes, repairs, patches, minor or major releases; and (ii) Customer shall have and shall retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Macorva Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (1) information, instructions, or materials provided pursuant to the Services or as otherwise provided to Macorva; (2) results obtained from any use of the Services, Macorva Materials, or Deliverables; and (3) conclusions, decisions, or actions based on any use of the Services, Macorva Materials, or Deliverables.
- (c) Upgrades; Scheduled Maintenance. Macorva reserves the right and may from time-to-time make any changes to the Services and Macorva Materials that it deems, in its sole discretion, necessary or useful, including to: (i) update such minor or major releases; (ii) to add new

features or functionalities, or to correct any errors or defects (each, an “**Upgrade**”); (iii) apply patches and fixes; or (iv) update, replace, or otherwise maintain any hardware and software infrastructure that is embedded within or supports the Services and Macorva Materials (each, a “**Maintenance**”). Macorva will use commercially reasonable efforts to schedule downtime for Maintenance (including for Upgrades) between the hours of 11:00 P.M. and 5:00 A.M., North American Central Time. Customer acknowledges, however, that Macorva may need to schedule Maintenance at other times, and that a scheduled Maintenance may cause the Services and Macorva Materials to be temporarily unavailable, in which Customer agrees that it shall not be reimbursed or alleviated from any payment obligations under this Agreement for any such Unavailability. Macorva reserves the right to charge, upon Customer’s approval, additional fees for access to new programs, services, features, functionality, and applications included in any Upgrade and not ordered under this Agreement. Customer’s use of the Services and Macorva Materials after a Maintenance shall constitute binding acceptance of such Maintenance.

- (d) Macorva’s Subcontractors. Macorva may, from time-to-time, in its sole discretion, engage Subcontractor(s) to perform Services, either directly or indirectly, for Customer or Authorized Users.
- (e) Customer Support. Customer will be entitled to assistance and technical support for the features, functionalities and operation of the Services and Macorva Materials and Customer’s use thereof (“**Support**”). Any such Support will be accessible via telephone from 9:00 A.M. to 5:00 P.M., North American Central Time, on Monday through Friday, except for holidays. Any such Support to which Customer is entitled shall only be provided to Authorized Users that have successfully completed all applicable training administered by Macorva, and Macorva expressly disclaims any obligation to provide Support to any other Person (whether or not such Person is an Authorized User). Macorva will use commercially reasonable efforts to respond to each Support Ticket within a commercially reasonable time; and, with respect to a Support Ticket that requires the attention of third party software vendor(s) or third party manufacturer(s) of components, such Support Ticket shall be deemed to be responded to and resolved by Macorva when it is forwarded to the applicable vendor(s) or manufacturer(s).

## 2. AUTHORIZATION AND RESTRICTIONS.

- (a) Authorization. Subject to and conditioned on Customer's payment of the Fees and Customer's and its Authorized Users' compliance and performance in accordance with the terms and conditions of this Agreement and Macorva's Terms of Use, Macorva hereby authorizes Customer to access and Use during the Term, the Services and Macorva Materials for Customer's internal business purposes related to the monitoring of (i) employee performance, job satisfaction, and inter-employee relationships, and (ii) members of the general public who transact business with Customer from time-to-time (each, a "**Consumer**") for purposes of sharing customer experiences and sentiment.
- (b) Authorization Limitations and Restrictions. Customer shall not, and shall not permit any Person to, access or use the Services or Macorva Materials except as explicitly permitted in this Agreement and in accordance with the Macorva Terms of Service. Without limiting the generality of the foregoing, Customer shall not, shall not attempt to, and shall not allow any Person to, except as expressly permitted in this Agreement: (i) sell, transfer, rent, lease, lend, copy, print, display, publish, modify, translate, sublicense, distribute, redistribute, syndicate, time-share, assign, electronically transmit or receive, or otherwise allow access to, in whole or in part, the Services or Macorva Materials to any Person; (ii) edit, modify, or create any

- derivative works or improvements of all or any part of the Services or Macorva Materials;
- (iii) allow the Services or Macorva Materials to be used on a service bureau, rental, managed services basis or permit other individuals or entities to create Internet “links” to the applications or “frame” or “mirror” the Services or Macorva Materials on any other server, or wireless or Internet-based device, or otherwise make available to a third party, any token, key, password, user name, Access Credentials, or other login credentials to the Services or Macorva Materials; (iv) interfere with, modify, disrupt, damage, destroy, impair, disable, or otherwise impede or harm, in any manner, the features or functionality of the Services or Macorva Materials, in whole or in part; (v) decipher, analyze, translate, decompile, disassemble or reverse engineer the Services or Macorva Materials, or otherwise attempt to derive source code, trade secrets, or know-how in or underlying any Services or Macorva Materials or any portion thereof; (vi) access the Services or Macorva Materials to build a similar or competitive product or service; (vii) bypass or breach any security device or protection (survey data anonymity or other) used by the Services or Macorva Materials or access or use the Services or Macorva Materials other than by an Authorized User through the use of his or her own then-valid Access Credentials; (viii) input, upload, transmit, or otherwise provide to or through the Services or Macorva Materials any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; (ix) input, upload, transmit, or otherwise provide to or through the Services or Macorva Materials any information or materials that are Prohibited Data, or contain or transmit any Prohibited Data; (x) remove, delete, alter, or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, patent, Intellectual Property Rights, or proprietary rights notices from any Services or Macorva Materials, including any copy thereof; (xi) access or use the Services or Macorva Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party, that violates the privacy rights of any third party, or that violates any applicable Law; (xii) perform any unauthorized vulnerability testing, including network security, privacy, penetration or intrusion testing (whether by “scanning” or any other method); or (xiii) otherwise access or use the Services or Macorva Materials beyond the scope of the authorization explicitly granted in Section 2(a) (Authorization).
- (c) Corrective Action and Notice. If Customer becomes aware of any actual or threatened acts or activity prohibited by this Section, Customer shall, and shall cause its Authorized Users to, immediately: (i) take all reasonable and lawful measures within their respective control that are helpful to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Macorva Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (ii) notify Macorva of any such actual or threatened activity.

### **3. ADDITIONAL OBLIGATIONS OF CUSTOMER.**

- (a) Customer Systems. Customer shall, at all times during the Term, procure, set up, maintain, and operate in good repair, at its sole cost and expense, all equipment, resources, technology, or systems, including computer hardware and equipment, any Internet access, third party software, and telecommunications services, necessary for Customer and/or its Authorized Users to access and Use the Services and Macorva Materials (collectively, the “**Customer Systems**”).

- (b) Appointment of Project Manager. Customer shall, throughout the Term, maintain within its organization a “**Project Manager**,” in which such Project Manager shall serve as Customer’s primary point of contact responsible for making, on behalf of Customer, all day-to-day communications, consultation, consents, approvals and other decisions regarding the Services. Customer shall attempt to maintain the same Project Manager identified in the Order throughout the Term; however, if Customer wishes to replace its Project Manager, Customer shall promptly name a new Project Manager by written notice to Macorva. Customer may also elect to maintain an additional or different Project Manager in a subsequent Order(s), in which Customer shall name the additional or different Project Manager in each Order. Customer represents and warrants that such Project Manager(s) has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity.
- (c) Effect of Customer Failure or Delay. Macorva shall not be responsible or liable for any delay or failure of performance caused, in whole or in part, by Customer’s delay in performing, or failure to perform, any of its obligations under this Agreement.
- (d) Use of Logo. The Customer agrees to grant Macorva permission to use the Customer’s name and logo in its marketing materials and bid documentation in relation to potential transactions.

#### 4. SECURITY.

- (a) Macorva Security Obligations. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing, Macorva will take and implement all appropriate technical and organizational security and confidentiality measures, and regularly update them, to ensure a level of security appropriate to the risk related to the processing of Customer Data for the provision of the Services and to protect Customer Data particularly against any accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access.
- (b) Access Credentials Management. Macorva shall assign Access Credentials for each Authorized User upon verified receipt of the required Customer Data relating to each Authorized User. Customer shall be responsible for securing transfer of Customer Data to Macorva via industry-standard secure transfer protocols with encryption enabled. Once established, Customer and each Authorized User shall be responsible for maintaining the Access Credentials used to access the Services and Customer shall be responsible for requesting Macorva to terminate access for any Authorized User. Customer and each Authorized User shall take all necessary precautions to ensure Access Credentials remain confidential. If Macorva has reason to believe that any Access Credentials have been stolen or might otherwise be misused, in whole or in part, Macorva may terminate the potentially stolen or misused Access Credentials and generate new Access Credentials as needed.
- (c) Customer Security. Customer shall employ all physical, administrative, and technical controls, screening and security procedures, and other safeguards necessary to: (i) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (ii) control the content of Customer Data, including the provision of Customer Data for Access Credential establishment.
- (d) Data Breach Procedures. In the event of a suspected data breach, the Party made aware of a suspected data breach shall immediately notify the other Party of such. The Parties shall then

cooperate in good faith to promptly investigate the suspected data breach to determine if a breach actually occurred, the extent of such breach (if any), and to determine appropriate next steps, including whether such breach (if any) requires any further actions by a Party or the Parties under an applicable Law.

## 5. FEES, INVOICING, AND PAYMENT.

- (a) Fees. Customer shall pay Macorva the Base Product Installation fee, Setup and Training Costs, and the Recurring Monthly Costs for each month in which Customer uses the Services and Macorva Materials (the “**Fees**”) and all other amounts due to Macorva hereunder (including Reimbursable Expenses and Taxes) in the amounts specified in the Order. All payments by Customer shall be in accordance with this Section as supplemented by the Order.
- (b) Fee Increases after the Initial Term. After the Initial Term of this Agreement, Macorva may increase the Fees no more than once during each Renewal Term by providing written notice (Email to suffice) at least ten (10) calendar days’ prior to instituting such increased Fees.
- (c) Reimbursable Expenses. In addition, Customer shall reimburse Macorva for any out-of-pocket expenses incurred by Macorva in connection with performing the Services, including travel and living expenses for services (including training) provided on-site at Customer's facilities (“**Reimbursable Expenses**”).
- (d) No Deductions or Setoffs. All amounts payable to Macorva under this Agreement shall be paid by Customer to Macorva in full and, except as expressly allowed in this Agreement, without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.
- (e) Taxes. All Fees under this Agreement and any Order exclude any and all taxes and regulatory fees of any kind imposed by any federal, national, state, provincial, local, municipal or foreign government on Deliverables or Services provided under this Agreement and similar assessments now in force, enacted, or imposed in the future on the transaction or delivery of the Services (“**Taxes**”), all of which Customer shall be solely responsible for paying.
- (f) Invoicing and Payment Terms. Macorva shall invoice Customer via Email to the Person specified in an applicable Order, or if none specified, then to Customer’s Project Manager. Customer shall pay all Fees and Reimbursable Expenses no later than thirty (30) calendar days after the date of the invoice thereof. Customer shall make all payments hereunder in United States Dollars to the address or account specified in each invoice, or as otherwise directed by Macorva
- (g) Suspension for Non-Payment. If Customer fails to make any payment when due, then, in addition to all other remedies that may be available: (i) Macorva may charge interest on all past due invoices at a rate of 1.5% per month calculated daily and compounded monthly, or, if lower, the highest rate allowed under applicable Law; (ii) Customer shall also reimburse Macorva for all costs incurred by Macorva in collecting any late payments or interest, including attorney’s fees, court costs, and collection agency fees; and (iii) if such failure continues for ten (10) calendar days following written notice thereof, Macorva may, but shall not be obligated to, suspend: (1) any and all Services to Customer; (2) Customer’s Authorized User accounts; and/or (3) any and all of Customer’s access to and use of Macorva Materials until such time as Customer fulfills all payment obligations (including interest thereon).

Macorva shall not incur any obligation or liability whatsoever to Customer or any other Person as a result of such suspension

## 6. COMPLIANCE.

- (a) Compliance with Laws; Export and Import Matters. Customer shall comply with all Laws attendant upon Customer's performance under this Agreement and Customer's or its Authorized Users' utilization of the Services and Macorva Materials. Each Party's obligation to comply with all Laws includes the procurement of permits, certificates, approvals, inspections, and licenses, as required for the Parties to fulfill their obligations under this Agreement. Customer acknowledges the Services and Macorva Materials may be subject to export controls under the Laws of the United States, the European Union, the United Nations, and other jurisdictions. Customer shall be responsible for, and shall coordinate and oversee, compliance with Laws in respect of such items exported or imported by Customer hereunder.
- (b) Compliance with Agreement. Macorva or a mutually agreed upon third party agent (who is subject to obligations of confidentiality) shall be entitled to inspect and audit any records related to the performance of this Agreement in Customer's control or possession upon reasonable notice to Customer, and at reasonable times during normal business hours, for the purpose of verifying compliance with this Agreement and the Fees payable to Macorva for the one (1) year period preceding the audit (the "**Audit Period**"). Macorva may exercise its audit right no more than once every twelve (12) months, unless it has reasonable cause for noncompliance, and such audit shall not unreasonably interfere with Customer's business activities. Customer will provide its full cooperation and assistance with such audit and provide access to all applicable agreements, records, and computers.

## 7. INTELLECTUAL PROPERTY MATTERS.

- (c) Ownership of Services and Macorva Materials. As between Macorva and Customer, Macorva exclusively owns all right, title and interest in and to the Services, the Macorva Data, and the Macorva Materials (including but not limited to, all ideas, inventions, inferences, discoveries, source and object software code, developments, derivative works, enhancements, Upgrades, fixes and patches, formats and processes, and all Intellectual Property Rights therein and thereto). Except as expressly provided herein, Customer has no right, license, or authorization with respect to any of the Services, the Macorva Data, or the Macorva Materials (including Third Party Materials). Customer shall not assert any claims to the contrary or otherwise do anything inconsistent with the allocation of ownership herein, including, but not limited to, challenging the validity of the authorizations or any Intellectual Property Rights granted herein. In the event Customer is ever deemed to be the owner of any of Macorva's Services, the Macorva Data, or the Macorva Materials, Customer shall immediately take all necessary steps to evidence, transfer, perfect, vest, or confirm Macorva's right, title and interest in the Intellectual Property Rights in or to Macorva's Services, the Macorva Data, or the Macorva Materials. Macorva is not transferring or granting to Customer any right, title, or interest in or to (or granting Customer any license or other permissions in or to) any Intellectual Property Rights of Macorva. The sole exception of the foregoing reservation of rights is the limited, non-exclusive, and non-transferable authorization explicitly granted in Section 2(a) (Authorization), and which shall automatically terminate upon expiration or termination of this Agreement.
- (d) Ownership of Customer Data. As between Customer and Macorva, Customer is and will remain the sole and exclusive owner of Customer Data, subject to the rights and permissions

granted under this Agreement or an applicable Order. Customer hereby irrevocably, during the Term of the Agreement, grants Macorva all rights and permissions in or relating to the Customer Data: (i) to Macorva, its Subcontractors, and Macorva personnel as is necessary or useful to perform the Services or provide the Macorva Materials; and (ii) to Macorva and its Affiliates as is necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder. Customer represents and warrants that it has procured all consents and approvals necessary to transfer the Customer Data to Macorva, its Subcontractors, and its personnel.

- (e) User Content; Deliverables. In accordance with Macorva's Terms of Service, Authorized Users grant Macorva a license to User Content for the purposes of: (i) providing the Services, (ii) performing other obligations that Macorva owes to Customer under this Agreement, and (iii) carrying out other business purposes. In connection with the foregoing, Macorva shall prepare for Customer reports derived from User Content, the detail of which is further defined in an Order (the "**Deliverables**"). Macorva agrees that all Deliverables shall constitute "works made for hire" (as such term is defined in 17 U.S.C. § 101) for Customer. To the extent that any Deliverable does not constitute a "work made for hire" for Customer, Macorva hereby irrevocably assigns, transfers, and conveys (and agrees to assign, transfer, and convey, without further consideration) to Customer, on a worldwide and perpetual basis, all right, title, and interest in and to any and all Deliverables (including all Intellectual Property Rights therein). To ensure Authorized User anonymity and to encourage candor in Authorized User submissions, the User Content (including personally identifiable survey results and ratings) submitted by Authorized Users through the Services shall not be considered a "Deliverable" under this Agreement, and Customer shall have no right, title, or interest in such User Content, nor shall Customer be entitled to view, access, or otherwise evaluate such User Content at any time. Notwithstanding the foregoing, Macorva shall make available User Content to Customer in the event Macorva perceives an imminent threat to the health or safety of Customer's Authorized Users, or as required by law enforcement during an active investigation. In such an event and when feasible, Macorva shall take reasonable steps to redact or anonymize non-pertinent or non-essential User Content submitted in combination with, or otherwise unrelated to, the User Content at issue.
- (f) Data Derivatives. Customer hereby grants Macorva a perpetual, transferable and irrevocable license to: (i) use, distribute and otherwise exploit Customer Data solely in anonymized de-identified form (in whole or in part) to provide benchmarking, Service improvement, marketing and/or other purposes; and (ii) aggregate Customer Data in anonymized de-identified form (in whole or in part) with User Content, Macorva Data, and data from other public and private sources to create databases, compilations, improvements, enhancements, transformations, or derivative works thereof (collectively, "**Data Derivatives**"). As between Customer and Macorva, Macorva exclusively owns all rights, title and interest in and to the Data Derivatives and all Intellectual Property Rights therein. To the extent that Customer may have or assert any rights in any Data Derivatives arising out of, or related to Customer Data, Customer hereby irrevocably and in perpetuity assigns to Macorva all worldwide rights, title, and interest it may have therein.
- (g) Feedback. Customer may provide Macorva with comments concerning the Services, Macorva Materials, or Customer's evaluation and use thereof (collectively, "**Feedback**"). Customer hereby grants to Macorva an exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide right and license to copy, modify, create derivative works from, publicly display, disclose, distribute, license and sublicense, incorporate and otherwise use the Feedback

(including all Intellectual Property Rights therein), for any and all commercial and non-commercial purposes with no obligation of any kind to Customer.

- (h) Prohibited Data. Notwithstanding anything to the contrary in this Agreement, Customer acknowledges that the Services are not designed with security and access management for inputting, storing, or otherwise processing certain categories of information, or any derivatives thereof (collectively, "**Prohibited Data**") such categories of information to include: (i) "Protected Health Information" as defined under the Health and Insurance Portability and Accountability Act of 1996, (ii) "Personal Information" as defined under the Children's Online Privacy Protection Act of 1998; and (iii) "Special Categories of Personal Information" under the Regulation (EU) 2016/679 (General Data Protection Regulation) or under Member State or other data protection law revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation. Customer shall not, and shall not permit any Authorized User or other Person to, provide any Prohibited Data to, or input, store, or otherwise process any Prohibited Data through the Services, Macorva Systems, or by any Macorva personnel. Customer agrees to defend, indemnify, and hold harmless the Macorva Indemnitees from and against any and all Losses incurred by any Macorva Indemnitee in connection with any Action by a third party arising from, in connection with, or resulting from any Prohibited Data.

## 8. CONFIDENTIALITY.

- (a) Definitions. In connection with this Agreement, each Party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (as the "**Receiving Party**"). "**Confidential Information**" means non-public data or information in any form or medium (whether oral, written, machine-readable, web-accessible, electronic, or otherwise), including data or information consisting of or relating to the Disclosing Party's technology, the principles (including, but not limited to, software development or design) upon which the technology is based, the manner by which the technology operates, any improved software object functionality of the technology, the performance derived from the use of the technology, technology roadmaps, research, product plans, products, services, customers, markets, developments, inventions, designs, drawings, engineering, marketing, finances, trade secrets, know-how, business operations, plans, strategies, and any information which the Disclosing Party uses reasonable efforts to protect as confidential, in each case whether or not marked, designated, or otherwise identified as "confidential" or "proprietary." Without limiting the foregoing, all Macorva Materials are the Confidential Information of Macorva, the terms and existence of this Agreement are Confidential Information, and any reports or documents created by the Disclosing Party that include, summarize, or refer to Confidential Information disclosed hereunder are the Confidential Information of the Disclosing Party.
- (b) Exclusions. Confidential Information does not include information, technical data, or know-how that the Receiving Party can demonstrate by written or other documentary records: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information, technical data, or know-how being disclosed or made available to the Receiving Party in connection with this Agreement; (ii) prior to or after the time of disclosure becomes generally known by the public other than by the Receiving Party's or any of its Representatives noncompliance with this Agreement; (iii)



in which the Disclosing Party consents, in writing, to the release, provided that any such release is subject to any conditions attendant upon such consent; or (iv) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality.

- (c) Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (ii) not disclose or permit access to Confidential Information other than to its Representatives who: (1) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (2) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section; and (3) are bound by written confidentiality and restricted use obligations no less protective of the Confidential Information as the terms set forth in this Section; (iii) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its sensitive information and in no event less than a reasonable degree of care; and (iv) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives non-compliance with the terms of this Section.
- (d) Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (i) promptly, and prior to such disclosure (if legally possible), notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under this Section; and (ii) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure.

## 9. TERM AND TERMINATION.

- (a) Term. The initial term of this Agreement shall commence on the Effective Date and continue in effect until the date outlined in the Customer Order ("**Initial Term**"), unless earlier terminated as expressly permitted in this Section. At the end of the Initial Term, this Agreement shall not renew unless written notice to renew is provided by Customer. The "**Term**" of this Agreement means, collectively, the Initial Term and all renewal term(s), if any.
- (b) Termination. Either Party may, in addition to any other applicable remedies, terminate this Agreement or an applicable Order immediately upon written notice if the other Party: (i) breaches any provision of this Agreement or such Order, such breach is of a nature that is curable, and the breaching Party fails to cure such breach within thirty (30) calendar days after receipt of written notice of such breach; (ii) breaches this Agreement or such Order and such breach is of a nature that is not curable, including, without limitation, a violation of Laws; (iii) undergoes a Change in Control; (iv) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (v) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law, unless, in the case of an involuntary proceeding, such proceeding is dismissed or withdrawn within forty-five (45) days of the date in which it was initiated; (vi) makes or seeks to make a general assignment for the benefit of its creditors; or (vii) applies for or has

appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. Macorva may, in addition to any other applicable remedies, terminate this Agreement or any Order, immediately upon written notice if Customer fails to pay any amount when due thereunder, and such failure continues more than ten (10) days after Macorva delivers of written notice thereof.

- (c) Effect of Termination or Expiration. Upon termination or expiration of this Agreement: (i) all rights, licenses, consents, permissions, and authorizations granted to Customer hereunder will immediately terminate; (ii) Customer shall immediately cease all use of the Services and Macorva Materials; (iii) Macorva may disable all Customer and Authorized User access to the Services and Macorva Materials; (iv) Macorva shall cease all use of Customer's Confidential Information; (v) Customer shall immediately deliver to Macorva or destroy all copies of all Macorva Materials and any related materials, including all Confidential Information of Macorva, documentation, and materials in the possession of Customer, its Representatives, its third party contractors, or third party customers; (vi) Macorva shall delete all Customer Data (excluding Data Derivatives) from Macorva's database within one (1) year unless a Law requires or Customer requests for Macorva to retain such data; and (vii) Customer shall pay all unpaid Fees and other amounts due to Macorva hereunder, which shall become immediately due and payable.
- (d) Survival. Any right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement (including, but not limited to, all payment obligations, which arose prior to the effective date of such expiration or termination) will survive any expiration or termination of this Agreement

## 10. WARRANTIES.

- (a) Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (ii) it has full right, power, and authority to enter into this Agreement or any Order and to perform its obligations and duties under this Agreement or any Order (including to grant the rights, licenses, consents, and authorizations it grants or is required to grant pursuant to this Agreement), and that the performance of such obligations and duties does not conflict with or result in a breach of any other agreement of such Party or any judgment, order, or decree by which such Party is bound; (iii) the execution of this Agreement or any Order by its representative whose signature is set forth on the Customer quote referencing this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and (iv) when executed and delivered by both Parties, this Agreement or any Order will constitute the legal, valid, and binding obligations of such Party, enforceable against such Party in accordance with its terms.
- (b) Additional Macorva Representations and Warranties. Macorva represents and warrants that Macorva will deliver the Services using personnel with the required skill, experience, and qualifications and in a professional and workmanlike manner and will devote adequate resources to meet its obligations under this Agreement. In the event Customer reports a breach of the foregoing warranty, Customer's sole and exclusive remedy and Macorva's sole obligation shall be one of the following options (such option to be selected by Macorva, in its sole discretion): (i) Macorva shall replace the personnel; or (ii) to the extent such a breach

caused an error or defect and to the extent practicable, Customer may request that Macorva fix the Services or Macorva Materials and correct any defect or error, provided that Macorva agrees that such defect or error is correctable. The foregoing states Customer's sole and exclusive remedy, and Macorva entire liability, for breach of the above warranty under this Agreement or any Order.

- (c) Additional Customer Representations and Warranties. Customer represent and warrants that: (i) Customer has and will have the necessary rights and consents in and relating to the Customer Data so that Macorva's processing of such Customer Data shall not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or any privacy or other rights of any Authorized User or third party, or violate any applicable Law; (ii) the Customer Data does not contain any Prohibited Data; (iii) the Customer Data does not contain, transmit, or activate any Harmful Code or other malicious code; and (iv) the Customer Data does not contain any information or materials designed to bypass or breach any security device or protections used by the Services or Macorva Materials.
- (d) WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, THE SERVICES, THE MACORVA MATERIALS, THIRD PARTY MATERIALS, AND THE STORAGE OF CUSTOMER DATA ARE PROVIDED SOLELY "AS IS", "AS AVAILABLE", AND WITH ALL FAULTS. MACORVA DOES NOT MAKE AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER AND SPECIFICALLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, QUALITY, PERFORMANCE, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, TITLE, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, MACORVA MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, MACORVA MATERIALS, DELIVERABLES, OR STORAGE OF CUSTOMER DATA, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, ERROR-FREE, OR THAT THE RESULTS OBTAINED FROM THE SERVICES, MACORVA MATERIALS, DELIVERABLES, PROCESSING OF CUSTOMER DATA, OR ANY SOFTWARE OR OTHER CONTENT CONTAINED IN OR PROVIDED THROUGH THE SERVICES AND MACORVA MATERIALS ARE ACCURATE OR RELIABLE. IN NO EVENT SHALL MACORVA OR ITS LICENSORS BE LIABLE FOR THE ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, LOSS, OR RECOVERY OF ANY CUSTOMER DATA. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY MACORVA, ITS REPRESENTATIVES, ITS AGENTS, OR ITS EMPLOYEES WILL CREATE A WARRANTY AND CUSTOMER MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. ANY USE OF THE MACORVA MATERIALS OR SERVICES, OR THE STORAGE OF CUSTOMER DATA, IS AT CUSTOMER'S OWN RISK.

## 11. INDEMNIFICATION.

- (a) Indemnification by Macorva. Macorva shall defend, indemnify and hold harmless Customer and its officers, employees and agents (each, a "**Customer Indemnitee**") from and against any settlement, payment, loss, disbursement, cost, expense, interest, award, judgment, damages (including punitive damages), lien, fine, fee, or penalty (collectively, "**Loss**")

- incurred by a Customer Indemnitee arising out of or relating to any claim, suit, action, or proceeding (each, an “**Action**”) by a third party (other than an Affiliate of Customer) to the extent that such Loss arises from any allegation in such Action that Services infringe upon or misappropriate any United States Intellectual Property Right. The foregoing obligation shall not apply to any Action or Loss arising out of or related to any: (i) access to or use of the Services or Macorva Materials in combination with any services, software, hardware, systems, networks, data, or other materials or services not supplied by Macorva; (ii) modification of the Services or Macorva Materials other than as authorized in writing and signed by Macorva; (iii) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Macorva; (iv) any act, omission, or other matter described in Section 11(b).
- (b) Indemnification by Customer. Customer shall defend, indemnify and hold harmless Macorva and its Subcontractors and Affiliates, as well as each of its and their respective officers, directors, employees, agents, distributors, customers, successors, and assigns (each, a “**Macorva Indemnitee**”) from and against any and all Loss incurred by any Macorva Indemnitee in connection with any Action by a third party arising from, in connection with, or resulting from: (i) the Customer Data, including, the use, processing, or storage of any Customer Data by or on behalf of Macorva; (ii) Customer’s access and Use of the Services and Macorva Materials other than as expressly permitted in this Agreement; (iii) the Customer Systems or Customer’s obligations to any third party provider of the Customer Systems; (iv) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including Macorva’s compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Macorva; (v) Customer’s breach of any of its representations, warranties, covenants, or obligations under this Agreement; (vi) any labor or employment matters related, directly or indirectly, to Customer’s employees, Authorized Users, and Representatives; and (vii) acts or omissions by Customer, an Authorized User, or any third party acting on Customer’s behalf with respect to this Agreement.
- (c) Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 11(a) (Indemnification by Macorva) or Section 11(b) (Indemnification by Customer), as the case may be. The Party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other Party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this Section will not relieve the Indemnitor of its obligations, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.
- (d) Mitigation. If any of the Services or Macorva Materials are, or in Macorva’s opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer’s or any Authorized User’s use of the Services or Macorva Materials is enjoined or threatened to be enjoined, Macorva may, at its option and in its sole discretion, and at its sole cost and expense: (i) obtain the right for Customer to continue to use the Services and Macorva Materials materially as contemplated by this Agreement; (ii) modify or replace the Services and Macorva Materials, in whole or in part, to seek to make the Services and Macorva Materials (as so modified or replaced) non-

infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Macorva Materials, as applicable, under this Agreement; or (iii) by written notice to Customer, terminate this Agreement, in whole or in part, and require Customer to immediately cease any use of the Services and Macorva Materials or any specified part or feature thereof.

- (e) DISCLAIMER. THIS SECTION SETS FORTH CUSTOMER'S SOLE REMEDIES AND MACORVA'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND MACORVA MATERIALS) INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

## 12. LIMITATION OF LIABILITY.

- (a) EXCLUSION OF DAMAGES. IN NO EVENT SHALL MACORVA, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (I) LOSS OF PRODUCTION, LOSS OF USE, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF PROFIT, LOSS OF SAVINGS, COST OF REPLACEMENT GOODS OR SERVICES, LOSS OF TECHNOLOGY, LOSS OF GOODWILL, LOSS OF RIGHTS, OR DIMINUTION IN VALUE; (II) IMPAIRMENT, INABILITY TO USE, OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES; (III) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA, OR BREACH OF CUSTOMER DATA OR SYSTEM SECURITY, OR (IV) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER MACORVA WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.
- (b) CAP ON MONETARY LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT SHALL THE COLLECTIVE AGGREGATE LIABILITY OF THE PARTIES, THEIR AFFILIATES, AND THEIR RESPECTIVE LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS, AND SUPPLIES UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO MACORVA IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH CLAIM(S) OR CAUSE(S) OF ACTION.

## 13. MISCELLANEOUS.

- (a) Force Majeure. Except for Customer's obligation to make payments to Macorva, neither Party shall be liable to the other Party in any way for any failure or delay in the performance of its obligations under this Agreement due to any cause beyond such Party's reasonable control, including acts of God, explosions, failure of utilities, mechanical breakdowns, or other such occurrence (each, a "**Force Majeure Event**"); provided, however, that the Party affected by the

Force Majeure Event shall provide the other Party with notice of the Force Majeure Event and use commercially reasonable efforts to minimize the effect of the Force Majeure Event upon such Party's performance.

- (b) Further Assurances. Upon a Party's reasonable request, the other Party shall, at the requesting Party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.
- (c) Independent Contractor. The relationship between Customer and Macorva is that of an independent contractor. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
- (d) Third Party Beneficiary. Except for the owner(s) of any third party software that is embedded in the Services or Macorva Materials, each of which is an intended third party beneficiary of this Agreement, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon and other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
- (e) Right to Preliminary and Injunctive Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations hereunder involving Intellectual Property Rights, Confidential Information, compliance with Laws, or by the Parties exceeding the scope of the authorization to Use the Services and Macorva Materials, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- (f) Attorney's Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party hereto against the other Party arising out of or related to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees from the non-prevailing Party. Attorney's fees shall include a charge for the service of in-house counsel at the market rate for independent counsel of similar experience.
- (g) Governing Law. This Agreement and the transactions it contemplates shall be governed, interpreted, construed, enforced, and performed in accordance with the laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Texas. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to this Agreement.
- (h) Entire Agreement. This Agreement, including all appendices, exhibits, schedules, attachments, and documents incorporated by reference, sets forth the entire, final, complete, and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior written and oral negotiations and agreements, and all contemporaneous oral negotiations and agreements, between the Parties on the matters contained in this Agreement are expressly merged into and

superseded by this Agreement. The Parties do not intend that the provisions of this Agreement be explained, supplemented, or qualified through evidence of trade usage or any prior course of dealings or any course of performance under any prior agreement. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, action, or agreement of the other Party, except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than any expressly stated in this Agreement.

- (i) Order of Precedence. The terms and conditions of this Agreement govern all Orders between Macorva and Customer while this Agreement remains in effect. The Parties may not vary or supplement the terms of this Agreement, in connection with any Order, except by Special Terms and Conditions upon which both Parties have agreed. When Special Terms and Conditions are included in an Order and agreed upon, such terms and conditions take precedence over any inconsistent term of this Agreement, but only with reference to the transaction governed by that Order and such terms and conditions in such Order shall have no other force or effect. This Agreement shall govern in lieu of all other pre-printed or standardized provisions that may otherwise appear on any other paper or electronic record of either Party (such as standard terms and conditions on order or acknowledgement forms, time sheets, packages, shrink wrap terms, and click wrap terms).
- (j) Severability. If any provision of this Agreement is held invalid or unenforceable in any jurisdiction, such provision shall be revised to the extent necessary to cure the invalidity or unenforceability, and such invalidity or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. In the event of any conflict between any provision of this Agreement and any applicable Law, the provision or provisions of this Agreement affected shall be modified to remove such conflict and permit compliance with such Law, and as so modified this Agreement shall continue in full force and effect, and such illegality shall not affect any other term or provision of this Agreement.
- (k) Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Macorva's prior written consent, which consent shall not be unreasonably withheld. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns. Macorva shall be entitled to assign this Agreement to a successor of all or substantially all of its relevant assets to which this Agreement relates.
- (l) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement, and signed by an authorized representative of each Party. Subject to Section 14(n) (Counterparts; Transmission of Signatures), e-mails or similar electronic communications shall not be deemed writings signed by authorized representatives, as required above, and shall under no circumstances be deemed sufficient to modify, terminate or otherwise change the Agreement, regardless of whether such e-mails or other electronic communications contain electronic signatures or similar marks. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial

exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- (m) Notices. Each Party giving or making any notice, consent, request, demand, certificate, or other communication pursuant to this Agreement (each, a “**notice**”) shall provide the notice in writing and delivered: (i) personally; (ii) by a nationally recognized overnight courier; or (iii) by pre-paid, first class, certified or registered mail, return receipt requested, and address such notice to the intended recipient thereof (the “**Addressee**”) at the receiving Party at the address first set forth above. A notice is effective only if the Party giving notice has complied with the foregoing requirements of this Section and the Addressee has received the notice. A notice is deemed to have been received as follows: (1) if a notice is furnished by hand, on the date of delivery if delivered during the Addressee’s normal business hours on a business day (otherwise on the next business day); or (2) if a notice is sent by a nationally recognized overnight courier or by pre-paid, first class, certified or registered mail, return receipt requested certified mail, then upon the date of delivery as indicated by the receipt or other tracking record. A Party may change the address to which a notice shall be delivered or mailed by giving written notice thereof to the other Party in accordance with this Section.
- (n) Counterparts; Transmission of Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. A signed copy of the Customer quote referencing this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.



## **Appendix A**

### **Definitions**

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Services.

“**Affiliate**” with respect to a Party means any business entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Party, including as an Affiliate any business entity now or in the future that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Party. For purposes of this definition, “**Control**” means with respect to an entity, direct or indirect ownership or beneficial ownership of more than fifty percent (50%) of the voting power, equity capital, or other equity securities of such entity. “**Controlled by**” and “**Controlling**” shall have correlative meanings.

“**Authorized User**” means each of the individuals authorized by Customer to access and Use the Services and Macorva Materials pursuant to Section 2 (Authorization and Restrictions) and the other terms and conditions of this Agreement.

“**Change in Control**” occurs with respect to a Party in the event that (a) any other Person acquires ownership, directly or indirectly, of more than fifty percent (50%) of the voting shares of such Party and possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Party (whether by reason of acquisition, merger, reorganization, operation of law, or otherwise); or (b) all, or substantially all, of such Party’s assets are acquired (whether by reason of acquisition, merger, reorganization, operation of law, or otherwise) by, or combined by merger with, any other Person.

“**Customer Data**” means information submitted by Customer to Macorva in connection with the establishment and Use of Macorva’s Services, for itself and its employees as Authorized Users. Customer Data includes: (a) any Customer entity-specific information, such as Customer name, address, business type, department names, and survey options; and (b) any employee-related personal information, such as name, date of birth, gender, hire date, email, telephone number, salary, location, photo, and other data as may be reasonably requested. Customer Data does not include Macorva Data, Data Derivatives, or User Content submitted by employees as Authorized Users.

“**Documentation**” means any manuals, instructions or other documents or materials that Macorva provides or makes available from time-to-time to Customer, in any form or medium, whether tangible or intangible, and which describe the functionality, components, features or requirements of the Services, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“**Excused Downtime**” means any Unavailability or degradation due to: (i) a Scheduled Maintenance; (ii) a Force Majeure Event; (iii) any other circumstances beyond Macorva’s reasonable control, including Customer’s use of Customer Systems, misuse of the Services or Macorva Materials, or use of the Services or Macorva Materials other than in strict compliance with the terms and conditions of this Agreement; and (iv) any suspension or termination of Customer’s or any Authorized Users’ access to or Use of the Services and Macorva Materials, as permitted by this Agreement.

“**Harmful Code**” means any software, hardware or other technologies, devices or means, the purpose or effect of which is to: (a) permit unauthorized access to, or to destroy, disrupt, disable, distort,

or otherwise harm or impede in any manner, any (i) computer, software, firmware, hardware, system or network, or (ii) any application or function of any of the foregoing or the integrity, use or operation of any data processed thereby; or (b) prevent Customer or any Authorized User from accessing or using the Services or Macorva Systems as intended by this Agreement, and includes any virus, bug, Trojan horse, worm, backdoor or other malicious computer code and any time bomb or drop dead device.

**“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent (including all reissues, divisions, continuations, and extensions thereof), copyright, trade name, trademark, service mark, logo, trade dress, trade secret, mask work, rights in technology, know-how, rights in content (including performance and synchronization rights), database protection, or other right in or to intellectual property that are in each case protected under the Laws of any governmental authority having jurisdiction.

**“Law”** means all federal, state, provincial, territorial, local, or foreign, or any political subdivision thereof, statutes, laws, ordinances, regulations, rules, codes, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters, orders, constitutions, treaties, common laws, judgments, decrees, or other official releases of or by governmental authority.

**“Macorva Data”** means information, data, and other content that is developed, collected, derived, aggregated, transformed, or compiled by or through Customer’s or Authorized Users’ use of the Services, or that otherwise results from Macorva’s processing of User Content, including all ideas, neural networks, training sets, parameters, rules, ensemble methods, generated code, decision trees, device configurations, machine learning (supervised or unsupervised) or other algorithmic knowledge, know-how, processes, metadata, analytics, reports, algorithms, logs, and any Macorva Materials, Data Derivatives, or Intellectual Property Rights arising from or related to any of the foregoing.

**“Macorva Materials”** means the Documentation and Macorva Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any technical or functional descriptions, requirements, plans, specifications, or reports, that are provided or used by Macorva or any Subcontractor engaged by Macorva in connection with the Services or otherwise comprise or relate to the Services or Macorva Systems, and which may be updated by Macorva from time-to-time.

**“Macorva Systems”** means the information technology infrastructure used by or on behalf of Macorva in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Macorva or through the use of third-party services (including any Subcontractors engaged by Macorva).

**“Order”** means such paper or electronic records as the Parties may execute, in the form provided in Appendix B, for the purpose of ordering Services, Use of the Macorva Materials, and defining Deliverables hereunder.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

**“Representatives”** means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors, consultants, agents, contractors, service providers, licensors, sublicensees, subcontractors, temporary workers, vendors, legal advisors, and/or other representatives.

**“Subcontractor”** or **“subcontractor”** means any person or entity (including an agent) supplying labor or materials to perform any or all of a Party’s obligations under this Agreement, including any

person or entity at any tier of subcontractors, and shall not be limited to those persons or entities with a direct relationship with the applicable Party.

**“Support Ticket”** means an official ticket opened in connection with the Services.

**“User Content”** means the raw survey, ratings, or other data received and processed by Macorva from Authorized Users in connection with their Use of the Services and Macorva Materials.

**“Terms of Service”** means Macorva’s Terms of Service applicable to Macorva’s Services, located here: <https://www.macorva.com/terms-of-use> and incorporated herein for reference. If there are any conflicts between the Terms of Use and this Agreement, the terms and conditions of this Agreement shall control with respect to the subject matter contained herein.

**“Third Party Materials”** means materials and information, in any form or medium, including any opensource or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Macorva.

**“Unavailability”** means the period of time for which the Services are unable to be accessed by Customer, whether or not such inability to access the Services is a result of Macorva or, either directly or indirectly, from Customer, the Customer Systems, or Third Party Materials. Except as expressly stated hereunder, Macorva shall not be responsible for any period(s) of Unavailability.

**“Use”** means any use of the Services by an Authorized User for the benefit of Customer solely in or for Customer’s internal business operations or managing Customer’s workforce.