

ActionableAgile™ Analytics

Software as a Service

Subscription Agreement

This subscription agreement (the "Agreement") governs the use of the System (as defined below) and any related services provided by ActionableAgile, LLC. d/b/a ActionableAgile, a Delaware corporation having its principal place of business at 16446 Mariposa Cir N, Fort Lauderdale, FL 33331. Any company or person using this software is referred to as "Customer" in this Agreement. If Customer or any agent or employee of Customer uses the System or takes any other affirmative action indicating acceptance of this Agreement, then Customer has agreed to these terms.

1. Definitions

(a) Customer Data. "Customer Data" means any of Customer's information, documents, or electronic files that are provided to ActionableAgile hereunder.

(b) Documentation. "Documentation" means any online or printed user manuals, functional specifications that are provided to Customer by ActionableAgile, and any derivative works of the foregoing.

(c) Error. "Error" means any reproducible material failure of the System to function in accordance with its Documentation.

(d) Seat. "Seat" means the maximum number of Users to whom Customer is permitted to grant login credentials for the System.

(e) System. "System" means the software service for which Customer has paid, including any Updates relating thereto that may be provided hereunder or thereunder, and any derivative works of the foregoing.

(f) Support. "Support" means the ongoing services by ActionableAgile to support the System as defined in Section 3 below.

(g) Update. "Update" means any patch, bug fix, release, version, modification or successor to the System.

(h) User. "User" means a named individual to whom Customer has granted access to use the System on Customer's behalf, regardless of whether or not the User actually accesses the Software.

(i) Edition. "Edition" means the named configuration of the System that has been purchased by the Customer. An Edition defines what features, limits, and usage restrictions are placed on the system purchased by the Customer. From time to time, new features will be introduced to the system, and those features will be restricted to specific Editions. New named or numbered Editions may also be introduced from time to time.

(j) Effective Date. "Effective Date" is the date on which the Customer's subscription to the purchased Edition of the System starts. The beginning of the contract term.

2. Subscription

(a) Subscription. During the term and subject to the terms of this Agreement, ActionableAgile hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the subscribed to Edition of the System for its internal business purposes. The subscription in the preceding sentence is limited to use

by the number of Seats or Users for which Customer has paid. Said subscription is non-transferable, except in the event of a voluntary transfer of substantially all assets by Customer to a transferee which executes ActionableAgile's form of agreement agreeing to be bound all of the terms and conditions of this Agreement. All rights in and to the System not expressly granted herein are reserved to ActionableAgile.

(b) Subscription and Use Restrictions. Customer shall not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the System; (ii) modify, create derivative works based upon, or translate the System; (iii) transfer or otherwise grant any rights in the System in any form to any other party, nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

(c) Customer Data. Customer owns all right, title and interest in the Customer Data. Customer hereby grants to ActionableAgile, a non-exclusive, non-transferable, non-sublicensable right and subscription to use, copy, transmit, modify and display the Customer Data solely for purposes of Customer's use of the System. ActionableAgile shall not use the Customer Data except as necessary to perform its obligations hereunder.

(d) No Sensitive Data. Customer acknowledges that the System is not intended for use with protected health information under HIPAA, credit card numbers, financial account numbers, or other similarly-sensitive personal information, and that Customer assumes all risk arising from use of any such sensitive information with the System, including the risk of any inadvertent disclosure or unauthorized access thereto.

(e) Security. Customer is solely responsible for maintaining the security of all user names and passwords granted to it, for the security of its information systems used to access the System, and for its Users' compliance with the terms of this Agreement. ActionableAgile has the right at any time to terminate or suspend access to any User or to Customer if ActionableAgile reasonable believes that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or ActionableAgile's network.

3. Support

(a) Services Generally. Subject to the terms of this agreement, ActionableAgile shall make the System available to Customer.

(b) Updates. ActionableAgile shall deliver all bug fixes to the system at no additional charge. ActionableAgile shall deliver all updates to the system that apply to the Customer's currently subscribed-to Edition at no additional charge. From time to time, new features are released that are applied selectively to different Editions of the System. Only those updates that apply to the Customer's currently subscribed-to Edition will be delivered automatically to the customer at no additional charge.

(c) Support Procedures. ActionableAgile shall provide email support only to the Customer. Support requests will generally be responded to within five business days of receipt.

(d) Error Correction. ActionableAgile shall use commercially reasonable efforts to correct all Errors or to provide a reasonable workaround as soon as is possible during ActionableAgile's normal business hours. Customer shall provide such access, information, and support as ActionableAgile may reasonably require in the process of

resolving any Error. This paragraph is Customer's sole and exclusive remedy for Errors.

(e) Support Exclusions. ActionableAgile is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support was created in whole or in part by:

(i) the acts, omissions, negligence or willful misconduct of Customer, including any unauthorized modifications of the System or its operating environment;

(ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of ActionableAgile's firewall);

(iii) Customer's use of the System other than in accordance with the System's documentation;

(iv) a Force Majeure Event; or

(v) Customer's use of any Edition of the System more than 12 months after ActionableAgile has released a successor Edition or sunset that Edition.

(f) Support Fees. ActionableAgile has the right to bill Customer at its standard services rates for any support issues excluded by Section 3(e) above.

(g) Limitation of Remedies. Correction of Errors as defined in this Agreement are Customer's sole remedies for any Errors in the System.

4. Financial Terms

(a) Fees. In return for the products, services and subscriptions provided by ActionableAgile to Customer hereunder, Customer shall pay to ActionableAgile the fees in the amount set forth. All dollar amounts refer to U.S. dollars.

(b) Payment Terms. ActionableAgile shall invoice Customer yearly in advance for all recurring charges, which invoices will also include all non-recurring charges and expenses incurred since the previous invoice. Customer shall pay all ActionableAgile invoices within 30 calendar days of the invoice date. If Customer is delinquent in payment of any portion of an invoice that it has not disputed in good faith, ActionableAgile may, in addition to other remedies it may have, including termination, suspend access to the System and/or provision of all services to Customer. Customer agrees to pay interest on delinquent amounts at the rate of 1.5% per month (or, if lower, the maximum amount permitted by law) that a payment is overdue.

(c) Taxes. Customer shall pay or shall reimburse ActionableAgile for all sales taxes and other taxes, however characterized by the taxing authority, based upon the subscription fees or other charges under this Agreement or otherwise incurred on account of Customer's use of the System, except for any taxes based upon ActionableAgile's net income or gross receipts or for any franchise or excise taxes owed by ActionableAgile. If Customer is a tax-exempt organization, then, upon ActionableAgile's receipt of proof of such status, then ActionableAgile shall not charge Customer for any taxes from which Customer is exempt.

(d) Pricing Changes. ActionableAgile reserves the right to change pricing at any time, for any reason, or for no reason.

5. Term and Termination

(a) Term. The term of this Agreement commences on the Effective Date hereof. If Customer has selected an annual pricing plan, then the term will continue until the one year anniversary of the Effective Date, and will automatically renew for additional terms of one year each unless either party gives the other party written notice of its intention not to renew at least 60 days in advance of the then current term.

(b) Termination for Cause. Either party can terminate this Agreement for cause upon written notice to the other party:

(i) if a party fails to pay the other party any delinquent amounts owed to the other party hereunder within 10 calendar days of written notice by the other party specifying the amounts owed; in the case of ActionableAgile, immediately upon any breach by Customer of Section 2(b) above;

(ii) immediately upon any breach of any confidentiality obligations owed to such party by the other party;

(iii) if the other party has committed any other material breach of its obligations under this Agreement and has failed to cure such breach within 30 days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 30 days, has failed to begin and continue to work diligently and in good faith to cure such breach); or

(iv) upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement.

(c) Obligations Upon Termination. Upon termination of this Agreement:

(i) ActionableAgile shall immediately terminate access to the System by Customer; and

(ii) Customer shall immediately pay ActionableAgile any amounts payable or accrued but not yet payable to ActionableAgile, including any deferred payments or payments originally to be made over time.

6. Confidentiality

(a) Confidential Information. "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of a party that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (B) the disclosing party designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation: (i) nonpublic information relating to a party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (ii) third-party information that Customer or ActionableAgile is obligated to keep confidential; (iii) the material terms and conditions of this Agreement; and (iv) any nonpublic information relating to any activities conducted hereunder. Any information regarding APIs for the System is Confidential Information of ActionableAgile.

(b) Exclusions. Notwithstanding the above, the term "Confidential Information" does not include any information that is either: readily discernible from publicly-available products or literature; or approved

for disclosure by prior written permission of an executive officer of the disclosing party; or as covered as part of the promotional materials outlined in Section 9(a).

(c) Use of Confidential Information. Each party shall only use Confidential Information furnished to it hereunder in furtherance of the activities contemplated by this Agreement, and it shall not disclose the Confidential Information to any other persons without the disclosing party's express written authorization.

(d) Required Disclosures. A receiving party may disclose Confidential Information of the disclosing party as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow it to seek a protective order or other appropriate remedy (except to the extent compliance with the foregoing would cause the receiving party to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed.

(e) Return of Information. If a disclosing party so requests at any time, the receiving party shall return promptly all copies, extracts, or other reproductions in whole or in part of the Confidential Information in its possession.

(f) Survival. The parties hereto covenant and agree that this Section 6 will survive the expiration, termination, or cancellation of this Agreement for a period of 3 years, except for Confidential Information constituting a trade secret, with respect to which this Section will

survive the expiration, termination, or cancellation of this Agreement for so long as such Confidential Information remains a trade secret.

7. Indemnification

(a) Indemnification. Each party shall indemnify the other, the other's affiliates, and all of their stockholders, officers, directors, agents, and employees (each, an "Indemnified Party") at all times from and after the Effective Date against any liability, loss, damages (including punitive damages), claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, fine, fee, and penalty, or other charge, including reasonable legal expenses, arising out of or relating to any claim by an unaffiliated third party (i) alleging that the use in accordance with this Agreement of the System or the Services (in the case of ActionableAgile) or the Customer Data (in the case of Customer) infringes or misappropriates any intellectual property or privacy rights of the unaffiliated third party, or (ii) that arises or is alleged to have arisen solely out of the gross negligence or intentional misconduct of the indemnifying party (each a "Third Party Claim"). Notwithstanding the foregoing, if the System becomes the subject of such a claim of infringement then ActionableAgile may, at its option: (x) procure for Customer the right to use the System free of any liability for infringement; (y) replace or modify the System to make it non-infringing but with reasonably comparable functionality; or (z) if ActionableAgile determines that the previous two options are not available on a commercially reasonable basis, grant to Customer a credit for the unused portion of any prepaid access rights fees and refund any deposits paid by Customer for the affected System. Furthermore, ActionableAgile has no liability for, and no obligation to indemnify Customer against, any Third Party Claim arising or alleging based in whole or in part on use of the System other than as specified

in this Agreement, or its documentation, including use with third party hardware and software products not specifically authorized by ActionableAgile.

(b) Indemnification Process. The Indemnified Party shall promptly notify the indemnifying party in writing of any Third Party Claim, stating the nature and basis of the Third Party Claim, to the extent known. The indemnifying party shall have sole control over the defense and settlement of any Third Party Claim, provided that, within fifteen (15) days after receipt of the above-described notice, the indemnifying party notifies the Indemnified Party of its election to so assume full control. The foregoing notwithstanding, the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ counsel at its own expense to assist in the handling of such claim, except that the Indemnified Party's legal expenses in exercising this right shall be deemed legal expenses subject to indemnification hereunder to the extent that (x) the indemnifying party fails or refuses to assume control over the defense of the Third Party Claim within the time period set forth above; (y) the Indemnified Party deems it reasonably necessary to file an answer or take similar action to prevent the entry of a default judgment, temporary restraining order, or preliminary injunction against it; or (z) representation of both parties by the same counsel would, in the opinion of that counsel, constitute a conflict of interest. The Indemnifying Party shall not settle any such Third Party Claim without the written consent of the Indemnified Party, except for a complete settlement requiring only the payment of money damages to be paid by the Indemnifying Party.

(c) Sole Remedy. Indemnification pursuant to this Section is the parties' sole remedy for any third party claim against the other party in

the nature of negligence, gross negligence, intentional misconduct, or intellectual property infringement.

8. Disclaimers and Limitations

(a) Disclaimer of Warranties. OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ACTIONABLEAGILE MAKES NO, AND HEREBY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SYSTEM, THE SERVICES PROVIDED OR THE AVAILABILITY, FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SYSTEM. WITHOUT LIMITING THE FOREGOING, EXCEPT AS SPECIFICALLY SET FORTH HEREIN, ACTIONABLEAGILE DISCLAIMS ANY WARRANTY THAT THE SYSTEM, THE SERVICES PROVIDED BY ACTIONABLEAGILE, OR THE OPERATION OF THE SYSTEM ARE OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED. ACTIONABLEAGILE MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

(b) Disclaimer of Consequential Damages. ACTIONABLEAGILE HAS NO LIABILITY WITH RESPECT TO THE SYSTEM, SERVICES, OR ITS OTHER OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OF PROFITS AND THE COST OF COVER) EVEN IF ACTIONABLEAGILE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(c) Limitations of Remedies and Liability. ACTIONABLEAGILE'S TOTAL LIABILITY TO CUSTOMER FOR ANY REASON AND UPON ANY CAUSE OF ACTION INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS, IS LIMITED TO ALL FEES PAID TO ACTIONABLEAGILE BY THE CUSTOMER IN RESPECT OF USER LICENSES FOR THE SYSTEM DURING THE THREE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY.

9. General

(a) Promotional Materials. Either party may include statements, and may use the other party's name and logos, in its website, commercial advertisements and promotional materials for the sole purpose of indicating that Customer is a user of the System.

(b) Force Majeure. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, and insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the

conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.

(c) Assignment. Customer shall not assign any of its rights under this Agreement, except with the prior written approval of ActionableAgile, which shall not be unreasonably withheld. The preceding sentence applies to all assignments of rights, except in the event of a voluntary transfer of substantially all assets by Customer to a transferee which executes ActionableAgile's form of agreement agreeing to be bound all of the terms and conditions of this Agreement. Any change of control transaction is deemed an assignment hereunder. Any purported assignment of rights in violation of this Section is void.

(d) Governing Law; Venue. The laws of the State of Florida (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Fort Lauderdale, FL, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to (i) the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Fort Lauderdale, FL; and (ii) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

(e) Recovery of Litigation Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the unsuccessful party shall pay to the successful party an amount that does not surpass the total amount that Customer has paid ActionableAgile in the past twelve (12) calendar months.

(f) Entire Agreement. This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement.

(g) Amendments. The parties can amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

(h) Survival of Certain Provisions. Each party hereto covenants and agrees that the provisions in Sections 1, 2(b), 5(c), 6, 8, and 9 in addition to any other provision that, by its terms, is intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.