

## CADALYS MASTER SUBSCRIPTION AND SERVICES AGREEMENT

**THIS MASTER SUBSCRIPTION AND SERVICES AGREEMENT** is entered into as of \_\_\_\_\_, 2021 (the “Effective Date”) by and between Cadalys, Inc., a Delaware corporation, whose principal place of business is located at 201 Mission Street, Suite 1200, San Francisco, California 94105 and its successors or assignees (“Cadaly’s”) and \_\_\_\_\_, whose principal place of business is at \_\_\_\_\_ (“Client”). Cadaly’s and Client is each individually referred to herein as a “Party” and collectively as the “Parties.”

### 1. Recitals.

1.1. Cadaly’s has developed applications including but not limited to Cadaly’s Care™, Cadaly’s Concierge™, Cadaly’s All Aboard™ and Cadaly’s Service Management™, each a software application sold on Salesforce.com’s AppExchange on a subscription basis (“Application”).

1.2. Cadaly’s also provides various services to help companies implement, optimize and deploy Applications.

1.3. Client desires to subscribe to one or more Applications and obtain implementation services therefore from Cadaly’s, and Cadaly’s desires to provide the same pursuant to the terms and conditions of this Agreement.

### 2. Select Definitions.

2.1. “**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

2.2. “**Aggregate Data**” means PII collected and combined from Application users into various aggregate or statistical forms such that no PII of any specific user is discernible or detectable.

2.3. “**Agreement**” means, collectively, this Master Subscription and Services Agreement, all Exhibits attached hereto, and any additional Order Forms or SOWs signed by the Parties pursuant to this Master Subscription and Services Agreement.

2.4. “**Authorized User**” means an individual for whom Client has purchased a license from Cadaly’s for an Application.

2.5. “**Base Application**” means the basic edition of an Application developed by Cadaly’s as Prior Work Product, before the addition of any New Work Product for Client.

2.6. “**Effective Date**” means the date from which this Agreement is effective, as set forth in the header paragraph of this Agreement.

2.7. “**Export Laws**” mean collectively the United States Export Administration Act or any other applicable export laws, restrictions or regulations.

2.8. “**Fees**” means, collectively, Implementation Fees and Subscription Fees.

2.9. “**Implementation Fees**” shall have the meaning given to it in Paragraph 8.2 and the amount as set forth in an SOW.

2.10. “**Implementation Services**” means services provided by Cadaly’s to Client to implement, install and deploy Client’s subscription to Cadaly’s Concierge™.

2.11. **“Intellectual Property Rights”** means any of the following: any patents or patent applications, trademarks (whether or not registered) including any applications for registration of the same, inventions, discoveries, topography rights, utility models and improvements whether or not capable of protection by patent or registration, copyright or design rights (whether registered or unregistered and including any applications), any goodwill in any trade or service name, trading style or get-up, rights in know-how, and any and all other intellectual or proprietary rights, wherever in the world enforceable, including all reversions, renewals and extensions of such rights.

2.12. **“New Work Product”** means all Intellectual Property Rights created specifically and paid for by Client pursuant to this Agreement and expressly set forth in any SOW hereunder.

2.13. **“Order Form”** means the documents containing information about Client’s subscription pricing and duration, which are attached hereto as Exhibit A and incorporated herein by reference.

2.14. **“PII”** means personally identifiable information.

2.15. **“Prior Work Product”** means all Intellectual Property Rights owned by Cadalys and in existence prior to the Effective Date, including a Base Application.

2.16. **“Production Instance”** means a single Enterprise Edition, Performance Edition or Unlimited Edition instance of Salesforce Platform serving as or intended to be serving as a production instance and accessible via <https://login.salesforce.com/>.

2.17. **“Salesforce”** means salesforce.com and its related companies listed here: <http://www.salesforce.com/company/msa.jsp>.

2.18. **“Salesforce Platform”** means the Salesforce application provided by Salesforce.

2.19. **“Sandbox”** means a copy of Client’s Production Instance of the Salesforce Platform accessible via <https://test.salesforce.com/>.

2.20. **“Seller”** means the company from which Client is purchasing Client’s subscription to an Application. Seller may be Cadalys or an authorized third-party reseller.

2.21. **“Service Levels”** means the service levels for an Application that are set forth in the Service Level Agreement, which is attached hereto as Exhibit A and incorporated herein by reference.

2.22. **“SOW”** means a Statement of Work i.e., the documents containing information about the components, pricing, and timeframes, as applicable, for the Implementation Services, which are incorporated herein by reference.

2.23. **“Subscription Fees”** shall have the meaning given to it in Paragraph 8.1 and the amount as set forth in an Order Form.

2.24. **“Subscription Term”** means the duration specified on an Order Form during which Client may use a specified Application.

### **3. License; Limitations on Use.**

3.1. **Provision of Application.** For each Application for which Client and Cadalys have signed an Order Form, Cadalys will provide Client with each Application, which is licensed to Client under this Section 3. Cadalys may update, change, and/or modify the products, services, technology, delivery methods and processes, connectivity requirements, message format requirements, and security requirements related to the Application from time to time during the Term of the Agreement.

3.2. **Limited License.** During the Subscription Term and subject to the terms and conditions of this Agreement, Cadalys grants to Client a limited, revocable, non-exclusive, non-sublicensable, non-transferable, non-assignable right and license to install and use the Application, solely for Client’s benefit, in the manner and

for the purposes specified in this Agreement and in any documentation which Cadalys may provide from time to time in connection with the Application.

3.3. **Single Production Instance.** Unless otherwise stated on an Order Form, Client's subscription to the Application is valid for one (1) and only one (1) Production Instance and its linked Sandboxes. If Client has multiple Production Instances, Client must purchase a separate Application subscription for each Production Instance in which Client wants to use the Application or related services.

3.4. **Limitations on Use.** Client's use of an Application is expressly subject to the following:

3.4.1. Only Authorized Users are authorized to log into and use the Application.

3.4.2. Cadalys reserves the right, in its sole discretion, to make available certain upgrades or updates to an Application Client.

3.4.3. Cadalys reserves all rights not expressly licensed or otherwise granted under this Agreement.

3.4.4. Use of or access to an Application other than as permitted hereunder is expressly prohibited.

3.4.5. Client shall not and shall not permit any third party person or entity to: (i) modify, translate, adapt, arrange, or create derivative works based on any Application or associated documentation for any purpose; (ii) reverse engineer, decompile or disassemble the Application, or any portions thereof; (iii) remove, alter, or obscure any proprietary notices, labels, or marks from the Application or associated documentation; (iv) use any equipment, device, software, or other means to circumvent digital rights protection used in connection with the Application; or (v) use the Application to develop a product which is competitive with any Cadalys offerings.

3.4.6. Each Application is licensed to Client as a single product and its components may not be separated for any purpose. Client may not distribute, rent, loan, lease, sell, resell, assign, sublicense, or otherwise transfer all or any portion of an Application, data provided by an Application, or any other rights granted in this Agreement, to any other person or entity without the prior written consent of Cadalys.

3.4.7. Client will at all times comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with Client's use of the Application, including without limitation those related to privacy, electronic communications and anti-spam legislation. In particular, to the extent required under applicable law, Client will provide notice and secure consent of all persons whose locations will be determined using an Application.

3.4.8. Except as expressly permitted by this Agreement, no part of the Application may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Client agrees not to access the Application in any way other than by the methods and/or interfaces designated by Cadalys.

3.4.9. Cadalys has the right to monitor Client's use of each Application, and to take other reasonable steps to provide and improve the Application, to upgrade the Application, and to assure Client's compliance with this Agreement. Client agree that Cadalys has the right to take such actions, and to immediately disable and terminate Client's use of an Application if Cadalys believes, in its sole discretion, that Client is using the Application or Service in any manner other than as expressly authorized under this Agreement or applicable law. Client hereby grants to Cadalys the right to remotely access or monitor the device(s) on which an Application is installed and used and agrees to provide Cadalys with access rights as necessary to do so. Client further agrees that Cadalys may collect and retain data regarding Client's use of each Application and may use all such data for any legal purpose Cadalys deems necessary to the operation of its business.

3.4.10. Client will notify the Seller annually, or immediately if the number of users in Client's Salesforce instance for which the subscription to an Application is being purchased where such increase in the number of users exceeds ten percent (10%) of the number of users permitted under the terms of Client's Order Form or may move Client into a higher Subscription Fee tier.

3.4.11. Client is responsible for compliance with this Agreement among all those accessing Client's Production Instance(s) or Sandboxes in which an Application is running.

3.4.12. Client will use commercially reasonable efforts to prevent unauthorized access to or use of each Application and will notify Cadalys promptly of any such unauthorized access or use by a third party.

3.4.13. Client may not knowingly permit or enable any of Cadalys' direct competitors to use an Application, except with prior written consent from Cadalys. In addition, Client may not access any Application for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

**4. Application Support.** Subject to this Agreement, including without limitation Client's timely payment of all applicable Fees, Cadalys will provide reasonable technical support services for each Application via telephone or email to Client's designated support representative. These support services cover publicly available and supported versions of each Application and do not cover implementation issues, hardware, operating systems, networks or third-party software interaction. All customer support inquiries should be directed through Cadalys as provided at <http://www.cadalys.com/contact/>.

**5. Application Service Levels.** Cadalys shall ensure each Application is available for use by Client as set forth in the Service Level Agreement attached hereto as Exhibit A.

**6. Implementation Services.**

6.1. **Project Assignments and SOWs.** Cadalys will provide Implementation Services on a project-by-project basis, with each project referred to herein as a "Project Assignment." Each Project Assignment will be governed by an SOW setting forth expected deliverables from Cadalys ("Deliverables"), as well as any specifications the Parties establish for the Deliverables. A Project Assignment is deemed accepted when both Parties sign the SOW describing the Project Assignment.

6.2. **Manner of Completion of Implementation Services.** Subject to the terms of this Agreement, Cadalys will render the Implementation Services set forth in Project Assignment(s) by the completion dates set forth therein. The manner and means by which Cadalys chooses to complete Projects are in Cadalys' sole discretion and control. In completing Project Assignments, Cadalys agrees to provide its own equipment, tools and other materials at its own expense. Cadalys will perform Implementation Services at a location, place and time which Cadalys deems appropriate.

6.3. **Subcontracting.** Cadalys shall be entitled to work with subcontractors in the performance of the Implementation Services, provided that such subcontractors agree to abide by the terms and conditions of this Agreement.

6.4. **Competitors.** Client shall not assign any subcontractor to a Project Assignment if such subcontractor is associated either directly or indirectly with a Cadalys competitor or has any conflict of interest with Cadalys' success on the Project Assignment.

6.5. **Key Dates.** Client will inform Cadalys of any key dates, including but not limited to project dates as well as dates of key corporate activities or events that may affect the timeline or availability of project personnel for a Project Assignment, prior to the execution of each corresponding SOW.

6.6. **Project Management.** The Cadalys project manager shall serve as the prime project manager on each Project Assignment.

7. **Acceptance of Deliverables.** Within thirty (30) days following receipt of a Deliverable, Client shall be entitled to conduct acceptance tests in accordance with the specifications set forth in the Statement of Work for such Deliverables and/or a test plan mutually agreed to in writing by the Parties (“Specifications”). The acceptance test period shall be thirty (30) days (“Test Period”). If the Deliverables fail to so perform, Client shall deliver to Cadalys a notice (“Notice of Nonconformance”) stating in reasonable detail the respects in which the Deliverables failed to conform and Cadalys shall exercise commercially reasonable efforts to correct any errors or omissions and resubmit the Deliverables for acceptance testing. If Cadalys believes it is unable to correct all material errors and omissions, Cadalys shall so notify Client and, upon such notice, Client shall be entitled to terminate this Agreement immediately upon notice to Cadalys; provided, however, that before notification the Parties shall use commercially reasonable efforts to negotiate changes in the Specifications or further efforts to correct errors or omissions and permit a reasonable amount of time, not less than fourteen (14) days, for the Parties to complete such negotiations and/or correct any errors or omissions prior to any notice of termination. If Client does not provide a Notice of Nonconformance to Cadalys within the Test Period, Client’s Acceptance of the Deliverables will be deemed to have occurred.

## 8. Fees.

8.1. **Subscription Fees.** Client agrees to timely pay all applicable license, subscription and other fees for Client’s access to and use of each Application (collectively, “Subscription Fees”) promptly when due, in accordance with the terms of (i) the Order Form, or (ii) where the Seller is a third-party, the agreement between Client and the Seller. Subscription Fees are based on access purchased and not actual usage. Except where provided by law or as otherwise expressly provided herein or agreed to by the Seller in a separate signed agreement, and except as provided herein, payment obligations are non-cancelable, and Subscription Fees paid are non-refundable. Subscription Fees are based on monthly periods that begin on the subscription start date and each monthly anniversary thereof; therefore, fees for users added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the Subscription Term.

8.2. **Implementation Fees.** Client will timely pay Cadalys for Implementation Services rendered under this Agreement at the intervals and for the amounts set forth by the Parties in the SOW (collectively, “Implementation Fees”). Cadalys shall be reimbursed for all reasonable and actual expenses incurred in performing Implementation Services under this Agreement and said expenses shall be included within the definition of “Implementation Fees.” Unless other terms are set forth in the SOW for work that is in progress, Client will pay Cadalys for Implementation Services and will reimburse Cadalys for expenses within thirty (30) calendar days of the date of Cadalys’ invoice to Client for the same. Upon expiration or termination of this Agreement for any reason, Cadalys will be paid Implementation Fees earned (including expenses incurred) up to and including the date of such expiration or termination. Without limiting the generality of the foregoing, regarding work in progress at the time of termination, Cadalys will be entitled to Implementation Fees for completed milestones and, in the absence of any specific provision, for a pro rata share of the work on an SOW for based on the portion of the milestones completed.

8.3. **Late Payments.** Fees not received by Cadalys on or before the day upon which such Fees are due shall thereupon be subject, at Cadalys’ sole discretion, to accrue interest at the rate of one percent (1%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such Fees were due until the date paid. If any amount owing by Client to Cadalys under this or any other Agreement is thirty (30) or more days overdue, Cadalys may, without limiting its other rights and remedies, suspend Client’s use of each corresponding Application and/or stop work on the Implementation Services until such amounts are paid in full.

8.4. **Taxes.** Unless otherwise agreed in writing, all Fees are exclusive of applicable sales/use taxes and similar taxes, tariffs, duties, charges and assessments (“Taxes”). Client is solely responsible for timely payment of all Taxes, and will indemnify, defend and hold Cadalys, and any additional Seller from whom Client has purchased a subscription to an Application, harmless from and against claim, suit, proceeding or other action resulting from Client’s non-payment thereof, together with all related penalties and interest. If Client is legally entitled to an exemption from the payment of any Taxes, Client will promptly provide Cadalys with legally

sufficient tax exemption certificates for each taxing jurisdiction for which it claims exemption. Unless otherwise prohibited by law, Cadalys will apply the benefits of any requested tax exemption.

## **9. Ownership; Intellectual Property Rights.**

9.1. **Confidentiality.** The mutual Nondisclosure Agreement (“NDA”) with an effective date of \_\_\_\_\_, 202\_ is hereby incorporated into and made part of this Agreement.

9.2. **Prior Work Product; Improvements.** All Prior Work Product in each Base Application and all Prior Work Product used by Cadalys in providing the Implementation Services, including all Intellectual Property and other rights and title therein, shall remain the exclusive property of Cadalys, and shall only be licensed to Client as provided in this Agreement. Similarly, exclusive of New Work Product, all improvements to a Base Application made by Cadalys over the course of the Agreement, including at the suggestion or upon the feedback of Client, shall become part of the Base Application and, as such, shall be the exclusive property of Cadalys.

9.3. **New Work Product; Assignment.** Cadalys agrees that any and all New Work Product created specifically for by Client pursuant to this Agreement and as expressly set forth in any SOW hereunder, including New Work Product that is only partially completed at the time this Agreement has been terminated or expired, shall be the sole and exclusive property of Client. Except for the rights retained in the Prior Work Product and non-New Work Product improvements by Cadalys and its suppliers, Cadalys irrevocably assigns and agrees to assign to Client all right, title and interest worldwide in and to the New Work Product and all applicable Intellectual Property rights related to the New Work Product, including without limitation, all copyrights, trademark rights, trade secrets rights, patent rights, moral rights and contract and licensing rights (the “Proprietary Rights”). Cadalys retains no rights to use the New Work Product and agrees not to challenge the validity of Client ownership in the New Work Product. The assignment in this Section is conditioned upon Client’s payment of all fees and expenses owing to Cadalys under this Agreement. To the extent the New Work Product contains Prior Work Product, Cadalys grants to Client a limited, revocable, non-exclusive, non-sublicensable, non-transferable, non-assignable right and license to use the Prior Work Product, solely for Client’s and its Affiliates’ benefit and use of the New Work Product. **Client Data.** As between Client and Cadalys, Client is the sole and exclusive owner of all data and information which is submitted to Cadalys either by Client or on Client’s behalf in connection with an Application and/or the Implementation Services subject to an Order or SOW hereunder, provided however that: (i) Client hereby grants to Cadalys a fully-paid-up, royalty-free, worldwide right and license to use all such data and information as necessary or appropriate to provide and improve the Application and otherwise to conduct Cadalys’ businesses; and (ii) without in any way limiting the generality of the statement set forth in subsection (i) immediately above,. If Client provides feedback to Cadalys regarding any Application, the Service, or any other topic, Client agrees that Cadalys may, without any notice or compensation to Client, use and communicate such feedback to third parties for any legal purpose whatsoever.

9.4.

9.5. **Third-Party Information.** Cadalys understands that Client has received and will in the future receive from third parties confidential or proprietary information (“Third-Party Information”) subject to a duty on Client’s part to maintain the confidentiality of such information and use it only for certain limited purposes. Cadalys agrees to hold such Third-Party Information in confidence and not to disclose to anyone (other than Cadalys and Client employees who need to know such information in connection with their work for Client) or to use, except in connection with Cadalys’ work for Client, Third-Party Information unless expressly authorized in writing by an officer of Client. Cadalys acknowledges and agrees that any of its employees or subcontractors to whom any Third-Party Information is disclosed is informed of the confidential nature of such information and is bound by a written duty not to disclose or use any such information obtained from Client except as authorized in this Section 9.5.

9.6. **Assistance.** Cadalys agrees to cooperate with Client or its designee(s), both during and after the term of this Agreement, in the procurement and maintenance of Client’s rights in the New Work Product and to sign, when requested and at Client’s sole expense, any other documents deemed necessary by Client to obtain and enforcement Client’s Proprietary Rights under this Section 9.

9.7. **Cadalys Business.** Cadalys is in the business of providing custom software development and of packaged application configuration and customization. Nothing in the foregoing will prevent Cadalys from independently developing or similarly configuring software for other clients, so long as such development is original and does not incorporate the New Work Product exclusive of the Prior Work Product or non-New Work Product improvements.

**10. Federal Government End Use Provisions.** This Section 10 applies only if Client is an agency or other arm of the United States federal government. Cadalys provides each Application, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Cadalys to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

**11. Privacy.**

11.1. **PII.** Each Application collects only limited PII, all of which is voluntarily provided by Client. For example, Cadalys collects certain biographical, contact and billing information when Client registers to use an Application, without which Cadalys would not be able to communicate with Client or bill Client regarding the Application or Implementation Services. Each Application may use PII in order to provide Authorized Users with access to and use of each Application.

**12. Export Compliance.** Client agrees that no Application will be transferred, sublicensed, exported, re-exported or otherwise made available in or into any country or used in any manner prohibited by the Export Laws. In addition, if any Application or the Implementation Services are identified as subject to export control under the Export Laws, Client represents and warrants that Client is permitted to receive and use and is located in a jurisdiction where Client is permitted to receive and use, the Application(s) and the Implementation Services. Client will indemnify, defend and hold harmless Cadalys and the Covered Parties (as defined in Section 16 below) from and against any claims, penalties, loss or damage arising out of a breach of Client's obligations under this Section. Client may not export an Application or associated documentation in violation of this Agreement, U.S. or other applicable export control laws.

**13. Independent Contractor Relationship.** Cadalys and its employees and/or contractors shall perform the provisions of this Agreement as independent contractors and shall not be considered agents of Client, nor shall Cadalys' personnel be considered employees of Client. Nothing contained in this Agreement shall be construed to (i) constitute the Parties as agents of one another, partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking, or (ii) allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever.

**14. Cadalys Representations and Warranties.**

14.1. **Application Warranty.** Cadalys represents and warrants that it has the right, power and authority, to provide each Application and grant and perform all rights and licenses granted or required to be granted by it under this Agreement, and the Application is free of defects, viruses, and malicious code. Cadalys further represents and warrants that there is no settled, pending or threatened legal action, and it has not received any written, oral or other notice of any action (including in the form of any offer to obtain a license): (i) alleging that any access to or use of the Application does or would infringe, misappropriate or otherwise violate any intellectual property right or any third party; (ii) challenging Cadalys' ownership of, or right to use or license, any software or other materials used or required to be used in connection with the provision of an Application, or alleging any adverse right, title or interest with respect thereto; or (iii) that, if decided unfavorably to Cadalys, would reasonably be expected to have an actual or potential adverse effect on its ability to provide any Application

under this Agreement, and it has no knowledge of any factual, legal or other reasonable basis for any such litigation, claim or proceeding.

14.2. **Implementation Services Warranty.** Cadalys warrants that the Implementation Services it performs will be completed in a timely and professional manner consistent with industry standards. During the three (3) months following the completion of a Test Period (the “Warranty Period”), Cadalys warrants that each Deliverable will meet the requirements set forth in the Specifications for such Deliverable. If a Deliverable, during the Warranty Period, fails to meet the requirements in the Specifications, Client’s sole and exclusive remedy shall be Cadalys’ use of reasonable efforts to repair, correct, or replace the Deliverable so that it performs in accordance with the Specifications.

14.3. **New Work Product Warranty.** Cadalys hereby represents and warrants that: (i) the New Work Product will be an original work of Cadalys and its licensors, and any third parties will have signed assignment of rights reasonably acceptable to Client; (ii) neither the Work Product nor any elements thereof infringe the Proprietary Rights of any third party; (iii) neither the New Work Product nor any element thereof will be subject to any restrictions or to any mortgages, liens, pledges, security interests, encumbrances or encroachments; and (iv) Cadalys has full right and power to enter into and perform this Agreement and to grant the licenses herein granted without the consent of any third party.

**15. DISCLAIMER.** EXCEPT AS EXPRESSLY WARRANTED IN THIS AGREEMENT, EACH APPLICATION, IMPLEMENTATION SERVICES AND DELIVERABLES ARE PROVIDED ON AN “AS-IS” BASIS, WITHOUT WARRANTY OF ANY KIND, AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CADALYS AND ITS LICENSORS HEREBY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CLIENT UNDERSTANDS AND AGREES THAT, TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW: (a) EACH APPLICATION AND THE IMPLEMENTATION SERVICES ARE PROVIDED “AS IS” AND WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, INTERFERENCE WITH CUSTOMER’S QUIET ENJOYMENT, SYSTEM INTEGRATION OR WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE; and (b) CADALYS DOES NOT MAKE ANY WARRANTY THAT EITHER THE OPERATION OF AN APPLICATION OR THE IMPLEMENTATION SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES AND/OR THE LIMITATION OR EXCLUSION OF LIABILITY IN CERTAIN CASES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CLIENT, OR MAY APPLY ONLY IN PART.

**16. LIMITATION OF LIABILITY.** NEITHER PARTY OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, INDEPENDENT CONTRACTORS, AFFILIATES, AGENTS, SUCCESSORS AND ASSIGNS, LICENSORS, SUPPLIERS, DISTRIBUTORS OR ANY OTHER THIRD-PARTY PARTNERS (COLLECTIVELY, THE “COVERED PARTIES”) IS LIABLE TO THE OTHER FOR LOST PROFITS, LOST DATA, OR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN THE EVENT THAT CADALYS IS NEVERTHELESS HELD BY A COURT OR OTHER TRIBUNAL OF COMPETENT JURISDICTION TO BE LIABLE TO CLIENT FOR DAMAGES FOR ANY REASON ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, CLIENT FURTHER AGREES THAT SUCH LIABILITY WILL BE LIMITED IN THE AGGREGATE TO THE TOTAL AMOUNT PAID BY CLIENT HEREUNDER IN THE PRECEDING CALENDAR QUARTER. THE FOREGOING SHALL NOT LIMIT CLIENT’S PAYMENT OBLIGATIONS UNDER SECTION 8. THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION WILL SURVIVE ANY EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.



## **17. Indemnification.**

17.1. **Duty to Indemnify.** Each Party (“The Indemnitor”) shall defend, indemnify and hold harmless the other Party, its officers, directors, employees, sublicensees, customers and agents (collectively, the “Indemnitee”) from and against any and all claims, losses, liabilities, damages, expenses and costs (including attorneys’ fees and court costs) by a third party (each, a “Claim”) if the alleged Claim is based on (i) the Indemnitor’s breach of this Agreement, including any representation or warranty of Indemnitor therein, (ii) the Indemnitor’s negligence, (iii) infringement of any third-party’s Intellectual Property Rights by Intellectual Property provided by the Indemnitor to the Indemnitee pursuant to this Agreement, (iv) violation of any applicable statute, rule, regulation, or other law by the Indemnitor, or (v) fraudulent or other tortious acts by the Indemnitor. The Indemnitor will have no indemnity obligation to the Indemnitee if the Claim arises out of or relates to (a) any combination, operation, or use of an Application by the Indemnitee with products, services, information, technologies, business methods or processes not furnished by the Indemnitor, (b) any modification (other than by the Indemnitor) of an Application, (c) the Indemnitee’s failure to promptly install any update to an Application as provided, instructed, or requested by the Indemnitor, or (d) fraudulent or other tortious acts by the Indemnitee.

17.2. **Procedure.** The Indemnitee shall promptly notify the Indemnitor in writing of any Claim. The Indemnitor shall have sole control over the defense and settlement of the Claim provided that, within fifteen (15) days after receipt of the above-described notice, the Indemnitor notifies the Indemnitee of its election to assume full control. The foregoing notwithstanding, the Indemnitee shall be entitled to participate in the defense of the Claim and to employ counsel at its own expense, provided that the Indemnitee’s legal expenses in exercising this right shall be deemed expenses subject to indemnification hereunder to the extent the Indemnitor fails or refuses to assume control over defense of the Claim. The Indemnitor shall not settle any Claim without the written consent of the Indemnitee, except for a complete settlement requiring only the payment of money damages to be paid by the Indemnitor.

**18. Insurance.** Cadalys, at its sole cost and expense, shall maintain appropriate insurance for (a) Workers Compensation and Disability Insurance and Employers Liability with limits of at least \$500,000, (b) Errors and Omissions coverage with a \$2,000,000 limit, (c) Commercial General Liability Insurance with at least \$2,000,000 Combined Single Limit Bodily Injury and Property Damage and \$2,000,000 Personal Injury; a \$4,000,000 aggregate limit will apply per project.

## **19. Term and Termination.**

19.1. **Term.** The term of this Agreement shall begin on the Effective Date and continue until the earlier of (i) expiration and/or completion of all Subscription Terms, Order Forms, Project Assignments and SOWs between the Parties, or (ii) termination by either Party as permitted herein.

### **19.2. Subscription Term; Automatic Renewal.**

19.2.1. The initial Subscription Term for an Application will begin upon the date as outlined in the Order Form. The license to use an Application will expire at the end of the applicable Subscription Term. Use of an Application before or beyond the Subscription Term, as applicable, or any attempt to defeat any time-control disabling function in an Application is an unauthorized use and constitutes a material breach of this Agreement.

19.2.2. Unless otherwise specified in an applicable Order Form, Client’s subscription shall automatically renew for an additional period equal to the expiring Subscription Term, unless either Client or the Seller gives the other Party notice of non-renewal at least thirty (30) days before the end of the relevant subscription term. The Subscription Fee for any such renewal shall be the same as that during the prior Subscription Term, excluding any one-time discounts stated on the Order Form, unless the Seller has given Client written notice of a Subscription Fee increase at least sixty (60) days before the end of such prior Subscription Term, in which case the Subscription Fee increase shall be effective upon renewal and thereafter. Any such Subscription Fee increase shall not exceed four percent (4%) of the Subscription Fee for the immediately preceding Subscription Term, unless the pricing in such prior term was designated in the relevant Order Form as promotional or one-time.

19.3. **Termination.** Either Party may terminate this Agreement for a material breach thereof by the other Party and the other Party fails to cure said breach within thirty (30) days of receipt of written notice describing the breach.

19.4. **Effect of Termination.** Upon termination of the Agreement, (i) neither Client nor any other person or entity will have any further right to make any use of an Application; (ii) Client will immediately cease using or otherwise accessing the Application(s), and will uninstall and delete each Application and all associated documentation; (iii) Cadalys will deliver to Client any and all drawings, notes, memoranda, specifications, devices, formulas, and documents, together with all copies thereof, and any other material containing or disclosing any New Work Product or Third-Party Information; and (iv) each Party shall return or destroy all Confidential Information of the other Party and confirm in writing that it has done the same.

19.5. **Survival.** The following provisions shall survive termination of this Agreement: Sections 3.4, 8–9, 11, 15–17, 19.5, 20–21 and the NDA.

## **20. Disputes.**

20.1. **Governing Law.** This Agreement, including without limitation this Agreement's interpretation, shall be treated as though this Agreement were fully signed and performed in the State of Delaware, and shall be governed by and construed in accordance with the laws of the State of Delaware without regard to its conflict of law principles. The language in this Agreement shall be interpreted in accordance with its fair meaning and not strictly for or against either Party.

20.2. **Venue for any Judicial Proceeding.** The interpretation, construction, enforcement and venue for any action arising out of, relating to, or in connection with this Agreement will be the state and federal courts located in the State of Delaware. The Parties stipulate to, and agree to waive any objection to, the personal jurisdiction and venue of such courts, and further expressly submit to extraterritorial service of process.

## **21. General Provisions.**

21.1. **Notices.** All notices, requests and other communications under this Agreement must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by e-mail or by hand to the Party to whom such notice is required or permitted to be given. If mailed, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by e-mail or by hand, any such notice will be considered to have been given when received by the Party to whom notice is given, as evidenced by written and dated documentation (such as an e-mail message). The mailing address for notice to either Party will be the address shown on the signature page of this Agreement. Either Party may change its mailing address by notice as provided by this section.

21.2. **Severability.** In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. If moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, it shall be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

21.3. **Force Majeure.** Neither Party will be liable for delays in performance or a failure to perform hereunder due to causes beyond its reasonable control, which could include acts of nature, acts of any government, wars, terrorism, riots, fires, floods, tsunamis, hurricane/typhoon, pandemic, accidents, non-Vendor related strikes, communication failures, unavailability of the Internet or other telecommunications, state or nation-wide power failures or blackouts, or embargoes. In the event of such delays, SOWs in effect at the time will be extended for such additional period of time as is determined to be equitable by the Parties. In the event any of these events occur, the impacted Party will immediately notify the other Party.

21.4. **No Assignment.** Except as expressly permitted herein, neither Party shall assign, transfer or delegate its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary set forth in this Agreement, a Party may assign the Agreement (without obtaining the other Party's prior written consent) to any of its respective current or future Affiliates.

21.5. **Authority.** Each of the signatories below represents and warrant that they have and will retain the full right, power and authority to enter into this Agreement and have the legal capacity to bind their respective entities to this Agreement.

21.6. **No Third-Party Beneficiaries.** The Parties acknowledge and agree that this Agreement is solely between the Parties hereto, and does not create any rights or benefits in favor of any third party.

21.7. **Waiver.** No waiver by either Party of any breach of this Agreement shall be a waiver of any preceding or succeeding breach. No waiver by either of any right under this Agreement shall be construed as a waiver of any other right. Neither Party shall be required to give notice to enforce strict adherence to all terms of this Agreement.

21.8. **Headings.** Headings herein are for convenience of reference only and shall in no way affect interpretation of the Agreement.

21.9. **Entire Agreement.** This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the Parties, whether written or oral. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing and signed by the Party to be charged. The terms of this Agreement will govern all Project Assignments and Implementation Services undertaken by Cadalys for Client. In the event of any conflict between this Agreement and an SOW, the SOW shall control, but only with respect to the Implementation Services set forth therein.

**IN WITNESS WHEREOF**, each Party has caused this Agreement to be signed by its duly authorized representative as of the Effective Date.

**CADALYS, INC.**

**CLIENT**

Richard C. Faint, Jr.

\_\_\_\_\_  
(Printed name)

By:

Title: Chief Financial Officer

Address: 201 Mission Street, Ste 1200

San Francisco, CA 94105  
\_\_\_\_\_

\_\_\_\_\_  
(Printed name)

By:

Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## **Exhibit A**

(See Attached)