POLYOPS

CUSTOMER TERMS AND CONDITIONS

Last Modified: November 18, 2020

These Customer Terms and Conditions (this "*Agreement*"), effective as of the date on which you click a button or check a box (or something similar) acknowledging your acceptance of this Agreement (the "*Effective Date*"), is by and between PolyOps, Inc., a Delaware corporation with offices located at 2261 Market Street #4016, San Francisco, CA 94114 ("*PolyOps*") and the entity on whose behalf the individual accepting this Agreement accepts this Agreement ("*Customer*"). The individual accepting this Agreement hereby represents and warrants that it is duly authorized by the entity on whose behalf it accepts this Agreement to so accept this Agreement. PolyOps and Customer may be referred to herein collectively as the "*Parties*" or individually as a "*Party*." The Parties agree as follows:

1.   Definitions.

1.1   "*Aggregated Data*" means data and information related to or derived from Customer Data or Customer's use of the Services that is used by PolyOps in an aggregate and anonymized manner, including to compile statistical and performance information related to the Services.

1.2   "*Authorized User*" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (ii) for whom access to the Services has been purchased hereunder.

1.3   "*Customer Data*" means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services; provided that, for purposes of clarity, Customer Data does not include Aggregated Data.

1.4   "*Data Processing Addendum*" or "*DPA"* means: (i) PolyOps's standard data processing addendum, as made available from time to time at https://dashboard.polyoperations.com/dpa.pdf or (ii) if PolyOps has agreed to a separate data processing addendum with Customer, such separate data processing addendum.

1.5   "*Documentation*" means PolyOps's end user documentation relating to the Services available at https://polyoperations-7772838.hs-sites.com/en/knowledge .

1.6   "*Harmful Code*" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to 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 security, integrity, confidentiality, or use of any data processed thereby.

1.7   "*Order*" means: (i) the purchase order, order form, or other ordering document entered into by the Parties that incorporates this Agreement by reference; or (ii) if Customer registered for the Services through PolyOps's online ordering process, the results of such online ordering process.

1.8   "*Personal Information*" means any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located, including without limitation all data considered "personal data", "personally identifiable information", or something similar under applicable laws, rules, or regulations relating to data privacy.

1.9   "*PolyOps IP*" means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, PolyOps IP includes Aggregated Data and any information, data, or other content derived from PolyOps's provision of the Services but does not include Customer Data.

1.10   "*Services*" means PolyOps's proprietary hosted software platform, as made available from time to time at https://www.polyoperations.com/ (or a successor site).

1.11   "*Subscription Period*" means the time period identified on the Order during which Customer's Authorized Users may access and use the Services.

1.12   "***Third-Party Products***" means any third-party products provided with, integrated with, or incorporated into the Services.

1.13   "***Usage Limitations***" means the usage limitations set forth in this Agreement and the Order, including without limitation any limitations on the number of Authorized Users (if any), and the applicable product, pricing, and support tiers agreed-upon by the Parties.

2.   <u>Access and Use</u>.

2.1   <u>Provision of Access</u>. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, including without limitation the Usage Limitations, PolyOps will make available to Customer during the Subscription Period, on a non-exclusive, non-transferable (except in compliance with <u>Section 13.8</u>), and non-sublicensable basis, access to and use of the Services, solely for use by Authorized Users. Such use is limited to Customer's internal business purposes and the features and functionalities specified in the Order. PolyOps shall provide to Customer the necessary access credentials to allow Customer to access the Services.

2.2   <u>Documentation License</u>. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, PolyOps hereby grants to Customer a non-exclusive, non-transferable (except in compliance with <u>Section 13.8</u>), and non-sublicensable license to use the Documentation during the Subscription Period solely for Customer's internal business purposes in connection with its use of the Services.

2.3   <u>Use Restrictions</u>. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of any PolyOps IP, whether in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation to any third party; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from any PolyOps IP; (v) use any PolyOps in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (vi) access or use any PolyOps IP for purposes of competitive analysis of PolyOps or the Services, the development, provision, or use of a competing software service or product, or any other purpose that is to PolyOps's detriment or commercial disadvantage; (vii) bypass or breach any security device or protection used by the Services or access or use the Services other than by an Authorized User through the use of valid access credentials; or (vii) input, upload, transmit, or otherwise provide to or through the Services any information or materials that are unlawful or injurious, or that contain, transmit, or activate any Harmful Code.

2.4   <u>Reservation of Rights</u>. PolyOps reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the PolyOps IP.

2.5   <u>Suspension</u>. Notwithstanding anything to the contrary in this Agreement, PolyOps may temporarily suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) PolyOps reasonably determines that (A) there is a threat or attack on any of the PolyOps IP; (B) Customer's or any Authorized User's use of the PolyOps IP disrupts or poses a security risk to the PolyOps IP or to any other customer or vendor of PolyOps; (C) Customer, or any Authorized User, is using the PolyOps IP for fraudulent or illegal activities; (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) PolyOps's provision of the Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of PolyOps has suspended or terminated PolyOps's access to or use of any Third-Party Products required to enable Customer to access the Services; or (iii) in accordance with <u>Section 5.1</u> (any such suspension described in subclause (i), (ii), or (iii), a "***Service Suspension***"). PolyOps shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to

the Services following any Service Suspension. PolyOps shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. PolyOps will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

2.6   Aggregated Data. Notwithstanding anything to the contrary in this Agreement, PolyOps may monitor Customer's use of the Services and collect and compile Aggregated Data. As between PolyOps and Customer, all right, title, and interest in Aggregated Data, and all intellectual property rights therein, belong to and are retained solely by PolyOps. Customer acknowledges that PolyOps may compile Aggregated Data based on Customer Data input into the Services. Customer agrees that PolyOps may (i) make Aggregated Data available to third parties including its other customers in compliance with applicable law, and (ii) use Aggregated Data to the extent and in the manner permitted under applicable law.

3.   Customer Responsibilities.

3.1   General. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.

3.2   Third-Party Products. PolyOps may from time to time make Third-Party Products available to Customer or PolyOps may allow for certain Third-Party Products to be integrated with the Services to allow for the transmission of Customer Data from such Third-Party Products into the Services. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install or use such Third-Party Products. By authorizing PolyOps to transmit Customer Data from Third-Party Products into the Services, Customer represents and warrants to PolyOps that it has all right, power, and authority to provide such authorization.

3.3   Customer Control and Responsibility. Customer has and will retain sole responsibility for: (i) all Customer Data, including its content and use; (ii) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (iii) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (iv) the security and use of Customer's and its Authorized Users' access credentials; and (v) all access to and use of the Services directly or indirectly by or through the Customer Systems or its or its Authorized Users' access credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

4.   Support. During the Subscription Period, PolyOps will use commercially reasonable efforts to provide Customer with basic customer support via PolyOps's standard support channels during PolyOps's normal business hours.

5.   Fees and Taxes.

5.1   Fees. Customer shall pay PolyOps the fees ("**Fees**") identified in the Order without offset or deduction at the cadence identified in the Order (e.g., monthly or annually). Fees paid by Customer are non-refundable. If Customer fails to make any payment when due, and Customer has not notified PolyOps in writing within ten (10) days of the payment becoming due and payable that the payment is subject to a good faith dispute, without limiting PolyOps's other rights and remedies: (i) PolyOps may charge interest on the undisputed past due amount at the rate of 1.5% per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse PolyOps for all reasonable costs incurred by PolyOps in collecting any late payments or

interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for ten (10) days or more, PolyOps may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.

5.2   Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on PolyOps's income.

6.   Confidential Information.

6.1   Definition. From time to time during the Subscription Period, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media that: (i) is marked, designated or otherwise identified as "confidential" or something similar at the time of disclosure or within a reasonable period of time thereafter; or (ii) would be considered confidential by a reasonable person given the nature of the information or the circumstances of its disclosure (collectively, "**Confidential Information**"). Except for Personal Information, Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party without use of, reference to, or reliance upon the disclosing Party's Confidential Information.

6.2   Duty. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees, contractors, and agents who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder ("**Representatives**"). The receiving Party will be responsible for all the acts and omissions of its Representatives as they relate to Confidential Information hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. Further, notwithstanding the foregoing, each Party may disclose the terms and existence of this Agreement to its actual or potential investors, debtholders, acquirers, or merger partners under customary confidentiality terms.

6.3   Return of Materials; Effects of Termination/Expiration. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-use and non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire three (3) years from the date of termination or expiration of this Agreement; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7.   Personal Information. PolyOps's DPA can be executed here: https://dashboard.polyoperations.com/dpa.pdf. Upon execution by Customer, the DPA is hereby incorporated by reference into the terms of this Agreement.

8.   Intellectual Property Ownership; Feedback.

8.1   PolyOps IP. Customer acknowledges that, as between Customer and PolyOps, PolyOps owns all right, title, and interest, including all intellectual property rights, in and to the PolyOps IP and, with respect to Third-Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.

8.2   Customer Data. PolyOps acknowledges that, as between PolyOps and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to PolyOps a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for PolyOps to provide the Services, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Data. Customer may export the Customer Data at any time through the features and functionalities made available via the Services.

8.3   Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to PolyOps by mail, email, telephone, or otherwise, suggesting or recommending changes to the PolyOps IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), PolyOps is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback.

9.   Warranty Disclaimer. THE POLYOPS IP IS PROVIDED "AS IS" AND POLYOPS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. POLYOPS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. POLYOPS MAKES NO WARRANTY OF ANY KIND THAT THE POLYOPS IP, 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, OR ERROR FREE.

10.   Indemnification.

10.1   PolyOps Indemnification.

(a)   PolyOps shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by Customer resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's US copyrights or trade secrets; provided that Customer promptly notifies PolyOps in writing of the claim, cooperates with PolyOps, and allows PolyOps sole authority to control the defense and settlement of such claim.

(b)   If such a claim is made or appears possible, Customer agrees to permit PolyOps, at PolyOps's sole discretion: to (i) modify or replace the Services, or component or part thereof, to make it non-infringing; or (ii) obtain the right for Customer to continue use. If PolyOps determines that neither alternative is reasonably commercially available, PolyOps may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(c)   This Section 10.1 will not apply to the extent that the alleged infringement arises from: (i) use of the Services in combination with data, software, hardware, equipment, or technology not provided by PolyOps or authorized by PolyOps in writing; (ii) modifications to the Services not made by PolyOps; (iii) Customer Data; or (iv) Third-Party Products.

10.2   Customer Indemnification. Customer shall indemnify, hold harmless, and, at PolyOps's option, defend PolyOps from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's US intellectual property or other rights and any Third-Party Claims based on Customer's or any Authorized User's (i) negligence or willful misconduct; (ii) use of the Services in a manner not authorized by this Agreement; or (iii) use of the Services in combination with data, software, hardware, equipment or technology not provided by PolyOps or authorized by PolyOps in writing; in each case provided that Customer may not settle any Third-Party Claim against PolyOps unless PolyOps consents to such settlement, and further provided that PolyOps will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by

counsel of its own choice.

10.3　Sole Remedy. THIS SECTION 10.3 SETS FORTH CUSTOMER'S SOLE REMEDIES AND POLYOPS'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL POLYOPS'S AGGREGATE LIABILITY UNDER THIS SECTION 10 EXCEED THREE TIMES (3X) THE TOTAL AMOUNTS PAID TO POLYOPS IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

11.　Limitations of Liability. EXCEPT FOR: (I) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; (II) A PARTY'S INDEMNITY OBLIGATIONS; OR (III) A PARTY'S GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT ("*Excluded Liabilities*"), (A) IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (1) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (2) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (3) LOSS OF GOODWILL OR REPUTATION; (4) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (5) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE; AND (B) IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID AND/OR PAYABLE TO POLYOPS UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM; PROVIDED THAT, NOTWITHSTANDING THE FOREGOING, POLYOPS'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO ANY EXCLUDED LIABILITIES WILL NOT EXCEED THREE TIMES (3X) THE TOTAL AMOUNTS PAID AND/OR PAYABLE TO POLYOPS UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM.

12.　Subscription Period and Termination.

12.1　Subscription Period. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect for the period identified in the Order (the "*Initial Subscription Period*"). This Agreement will automatically renew for additional successive terms equal to the length of the Initial Subscription Period unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each a "*Renewal Subscription Period*" and together with the Initial Subscription Period, the "*Subscription Period*").

12.2　Termination. In addition to any other express termination right set forth in this Agreement:

(a)　PolyOps may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than ten (10) calendar days after PolyOps's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 2.3 or Section 6;

(b)　either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) calendar days after the non-breaching Party provides the breaching Party with written notice of such breach; or

(c)　either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) 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; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) 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.

       12.3   <u>Effect of Expiration or Termination</u>. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the PolyOps IP and, without limiting Customer's obligations under <u>Section 6</u>, Customer shall delete, destroy, or return all copies of the PolyOps IP and certify in writing to the PolyOps that the PolyOps IP has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle Customer to any refund.

       12.4   <u>Survival</u>. This <u>Section 12.4</u> and <u>Sections 1</u>, <u>5</u>, <u>6</u>, <u>8</u>, <u>9</u>, <u>10</u>, <u>11</u>, and <u>13</u> survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

13.   <u>Miscellaneous</u>.

       13.1   <u>Entire Agreement</u>. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Agreement; and (ii) second, any other documents incorporated herein by reference.

       13.2   <u>Notices</u>. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "***Notice***") must be in writing and addressed to the Parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.

       13.3   <u>Force Majeure</u>. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

       13.4   <u>Amendment and Modification</u>. PolyOps may change this Agreement (except for any Orders) from time to time at its discretion. The date on which the Agreement was last modified will be updated at the top of this Agreement. PolyOps will provide Customer with reasonable notice prior to any amendments or modifications taking effect, either by emailing the email address associated with Customer's account on the Services or by another method reasonably designed to provide notice to Customer. If Customer accesses or uses the Services after the effective date of the revised Agreement, such access and use will constitute Customer's acceptance of the revised Agreement beginning at the next Renewal Subscription Period or, if Customer enters into a new Order with PolyOps, as of the date of execution of such Order.

       13.5   <u>Waiver</u>. No failure or delay by either Party in exercising any right or remedy available to it in connection with this Agreement will constitute a waiver of such right or remedy. No waiver under this Agreement will be effective unless made in writing and signed by an authorized representative of the Party granting the waiver.

       13.6   <u>Severability</u>. If any provision of this Agreement is invalid, illegal, or unenforceable in any

jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.7   Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of California 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 California. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder must be instituted in the federal courts of the United States or the courts of the State of California in each case located in San Francisco County, California and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

13.8   Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of PolyOps. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

13.9   Export Regulation. The Services utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the Services or the underlying software or technology to, or make the Services or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services or the underlying software or technology available outside the US.

13.10   US Government Rights. Each of the Documentation and the software components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Customer is an agency of the US Government or any contractor therefor, Customer only receives those rights with respect to the Services and Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government users and their contractors.

13.11   Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2.3, 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.

13.12   Publicity. PolyOps may identify Customer as a user of the Services and may use Customer's name, logo, and other trademarks in PolyOps's customer list, press releases, blog posts, advertisements, and website (and all use thereof and goodwill arising therefrom shall inure to the sole and exclusive benefit of Customer). Otherwise, neither Party may use the name, logo, or other trademarks of the other Party for any purpose without the other Party's prior written approval.