



Master Subscription Agreement

BY EXECUTING THIS MASTER SUBSCRIPTION AGREEMENT (THE “END USER ACCESS AGREEMENT” IN WRITING AND ALONG WITH ALL ORDERS, THE “AGREEMENT”) ON BEHALF OF THE ORDER ACTIVITY INDICATED BY YOU AT THE TIME OF ACCEPTANCE (“GOVERNMENT”) YOU ARE HEREBY AGREEING TO THIS END USER ACCESS AGREEMENT ON BEHALF OF ORDERING ACTIVITY. IN DOING SO YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE ORDERING ACTIVITY TO THESE END CLIENT TERMS AND CONDITIONS AND THE AGREEMENT. THE AGREEMENT IS BY AND BETWEEN THE ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER, STATEMENT OF WORK, OR SIMILAR DOCUMENT (“ORDERING ACTIVITY,” OR “LICENSEE”) AND THE GSA MULTIPLE AWARD SCHEDULE CONTRACTOR ACTING ON BEHALF OF SPYCLOUD, INC. (“PROVIDER” OR “SPYCLOUD”).

1. DEFINITIONS

- (a) **“Credentials”** means any user accounts, passwords and other authentication credentials associated with use of the Service by Customer or End Users.
- (b) **“Customer Facilities”** means Credentials and any account, hardware, system or other facility within Customer’s custody or control.
- (c) **“Data Subjects”** mean any: (i) employees of Customer; (ii) users who sign up for user accounts to purchase or use Customer’s products or services; or (iii) users who provide personal information to Customer as part of the process for using or purchasing Customer’s products or services.
- (d) **“Emergency Security Issue”** means any: (i) use of the Service by Customer or End Users in violation of the terms and conditions of this Agreement that disrupts or is reasonably likely to disrupt the availability of the Service to other users; or (ii) access to the Service by any unauthorized third party through use of any Customer Facilities.
- (e) **“End Users”** means employees and contractors of Customer and its affiliates.
- (f) **“Intellectual Property”** means all rights associated with patents and inventions; copyrights, mask works and other works of authorship (including moral rights); trademarks, service marks, trade dress, trade names, logos and other source identifiers; trade secrets; software, databases and data; and all other intellectual property and industrial designs.
- (g) **“Service”** means SpyCloud’s proprietary online service (as may be updated from time to time) for detecting potential breaches of data security through monitoring of activities occurring online.

2. GRANT OF RIGHTS AND RESTRICTIONS

- (a) **Grant of Rights.** During the term of this Agreement and subject to Customer’s compliance in all material respects with the terms and conditions of this Agreement (including any limitations on use set forth in the Order Form), SpyCloud hereby grants Customer a limited, non-exclusive, non-sublicensable right to access and use the Service only in the form made available by SpyCloud and only as necessary for End Users to monitor or investigate potential breaches of data security involving Customer or Data Subjects. SpyCloud may provide the Service through access to: (1) an application programming interface that allows End Users to run queries

through the Service for information relevant to Data Subjects (“API”); or (ii) raw data files, supplemented by daily diff files (“Data Files”). All rights granted to Customer may only be exercised by Customer for Customer’s internal business purposes and in accordance with the license granted herein.

- (b) **Restrictions.** Except as expressly permitted under this Agreement, Customer shall not itself, nor shall it permit any other party to: (i) reproduce, modify, translate, adapt or create derivative works based upon the Service; (ii) reverse engineer, decode, decompile, disassemble or otherwise attempt to access or derive the source code or architectural framework of the Service; (iii) access the Service for purposes of benchmarking or developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Service; (iv) rent, lease, lend, sell or sublicense the Service or otherwise provide access to the Service to any third party who is not an End User or as part of a service bureau or similar fee-for-service purpose; or (v) use the Service in any way that does not comply with all applicable laws and regulations.

- (c) **Changes.** Customer acknowledges and agrees that SpyCloud may improve, modify, add or remove functions or features to or from the Service from time to time, with or without notice to Customer. Any material updates to this agreement shall be presented to Ordering Activity for review and will not be effective unless and until both parties sign a written agreement updating these terms.

3. CUSTOMER RESPONSIBILITIES

- (a) **Technical Requirements.** Customer and End Users shall be solely responsible for obtaining, configuring and maintaining any hardware, network connectivity and third-party software required to access the Service, including computers, operating systems, web browsers and storage devices.
- (b) **Protection.** Customer shall be solely responsible for protecting the confidentiality of Credentials and all activities undertaken using Customer Facilities. In the event that Customer becomes aware of any unauthorized access to or use of the Service through use of Customer Facilities, Customer shall immediately give written notice to SpyCloud of such unauthorized use and make reasonable efforts to eliminate it. Customer shall at all times implement appropriate security policies and procedures and access control methodologies to

safeguard access to the Service through Customer Facilities. All such measures shall comply with prevailing industry standards but in no case consist of less than reasonable care.

(c) Policies. Reserved.

4. FEES AND TAXES

(a) Fees. For the initial order, Licensee shall pay the Software License Fees as set forth on the Order Form issued in accordance with the GSA Schedule Pricelist. . Any undisputed fees not paid when due shall accrue interest at the rate indicated by the the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

(b) Taxes. Vendor shall state separately on invoices taxes excluded from the fees, and the Ordering Activity agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

5. INTELLECTUAL PROPERTY

(a) Responsibility for Data. All information, data, and other materials accessible through the Service (“**Data**”) are the sole responsibility of the party from whom such materials originated. Customer acknowledges and agrees that: (i) the Service may provide access to or rely on Data from third parties, and such third parties, and not SpyCloud, are entirely responsible for such Data; (ii) Customer and End Users, and not SpyCloud, are entirely responsible for all Data that Customer and End Users submit, upload, email, transmit or otherwise make available through the Service (“**Customer Data**”); and (iii) Customer and End Users are solely responsible for giving all required notices and obtaining all necessary consents (including all required permissions from Intellectual Property holders) before submitting Customer Data through or to the Service. Customer and End Users shall not submit, upload, email, transmit or otherwise make available through the Service any Data not owned or managed by Customer or End Users.

(b) SpyCloud Ownership. Customer acknowledges and agrees that, as between SpyCloud and Customer, SpyCloud owns all right, title and interest (including all Intellectual Property) in and to Service, including the API and Data Files.

(c) Customer Ownership. SpyCloud acknowledges and agrees that, as between Customer and SpyCloud, Customer owns all right, title and interest (including all Intellectual Property) in and to Customer Data. Customer hereby grants SpyCloud and its service providers a worldwide, royalty-free, non-exclusive license to use, process, transmit and reproduce Customer Data as necessary for SpyCloud to provide the Service to Customer and End Users.

(d) Suggestions. If Customer or End Users elect to provide or make available to SpyCloud any suggestions, comments, ideas, improvements or other feedback relating to the Service (“**Suggestions**”), SpyCloud shall be free to use, disclose, reproduce, have made, modify, license, transfer and otherwise utilize and distribute Suggestions in any manner, without credit or compensation to Customer or End Users.

(e) Intellectual Property Notices. Customer shall not remove, obscure or modify in any way any copyright or trademark notices or other notices or disclaimers that appear within the Service.

(f) Reservation of Rights. Each of the parties reserves all rights not expressly granted under this Agreement.

6. TERM, SUSPENSION AND TERMINATION

(a) Term. This Agreement and the license granted hereunder shall become effective as of the Effective Date and shall continue in effect thereafter for the Term set forth in the applicable Order Form unless terminated upon the Termination Date set forth in the Order Form. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, SpyCloud shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

(b) Suspension. SpyCloud reserves the right to suspend Customer or any End User’s access to the Service in the event of an Emergency Security Issue. SpyCloud will make commercially reasonable efforts to limit suspension to the minimum extent and duration necessary to eliminate the Emergency Security Issue.

(c) Termination. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, SpyCloud shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

(d) Events Upon Termination. Upon termination of this Agreement for any reason: (i) all rights granted by the parties under this Agreement shall immediately terminate; (ii) Customer shall immediately cease all use of the Service; and (iii) each party shall immediately cease all use of the other party’s Confidential Information (as defined in Section 9(a)) and return or destroy all copies of such Confidential Information that are within its custody or control. Without limiting the generality of this Section 6(d), in the event that Customer has received any Data Files, Customer shall, upon termination of this Agreement for any reason: (1) cease use of and delete all copies of Data Files within Customer’s custody or control; and (2) provide SpyCloud with a written certification signed by an officer of Company attesting to Customer’s compliance. Notwithstanding the foregoing, each party shall be permitted to retain one copy of the other party’s Confidential Information solely for archival, audit, disaster recovery, legal and/or regulatory purposes, and neither party will be required to search archived electronic back-up files of its computer systems for the other party’s Confidential Information in order to purge the other party’s

Confidential Information from its archived files; provided further, that any Confidential Information so retained will (A) remain subject to the obligations and restrictions contained in this Agreement, (B) will be maintained in accordance with the retaining party's document retention policies and procedures, and (C) the retaining party will not use the retained Confidential Information for any other purpose.

(e) Survival. Any provision that, by its terms, is intended to survive the expiration or termination of this Agreement shall survive such expiration or termination, including Sections: 2(b) {Restrictions}; 4 {Fees and Taxes}; 5 {Intellectual Property}; 6(d) {Events Upon Termination}; 6(e) {Survival}; 7 {Representations and Warranties}; 8 {Indemnification}; 9 {Confidential Information}; 10 {Disclaimer of Warranties}; 11 {Limitation of Liability}; and 13 {Miscellaneous}.

7. REPRESENTATIONS AND WARRANTIES

SpyCloud and Customer each represents and warrants to the other that: (a) it has the necessary power and authority to enter into this Agreement; (b) the execution and performance of this Agreement have been authorized by all necessary corporate or institutional action; (c) entry into and performance of this Agreement will not conflict with any provision of law or the certificate of incorporation, bylaws or comparable organizational documents of such party; (d) no action by any governmental organization is necessary to make this Agreement valid and binding upon such party; and (e) it possesses all governmental licenses and approvals necessary to perform its obligations under this Agreement.

8. INDEMNIFICATION

(a) SpyCloud Indemnification. SpyCloud agrees that Customer shall have no liability and SpyCloud has the right to intervene to indemnify, defend and hold Customer harmless against any loss, damage, cost, liability and expense (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction or paid in settlement to the extent arising from any action or claim of a third party (collectively, "**Losses**") asserting that Customer or End Users' use of the Service infringes the Intellectual Property of such third party; provided, however, that SpyCloud shall have no obligation to indemnify Customer from any Losses to the extent they arise from: (i) use of the Service in any manner that does not comply in all material respects with the terms and conditions of this Agreement or any Policies or applicable laws or regulations; (ii) use of the Service in combination with any hardware or software not provided or approved by SpyCloud; (iii) modifications to the Service not made or authorized by SpyCloud; or (iv) any Customer Data (Sections 8(a)(i) through 8(a)(iv), collectively, "**Customer Acts**"). In the event that any part of the Service becomes the subject of a Loss or SpyCloud reasonably determines that any part of the Service is likely to become the subject of a Loss, SpyCloud may, at its sole discretion: (1) procure for Customer a license as necessary for Customer to exercise the rights granted by SpyCloud under this Agreement; (2) modify or replace the Service to avoid infringement, provided, however, that the Service as modified or replaced retains materially the same or better features and

functionality; or (3) terminate this Agreement and provide a pro rata refund of the fees paid by Customer to SpyCloud for the unused portion of the Initial Term or Renewal Term, as applicable. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

(b) Customer Indemnification. Reserved.

(c) Procedure. The indemnified party shall: (i) give the indemnifying party prompt written notice of any Loss or threat of Loss; provided, however, that failure of the indemnified party to give such prompt written notice shall not relieve the indemnifying party of any obligation to indemnify pursuant to this Section 8, except to the extent the indemnifying party has been prejudiced thereby; (ii) cooperate fully with the indemnifying party, at the indemnifying party's expense, in the defense or settlement of any Loss or threat of Loss; and (iii) reserved.

9. CONFIDENTIAL INFORMATION

(a) Definition. "**Confidential Information**" means information identified in good faith by either party as being confidential or proprietary, or information that, under the circumstances, should reasonably be understood to be confidential or proprietary. Confidential Information shall include, but not be limited to, the source code and architectural framework of the Service, API specifications, and Data Files, information relating to future releases of the Service, information available via the Service, and pricing information and business plans provided by either party. When the end user is the Federal Government, neither this Agreement nor the pricing terms are confidential information notwithstanding any such markings. SpyCloud recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

(b) Non-Disclosure. Each party agrees that it will use the Confidential Information provided by the other party only as necessary to exercise its rights and discharge its obligations under this Agreement and for no other purpose without the prior written consent of the disclosing party. Neither party shall disclose to a third party Confidential Information of the other party. To maintain in confidence the Confidential Information of the disclosing party, the receiving party shall use the same degree of care as it uses to protect the confidentiality of its own Confidential Information of like nature, but no less than a reasonable degree of care. The foregoing obligations shall not apply to any Confidential Information that: (i) can be demonstrated to have been publicly known at the time of the disclosing party's disclosure of such Confidential Information to the receiving party; (ii) becomes part of the public domain or publicly known, by publication or otherwise, not due to any unauthorized act or omission by the receiving party; (iii) can be demonstrated to have been independently developed or acquired by the receiving party without reference to or reliance upon such Confidential Information; (iv) is provided to the receiving party by a third party who is under no obligation to

the disclosing party to keep the information confidential; or (v) is required to be disclosed by law; provided, however, that the receiving party shall take reasonable actions to minimize such disclosure and promptly notify the disclosing party, to the extent permitted by law, so that the disclosing party may take lawful actions to avoid or minimize such disclosure. Notwithstanding anything to the contrary, SpyCloud shall be permitted to identify Customer as a SpyCloud customer to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

10. DISCLAIMER OF WARRANTIES

SPYCLOUD warrants that the Service will, for a period of sixty(60) days from the date of your receipt, perform substantially in accordance with Service written materials accompanying it. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, ALL PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS," "AS AVAILABLE" AND "WITH ALL FAULTS." EACH PARTY, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXPRESSLY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS (EXCEPT AS SET FORTH IN SECTION 7), EXPRESS OR IMPLIED, INCLUDING: (A) THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE; AND (B) ANY WARRANTY WITH RESPECT TO THE QUALITY, ACCURACY, CURRENCY OR COMPLETENESS OF THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT, OR THAT USE OF SUCH PRODUCTS AND SERVICES WILL BE ERROR-FREE, UNINTERRUPTED, FREE FROM OTHER FAILURES OR WILL MEET CUSTOMER OR END USERS' REQUIREMENTS. THIS AGREEMENT DOES NOT LIMIT OR DISCLAIM ANY OF THE WARRANTIES SPECIFIED IN THE GSA SCHEDULE 70 CONTRACT UNDER FAR 52.212-4(O). IN THE EVENT OF A BREACH OF WARRANTY, THE U.S. GOVERNMENT RESERVES ALL RIGHTS AND REMEDIES UNDER THE CONTRACT, THE FEDERAL ACQUISITION REGULATIONS, AND THE CONTRACT DISPUTES ACT, 41 U.S.C. 7101-7109.

11. LIMITATION OF LIABILITY

OTHER THAN WITH RESPECT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 OR BREACH OF SECTION 2(b) OR 9: (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS OR COST OF COVER, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS OCCASIONED BY OR RESULTING FROM ANY USE OF OR INABILITY TO USE THE PRODUCTS AND SERVICES PROVIDED UNDER THIS AGREEMENT, SUCH AS ANY MALFUNCTION, DEFECT OR FAILURE OF THE SERVICE OR ITS DELIVERY VIA THE INTERNET, EVEN IF SUCH PARTY HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE; AND (B) IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED PAID BY LICENSEE TO SPYCLOUD FOR SOFTWARE, DOCUMENTATION OR SERVICES PURSUANT TO THE PURCHASE ORDER(S) GIVING RISE TO THE CLAIM. THIS AGREEMENT SHALL NOT IMPAIR THE U.S. GOVERNMENT'S RIGHT TO RECOVER FOR

FRAUD OR CRIMES ARISING OUT OF OR RELATED TO THIS CONTRACT UNDER ANY FEDERAL FRAUD STATUTE, INCLUDING THE FALSE CLAIMS ACT, 31 U.S.C. 3729-3733. FURTHERMORE, THIS CLAUSE SHALL NOT IMPAIR NOR PREJUDICE THE U.S. GOVERNMENT'S RIGHT TO EXPRESS REMEDIES PROVIDED IN THE GSA SCHEDULE CONTRACT (E.G., CLAUSE 552.238-75 – PRICE REDUCTIONS, CLAUSE 52.212-4(H) – PATENT INDEMNIFICATION, AND GSAR 552.215-72 – PRICE ADJUSTMENT – FAILURE TO PROVIDE ACCURATE INFORMATION). The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law

12. U.S. GOVERNMENT MATTERS

(a) Each party represents that it is not named on any United States government list of persons or entities restricted from doing business with any United States company. Customer shall not directly or indirectly access or use the Service in violation of any United States or international export embargo, prohibition or restriction.

(b) If Customer is a U.S. federal government department or agency ("U.S. Government Customers"), the Service 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 those terms are used in 48 C.F.R. §12.212. All U.S. Government Customers acquire subscriptions to the Service only as a "Commercial item" and only with those rights that are granted to all other end users pursuant to the terms and conditions of this Agreement, consistent with 48 C.F.R. 12.212. U.S. Government Customers may only use the Service for a governmental-related purpose. Notwithstanding Section 13(h), applicable federal law and regulations shall govern this Agreement.

13. Miscellaneous

(a) Independent Contractors. The relationship between SpyCloud and Customer established by this Agreement is solely that of independent contractors. Neither party is in any way the partner or agent of the other, nor is either party authorized or empowered to create or assume any obligation of any kind, implied or expressed, on behalf of the other party, without the express prior written consent of such other party.

(b) Notice. All notices, demands, and other communications under this Agreement must be in writing and will be considered given upon: (i) delivery by traceable courier or mail (delivery confirmation/return receipt requested); or (ii) the first business day after sending by email. Notices to SpyCloud should be sent to legal@spycloud.com or to SpyCloud's Legal Department at the address specified above. Billing notices and notices relating to this Agreement will be sent to the contacts designated by Customer on the Order Form.

(c) Assignment. Neither party may assign this Agreement, or sublicense, assign or delegate any right or obligation hereunder, by operation of law or otherwise without the prior written consent of the other party which will not be

unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(d) Interpretation. For the purposes of this Agreement: (i) the words “such as,” “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation;” (ii) the word “or” is not exclusive; and (iii) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted.

(e) Entire Agreement. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, and Purchase Order(s), contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous or contemporaneous oral or written negotiations or agreements with respect to such subject matter. In the event of any conflict between this Agreement and any Policy, the terms and conditions of this Agreement shall take precedence.

(f) Amendment. This Agreement may not be amended except in a writing executed by an authorized representative of each party.

(g) Severability. If any provision of this Agreement shall be held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this Agreement.

(h) Dispute Resolution; Governing Law. The parties shall use good faith, reasonable efforts to resolve any dispute before initiating legal action. The Federal laws of the United States govern this Agreement.

(i) Contract for Services. This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, shall not apply to this Agreement. If Customer is located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights and obligations of the parties under this Agreement.

(j) Jurisdiction. All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the Federal laws of the United States.

(k) No Waiver. The failure of either party to require strict performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. Any waiver of the provisions of this Agreement, or of any breach or default hereunder, must be set forth in a written instrument signed by the party against which such waiver is to be enforced.

(l) Force Majeure. Excusable delays shall be governed by FAR 52.212-4(f)..

(m) Use of Logo. Reserved.

(n) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.