



MASTER SERVICES AGREEMENT

Version: July 15, 2024

This Agreement is entered into as of the Effective Date by and between Varicent and Customer and sets out the terms by which Varicent shall provide the Services to Customer. In consideration of the covenants and agreements contained in this Agreement and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the Parties), the Parties agree to the terms and conditions of this Agreement.

1 DEFINITIONS

All capitalized terms used but not defined in this Agreement shall have the following meanings:

- 1.1 “**Affiliate**” means with respect to a specified entity, any other entity who, directly or indirectly, Controls, is Controlled by, or is under common Control with the specified entity. An entity shall be deemed to “**Control**” another entity if such entity owns, directly or indirectly, more than 50% of the voting securities of such other entity; and the term “**Controlled**” has similar meaning.
- 1.2 “**Agreement**” means this Master Services Agreement between the Parties including all Orders and SOWs.
- 1.3 “**Authorized User**” means an employee or independent contractor of Customer and its Affiliates who is authorized under this Agreement to access the Software Services, unless otherwise expressly stated in an Order or SOW, and “**Authorized Users**” means every Authorized User.
- 1.4 “**Customer Data**” means the electronic data and information submitted to the Software Services by Customer, its Affiliates and Authorized Users to enable the provision of Software Services.
- 1.5 “**Customer**” means the entity accepting this Agreement, Order or SOW with Varicent.
- 1.6 “**Documentation**” means any documentation and other related materials, regardless of its form or medium, pertaining to the Software Services provided or made available by Varicent to Customer and shall include any user guides, online help, release notes and training materials.
- 1.7 “**Effective Date**” means the date the first Order or SOW is accepted by the Parties.
- 1.8 “**Free Services**” means any Software Services that Varicent makes available to Customer free of charge.
- 1.9 “**Malicious Code**” means any code, files, scripts, agents or programs intended to do harm including any viruses, worms, time bombs and Trojan horses.
- 1.10 “**Month**” means the applicable calendar month.
- 1.11 “**Online Portal**” means any online purchasing portal on <https://www.varicent.com> (or other Varicent owned website) where Free Services may be made available by Varicent.
- 1.12 “**Order**” means any ordering document executed by the Parties which references this Agreement and under which Customer orders Software Services.
- 1.13 “**Parties**” means Varicent and Customer; and “**Party**” means either Varicent or Customer.
- 1.14 “**Professional Services**” means any implementation, configuration, custom development or training to be provided by Varicent to Customer as described in a SOW. Professional Services exclude Software Services.
- 1.15 “**Services**” means the services to be provided by Varicent under this Agreement and any Order or SOW and which may include Software Services, Professional Services, Support Services and Free Services.
- 1.16 “**Software Services**” means the propriety software-as-a-service platform made available by Varicent to Customer as described in an Order. Software Services exclude Professional Services.
- 1.17 “**SOW**” means any statement of work executed by the Parties which references this Agreement and under which Customer orders Professional Services.
- 1.18 “**Support Services**” means any technical support for Software Services that Varicent provides to Customer pursuant to an Order.
- 1.19 “**Varicent**” means the Varicent legal entity described in Section 13.1.

2 THE SERVICES

- 2.1 **Generally.** By (a) accepting this Agreement; (b) executing an Order or SOW; or (c) registering for Free Services in the Online Portal, Customer agrees to be bound by this Agreement and that this Agreement shall govern the provision of the Services to Customer.
- 2.2 **Software Services.** Varicent shall provide Customer with access to the Software Services in accordance with this Agreement, any Order and the software schedule found at **Schedule A** attached to this Agreement (the “**Software Schedule**”) which is



incorporated by reference into this Agreement to the extent applicable to the Software Services.

- 2.3 **Support Services.** Support Services for the Software Services shall be provided to Customer in accordance with this Agreement, any Order and the support services schedule found at **Schedule B** attached to this Agreement (the "**Support Services Schedule**") which is incorporated by reference into this Agreement to the extent applicable to the Support Services.
- 2.4 **Professional Services.** In the event Customer requests Varicent provide Professional Services, Professional Services shall be provided to Customer in accordance with this Agreement, any SOW and the professional services schedule found at **Schedule C** attached to this Agreement (the "**Professional Services Schedule**") which is incorporated by reference into this Agreement to the extent applicable to the Professional Services.
- 2.5 **Supplemental AI Terms.** In the event any Software Services include the use of data models trained by machine learning and artificial intelligence ("**AI Tools**") (a) the use of any AI Tools shall be disclosed to Customer and described in the Documentation; and (b) the artificial intelligence schedule found at **Schedule D** attached to this Agreement (the "**AI Schedule**") shall apply to the Software Services and shall be incorporated by reference into this Agreement.
- 2.6 **Free Services.** Any Free Services made available to Customer shall be provided until either Party gives the other Party notice of termination of the Free Services. Notwithstanding any other term in this Agreement, Free Services are provided "as is" without any warranty and Varicent shall have no indemnification obligations nor liability with respect to the Free Services, unless such exclusion of liability is not enforceable under applicable laws, in which case Varicent's liability with respect to Free Services shall not exceed \$1,000. Free Services may be subject to additional terms and conditions, such as Varicent's web policies, which (if any) are incorporated by reference into this Agreement upon acceptance by Customer.
- 2.7 **Changes.** Customer acknowledges and agrees that Varicent may, at Varicent's discretion and without notice to Customer, modify the Software Services, Documentation, Software Schedule, Support Services Schedule, Professional Services Schedule, AI Schedule, DPA (defined below) and Security Schedule (defined below) from time to time; provided, however any such modifications shall (a) replace all prior versions (as applicable); and (b) not materially reduce the service levels, functionality or security of the Services.

3 ACCESS TO SERVICES

- 3.1 **Affiliates.** Customer may allow its Affiliates to access the Software Services either: (a) as Authorized Users or (b) with Varicent's consent, by directing the Customer Affiliate to enter into a separate Order with Varicent or its Affiliate; provided, that (i) Customer causes each of its Affiliates to comply with the terms and conditions of this Agreement; (ii) Customer remains fully liable and responsible for the acts and omissions of its Affiliates; (iii) any acts, omissions or breaches of this Agreement by an Affiliate shall be deemed to constitute an act, omission or breach of this Agreement by Customer; and (iv) in the case of option (a), an Affiliate's right to access the Software Services pursuant to this Section 3.1 shall automatically terminate if the Affiliate ceases to be an Affiliate of Customer. Customer shall promptly notify Varicent if an Affiliate who is accessing the Software Services ceases to be an Affiliate of Customer.
- 3.2 **Usage Restrictions.** Customer shall not (a) make the Software Services available to anyone other than Customer, its Affiliates or Authorized Users, or use any Software Services or Documentation for the benefit of anyone other than Customer and its Affiliates, unless expressly stated otherwise in an Order or SOW; (b) sell, resell, license, sublicense, distribute, rent or lease any Software Services or Documentation, or include any Software Services or Documentation in a service bureau or outsourcing offering; (c) use the Software Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material or any material in violation of any third party privacy rights; (d) use the Software Services to store or transmit Sensitive Personal Information (as defined in the DPA); (e) use the Software Services to store or transmit Malicious Code; (f) interfere with or disrupt the integrity or performance of the Software Services; (g) attempt to gain unauthorized access to the Software Services or Documentation or its related systems or networks; (h) permit direct or indirect access to or use of any Software Services or Documentation in a way that circumvents a contractual usage limit or use the Software Services to access, copy or use any of Varicent's intellectual property except as expressly permitted by this Agreement, Order or SOW; (i) modify, copy or create derivative works of the Software Services or any part, feature, function or user interface of the Software Services; (j) copy Documentation except as permitted by this Agreement; (k) frame or mirror any part of the Software Services or Documentation; or (l) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Software Services or Documentation or access it to (i) build a competitive product or service; (ii) build a product or service using similar ideas, features, functions or graphics as the Software Services; (iii) copy any ideas, features, functions or graphics of the Software Services; or (iv) determine whether the Software Services are within the scope of any patent.
- 3.3 **Usage Limits.** If Customer requires additional Software Services or exceeds a contractual usage limit specified in an Order, Customer shall promptly execute an Order for the additional quantities of Software Services and/or pay any invoice for excess usage in accordance with Section 7.2 of this Agreement. The amount charged by Varicent for any excess Software Services shall be 120% of the Fees then in effect for the applicable Software Services unless otherwise agreed by the Parties in writing.
- 3.4 **Rights of Suspension.** Varicent may suspend or limit Customer's access to the Software Services without incurring any liability to Customer if (a) Varicent experiences, or reasonably believes it will experience, a security threat or system failure that endangers the integrity of Varicent's internal systems; (b) Varicent is directed to do so by any law enforcement or regulatory agency; (c) the continued performance of Varicent's obligations under this Agreement could result in Varicent being in breach of any applicable



laws; (d) Varicent reasonably believes Customer is in breach of Section 3.2; or (e) Customer fails to pay any Fees that are not disputed by Customer in accordance with Section 12 this Agreement. Varicent shall (i) promptly notify Customer in advance that it intends to suspend or limit access to the Software Services in accordance with this Section 3.4; and (ii) use commercially reasonable efforts to restore such access as soon as reasonably practicable after the cause of the suspension has been remediated by Customer.

4 OBLIGATIONS

- 4.1 **Customer Obligations.** Customer shall (a) cooperate with Varicent in good faith to enable Varicent's provision of the Services including providing Varicent with timely access to Customer Data and employees and consultants of Customer as reasonably required by Varicent to provide the Services; (b) have sole responsibility for the accuracy, quality, completeness, integrity, legality, reliability and appropriateness of Customer Data; (c) comply with all applicable laws; (d) if any Services are to be provided at Customer's facilities, provide Varicent with all necessary access to Customer's facilities including access to Customer's information technology and telecommunications systems that are necessary for Varicent to provide the Services; (e) ensure that Customer's information technology and telecommunications systems comply with relevant specifications and requirements that may be provided by Varicent from time to time to enable Varicent to provide the Services; (f) use commercially reasonable efforts to prevent any unauthorized access or use of the Software Services and promptly notify Varicent of any unauthorized access or use of the Software Services; (g) obtain and maintain all necessary licenses, consents and authorizations to allow Varicent to provide the Services to Customer; and (h) be fully liable and responsible for the acts and omissions of Authorized Users.
- 4.2 **Failure to Perform.** Varicent shall not be in breach of this Agreement and shall not be liable to Customer for failure to perform Varicent's obligations under this Agreement if such failure is caused by (a) Customer failing to perform any of its obligations under this Agreement; (b) any use by Customer of a third party website, product or service that is linked to the Software Services to transfer information to any such third party; (c) any act, omission or breach of this Agreement by Customer; or (d) any violation of applicable laws by Customer.

5 DATA SECURITY AND PRIVACY

- 5.1 Varicent shall maintain and process Customer Data only as necessary for the specific purpose of providing the Software Service and as set out in the data processing addendum found at Schedule E attached to this Agreement") (the "**DPA**") which shall apply to the Software Services and shall be incorporated by reference into this Agreement.

6 TERM AND TERMINATION

- 6.1 **Term.** This Agreement commences on the Effective Date and continues until all Orders and SOWs have expired or been terminated.
- 6.2 **Overholding.** In the event Customer continues to access any Software Services after the termination or expiry of this Agreement or a related Order or SOW without the written agreement of Varicent ("**Overheld Services**"), the terms and conditions of this Agreement and the applicable Order or SOW shall be deemed to apply to any Overheld Services; provided, however (a) the length of the term for any Overheld Services shall be month to month payable in advance on the first day of the month; and (b) the amount charged by Varicent for any Overheld Services shall be 130% of the Fees then in effect at the time of termination or expiry of this Agreement, Order or SOW (as applicable) calculated on a monthly pro-rated basis. Varicent shall promptly invoice Customer for any Overheld Services.
- 6.3 **Termination.** Either Party may terminate this Agreement for cause (a) upon 30 days written notice to the other Party if the other Party breaches any material provision of this Agreement and such breach remains uncured at the expiration of such period; or (b) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- 6.4 **Effect of Termination.** Upon termination or expiration of this Agreement (a) Varicent shall make Customer Data available to Customer for export or download for 30 days and, following such 30 day period, Varicent shall have no obligation to maintain or provide any Customer Data and shall delete or destroy copies of all Customer Data in its possession or control, unless prohibited by applicable laws; (b) Customer shall pay all Fees due and not yet paid; (c) if this Agreement is terminated by Varicent in accordance with Section 6.3, Customer shall pay any Fees covering the remainder of the term of all Orders and SOWs; (d) each Party shall return to the other Party, or at the direction of the other Party destroy, within 30 days all Confidential Information of the other Party; and (e) any rights of a Party to use the intellectual property of the other Party as provided for in this Agreement shall terminate.

7 FEES

- 7.1 **Fees.** Customer shall pay Varicent all fees ("**Fees**") specified in each Order and SOW. Unless expressly stated otherwise in an Order or SOW (a) the quantity of Software Services purchased cannot be reduced during the term of an Order; (b) payment obligations are non-cancelable; and (c) Fees paid are non-refundable. Customer may add additional Software Services at any time by executing an Order with Varicent for additional Software Services.
- 7.2 **Invoicing and Payment.** Fees shall be invoiced in accordance with the applicable Order or SOW. Unless expressly stated



otherwise in an Order or SOW, Customer shall pay all invoiced amounts within 30 days of the applicable invoice date.

- 7.3 **Taxes.** Fees do not include any taxes, levies, duties or similar governmental assessments of any nature including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with the purchase of the Services and shall not deduct any amount from the Fees for Taxes. Varicent shall add any applicable Taxes to each invoice.
- 7.3.1 **Sales Tax.** Varicent will include applicable sales taxes in Customer's invoice unless Customer has provided Varicent with a valid tax exemption certificate, or other appropriate documentation of non-taxability sufficient to confirm the tax-exempt status of Customer or purchase of the Services.
- 7.3.2 **Withholding Tax.** If Customer has determined that withholding taxes apply to Customer's purchase of the Services, Customer shall provide Varicent with a tax assessment to substantiate Customer's opinion and seek Varicent's approval before any amounts are deducted from Fees. If not so provided, Customer shall increase the sum paid to Varicent by the amount necessary such that the total payment to Varicent for Fees equals the full amount Varicent would have received had the withholding tax not been required.

8 PROPRIETY RIGHTS

- 8.1 **Reservation of Rights.** Other than the rights expressly granted in this Agreement (a) all right, title and interest in the Services and Documentation (including all intellectual property and other proprietary rights in the Services and Documentation) is owned by Varicent and its third party licensors (as applicable); and (b) nothing in this Agreement shall assign, transfer or convey to Customer any title, rights or interest to any intellectual property (including in the Services and Documentation). Varicent reserves all rights not expressly granted to Customer in this Agreement.
- 8.2 **Customer Data.** Subject to the access rights granted in this Agreement, all right, title and interest in Customer Data (including all intellectual property rights in Customer Data) is owned by Customer. Customer grants to Varicent a non-exclusive, worldwide, fully paid up and royalty-free license to use, reproduce, display, distribute, publish, perform, create derivative works from, process, transmit, provide and store Customer Data for the purpose of providing, enhancing, developing, diagnosing and correcting the Services.
- 8.3 **Documentation.** Varicent grants to Customer a limited, non-transferable, non-exclusive, worldwide, fully paid up and royalty-free license to use and reproduce the Documentation for Customer's internal business purposes in connection with Customer's access and use of the Services.
- 8.4 **Feedback.** Customer grants to Varicent and its Affiliates an irrevocable, perpetual, unlimited, transferable, exclusive, worldwide, fully paid up and royalty-free license to use, distribute, disclose, make and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer relating to the Services.

9 CONFIDENTIAL INFORMATION

- 9.1 "**Confidential Information**" means all confidential or proprietary information of a Party (the "**Disclosing Party**") disclosed to the other Party (the "**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes Customer Data, Documentation, the terms and conditions of this Agreement (including all Orders, SOWs and Fees), business and marketing plans, technology and technical information, application programming interfaces, computer code, techniques, methods of operation, specifications, trade secrets and business processes.
- 9.2 **Treatment of Confidential Information.** The Receiving Party shall not use or disclose Confidential Information of the Disclosing Party for any purpose other than to perform its respective obligations under this Agreement. Each Party retains all ownership rights to its Confidential Information. The Receiving Party shall use at least the same level of care to prevent unauthorized use or disclosure of Confidential Information as it uses for its own confidential and proprietary information, but in no event less than a reasonable standard of care. The confidentiality obligations contained in this Section 9 supersede and replace any prior non-disclosure agreement between the Parties regarding the subject matter of this Agreement. The Receiving Party shall only make available Confidential Information to its Affiliates, employees and contractors on a need-to-know basis and shall be subject to contractual obligations of confidentiality no less restrictive than the restrictions set out in this Section 9 with respect to the use and disclosure of Confidential Information. The Receiving Party shall be responsible for any unauthorized disclosure of any Confidential Information by its Affiliates, employees and contractors.
- 9.3 **Permitted Disclosure.** The obligations of confidentiality set out in this Section 9 shall not apply to any Confidential Information that (a) is publicly available when it is received by or becomes known to the Receiving Party or that subsequently becomes publicly available through no fault of the Receiving Party (but only after it becomes publicly available); (b) is established by evidence to have been already known to the Receiving Party at the time of its disclosure to the Receiving Party and is not known by the Receiving Party to be the subject of an obligation of confidence of any kind; (c) is independently developed by the Receiving Party without any use of or reference to the Confidential Information of the Disclosing Party as established by evidence; (d) is received by the Receiving Party in good faith without an obligation of confidence of any kind from a third party who the Receiving Party had no reason to believe was not lawfully in possession of the information free of any obligation of confidence of any kind; or (e) the



Receiving Party is required to disclose by applicable laws or in response to an order of a court or other governmental authority; provided, that the Receiving Party provides the Disclosing Party with prompt notice of any such requirement to disclose (to the extent legally permitted) so that the Disclosing Party may seek a protective order or applicable relief.

- 9.4 **Injunctive Relief.** The Parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable harm to the Disclosing Party and that, in the event of such unauthorized disclosure, the Disclosing Party shall be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief.

10 REPRESENTATIONS AND WARRANTIES

- 10.1 **Varicent.** Varicent represents and warrants that (a) the Services shall function as described in the Documentation in all material respects; (b) it shall use reasonable efforts to scan for Malicious Code; and (c) it shall provide the Services using commercially reasonable care and skill and in accordance with laws applicable to Varicent's performance of the Services to Customer.
- 10.2 **Customer.** Customer represents and warrants that (a) it owns all rights, title and interests in, or has a license to, all Customer Data; (b) it has the necessary rights and consents to provide Customer Data to Varicent; (c) it has the necessary rights to grant the licenses granted by Customer to Varicent in this Agreement; (d) Customer Data complies with all applicable license requirements and does not violate any applicable laws.
- 10.3 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAWS.

11 LIABILITY

- 11.1 **Indemnity by Varicent.** Subject to Sections 11.2 and 11.4, Varicent shall (a) defend and hold harmless Customer from and against any claim the Services infringe a third party's intellectual property right; and (b) indemnify Customer for any damages and reasonable legal fees finally awarded by a court of competent jurisdiction with respect to such claim. Varicent's obligations under this Section 11.1 will not apply to the extent the claim results from: (a) Customer Data; (b) modifications to Services requested by Customer or not approved by Varicent; (c) use of Services by Customer in violation of the terms of this Agreement or the Documentation; (d) an extension developed to meet Customer's technical specification not contained in the Documentation; or (e) Customer's bundling, combining, integrating or interfacing Services with any non-Varicent products, processes, software, hardware, or materials (unless expressly authorized by Varicent).
- 11.2 **Replacement Services.** If any part of Services becomes, or in the reasonable opinion of Varicent is likely to become, the subject of a claim of intellectual property infringement as described in Section 11.1 Varicent may at its own expense (a) modify the Services so that it is no longer infringing; (b) obtain a license to enable Customer to continue using the Services in accordance with this Agreement; (c) replace the Services with a functionally equivalent service; or (d) terminate the applicable Services if Varicent issues to Customer a refund for any pre-paid Fees applicable to the remaining term of the Order or SOW. Sections 11.1 and 11.2 state Varicent's exclusive obligations and the Customer's exclusive remedies with respect to any claim for intellectual property infringement relating to the Services.
- 11.3 **Indemnity by Customer.** Subject to Section 11.4, Customer will indemnify, defend and hold harmless Varicent from and against any third party claim arising out of: (a) Customer Data; (b) modifications to Services requested by Customer or not approved by Varicent; (c) use of Services by Customer in violation of the terms of this Agreement or the Documentation; (d) an extension developed to meet Customer's technical specification not contained in the Documentation; or (e) Customer's bundling, combining, integrating or interfacing Services with any non-Varicent products, processes, software, hardware, or materials (unless expressly authorized by Varicent).
- 11.4 **Indemnity Procedure.** A Party's indemnification obligations in Sections 11.1 or 11.3 shall only apply if (a) the indemnified Party promptly gives the indemnifying Party written notice of the Indemnity Claim; (b) the indemnified Party gives the indemnifying Party sole control of the defence and settlement of the indemnity claim (provided any settlement unconditionally releases the indemnified Party of all liability); (c) the indemnified Party provides the indemnifying Party all reasonable assistance to enable the indemnifying Party to defend and settle the indemnity claim.
- 11.5 **Cap on Liability.**
- (a) In no event shall either Party or its respective Affiliates and their officers, directors, employees and agents have any liability arising out of or related to this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages (including any loss of profits, business interruption, loss of reputation, loss of goodwill, loss of software use or costs of substitute services) regardless of the nature of the claim (including negligence), even if foreseeable or a Party has been advised of the possibility of such liability.
 - (b) The aggregate liability of each Party and its respective Affiliates' and their officers, directors, employees and agents arising out of or related to this Agreement, regardless of the nature of the claim (including negligence), shall in no circumstance exceed the total amount of Fees paid or payable by Customer and its Affiliates to Varicent for Services in the 12 months prior to the incident from which the liability arose.

- (c) Nothing in this Section 11.5 shall limit a Party or its respective Affiliates' liability for (i) gross negligence or willful misconduct; (ii) payment of Fees; (iii) breach by Customer of Section 3.2 (Usage Restrictions); (iv) indemnification obligations set out in Sections 11.1 and 11.3; or (v) liability which cannot be excluded or limited under applicable laws.

12 DISPUTE RESOLUTION

- 12.1 **Dispute.** If any dispute, disagreement, controversy, claim or allegation arises between the Parties relating to this Agreement (a "**Dispute**"), the Parties shall in good faith attempt to promptly and amicably resolve the Dispute in accordance with the following process:
- 12.1.1 The Party initiating the Dispute shall provide notice to the other Party of the existence of the Dispute, which notice shall (a) be provided in accordance with Section 13.2 of this Agreement; and (b) include reasonably detailed information containing the nature of the Dispute.
- 12.1.2 Each Party shall designate a relationship manager (the "**Relationship Managers**") who shall meet to attempt to resolve the Dispute.
- 12.1.3 If the Relationship Managers are unable to resolve the Dispute within 14 days following the date the notice of Dispute was given (or such other date as mutually agreed upon by the Parties in writing), the Dispute shall be escalated to a senior corporate executive, officer or representative of each Party (the "**Senior Executives**") to attempt to resolve the Dispute.
- 12.1.4 If the Senior Executives are unable to resolve the dispute within 14 days following the date the Dispute was escalated to the Senior Executives, then each Party may take whatever steps are necessary to protect its interests. Any Dispute that is submitted to the process described in this Section 12 shall not be the subject of litigation or other formal proceeding between the Parties before being considered by the Senior Executives in accordance with this Section 12; provided, however that either Party may seek injunctive or equitable relief without complying with the process described in this Section 12.

13 GENERAL

- 13.1 **Contracting Entity and Governing Law.** The Varicent legal entity entering into this Agreement, the governing law applies to this Agreement and the courts that have exclusive jurisdiction over this Agreement shall depend on where Customer is domiciled as set out below:

CUSTOMER'S DOMICILE	VARICENT LEGAL ENTITY ENTERING INTO THIS AGREEMENT	GOVERNING LAW	COURTS WITH EXCLUSIVE JURISDICTION
United States of America, or Asia or the Pacific region	Varicent US Opco Corporation	New York and controlling United States federal law	Manhattan, New York, United States
Canada, Peru, Argentina, Mexico, and other countries within Central or South America or Caribbean	Varicent Canada Opco Ltd.	Province of Ontario and controlling Canadian federal law	Toronto, Ontario, Canada
Europe (excluding Romania) or Middle East	Varicent UK Opco Limited	England and Wales	London, England
Romania	Varicent ROM Opco S.R.L.	Romania	Bucharest, Romania
Australia or New Zealand	Varicent Australia Opco Pty Ltd.	Australia	Sydney, New South Wales, Australia

- 13.2 **Notice.** All notices given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier to occur of actual receipt or (a) personal delivery to the Party to be notified; (b) when sent, if sent by email during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day; (c) five days after having been sent by registered or certified mail, return receipt requested and postage prepaid; or (d) one business day after deposit with a nationally recognized overnight courier, freight prepaid and specifying next business day delivery, with written verification of receipt. All notices shall be sent to Customer at their mailing address or email address set forth in the applicable Order or SOW. All notices shall be sent to Varicent at (i) the email address set forth in the applicable Order or SOW or 4711 Yonge St., Suite 300, Toronto, ON Canada M2N 6K8 Attention: Varicent; and (b) legal@varicent.com. Each Party consents to the delivery of electronic notices under this Agreement.
- 13.3 **Publicity.** Notwithstanding any other term in this Agreement, Varicent shall be permitted to disclose, without consent of Customer, in its marketing, promotional or other similar materials and on its website and orally (a) Customer's trademarks, service marks, logos or brand names; (b) the fact that Customer is a customer of Varicent; and (c) the general nature of the relationship between the Parties.
- 13.4 **Survival.** The provisions of Sections 2.6, 3.3, 6.2, 7, 8.4, 9, 11, 12, 13.2, 13.3 and 13.4, and any other terms in this Agreement



which expressly state that such terms shall survive or are necessary to survive to give effect to the surviving terms, shall survive the termination or expiration of this Agreement.

- 13.5 **Third Parties.** Except as otherwise expressly stated in this Agreement, nothing contained in this Agreement is intended to confer upon any person who is not a Party any rights, benefits or remedies of any kind or character whatsoever, and no such person shall be deemed a third party beneficiary under this Agreement.
- 13.6 **Exclusivity.** The commercial relationship under this Agreement is non-exclusive. Nothing in the Agreement shall prevent Varicent from providing any services to any other person or Customer from purchasing any services from another person.
- 13.7 **Further Assurance.** The Parties agree from time to time to execute such further agreements or other documents, and do all such other acts and things as may be necessary or desirable, to give effect to the terms of this Agreement.
- 13.8 **Entire Agreement and Paramountcy.** This Agreement constitutes the entire agreement between the Parties regarding the subject matter of this Agreement and supersedes all prior agreements, proposals, understandings, letters of intent, negotiations and discussions between the Parties, whether oral or written, regarding the subject matter of this Agreement. In the event of any conflict or inconstancy among this Agreement and any Order or SOW, the terms of this Agreement shall prevail to the extent of the conflict or inconsistency, unless otherwise expressly stated in an Order or SOW. The Parties agree that any term or condition stated in any Customer issued purchase order or in any other Customer order documentation (excluding an Order or SOW) is void.
- 13.9 **Export Compliance.** The Services are subject to all applicable export control laws and regulations including, without limitation, those of the United States government. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Customer shall not make the Software Services available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo; or (ii) is listed on any U.S. government list of prohibited or restricted parties.
- 13.10 **Force Majeure.** Neither Party shall be in breach of this Agreement nor liable for failure to perform its obligations under this Agreement if such failure is due to causes beyond a Party's reasonable control (each a "**Force Majeure Event**") including acts of God, acts or omissions of the other Party or a third party, third party product or service failures, internet or telecommunications outages, acts of civil or military authorities, fire, strikes, power, surges or outages, epidemics, flood, earthquakes, riot or war. Each Party shall use commercially reasonable efforts to provide the other Party with notice of any Force Majeure Event.
- 13.11 **Independent Contractor.** The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Each Party shall be solely responsible for payment of all compensation, benefits, premiums and taxes required to be paid on behalf of its employees and contractors.
- 13.12 **Amendments and Waiver.** No amendment or waiver of any provision of this Agreement shall be binding on any Party unless consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provisions, nor shall any waiver constitute a continuing waiver, unless otherwise expressly stated in a waiver.
- 13.13 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to applicable laws, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by applicable laws and the remaining provisions shall remain in effect.
- 13.14 **Assignment.** This Agreement shall be binding upon and shall enure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party; provided, however either Party may assign this contract: (a) to an affiliate; (b) as part of a *bona fide* corporate reorganization; or (c) in connection with a sale of its business, a sale of all or substantially all of its assets, a merger, a change of control transaction, a business combination or other such similar transaction, whether by way of contract, operation of law or otherwise.
- 13.15 **Currency.** Unless expressly stated otherwise in this Agreement, Order or SOW, all amounts referred to in this Agreement are expressed in United States Dollars.
- 13.16 **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and both of which taken together shall constitute one and the same agreement, and each Party may deliver such executed counterpart electronically to the other Party.

[End of Master Services Agreement]

**SCHEDULE A TO MASTER SERVICES AGREEMENT
SOFTWARE SCHEDULE**

1. Incentive Compensation Management

All capitalized terms used but not defined in this Software Schedule shall have the meaning given in the Agreement. The following terms and conditions apply to the provision of the Software Services named “Incentives” (the “**Incentive Services**”).

1.1. Definitions. In this Section 1:

- (a) “**Active Payee**” means a Payee (a) whose information is being calculated, reported or administered by the Incentive Services; and (b) who is designated as “Active” in the “System Effective Dated Payee” table within the Incentive Services.
- (b) “**Add On**” means any additional Software Services that may be purchased by Customer as part of the Incentive Services and as are further described in Section 1.6 of this Software Schedule.
- (c) “**Administrative User**” means an Authorized User who (a) has been designated or permitted by Customer to create or administer incentive compensation plans on behalf of Customer or its Affiliates; or (b) accesses the Software Services through an administrative client.
- (d) “**AWS Hosted**” means Amazon Web Services is the hosting and cloud storage provider used for the Services.
- (e) “**Data Retention**” means the duration of time Customer Data will be retained by Varicent commencing from the date the specific Customer Data is uploaded to the Software Services.
- (f) “**Data Volume**” means the maximum number of Record Lines that may be processed by the Incentive Services within any Production Instance or Non-Production Instance during each calendar month.
- (g) “**IBM Hosted**” means International Business Machines is the hosting and cloud storage provider used for the Services.
- (h) “**Inactive Payee**” means a Payee who is designated as “Inactive” in the “System Effective Dated Payee” table within the Incentive Services.
- (i) “**Non-Production Instance**” means an instance of the Incentive Services that is configured to be used solely by Customer for non-production purposes such as: testing, performance tuning, fault diagnosis, benchmarking, staging, quality assurance and developing internally used additions or extensions for the Software Services using published application programming interfaces.
- (j) “**Package**” means any of the packages for Incentive Services described in Section 1.5 of this Software Schedule.
- (k) “**Payee**” means an individual person whose information has been submitted to the Software Services to enable Varicent to provide Incentive Services with respect to such individual person.
- (l) “**Production Instance**” means an instance of the Incentive Services that is configured to enable Customer to use Incentive Services and any Add Ons purchased.
- (m) “**Record Line**” means a single row of data from any chart uploaded to or processed by the Incentive Services. For clarity, any purged data that is then re-imported is considered a new Record Line.
- (n) “**Recovery Time Objective**” means the time by which Varicent will restore Customer’s access to the Software Services following the occurrence of a Force Majeure Event that causes the primary data centre hosting the Software Services to become unavailable.
- (o) “**Response Time Service Level Objectives**” means the applicable response times for a Support Ticket as further described in the Support Services Schedule.
- (p) “**Scenario Modeling Instance**” means a Non-Production Instance which is specially configured for scenario-modeling purposes.

1.2. Incentive Services. The Incentive Services automate the process of calculating, reporting and administering variable-based pay, such as sales commissions and bonus programs in a SaaS environment. The Fees for Incentive Services include:

- (a) One Administrative User licence for every 25 Payees (if AWS Hosted). Administrative Users can be used to build compensation plan logic, construct reports and configure aspects of the Incentive Services; and
- (b) A web portal through which sales representatives, operations staff and managers can obtain Documentation and Support Services, and perform certain functions through a web interface (for example, approving a compensation plan document).

1.3. Multi-Tenancy. Unless Customer has purchased the Single Tenancy Add On, Varicent shall establish a dedicated instance for the Incentive Services within a collection of individual databases that store data for Varicent’s other customers (the “**Relational Database System**”).

1.4. Fees for Incentive Services. Customer must purchase (a) a Package (if AWS hosted); and (b) Payees or Add Ons. The Package and number of Payees purchased will be specified in an Order. Customer or any Administrative User may replace an Inactive Payee with

an Active Payee at any time without having to purchase additional quantities; provided, the number of Active Payees at any time does not exceed the aggregate number of Active Payees purchased by Customer in an Order.

1.5. **Packages.** To receive Incentive Services, Customer must subscribe for one of the following Packages:

PACKAGES				
PACKAGE FEATURES	Growth (AWS Hosted)	Business (AWS Hosted)	Premier (AWS Hosted)	IBM Hosted
Included Administrative Users	1 for each 25 Payees			Not Included
Included Instances	1 Production Instance 1 Non-Production Instance	1 Production Instance 1 Non-Production Instance 1 Scenario Modeling Instance	1 Production Instance 2 Non-Production Instance 1 Scenario Modeling Instance	1 Production Instance 1 Non-Production Instance
Data Volume	1M	10M	25M	Not Included
Data Retention	5 Years	7 Years	7 Years	3 Years
Recovery Time Objective	5 days	24 hours	12 hours	14 days
Response Time Service Level Objectives				
Severities 1 - 4	Growth SLO	Business SLO	Premier SLO	Business SLO
Apply Advanced Analytics				
Varicent ELT	Not Included	Not Included	Included	Not Included

1.6. **Add Ons.** Customer may purchase any of the following Add Ons. Any purchased Add On will be specified in an Order.

- (a) **Additional Administrative Users.** This Add On provides one additional Administrative User in addition to the number of Administrative Users automatically allocated to Customer based on number of Payees.
- (b) **Additional Data Volume.** This Add On increases the Data Volume by an additional:
 - (i) AWS Hosted: five million Record Lines; or
 - (ii) IBM Hosted: one million Record Lines.
- (c) **Additional Non-Production Instance.** This Add On provides one additional Non-Production Instance in addition to the number of Non-Production Instances allocated to Customer based on the Package selected.
- (d) **Additional Production Instance.** This Add On provides one additional Production Instance in addition to the number of Production Instances allocated to Customer based on the Package selected.
- (e) **Data History Premium on Cloud.** This Add On provides:
 - (i) AWS Hosted: one additional year of Data Retention in addition to the Data Retention period applied based on the Package selected; or
 - (ii) IBM Hosted: up to four years of additional Data Retention in addition to the three-year Data Retention period included by default.
- (f) **Disaster Recovery.** This Add On reduces the Recovery Time Objective to:
 - (i) AWS Hosted: the period set out in an Order; or
 - (ii) IBM Hosted: five days.
- (g) **VIP Support.** This Add On provides any of the Enhanced Services (as defined in the Support Services Schedule) purchased by Customer.
- (h) **Non-Standard Payee.** Unless defined otherwise in an Order, this Add On is for an additional Payee who uses the Incentive Services solely for purposes other than to receive commission payments from Customer (such as view-only, bonus based variable compensation on a fixed time basis, management-based objectives or as otherwise described in an Order).

- (i) **Single Tenancy.** This Add On provides Customer with a dedicated database server to house the Relational Database System.
- (j) **Varicent AI.** This Add On is powered by Varicent's proprietary Symon.AI augmented intelligence solution. Varicent AI includes all the features included in ELT plus additional artificial intelligence tools for advanced analytics such as predictive analytics and forecasting. Customer shall be provided with five AI-specific Authorized User accounts to analyze Customer Data. The number of Varicent AI Payees purchased pursuant to this Add On must equal the total amount of Active Payees.
- (k) **Varicent Extract Load Transform ("ELT").** This Add On helps users connect and cleanse raw data from multiple sources and export to the Incentive Services or to a third party product. Customer shall be provided with five ELT-specific Authorized User accounts to analyze Customer Data. The number of ELT Payees purchased pursuant to this Add On must equal the total amount of Active Payees.

2. Sales Planning

The following terms and conditions apply the provision of the Software Services named "Sales Planning" (the "**SP Services**").

- 2.1. **SP Services.** The SP Services provides Customers with territory and quota planning tools to enable the efficient planning and organization of Customer's sales deployment models.
- 2.2. **Fees for SP Services.** The number of SP Payees purchased will be specified in an Order. For the purposes of this Section 2, a "**SP Payee**" means an individual who is tracked by Customer using the SP Services. A SP Payee may be, but is not required to be, designated as an Authorized User by Customer. Customer must purchase one SP Payee per individual person.
- 2.3. **Access and Use.** As part of the SP Services, Varicent shall provide Customer with:
 - (a) Accounts for each Authorized User designated by Customer in order to receive SP Services; and
 - (b) Two accounts for Symon.AI Administrative Users. For purposes of this Section 2, a "**Symon.AI Administrative User**" is an Authorized User who may use software features integrated into the SP Services named "Symon.AI" to assist with territory and quota planning. Such accounts shall only be available until the features of Symon.AI are integrated into the SP Services.
- 2.4. **Data Storage.** Any Customer Data that is exported from the SP Services to other Software Services shall be governed solely by the terms applicable to the Software Services then housing Customer Data.

3. Seller Insights

The following terms and conditions apply the provision of the Software Services named "Seller Insights" (the "**SI Services**").

- 3.1. **SI Services.** The SI Services provides the ability for Customer to plan and organize Customer's sales deployment models with Varicent's propriety augmented intelligence solution named "Symon.AI."
- 3.2. **Fees for SI Services.** The number of SI Payees purchased will be specified in an Order. For the purposes of this Section 3, a "**SI Payee**" means an individual who is tracked by Customer using the SI Services. A SI Payee may be, but is not required to be, designated as an Authorized User by Customer. Customer must purchase one SI Payee per individual person.

[End of Software Schedule]

**SCHEDULE B TO MASTER SERVICES AGREEMENT
SUPPORT SERVICES SCHEDULE**

1 Definitions

All capitalized terms used but not defined in this Support Services Schedule shall have the meaning given in the Agreement. In this Support Services Schedule:

- 1.1 “**Directed Hours**” has the meaning given in Section 5.1.1(a).
- 1.2 “**Enhanced Services**” has the meaning given in Section 5.1.
- 1.3 “**Initial Month**” means the Month in which the Schedule Effective Date occurs.
- 1.4 “**Maintenance**” means any upgrades, fixes, patches, amendments, changes, alterations, modifications or other improvements to the Software Services and made generally available to other customers of Varicent.
- 1.5 “**Quarter**” means each of the successive periods of three Months each, commencing on the Schedule Effective Date.
- 1.6 “**Schedule Effective Date**” means the date in which Customer first accesses the Software Services pursuant to the Agreement.
- 1.7 “**Service Availability**” means the uptime of the Software Services and is measured by subtracting from total minutes in a Month, the total minutes of Service Interruption in such Month commencing from the time Varicent receives a Support Ticket from Customer notifying Varicent of the Service Interruption, divided by the total minutes in such Month, and then multiplied by 100.
- 1.8 “**Service Credit**” has the meaning given in Section 2.1.
- 1.9 “**Service Interruption**” means the period of time that the Software Services is either: (a) not available for Customer login; or (b) substantially not functioning, but excludes any downtime resulting from any (i) Maintenance; (ii) failures caused by any act or omission of Customer, its Affiliates or Authorized Users; or (iii) outages of third party data sources, connections, utilities or services or other reasons beyond Varicent’s control.
- 1.10 “**Severity Level**” has the meaning given in Section 3.1.
- 1.11 “**Standard**” has the meaning given in Section 2.1.
- 1.12 “**Support Service Hours**” means 9:00am-5:00pm Monday-Friday in Customer’s domicile as set out in the applicable Order.
- 1.13 “**Support Ticket**” means any request for Support Services, or notification of any Service Interruption, submitted to Varicent’s support ticketing system.
- 1.14 “**TAM**” the technical account manager assigned by Varicent to provide any Enhanced Services.
- 1.15 “**Technical Support**” has the meaning given in Section 3.1.

2 Availability Standard

2.1 Following the Initial Month, Varicent will use commercially reasonable efforts to ensure the Service Availability for the Software Services during any Month shall be at least 99.9% (the “**Standard**”). If Varicent does not meet the Standard in any Month (other than the Initial Month), Varicent shall apply a credit (a “**Service Credit**”) for the portion of Fees for Software Services attributable to such Month on a pro-rated basis, as follows:

Service Availability	Service Credit
Less than 99.9% to greater than or equal to 99%	2%
Less than 99% to greater than or equal to 95%	5%
Less than 95%	10%

For example, if annual Fees for Software Services equals \$200,000 and in the Month of June there are 600 minutes of Service Interruption, the Service Credit applicable shall be calculated as follows:

- $(43,200 \text{ [total minutes in a 30 day month]} - 600 \text{ [Service Interruption]}) / 43,200 = 0.986$ [Service Availability for the Month is 98.6%]
- $\$200,000 / 12 \text{ months} = \text{Monthly Fees of } \$16,666.66$
- Service Credit applicable is $\$833.33$ (5% of $\$16,666.66$)

2.2 Despite Section 2.1, to be eligible to receive a Service Credit, Customer must submit a Support Ticket for failure to meet the Standard within three business days following the end of the Month in which the Service Interruption occurred. Any Service Credits incurred shall be applied to the next invoice for Software Services issued to Customer. Service Credits may not be exchanged for, or converted to, monetary amounts. This Section 2 states Customer’s sole and exclusive remedy for any failure by Varicent to meet the Standard.

3 Technical Support

3.1 Varicent will provide technical support and troubleshooting assistance (“**Technical Support**”) during the Support Service Hours. Requests for Technical Support must be submitted by Customer by issuing a Support Ticket to Varicent. Customer will be required to assign a severity level (a “**Severity Level**”) for each Support Ticket based on the following guidelines. Varicent will endeavor to respond to a Support Ticket during Support Service Hours in accordance with the following response time targets

Severity Level	Severity Description	ICM Only			Response Time Coverage
		Growth SLO	Business SLO	Premier SLO	
1	Critical business impact/service down: A Service Interruption to the Software Services or all critical features and functionality of the Software Services are not functioning.	Within 1 Hour	Within 45 Minutes	Within 30 Minutes	24x7x365
2	Significant business impact: A feature or function of the Software Services is severely restricted in its use, resulting in a significant impact on Customer’s business operations. Customer is in jeopardy of missing business deadlines.	Within 90 Minutes	Within 1 hour	Within 45 Minutes	24x7x365
3	Minor business impact: A feature or function of the Software Services is not performing in accordance with the Documentation but does not result in a critical impact on Customer’s business operations.	Within 2 hours during the Support Service Hours	Within 90 Minutes during the Support Service Hours	Within 1 hour during the Support Service Hours	During Support Service Hours
4	Minimal business impact: An inquiry or non-technical request.	Within 3 hours during the Support Service Hours	Within 3 hours during the Support Service Hours	Within 2 hours during the Support Service Hours	During Support Service Hours

3.2 Despite any other term in this Support Services Schedule, Varicent shall have no obligation to provide Support Services to address any issues caused by factors outside of Varicent’s direct control, such as (a) Customer’s equipment, software or other technology or a third party’s equipment, software or other technology; (b) failure to access the Software Services in accordance with the Documentation; or (c) alterations to the Software Services by Customer.

4 Requesting Support

- 4.1 To obtain Support Services, Customer must submit a Support Ticket. Varicent shall assign a unique case number to each Support Ticket.
- 4.2 If submitting a Support Ticket of Severity Level one, Customer must also (a) set the Severity Level on the Support Ticket to state: “Sev 1 – Critical Impact/Service Down;” or (b) email support@varicent.com and state “Sev1” in the subject line, failing which the Support Ticket shall not be considered a Severity Level one Support Ticket.
- 4.3 To speak directly with a member of Varicent’s Support Services team, Customer shall must email to support@varicent.com and state “call me” in the subject line and a member of Varicent’s Support Services team shall promptly respond.
- 4.4 Customer shall cooperate with Varicent in good faith to enable Varicent’s provision of the Support Services including providing Varicent with timely access to Customer’s instances, sending system data to Varicent and providing any other additional information reasonably required by Varicent to provide the Support Services.

5 Enhanced Support

5.1 Customer may purchase enhanced support Services (“**Enhanced Services**”) for additional Fees. The various levels of Enhanced Services available are described below and, if ordered, will be specified in an Order.

5.1.1 Enhanced VIP Support. Enhanced VIP Support includes the following:

- (a) Varicent shall assign a TAM who shall analyze and review with Customer each Month the performance, platform metrics, usage reporting and support ticket management relating to the Software Services;
- (b) The TAM shall review with Customer each Quarter the impact and potential optimization of new features and bug fixes of the Software Services in an account-specific manner. Varicent shall share product roadmaps so that decisions regarding upgrades and migration plans can be made by Customer in a forward-thinking manner. As appropriate, the TAM shall internally advocate for product features which may benefit Customer’s organization. The TAM may also assist with data model modernization initiatives. Enhanced VIP Support includes 80 hours of such initiatives each Quarter (“**Directed Hours**”). Directed Hours expire at the end of

each Quarter; however, Customer may transfer up to ten percent of any unused Directed Hours to the next Quarter;

- (c) The TAM shall support Customer from an administrative and maintenance perspective by providing annual insights regarding model clean-up and organization, change management and process improvements. Customer shall also receive a holistic Software Services performance assessment touching on model performance, areas of improvement for calculation time and scalability of product adoption; and
- (d) The TAM shall help Customer enable established product and architecture best practices, provide ad hoc guidance with respect to new product functionality and review designs for Customer's proposed model changes. Upon request the TAM may also act as a general liaison and assist with issue investigation, root cause analysis and resolution.

5.1.2 **Elite VIP Support.** Elite VIP Support includes (a) Enhanced VIP Support; plus (b) such number of total Directed Hours as expressly specified in an Order.

[End of Support Services Schedule]

SCHEDULE C TO MASTER SERVICES AGREEMENT
PROFESSIONAL SERVICES SCHEDULE

1 PROFESSIONAL SERVICES

- 1.1 Varicent shall provide the Professional Services in accordance with the Agreement and the applicable SOW. Varicent shall have no obligation to perform any Professional Services not reflected in a SOW or any agreed upon by the Parties in a Change Order (defined below). Customer agrees that Varicent may engage its Affiliates to perform the Professional Services, as well as any third-party subcontractors outlined in a SOW.
- 1.2 Each Party shall appoint a project manager (collectively, the “**Project Managers**”) to coordinate among the Parties all aspects of the provision of Professional Services.
- 1.3 Varicent shall use reasonable efforts to complete each element of the Professional Services by the applicable deadline specified in the SOW. In the event Varicent is delayed in completing any part of the Professional Services due to an act, omission or breach of the Agreement by Customer or for reasons within Customer’s control (each a “**Customer Delay**”), the Parties shall prepare a Change Order to amend the SOW to (a) adjust any timelines affected by Customer Delay; and (b) cause Customer to compensate Varicent for any damages, losses, liabilities, costs, fees and expenses sustained by Varicent as a result of Customer Delay.

2 DELIVERABLES

- 2.1 The SOW sets out the output of the Professional Services (the “**Deliverables**”) to be provided by Varicent. Unless expressly stated otherwise in the SOW, the Deliverables shall be deemed accepted by Customer within 5 business days after receipt by Customer.
- 2.2 Varicent’s obligations under a SOW shall be deemed fulfilled upon the first of the following to occur: (a) all Deliverables are delivered to, and (if applicable) accepted by, Customer; (b) Varicent exhausts the estimated hours for Professional Services as stated in the SOW; and (c) the SOW is terminated or expires in accordance with its terms.
- 2.3 If prior to acceptance by Customer any part of the Deliverables is found to contain an error, deficiency or other failure to perform in accordance with the Agreement, Varicent will: (a) as soon as reasonably possible following the date on which Varicent becomes aware of such error, deficiency or other failure to perform and, in any event, no later than five business days following such date, deliver to Customer a corrective action plan that will be subject to approval by Customer; (b) after receipt of Customer’s approval, execute the plan in accordance with its terms; and (c) this process shall be repeated until the Deliverable is accepted by Customer.
- 2.4 Unless otherwise expressly stated in the SOW (a) all right, title and interest in the Deliverables (including all intellectual property and other proprietary rights in the Deliverables) is owned by Varicent and its third-party licensors (as applicable); and (b) nothing in this Professional Services Schedule shall assign, transfer or convey to Customer any title, rights or interest to any intellectual property (including in the Documentation).
- 2.5 Notwithstanding Section 2.4, Varicent grants to Customer a limited, non-transferable, non-exclusive, worldwide, fully paid up and royalty-free license to use the Deliverables for Customer’s internal business purposes in connection with Customer’s access and use of the Services for the duration of the applicable Order term.

3 PREMISES

- 3.1 If any Professional Services are to be provided at Customer’s premises: (a) Customer shall provide Varicent with access during Customer’s regular business hours to Customer’s premises; (b) Varicent shall cause its employees and contractors who are providing Professional Services at Customer’s premises to comply with any reasonable safety, security and technology policies of Customer which have been provided to Varicent prior to the commencement of the applicable SOW; and (c) Customer shall provide Varicent with access to Customer’s personnel, hardware, software, systems, equipment and technologies to the extent reasonably required by Varicent in order for Varicent to provide the Professional Services.

4 CHANGE REQUEST PROCEDURE

- 4.1 If a Party wishes to make a change to a SOW (a “**Change**”), such Party shall contact the other Party’s Project Manager in writing and provide details of the nature and reasons for the proposed Change (each a “**Change Request**”). Following receipt of a Change Request, the Parties shall enter good faith negotiations with respect of the terms and conditions pursuant to which the Change may be implemented (including scope, Fees and timing). Fees for any additional Professional Services shall be based upon Varicent’s then current standard rates unless otherwise agreed upon by the Parties in writing. If a Change is agreed upon by the Parties, Varicent shall prepare a change order (“**Change Order**”) to reflect the agreed upon terms of the Change. Once the Change Order is accepted by the Parties, the Parties shall implement the Change as reflected in the Change Order and the Change Order will be deemed to amend the SOW.

[End of Professional Services Schedule]

SCHEDULE D TO MASTER SERVICES AGREEMENT**AI SCHEDULE****1. DEFINITIONS**

- 1.1. Capitalized terms used in this AI Schedule but not defined shall have the meanings given to such terms in the Agreement. In this AI Schedule:
- (a) “**AI**” means artificial intelligence.
 - (b) “**AI Provider**” means OpenAI LLC.
 - (c) “**AI Provider Policies**” means AI Provider’s usage policies found here (<https://openai.com/policies/usage-policies>), and any future guidelines or policies AI Provider may provide in writing.
 - (d) “**AI Provider Subprocessors**” means the entities identified here: <https://platform.openai.com/subprocessors>.
 - (e) “**Enhanced AI Features**” means any Software Services which utilize data models that are trained by machine learning and AI tools from the AI Provider.
 - (f) “**Input Content**” means any prompts input by Customer to the Enhanced AI Features as well as any Customer Data reasonably required to supplement the prompt with additional context.
 - (g) “**Notice Period**” has the meaning given in Section 2.3 of this AI Schedule.
 - (h) “**Output Content**” means any data or content output to Customer by the Enhanced AI Features.
 - (i) “**Personal Data**” has the meaning outlined in the Agreement or the meaning associated with its equivalent term in the Agreement such as but not limited to “Personal Information”.
 - (j) “**Protected Health Information**” has the meaning defined under the Health Insurance Portability and Accountability Act (1996) Privacy Rule (45 C.F.R. Section 160.103).
 - (k) “**Statistical Data**” means any data related to the provision, operation or use of the Software Services, including measurement and usage statistics, configurations, survey responses, and performance results.

2. USE OF ENHANCED AI FEATURES

- 2.1. **Changes and Availability.** Without liability and in its discretion, Varicent may: (a) modify the Enhanced AI Features from time to time; and (b) suspend or discontinue the availability of Enhanced AI Features upon providing written notice to Customer, which may be made by way of e-mail or a notification within the applicable Software Services product. Any termination or suspension of Enhanced AI Features does not entitle Customer to any reduction, refund or credit of Fees.
- 2.2. **Use of Enhanced AI Features.** Customer may provide Input Content to be processed by Enhanced AI Features and receive Output Content. Customer acknowledges that Output Content may not be unique, and Enhanced AI Features may generate the same or similar Output Content for Varicent’s other customers. Customer will not use Enhanced AI Features: (a) to develop data sets, foundation models, or other large scale models that may compete with Varicent or the AI Provider; (b) to mislead any person or imply that Output Content generated using Enhanced AI Features is unique or solely human generated; or (c) in any manner which violates the Agreement.
- 2.3. **Data Processing.** Varicent uses the AI Provider to host and provide the Enhanced AI Features and Customer’s agreement to abide by third-party terms and conditions is required to access the Enhanced AI Features. Customer therefore agrees that:
- (a) Input Content will be processed by the AI Provider and AI Provider Subprocessors from their associated countries;
 - (b) Enhanced AI Features are only subject to SOC2 certification and the security measures included in its data processing addendum found here: <https://openai.com/policies/data-processing-addendum>;
 - (c) Customer will abide by the AI Provider Policies and only use the Enhanced AI Features from AI Provider;
 - (d) The Enhanced AI Features do not require Personal Data to function. If Input Data includes Personal Data, Customer represents that it is processing such information in accordance with applicable Law. Customer agrees not to use the Enhanced AI Features to transmit or otherwise process Protected Health Information;
 - (e) Varicent shall notify Customer in advance of any addition or replacement of AI Provider or AI Provider Subprocessors. Within five days after Varicent’s notification of an intended change (“**Notice Period**”), Customer can object to the addition of such subprocessor on the basis that such addition would cause Customer to violate applicable Law. Customer’s objection shall be in writing and include Customer’s specific reasons for its objection and options to mitigate, if any. If Customer does not object within the Notice Period, the respective subprocessor may be commissioned to process Input Data. If Customer objects within the Notice Period and Varicent is unable to accommodate Customer’s concern, Customer shall immediately cease using the Enhanced AI Features. Customer’s further use of the Enhanced AI Features shall signify Customer’s consent to the processing of Input Data by the then-current subprocessors.
- 2.4. **Intellectual Property.** All right, title, and interest in the Output Content (other than Statistical Data) (including all intellectual property) is owned by Customer. All right, title, and interest in the Enhanced AI Features and Statistical Data (including all intellectual property) is owned by Varicent. Varicent reserves all rights not expressly granted to Customer in this AI Schedule. Customer grants to Varicent a non-exclusive, worldwide, fully paid up and royalty-free license to use and reproduce the Output Content for the for the purpose of providing, enhancing, developing, diagnosing and correcting the Services.
- 2.5. **Changes.** Customer acknowledges and agrees that Varicent may, at Varicent’s discretion and without notice to Customer, modify this AI Schedule from time to time; provided, however any such modifications shall (a) replace all prior versions (as applicable); and (b) not materially reduce the service levels, functionality or security of the Services.

2.6. **Paramountcy.** Unless otherwise expressly stated in the Agreement, in the event of any conflict or inconsistency between the Agreement and this AI Schedule, the terms of the AI Schedule shall prevail.

3. **RISKS AND LIMITATIONS**

3.1. **General.** AI and machine learning technologies have known and unknown risks and limitations. Customer acknowledges and agrees that it is solely responsible for developing its own internal policies and controls regarding the use of these technologies. Customer acknowledges and agrees:

- (a) Varicent is not responsible for any inaccuracies or errors in the Output Content;
- (b) Output Content may not be unique and the Enhanced AI Features may generate the same or similar output for Varicent, other users or third parties;
- (c) Varicent is not responsible for any biases or limitations of the underlying algorithms or data in Enhanced AI Features;
- (d) Customer is solely responsible for responding to any third-party claims it receives regarding Customer's use of the Enhanced AI Features;
- (e) Enhanced AI Features are an optional feature of the Cloud Service and Customer is free to stop using the Enhanced AI Features at any time;

3.2. **Disclaimer.** The Enhanced AI Features are provided on an "as is" basis. Varicent does not make any warranty regarding the Output Content or the accuracy or suitability of the Output Content. Customer acknowledges and agrees that any Output Content is to be relied upon by Customer at Customer's sole risk. Varicent disclaims all liability arising from Customer's use and reliance upon any Output Content.

3.3. **Content.** The Enhanced AI Features rely on models and service arrangements provided by third parties. Those third parties may temporarily store Input Content and Output Content solely for providing Customer the Enhanced AI Features, complying with applicable Law, and enforcing AI Provider Policies, which may include debugging and monitoring for and preventing abusive or harmful uses or outputs of the Enhanced AI Features. Authorised personnel at those third parties may review Input Content and Output Content that triggered their automated systems to investigate and verify potential abuse.

3.4. **Service Levels Not Applicable.** Customer acknowledges and agrees that any Downtime of the Enhanced AI Features caused by any act or omission of the AI Provider or Customer shall be excluded from the calculation of Downtime.

[End of AI Schedule]

**SCHEDULE E TO MASTER SERVICES AGREEMENT
DATA PROCESSING ADDENDUM****1 Definitions**

All capitalized terms used but not defined in this DPA shall have the meaning given in the Agreement. In this DPA:

- 1.1 **“Authorized Persons”** means the persons that Varicent authorizes to Process Customer Personal Information, including Varicent’s employees, contractors, agents and Sub-Processors.
- 1.2 **“Controller”** means the individual or entity that determines the purposes and means of the Processing of Personal Information.
- 1.3 **“Customer Personal Information”** means any Customer Data that includes Personal Information that is subject to Data Protection Laws.
- 1.4 **“Data Exporter”** has the meaning given to such term in Section 7.1 of this DPA.
- 1.5 **“Data Importer”** has the meaning given to such term in Section 7.1 of this DPA.
- 1.6 **“Data Protection Laws”** means all applicable laws relating to the privacy or security of Personal Information, including (as applicable): (a) European Data Protection Laws; (b) United States Data Protection Laws; and (c) the Canada Personal Information Protection and Electronics Documents Act (“**PIPEDA**”).
- 1.7 **“Data Subject”** means the identified or identifiable natural person who is the subject of Personal Information.
- 1.8 **“European Data Protection Laws”** means, in each case to the extent applicable to the relevant Customer Personal Information or Processing thereof under the Agreement (a) the EU General Data Protection Regulation 2016/679 (“**GDPR**”); (b) the GDPR as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (“**UK GDPR**”), the Data Protection Act of 2018, and all other laws relating to data protection, the processing of Personal Information, privacy, or electronic communications in force from time to time in the United Kingdom (collectively, “**UK Data Protection Laws**”); (c) the Swiss Federal Act on Data Protection (“**FADP**”); and (d) any other applicable law, rule, or regulation related to the protection of Personal Information in the European Economic Area, United Kingdom, or Switzerland that is already in force or that will come into force during the term of this DPA.
- 1.9 **“Mandated Auditor”** has the meaning given to such term in Section 6.1 of this DPA.
- 1.10 **“Personal Information”** means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household, including any information that is defined as “personally identifiable information,” “personal information,” “personal data” or other similar term under Data Protection Laws.
- 1.11 **“Process”** means any operation or set of operations performed upon Personal Information, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation, alteration, retrieval, consultation, use, alignment, combination, restriction, erasure, destruction or disclosure by transmission, dissemination or otherwise making available.
- 1.12 **“Processor”** means the individual or entity that Processes Personal Information on behalf of a Controller.
- 1.13 **“Security Incident”** means a breach of Varicent’s Technical and Organizational Measures that leads to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Personal Information in Varicent’s possession, custody, or control. Security Incidents do not include unsuccessful attempts or activities that do not compromise the security of Customer Personal Information, including unsuccessful log-in attempts, pings, port scans, denial of service attacks or other network attacks on firewalls or networked systems.
- 1.14 **“Sell”** has the meaning given to such term in the CCPA/CPRA.
- 1.15 **“Sensitive Personal Information”** means any Personal Information that due to the nature of the Personal Information is considered sensitive, including but not limited to health information, banking information, financial information, social security numbers, government identification numbers, payment card data, or as otherwise similarly defined in applicable Data Protection Laws.
- 1.16 **“Share”** has the meaning given to such term in the CCPA/CPRA.
- 1.17 **“Standard Contractual Clauses”** means the European Commission’s decision (C(2021)3972) of 4 June 2021 on Standard Contractual Clauses (Module Two: Controller to Processor or Module Three: Processor to Processor, as applicable) for the transfer of Personal Information to third countries pursuant to Regulation (EU) 2016/678 (available at: https://eur-lex.europa.eu/eli/dec_impl/2021/914/oj?uri=CELEX:32021D0914&locale=en), which are incorporated into this DPA by reference.
- 1.18 **“Sub-processor”** means any Processor appointed by Varicent to Process Customer Personal Information on behalf of Customer under the Agreement.
- 1.19 **“Sub-processor List”** has the meaning given to such term in Section 4.1 of this DPA.
- 1.20 **“Supervisory Authority”** means an independent competent public authority established or recognized under Data Protection Laws.
- 1.21 **“Technical and Organizational Measures”** means the measures set out in Appendix 1 attached to this to this DPA, and any additional measures expressly set out in this DPA.

- 1.22 “**United States Data Protection Laws**” means, in each case to the extent applicable to the relevant Customer Personal Information or Processing thereof under the Agreement (a) the California Consumer Privacy Act of 2018 (“**CCPA**”), as amended by the California Privacy Rights Act of 2020 (“**CPRA**”), when effective (collectively, “**CCPA/CPRA**”); (b) the Virginia Consumer Data Protection Act (“**VCPDA**”), when effective; (c) the Colorado Privacy Act (“**CPA**”), when effective; (d) the Utah Consumer Privacy Act (“**UCPA**”), when effective; (e) any regulation, guideline, or opinion issued by a competent authority concerning the laws identified in the foregoing subparts (a) – (d) above; and (f) any other applicable law, rule, or regulation related to the protection of Personal Information in the United States that is already in force or that will come into force during the term of this DPA.

2 Protection of Customer Personal Information

- 2.1 To the extent that Varicent Processes any Customer Personal Information, Varicent shall Process Customer Personal Information in accordance with the measures set out in Appendix 1 and implement the Technical and Organizational Measures to protect Customer Personal Information from a Security Incident.
- 2.2 The categories of Customer Personal Information to be Processed by Varicent, the Processing activities to be performed under the Agreement and the duration of the Processing are set out in Appendix 2 attached to this DPA.

3 Customer Obligations

- 3.1 Customer shall be responsible for (a) giving adequate notice and making all appropriate disclosures to Data Subjects regarding Customer’s use and disclosure and Varicent’s Processing of Customer Personal Information; and (b) obtaining all necessary rights, and, where applicable, all appropriate and valid consents to disclose such Customer Personal Information to Varicent and to permit the Processing of such Customer Personal Information for the Permitted Purpose or as may be required by Data Protection Laws. Customer shall notify Varicent of any changes in, or revocation of, the permission to use, disclose or otherwise Process Customer Personal Information that would impact Varicent’s ability to comply with the Agreement or Data Protection Laws.
- 3.2 Customer acknowledges that Customer (a) is the Controller of any Customer Personal Information that Varicent Processes on behalf of Customer; and (b) sets permissions for Authorized Users to access Customer Personal Information. Customer is responsible for reviewing and evaluating whether the documented functionality of the Software Services meets Customer’s required security obligations relating to Customer Personal Information under Data Protection Laws.

4 Sub-processors

- 4.1 **Use of Subprocessors.** Varicent may engage Sub-processors in connection with the provision of the Software Services; provided, that: (a) Varicent has entered into a written agreement with each Sub-processor containing data protection obligations no less protective than those in this DPA with respect to the protection of Customer Personal Information to the extent applicable to the nature of the Software Services provided by such Sub-processor; and (b) Varicent shall be liable for the acts and omissions of its Sub-processors to the same extent Varicent would be liable if performing the Software Services of each Sub-processor directly under the terms of this DPA.
- 4.2 **List of Subprocessors.** Varicent’s current list of Sub-processors for the Services is available at <https://www.varicent.com/hubfs/Varicent-Subprocessor-List-2024.01.29.pdf> (the “**Sub-processor List**”), which Customer approves and authorizes and is incorporated by reference into this Agreement.
- 4.3 **Addition of Sub-processors.** Varicent may engage additional Sub-processors as Varicent considers reasonably appropriate for the processing of Customer Personal Information in accordance with this DPA; provided, that Varicent notifies Customer of the addition or replacement of Sub-processors by making modifications to the Sub-processor List. Customer shall be responsible for periodically checking the Sub-processor List to remain informed of Varicent’s current list of Sub-processors. Customer may, on reasonable grounds, object to a new Sub-processor by notifying Varicent in writing within 10 days of Varicent updating the Sub-processor List and giving reasons for the objection. Customer’s failure to object within such 10-day period shall be deemed a waiver of Customer’s right to object to Varicent’s use of such new Sub-processor added to the Sub-processor List. In the event Customer reasonably objects to a new Sub-processor, Varicent will use reasonable efforts to make available to Customer a change in the Software Services or recommend a commercially reasonable change to Customer’s configuration or use of the Software Services to avoid Processing of Customer Personal Information by the objected to new Sub-processor without unreasonably burdening Customer. If Varicent is unable to make available such change within a reasonable period of time (which shall not exceed 30 days), Customer may, as Customer’s sole and exclusive remedy, terminate the portion of the Agreement with respect only to the portion of the Software Services which cannot be provided by Varicent without the use of the objected to new Sub-processor by providing written notice to Varicent.

5 Certification Standards

- 5.1 The Software Services are compliant with the following standards:
- (a) ISO 27001;
 - (b) SOC 2; and
 - (c) SOC 1 (applies to Incentive Services only, does not include any Add Ons (as such terms are defined in the Software Schedule)).

- 5.2 Upon request in writing, Varicent shall provide Customer with evidence of compliance with the standards described in Section 5.1 and any other industry standards expressly described in this Agreement.

6 Records and Audit Rights

- 6.1 Varicent shall make available to Customer on request all information reasonably necessary to demonstrate compliance with this DPA and allow for and contribute to audits, including inspections by Customer or an auditor mandated by Customer, not being competitors of Varicent (“**Mandated Auditor**”) of any of Varicent’s premises where the Processing of Customer Personal Information takes place in order to assess compliance with this DPA. Varicent shall provide reasonable cooperation to Customer in respect of any such audit and shall, at the request of Customer, provide Customer with relevant records of compliance with its obligations under this DPA. Varicent shall promptly inform Customer if, in its opinion, a request infringes the Data Protection Laws or any other confidentially obligations with Varicent’s other customers. Customer agrees that (a) audits may only occur during normal business hours and, where possible, only after reasonable notice to Varicent (not less than 20 days’ advance written notice); (b) audits will be conducted in a manner that does not have any adverse impact on Varicent’s normal business operations; (c) Customer or Mandated Auditor will comply with Varicent’s standard safety, confidentiality and security procedures in conducting any such audits; and (d) any records, data or information accessed by Customer or Mandated Auditor in the performance of any such audit will be deemed to be the Confidential Information of Varicent. To the extent any such audit incurs in excess of 10 hours of Varicent’s personnel time, Varicent may charge Customer on a time and materials basis for any such excess hours.

7 Standard Contractual Clauses

- 7.1 If Customer transfers Customer Personal Information to Varicent that is subject to European Data Protection Laws, and such transfer is not subject to an alternative adequate transfer mechanism under European Data Protection Laws or otherwise exempt from cross-border transfer restrictions, then Customer (the “**Data Exporter**”) and Varicent (the “**Data Importer**”) agree that the applicable terms of the Standard Contractual Clauses shall apply to and govern such transfer and are incorporated by reference into this DPA. The Standard Contractual Clauses shall automatically terminate once Customer Personal Information transfer governed by the Standard Contractual Clauses becomes lawful under European Data Protection Laws in the absence of such Standard Contractual Clauses on any other basis. In accordance with Clause 2 of the Standard Contractual Clauses, the Parties wish to supplement the Standard Contractual Clauses with business-related clauses, which shall neither be interpreted nor applied in such a way as to contradict the Standard Contractual Clauses (whether directly or indirectly) or to prejudice the fundamental rights and freedoms of any Data Subjects. Varicent and Customer accordingly agree that the applicable terms of the Agreement and this DPA shall apply if, and to the extent they are permitted under the Standard Contractual Clauses, the following clarifications to the Standard Contractual Clauses:

- (a) **Module.** Module Two terms apply to the extent Customer is a Controller of European Personal Information and Module Three applies to the extent Customer is a Processor of European Personal Information.
- (b) **Docking Clause.** The Parties agree Section 7 shall not apply to this Agreement.
- (c) **Instructions.** For the purposes of clause 8.1(a) of Module 3, Customer’s complete and final instructions to Process Personal Information are set out in the Agreement and this DPA. Any additional or alternate instructions must be consistent with the terms of this Agreement;
- (d) **Copies of Clauses.** In the event a Data Subject requests a copy of the Standard Contractual Clauses or this DPA in accordance with clause 8.3, the Data Exporter shall make all redactions reasonably necessary to protect business secrets or other confidential information of Data Importer.
- (e) **Certification of Deletion.** Certification of deletion of Customer Personal Information under clause 8.5 and clause 16(d) shall be provided upon the written request of the Data Exporter.
- (f) **Security of Processing.** For the purposes of clause 8.6(a), Customer agrees that the Technical and Organizational Measures set forth in this DPA provide a level of security appropriate to the risk with respect to Personal Information. For the purposes of clause 8.6(c) and (d) of Module 3, Personal Information breaches will be handled in accordance with this DPA, and breach notifications shall only be sent to Customer.
- (g) **Onward Transfer Implementation.** The Data Importer shall be deemed in compliance with clause 8.8 to the extent such onward transfers occur in accordance with Article 4 of the Commission Implementing Decision (EU) 2021/914 of 4 June 2021.
- (h) **Audits and Certifications.** Any information requests or audits provided for in clause 8.9 of Module 3 shall be fulfilled in accordance with Sections 5 and 6 of this DPA.
- (i) **Engagement of New Sub-processors.** Pursuant to clause 9(a) Option 2, the Data Exporter acknowledges and expressly agrees that the Data Importer may engage new Sub-processors as described in Section 4 of this DPA. With respect to clause 9, the Parties select the time period set forth in Section 4 of this DPA.
- (j) **Data Subject Rights.** For the purpose of clause 10 of Module 3, Data Subject requests and related assistance shall be handled in accordance with Section 9 of Appendix 1 of this DPA with respect to Module 3, Varicent shall be required to communicate requests only to Customer;
- (k) **Complaints.** The optional language under clause 11 is not applicable.
- (l) **Liability.** The relevant Sections of the Agreement which govern indemnification and limitations of liability, shall apply to the Data Importer’s liability under clause 12.
- (m) **Supervisory Authority.** For purposes of clause 13, the following shall apply:
 - a. **EU Member State.** If Customer is established in an EU Member State, the supervisory authority responsible for compliance by Data Protection Laws shall be the relevant supervisory authority;

- b. **United Kingdom.** If Customer is established in the United Kingdom, the United Kingdom's Information Commissioner's Office shall be the relevant supervisory authority; or
- c. **Switzerland.** If Customer is established in Switzerland, the Swiss Federal Data Protection and Information Commissioner shall be the relevant supervisory authority.
- (n) **Notification of Government Access Requests.** For the purpose of clause 15(1), Varicent shall provide notification to Customer only and not individual Data Subjects;
- (o) **Governing Law.** For the purposes of clause 17, the Parties select the laws of the governing jurisdiction of the Agreement. If the Agreement is not governed by EU law, the SCCs will be governed by the laws of Ireland, or where the Agreement is governed by the laws and courts of the United Kingdom, the laws of the England and Wales;
- (p) **Choice of Forum and Jurisdiction.** For the purposes of clause 18, the Parties agree that any dispute arising from the Standard Contractual Clauses shall be resolved by the courts of Ireland, or where the Agreement is governed by the laws and courts of the United Kingdom, the laws of the England and Wales;
- (q) **Annexes.** The Annexes of the Standard Contractual Clauses are populated as follows:
 - a. Annex I.A is populated with the details as outlined in Section 1 of Appendix 2 of this DPA.
 - b. Annex I.B is populated with the details in Appendix 2 of this DPA.
 - c. Annex I.C is determined in accordance with Subsection (m) of this Section 7.
 - d. Annex II is populated with the Technical and Organizational Measures of this DPA
- (r) **Transfers from the UK.**
 - a. If Customer transfers Customer Personal Information to Varicent that is subject to UK Data Protection Laws, the Parties are deemed to enter into the addendum issued by the UK Information Commissioner and approved by the UK Parliament (available at: <https://ico.org.uk/media/for-organisations/documents/4019539/international-data-transfer-addendum.pdf>) (the "UK Addendum").
 - b. Tables 1 to 3 of the UK Addendum are populated with the details as outlined in Appendix 2 of this DPA, and elsewhere in this DPA as applicable. Table 2 of the UK Addendum is populated with the Standard Contractual Clause details outlined in this Section 7.
 - c. Neither party may end the UK Addendum without the other Party's written permission.
 - d. References in the Standard Contractual Clauses to GDPR or EU or Member State Law shall have the same meaning as the equivalent reference in UK Data Protection Laws.
- (s) **Transfers from Switzerland.**
 - a. If Customer transfers Customer Personal Information to Varicent that is subject to the FADP, the Standard Contractual Clauses shall apply to such transfers.
 - b. References in the Standard Contractual Clauses to GDPR or EU or Member State Law shall have the same meaning as the equivalent reference in Swiss Data Protection Laws.

8 **General**

- 8.1 **Execution.** Execution by the Parties of an Order or the Agreement incorporating by reference this DPA shall be deemed to constitute signature and acceptance of this DPA and the Standard Contractual Clauses (as applicable).
- 8.2 **Contracting Entity and Governing Law.** Unless prohibited by Data Protection Laws, this DPA is governed by the same laws governing the Agreement. The courts that have exclusive jurisdiction over this DPA shall be the same courts that have exclusive jurisdiction over the Agreement.
- 8.3 **Survival.** Any obligation imposed on Varicent under this DPA in relation to the Processing of Personal Information shall survive any termination or expiration of this DPA shall survive the termination or expiration of this Agreement.
- 8.4 **Further Assurance.** The Parties agree from time to time to execute such further agreements or other documents, and do all such other acts and things as may be necessary or desirable, to give effect to the terms of this DPA.
- 8.5 **Entire Agreement and Paramountcy.** This DPA constitutes the entire agreement between the Parties regarding the subject matter of this DPA and supersedes all prior agreements, proposals, understandings, letters of intent, negotiations and discussions between the Parties, whether oral or written, regarding the subject matter of this DPA. The provisions of this DPA regarding the protection of Personal Information under Data Protection Laws shall prevail over any conflict or inconsistency with the terms of the Agreement. Each Party's liability and remedies under this DPA are subject to the aggregate liability limitations set out in the Agreement.
- 8.6 **Amendments and Waiver.** No amendment or waiver of any provision of this DPA shall be binding on any Party unless consented to in writing by such Party. No waiver of any provision of this DPA shall constitute a waiver of any other provisions, nor shall any waiver constitute a continuing waiver, unless otherwise expressly stated in a waiver.
- 8.7 **Severability.** If any provision of this DPA is held by a court of competent jurisdiction to be contrary to applicable laws, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by applicable laws and the remaining provisions shall remain in effect.

[End of DPA]

APPENDIX 1 TO DPA
TECHNICAL AND ORGANIZATIONAL MEASURES

1 Information Security Policy

- 1.1 Varicent shall maintain and follow written information security policies and practices that are integral to Varicent's business and mandatory for all Varicent employees, including maintaining documented security architecture of networks managed by Varicent in its operation of the Software Services. Varicent shall separately review such network architecture, including measures designed to prevent unauthorized network connections to systems, applications and network devices, for compliance with its secure segmentation, isolation, and defense-in-depth standards prior to implementation.
- 1.2 Varicent shall maintain responsibility and executive oversight for such policies, including formal governance and revision management, employee education, and compliance enforcement. Varicent shall review the information security policies at least annually and amend such policies as Varicent deems reasonable to maintain protection of the Software Services and Customer Data processed therein.

2 Processing

- 2.1 Varicent shall Process Customer Personal Information only as necessary for the purpose of providing the Software Services and in accordance with the Agreement and any written instructions given by Customer from time to time (the "**Permitted Purpose**") unless required to do otherwise by applicable law in which event, Varicent shall inform Customer of such legal requirement before Processing Customer Personal Information other than for a Permitted Purpose, unless prohibited by applicable law from doing so.

3 No Sale or Disclosure

- 3.1 Varicent shall not (i) Sell or Share any Customer Personal Information; or (ii) retain, use or disclose any Customer Personal Information for a purpose other than the Permitted Purpose.

4 Compliance with Data Protection Laws

- 4.1 Varicent shall co-operate with and make available to Customer all information reasonably necessary to demonstrate Varicent's compliance with Data Protection Laws.

5 Access Controls

- 5.1 If Varicent requires access to Customer Data, it shall restrict such access to the minimum level required. Such access, including administrative access ("**Privileged Access**"), shall be individual, role-based, and subject to approval and regular validation following the principles of segregation of duties. Varicent shall maintain measures to identify and remove redundant and dormant accounts with Privileged Access and shall promptly revoke such access when appropriate or required to comply with Data Protection Laws.
- 5.2 Consistent with industry standard practices, and to the extent natively supported by each component managed by Varicent within the Software Services, Varicent shall maintain technical measures enforcing timeout of inactive sessions, lockout of accounts after multiple sequential failed login attempts, strong password or passphrase authentication, and measures requiring secure transfer and storage of such passwords and passphrases.
- 5.3 Varicent shall monitor use of Privileged Access and maintain security information and event management measures designed to: (a) identify unauthorized access and activity; (b) facilitate a timely and appropriate response; and (c) enable internal and independent third party audits of compliance with documented Varicent policies.
- 5.4 Logs in which Privileged Access and activity are recorded shall be retained in compliance with Varicent's records management plan. Varicent shall maintain measures designed to protect against unauthorized access, modification, and accidental or deliberate destruction of such logs.
- 5.5 To the extent supported by native device or operating system functionality, Varicent shall maintain computing protections for its end-user systems that include endpoint firewalls, encryption, signature-based malware detection and removal, time-based screen locks, and endpoint management solutions that enforce security configuration and patching requirements.

6 Encryption

- 6.1 Varicent shall encrypt Customer Data in transit using industry accepted cryptographic algorithms when transferring Customer Data over public networks and enable use of a cryptographic protocol, such as HTTPS, SFTP and FTPS, for Customer's secure transfer of Customer Data to and from the Software Services over public networks.
- 6.2 Varicent shall encrypt Customer Data at rest using industry accepted cryptographic algorithms. Varicent manages the cryptographic keys and shall maintain documented procedures for secure key generation, issuance, distribution, storage, rotation, revocation, recovery, backup, destruction, access, and use.

7 Segregation

- 7.1 Varicent shall not combine Customer Personal Information received pursuant to the Agreement with Personal Information received from or on behalf of any third party, or collected from Varicent's own interaction with third parties, unless required to provide the Software Services or permitted under Data Protection Laws.

8 Security Incidents

- 8.1 Varicent shall maintain and follow documented incident response policies for Security Incident handling.
- 8.2 Varicent shall notify Customer as soon as reasonably practicable (and in any event within 72 hours) upon confirmation of a Security Incident and take all reasonable steps to mitigate the impact of such Security Incident and provide, at Varicent's cost, all reasonable assistance required by Customer in investigating and resolving the Security Incident.

- 8.3 Varicent shall investigate any Security Incident and define and execute an appropriate response plan, provide Customer with reasonably requested information about such Security Incident and the status of Varicent remediation and restoration activities.
- 8.4 Customer may notify Varicent of a suspected vulnerability or Security Incident by submitting a support ticket.
- 9 Data Subject Requests**
- 9.1 Varicent shall inform Customer promptly (and in any event within two business days) of any request, enquiry or complaint received from any Data Subject or regulatory authority overseeing Data Protection Laws. Customer shall be responsible for handling such requests of Data Subjects. Varicent shall reasonably assist Customer in handling such Data Subject requests.
- 10 Deletion or Return of Customer Personal Information**
- 10.1 During the term of the Agreement, upon Customer's request, unless otherwise required under applicable law, Varicent shall return or destroy any Customer Personal Information as soon as reasonably practicable.
- 10.2 Following termination or expiration of the Agreement, unless otherwise required by Data Protection Laws, Varicent shall, at Customer's option, delete or return all Customer Personal Information and all copies of Customer Personal Information to Customer. Any data deleted may remain in immutable electronic backups maintained by Varicent used purely for backup, disaster recovery and data protection purposes for up to an additional 90 days beyond any such deletion or disposition.
- 11 Retention**
- 11.1 Varicent shall retain Customer Personal Information only for as long as reasonably necessary for the Permitted Purpose and Varicent's legitimate business purposes.
- 12 Varicent Employees**
- 12.1 Varicent shall maintain and follow its standard mandatory employment verification requirements for all new hires. In accordance with Varicent internal processes and procedures, these requirements shall be periodically reviewed and include criminal background checks, proof of identity validation, and additional checks as deemed necessary by Varicent and permitted under applicable laws.
- 12.2 Varicent employees shall complete security and privacy education annually and certify each year that they shall comply with Varicent's security and privacy policies. Additional policy and process training may be provided to individuals depending on their role in supporting the business and as required to maintain compliance and certifications stated in the Agreement.
- 13 Security and Risk Assessments**
- 13.1 Varicent shall: (a) perform security and privacy risk assessments of the Software Services at least annually; (b) perform penetration testing and vulnerability assessments, including automated system and application security scanning and manual ethical hacking, annually; (c) enlist a qualified independent third party to perform penetration testing at least annually; (d) perform automated management and routine verification of underlying Components' compliance with security configuration requirements; and (e) remediate identified vulnerabilities or noncompliance with its security configuration requirements based on associated risk, exploitability, and impact. Varicent shall take reasonable steps to avoid Software Services disruption when performing its tests, assessments, scans, and execution of remediation activities.
- 13.2 Varicent shall maintain policies and procedures reasonably designed to manage risks associated with the application of changes to the Software Services. Prior to implementation, changes to the Software Services, including its systems, networks, and underlying Components, shall be documented in a registered change request that includes a description and reason for the change, implementation details and schedule, and documented approval requirements.
- 13.3 Varicent shall maintain a reasonably up to date inventory of all information technology assets used in its operation of the Software Services. Varicent shall monitor and manage the health (including capacity and availability) of the Software Services.
- 13.4 Varicent shall implement, test and maintain business continuity and disaster recovery plans consistent with industry standard practices and as further described in the Agreement.
- 13.5 Varicent shall maintain measures designed to assess, test and apply security advisory patches to the Software Services and its associated systems, networks, applications and underlying components. Upon determining that a security advisory patch is applicable and appropriate, Varicent shall implement the patch pursuant to documented severity and risk assessment guidelines. Implementation of security advisory patches shall be subject to Varicent's change management policy.
- 14 Data Back-Up**
- 14.1 Varicent shall back up the Software Services and Customer Data on a daily basis (or at any other time interval agreed upon by the Parties in writing) and copy such back-ups to an off-site location. Back-ups shall be encrypted at rest and during transmission to the offsite location.
- 15 Disaster Recovery**
- 15.1 If a Force Majeure Event occurs that causes the primary data centre hosting the Software Services to become unavailable, Varicent shall work to restore Customer's access to the Software Services within 14 days or as otherwise agreed upon by the Parties in writing or in an Order. The environment shall be restored using the most recent data backup, with no more than 24 hours of Customer Data loss of the restored Customer Data set.

[End of Appendix 1 to DPA]

APPENDIX 2 TO DPA
PERSONAL INFORMATION PROCESSING ATTACHMENT

1 Parties

- 1.1 Data Exporter: Customer's details as outlined in the applicable Order.
- 1.2 Data Importer: Varicent's details as outlined in the applicable Order.

2 Categories of Data Subjects

- 2.1 Customer Personal Information includes (a) the Personal Information of the employees, contractors, business partners and customers of Customer and its Affiliates; and (b) any other Personal Information submitted to the Software Services by Customer and its Users that is subject to Data Protection Laws. Varicent Processes Customer Personal Information in accordance with the Agreement in order to provide the Software Services. Customer acknowledges and agrees that the above categories of Data Subjects may change from time to time based upon the nature and type of information submitted to the Software Services by Customer and its Authorized Users that is subject to Data Protection Laws.

3 Categories of Customer Personal Information Transferred

- 3.1 The types of Customer Personal Information Processed by the Software Services include the following:
 - (a) Basic Personal Information such as name, email and electronic signature;
 - (b) Role related Personal Information such as job title, unit/department, location, supervisor/subordinates, employee identification number, employment type and compensation information such as sales commission rates and eligibility, quotas, and target information; and
 - (c) Technical information about Data Subjects such as device identifiers, usage based identifiers and static IP addresses.

Sensitive Personal Information. The Software Services are not designed to process any special categories of Customer Personal Information or Sensitive Personal Information. Customer acknowledges that Sensitive Personal Information is not required for use of the Software Services and Customer agrees not to share any Sensitive Personal Information with Varicent or upload any Sensitive Personal Information to the Software Services. Varicent will not be liable to Customer for any Sensitive Personal Information provided to Varicent by Customer.

4 Processing Activities

- 4.1 The Processing activities of Customer Personal Information submitted to the Software Services include the following:
 - (a) Receipt of Customer Personal Information from Data Subjects and third parties;
 - (b) Computer Processing of Customer Personal Information including data transmission, data retrieval, data access and network access to allow data transfer if required to provide the Software Services;
 - (c) Technical customer support involving Customer Personal Information upon Customer's request including monitoring, issue determination and issue resolution;
 - (d) Transformation and transition of Customer Personal Information as reasonably necessary to provide the Software Services; and
 - (e) Storage, backup and destruction of Customer Personal Information.

5 Frequency, Nature, Purpose and Duration of Processing

- 5.1 The Processing of Customer Personal Information is ongoing during with the term of the Agreement in order for Varicent to provide the Services pursuant to the Agreement.

6 Technical and Organizational Measures

- 6.1 The Technical and Organizational measures set forth in this DPA apply to all Customer Data processed by Varicent within the Software Services, including Customer Personal Information.

7 Deletion and Return Of Data

- 7.1 Varicent will retain Customer Personal Information for the term of the Agreement, so long as Customer's access to the Software Services is not suspended in accordance with the terms of the Agreement, Customer may download from the Software Services a copy of Customer Personal Information.
- 7.2 Customer may also request removal of Customer Data (including Customer Personal Information) at any time prior to termination or expiration of the term of the Agreement.

8 Varicent Hosting and Processing Locations

- 8.1 The Varicent data hosting and processing locations used for the Software Services are set forth in the Sub-processor List for the Software ordered by Customer in an Order. Customer may be able to request that Varicent use a subset of these locations. Varicent may add additional hosting and processing locations in accordance with the Data Security Standards.

9 Third Party Subprocessors

- 9.1 The Software Services involves third party Sub-processors in the Processing of Customer Data, including Customer Personal Information, as described in the DPA.

10 Privacy Contact and Customer Notifications

- 10.1 The general privacy contact for the Software Services is privacy@varicent.com.

[End of Appendix 2 to DPA]