

Last updated: [January 23, 2024]

This Covalent Cloud Terms of Service (“**Terms of Service**”) governs Customer’s access to and use of the Services, including the Covalent Cloud Services that are provided by Agnostiq. These Terms of Service together with any Addenda, Order Forms and other Documentation, guidelines, or policies Agnostiq may provide in writing (collectively the “**Agreement**”) form a binding legal agreement between Agnostiq Inc. (“**Agnostiq**”) and the Customer visiting, browsing, accessing, downloading, installing or otherwise using (the terms “**use**” and “**using**” will refer to any of the foregoing) the Services. The term “**Customer**” refers to the organization agreeing to this Agreement. This Agreement is entered into on the earlier of the date Customer first uses any part of the Services and the date Customer agrees to be bound by this Agreement (the “**Effective Date**”). Each of Agnostiq and Customer will individually be referred to as a “**Party**” and jointly as the “**Parties**”. For purposes of this Agreement, Customer Property as defined in Section 2(a) below includes any Customer IP; and Agnostiq Property as defined in Section 2(c), includes Covalent Materials.

BY USING THE SERVICES, CUSTOMER ACKNOWLEDGES THAT IT HAS READ, ACCEPTS AND AGREES TO BE BOUND BY AND COMPLY WITH THE TERMS AND CONDITIONS SET OUT IN THIS AGREEMENT, AS AMENDED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 12(n). IF CUSTOMER DOES NOT ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, CUSTOMER WILL IMMEDIATELY CEASE ANY FURTHER USE OF THE SERVICES. BY USING THE SERVICES, CUSTOMER REPRESENTS AND WARRANTS TO AGNOSTIQ THAT CUSTOMER HAS THE CAPACITY TO ENTER INTO THIS LEGALLY BINDING AGREEMENT. IF CUSTOMER IS USING THE SERVICES ON BEHALF OF ANOTHER PERSON, CUSTOMER HEREBY REPRESENTS AND WARRANTS TO AGNOSTIQ THAT CUSTOMER HAS THE AUTHORITY TO BIND SUCH PERSON TO THIS AGREEMENT.

THE SERVICES MAY NOT BE ACCESSED FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

AGNOSTIQ’S DIRECT COMPETITORS ARE PROHIBITED FROM ACCESSING ANY SERVICES, EXCEPT WITH AGNOSTIQ’S PRIOR WRITTEN CONSENT.

- **1. Covalent Cloud Services**

- a. Provisioning of the Covalent Cloud Services. Subject to any limitations set forth in this Agreement, Customer may permit its End Customers to access or use the: (A) web services described in the applicable Order Forms or applicable Addenda (collectively the “Covalent Cloud Services”); and (B) Covalent Materials (pursuant to the License in Section 2(e)), provided that in both instances such access and use is solely for the purpose of enabling such End Customers to use and modify a Customer Application. Agnostiq grants to Customer a limited, revocable, non-exclusive, non- sublicensable (except as permitted herein to Permitted Users), non-transferable right during the applicable Subscription Term to allow its Permitted Users to access and use the Covalent Cloud Services in accordance with the Documentation.
- b. Use of the Covalent Cloud API.

- i. Agnostiq may make available to Customer the Covalent Cloud API in order to facilitate Customer's access to and use of the Covalent Cloud Services. To use the Covalent Cloud API, Customer must first sign up with Agnostiq and receive an API key from Agnostiq (each, an "API Key"). Customer acknowledges that such API Keys are Agnostiq's Confidential Information (as defined below) and will not share Customer's API Keys with any third party without Agnostiq's prior consent. In addition, Agnostiq may, in its sole discretion, change, cancel, or discontinue the API Key at any time, without Customer's consent.
 - ii. Customer may incorporate the Covalent Cloud API into the Customer Application and otherwise use the Covalent Cloud API in connection with its internal business purposes, provided such incorporation and use is done in accordance and in compliance with this Agreement and the related Documentation.
 - iii. Unless otherwise set out in an Order Form, the number of calls Customer makes to the Covalent Cloud API during any given period may be limited, at Agnostiq's sole discretion, based on various factors that include the manner in which Customer makes calls to the Covalent Cloud API and the anticipated volume of use associated with Customer.
 - iv. Agnostiq reserves the right to change the Covalent Cloud API and related Documentation at any time and without notice. Customer acknowledges and understands that these changes may require Customer to make changes to Customer Applications at Customer's own cost and expense.
 - v. Notwithstanding the foregoing, Agnostiq retains the right, at Agnostiq's sole discretion, to suspend or revoke Customer's access to the Covalent Cloud API, at any time and for any reason, including for: (A) violation of the terms of this Agreement, the responsible use guidelines or any other responsible use guidelines Agnostiq provides to Customer or are posted on the Website; (B) Customer's use of the Covalent Cloud API contrary to the related Documentation; (C) for scheduled maintenance; or (D) to address any emergency security concerns.
- c. Monitoring Usage of Covalent Cloud API.
- i. Agnostiq may monitor Customer's use of the Covalent Cloud API and that Customer will not block or otherwise interfere with Agnostiq's monitoring.
 - ii. At Agnostiq's request, Customer will provide Agnostiq access to, and use of, the Customer Application, at no cost to Agnostiq, for the purpose of monitoring or reviewing Customer Application for compliance with this Agreement.
- d. Restrictions on Use. Customer will not, and will not permit any other person (including any Permitted Users) to, access or use the Services except as expressly permitted by this Agreement. Without limiting the generality of the foregoing, Customer will not itself, and will not permit others (including any Permitted Users) to:

- i. sub-license (except as permitted herein to Permitted Users), sell, rent, lend, lease or distribute the Covalent Cloud Services, any other Agnostiq Property or any Intellectual Property Rights therein, or otherwise make the Covalent Cloud Services available to others;
- ii. permit any third party direct access the Covalent Cloud Services, or otherwise use, copy, distribute, or make available the Covalent Cloud Services to permit timesharing, service bureau use or commercially exploit the Covalent Cloud Services;
- iii. use or access the Covalent Cloud Services or any other Agnostiq Property: (A) in violation of any applicable law or Intellectual Property Right, (B) in a manner that threatens the security or functionality of the Covalent Cloud Services; (C) for any High Risk Activities; (D) for engaging in any regulated profession, trade or services including providing any legal advice, financial advice or medical advice; or (E) for any purpose or in any manner not expressly permitted in this Agreement;
- iv. circumvent the intended features, functionality or limitations of the Covalent Cloud Services;
- v. use the Covalent Cloud Services or any other Agnostiq Property for personal, family or household purposes;
- vi. buy, sell, or transfer API Keys without Agnostiq's prior consent;
- vii. use the Covalent Cloud Services in a manner which, in the opinion of Agnostiq bring Agnostiq (or its affiliates', successors' or assignees') name, logo, brand or trademarks into public disrepute, contempt, scandal or ridicule, would adversely affect the reputation or goodwill of Agnostiq or any of its the trademarks, or adversely affect the relationship between Agnostiq and any of its licensors or other customers;
- viii. use the Services to create, collect, transmit, store, use or Process any Customer Input:
 - A. that contains any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data;
 - B. that Customer does not have the lawful right to create, collect, transmit, store, use or Process;
 - C. that violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity); or
 - D. that imposes specific data security, data protection, or regulatory obligations on Agnostiq in addition to any obligations specified in this Agreement, including any regulated health data or payment card

information, provided that the foregoing restriction will not apply to any payment card information provided by Customer to Agnostiq for the purposes of paying the Fees;

- ix. Modify, reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying components of algorithms and systems of the Covalent Cloud Services (or any other Agnostiq Property) except to the extent such restrictions are contrary to applicable law);
 - x. remove or obscure any proprietary notices or labels on the Covalent Cloud Services, or any other Agnostiq Property including brand, copyright, trademark and patent or patent pending notices;
 - xi. use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe intellectual or other property rights; or sell, manufacture, market and/or distribute any product or service in violation of applicable laws;
 - xii. use the Services to perform cyber currency or crypto currency mining;
 - xiii. use the Covalent Cloud Services or any other Agnostiq Property to store or transmit material that is dangerous, harmful, fraudulent, deceptive, threatening, harassing, defamatory, libelous, obscene, or otherwise objectionable or unlawful;
 - xiv. access or use the Covalent Cloud Services or any other Agnostiq Property that Customer receives through or from the Covalent Cloud Services for the purpose of building a similar or competitive product or service; or
 - xv. perform any vulnerability, penetration or similar testing of the Covalent Cloud Services without the prior written consent of Agnostiq.
- e. Suspension of Access; Scheduled Downtime; Modifications. Agnostiq may from time to time and in its discretion, without limiting any of its other rights or remedies at law or in equity, under this Agreement:
- i. suspend Customer's access to or use of the Services:
 - A. for scheduled maintenance;
 - B. due to a Force Majeure;
 - C. if Customer is delinquent in its payment of Fees under Section 7;
 - D. if Agnostiq believes in good faith that Customer or any Permitted User has violated any provision of this Agreement;
 - E. to address any emergency security concerns;

THIS AGREEMENT, AFTER SUSPENSION OR TERMINATION OF CUSTOMER'S ACCESS TO OR USE OF ANY FREE TRIAL FOR ANY REASON: (A) CUSTOMER WILL NOT HAVE ANY FURTHER RIGHT TO ACCESS OR USE THE APPLICABLE FREE TRIAL; AND (B) CUSTOMER INPUT USED IN THE APPLICABLE FREE TRIAL MAY BE DELETED OR INACCESSIBLE. NOTWITHSTANDING THE "WARRANTIES; DISCLAIMERS; INDEMNITY" SECTION AND "AGNOSTIQ INDEMNITIES" SECTION BELOW, THE FREE TRIAL IS PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND AGNOSTIQ WILL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE FREE TRIAL UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE AGNOSTIQ'S LIABILITY WITH RESPECT TO THE FREE TRIAL WILL NOT EXCEED \$100.00. WITHOUT LIMITING THE FOREGOING, AGNOSTIQ AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (I) CUSTOMER'S USE OF THE FREE TRIAL WILL MEET CUSTOMER'S REQUIREMENTS; (II) CUSTOMER'S USE OF THE FREE TRIAL WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR; AND (III) DATA OR ANY COVALENT MATERIALS PROVIDED THROUGH THE FREE TRIAL WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE "LIMITATION OF LIABILITY" SECTION BELOW, CUSTOMER WILL BE FULLY LIABLE UNDER THIS AGREEMENT TO AGNOSTIQ AND ITS AFFILIATES FOR ANY DAMAGES ARISING OUT OF CUSTOMER'S USE OF THE FREE TRIAL, ANY BREACH BY CUSTOMER OF THIS AGREEMENT AND ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

- i. Professional Services. Customer and Agnostiq may enter into Order Forms that describe the specific Professional Services to be performed by Agnostiq.
- **2. Ownership; Reservation of Rights**
 - a. Customer IP. During the Term, Customer may provide its input to the Covalent Cloud Services such as Customer Data, source code, or other content ("**Customer Input**") and receive output generated and returned by the Covalent Cloud Services which is a processed form of or derived from the Customer Input ("**Customer Output**") (Customer Input and Customer Output are collectively "**Customer IP**"). As between the Parties and to the extent permitted by applicable law, Customer will own all Customer IP. Customer grants to Agnostiq a nonexclusive, worldwide, royalty-free, irrevocable, transferable sublicensable, and fully paid-up license during the Term to access, collect, use, Process, store, disclose, transmit, transfer, copy, Modify and display Customer IP to: (i) provide the Services; (ii) improve and enhance the Services; and (iii) generate and to permit Agnostiq's third party service providers to generate data, information or other materials that are not identified as relating to a particular individual or company (such data, information and materials, the "**Aggregated Data**"). Agnostiq and its third party service providers may use, process, store, disclose and transmit the Aggregated Data for any purpose and without restriction or obligation to Customer of any kind.
 - b. Customer Application. Customer hereby grants Agnostiq a worldwide, limited, non-exclusive right to access, distribute, and use the Customer Application solely as necessary to certify compatibility of such Customer Application with the Covalent Cloud

Services. Upon such certification, Agnostiq may permit Customer to make the Customer Application available to End Customers via Agnostiq's marketplace in accordance with and subject to Agnostiq's applicable marketplace terms and conditions. Please get in touch with Agnostiq at contact@agnostiq.ai for a copy of these marketplace terms and conditions.

- c. **Agnostiq Property.** Agnostiq or its licensors retain all ownership and Intellectual Property Rights in and to: (i) the Services; (ii) Documentation; (iii) Covalent Materials; (iv) Covalent Metadata; (v) Aggregated Data; and (vi) anything developed or delivered by or on behalf of Agnostiq in accordance with the terms of this Agreement including Deliverables; and (v) any Modifications to the foregoing (collectively, the "**Agnostiq Property**"). All rights not expressly granted by Agnostiq to Customer under this Agreement are reserved.
- d. **Covalent Metadata.** Customer acknowledges and agrees that Agnostiq may develop or generate metadata that is based on a Customer's use of the Services ("**Covalent Metadata**"). The Covalent Metadata will not include any Customer Input. Agnostiq may use, Process, store, disclose and transmit the Covalent Metadata for any purpose and without restriction or obligation to Customer of any kind.
- e. **License.** Subject to the terms of this License and this Agreement, Agnostiq grants Customer a limited, royalty-free, revocable, non-exclusive, non-sublicensable (except as permitted herein to Permitted Users), non-transferrable license to copy and use the Covalent Materials, and the Intellectual Property Rights therein, solely in connection with Customer's permitted use of the Services during the Subscription Term and to permit End Customers to access or use the Covalent Materials solely for the purpose of enabling such End Customers to use and modify a Customer Application ("**License**"). Except as expressly provided in this Section 2(e), Customer obtains no other rights under this Agreement or this License from Agnostiq, its affiliates or suppliers to the Services and Covalent Materials, including any related Intellectual Property Rights. Some Covalent Materials may be provided to Customer under a separate license, such as the Apache License, Version 2.0. In the event of a conflict between the License and any separate license, the separate license will prevail with respect to that portion of the Covalent Materials that is the subject to such separate license.
- f. **Feedback.** Customer grants to Agnostiq and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services, any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Permitted Users relating to the operation of Services or any of Agnostiq's affiliates' services ("**Feedback**"). Nothing in this Agreement will restrict our right to use, profit from, disclose, publish or otherwise exploit any Feedback, without compensation to the Customer or Permitted Users and without any obligation to the Customer or any Permitted User. Agnostiq is not obligated to use any Feedback.

- **3. Privacy**

- a. Agnostiq Privacy Policy. Customer understands that Personal Information, including the Personal Information of Permitted Users, will be treated in accordance with Agnostiq's privacy policy located at <https://www.covalent.xyz/privacy-policy/> (the "**Privacy Policy**"). Agnostiq may, without Customer consent, revise its Privacy Policy from time to time, as is customary business practice in its field (e.g., to incorporate improvements in its solutions offerings or align its practices with changing regulatory requirements).
- b. Compliance with Privacy Law. Each Party will comply with the obligations imposed on it under all applicable Privacy Law applicable to a Party.
- c. Customer Application. If Customer wishes to use the Covalent Cloud Services for it or Agnostiq to Process Personal Information other than Account Information, Customer will obtain Agnostiq's prior written consent and Customer will agree to such additional agreements or Documentation as may be required by Agnostiq, in its sole discretion, in respect of such Processing of Personal Information. Customer is solely responsible for access, collection or transmission of any Personal Information on or via the Customer Application. Customer will be responsible for obtaining Permitted Users' consent for any other use, including for marketing purposes, of End Customer contact information or Permitted User's Personal Information obtained from Agnostiq, and Agnostiq will not be responsible or liable for such other use.

- **4. Communications Over the Internet and Public Networks**

Given the inherent nature of the internet and public networks, and without limiting the Privacy Policy referenced herein, Agnostiq does not, and cannot, guarantee the security of data transmitted or the confidentiality of any communications made by Customer or any Permitted User over the Internet or public networks in connection with Customer's use of the Covalent Cloud Services.

- **5. User Accounts; Customer Responsibilities**

- a. User Accounts. Upon Customer's request, Agnostiq will issue one or more user accounts (each, a "**Customer User Account**") for use by Customer and all Permitted Users of Customer that Customer wishes to have access to and use of the Covalent Cloud Services and Covalent Cloud API.
- b. Customer Responsibilities.
 - i. Customer will permit Agnostiq or its third-party evaluation agents to verify whether the Customer Application meets the security, privacy, compliance controls, and other requirements provided by Agnostiq ("**Criteria**") based on the Supporting Evidence provided by Customer to Agnostiq. Agnostiq will make commercially reasonable efforts to complete the evaluation within a reasonable time.
 - ii. Customer will promptly notify Agnostiq of any actual or suspected unauthorized use of the Covalent Cloud Services. Agnostiq reserves the right to suspend, deactivate, or replace a Customer User Account if it determines that a Customer User Account may have been used for an unauthorized purpose;

- iii. Customer will ensure that Permitted Users only use the Covalent Cloud Services through the Customer User Account. Customer will not allow any Permitted User to share the Customer User Account with any other person; and
- iv. Customer will solely be responsible for:
 - A. the accuracy, quality and legality of Customer Input, the means by which Customer acquired Customer Input, Customer's use of Customer Input with the Services, and the interoperation of any third party products or systems with which Customer uses Services;
 - B. providing, at its own expense, all network access to the Services, including, without limitation, acquiring, installing and maintaining all telecommunications equipment, hardware, software and other equipment as may be necessary to connect to, access and use the Services;
 - C. properly configuring and using the Services and taking its own steps to maintain appropriate security, protection and backup of its infrastructure (including without limitation any databases, servers, and any other protocol) which may include the use of encryption technology to protect such infrastructure from unauthorized access and routine archiving of such infrastructure;
 - D. ensuring that the Customer Application, network, operating systems and the software of Customer's servers, databases, and computer systems use reasonable security measures to protect Permitted User (including any End Customer) information and ensuring that the Customer Application does not jeopardize or compromise user security, the security of the Covalent Cloud Services, any related services or systems, or any Customer's systems;
 - E. ensuring that Customer does not install or launch executable code on the user's environment beyond what is identified in or may reasonably be expected or approved by Agnostiq;
 - F. using the Services in accordance with this Agreement and applicable laws;
 - G. identifying and authenticating all Permitted Users and for ensuring only Permitted Users access and use Covalent Cloud Services;
 - H. ensuring that all Permitted Users (including End Customers) of the Covalent Cloud Services are contractually bound to terms and conditions with Customer that are consistent with any obligations under this Agreement and that are no less restrictive or protective of Agnostiq's rights than those set forth in this Agreement. Without limiting the foregoing, any contract terms are between Customer and

End Customer will not create any obligations or responsibilities of any kind for Agnostiq. Customer acknowledges that Agnostiq grants no right or license to Customer Applications through the operation of the Covalent Cloud Services or any other Agnostiq Property; and

- I. ensuring that Permitted Users comply with this Agreement and that none of the Permitted Users bring or maintain any Claim against Agnostiq, its shareholders, employees, officers, directors, affiliates, agents, contractors, successors, and assigns in respect of any matter related to or in connection with the subject matter of this Agreement. Customer will be liable for any breach by a Permitted User of this Agreement.

- **6. Support**

Customer will generally have access to Agnostiq’s technical support services in relation to the Covalent Cloud Services (“**Support Services**”) via email at contact@agnostiq.ai from 9 a.m. to 5 p.m. (Eastern Time) each Monday to Friday, (excluding statutory and civic holidays observed in Toronto, Ontario). Subject to Customer’s payment of applicable Fees, Agnostiq may provide premium support as part of Support Services, if set forth in an applicable Order Form or otherwise agreed to in writing by Agnostiq. For clarity and avoidance of all doubt, Agnostiq is not responsible for providing support for Customer Applications.

- **7. Fees and Payment**

- a. Fees. Customer will pay to Agnostiq the fees set forth on Agnostiq’s then-current applicable pricing page as may be amended from time to time in Agnostiq’s discretion or agreed to by Customer in any Order Form (the “**Fees**”). If Customer’s use of the Services exceeds the service capacity set forth on the Order Form, or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer will be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. If Customer requests that Agnostiq provide it with services in addition to the Services, Customer will be billed for such additional services based on Agnostiq’s standard rates.
- b. Payment Customer will provide current, complete and accurate billing information including a valid and authorized payment method. Agnostiq may charge Customer’s payment method on an agreed-upon periodic basis but may reasonably change the date on which the charge is posted. Customer must promptly update all information to keep Customer’s billing account current, complete and accurate (such as a change in billing address, credit card number, or credit card expiration date), and Customer must promptly notify Agnostiq if Customer’s payment method is cancelled (e.g., for loss or theft). Customer authorizes Agnostiq and its affiliates, and Agnostiq’s third-party payment processor(s), to charge Customer’s payment method for the Fees. If Customer’s payment cannot be completed, Agnostiq will provide Customer written notice and may suspend access to the Services until payment is received. Unless otherwise agreed in writing by Agnostiq, Fees are payable in United States dollars and

are due upon invoice issuance. Payments are non-refundable except as provided in this Agreement.

- c. Changes to the Fees. Agnostiq reserves the right to change the Fees or applicable charges and to institute new charges and Fees upon prior notice to Customer (which may be sent by email). If Agnostiq has increased the Fees payable by Customer, then Customer may terminate this Agreement in accordance with Section 11(b) and notwithstanding Section 11(b)(ii), Customer will not be required to pay any termination fee or any Fees that are outstanding in the Term
- d. Disputed Charges. If Customer believes Agnostiq has charged Customer incorrectly, Customer must contact Agnostiq no later than 45 days after having been charged by Agnostiq in order to request an adjustment or credit. In the event of a dispute, Customer will pay any undisputed amounts in accordance with the payment terms herein, and the Parties will discuss the disputed amounts in good faith in order to resolve the dispute.
- e. Late Payment. Customer may not withhold or setoff any amounts due under this Agreement. If Customer fails to make any payment when due, without limiting Agnostiq's other rights and remedies, Agnostiq may: (i) suspend, in accordance with Section 1(e), Customer's and all other Permitted Users' access to any portion or all of the Services until such amounts are paid in full; or (ii) terminate this Agreement immediately on notice (which may be sent by electronic means to Customer), without incurring any obligation or liability to Customer or any other person by reason of such suspension or termination.
- f. Taxes. The Fees set out in this Agreement do not include applicable sales, use, gross receipts, value-added, GST or HST, personal property or other taxes. Customer will be responsible for and will pay all applicable taxes, duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transactions contemplated in connection with this Agreement, other than taxes based on the net income or profits of Agnostiq.
- g. Suspension. Any suspension of the Services by Agnostiq pursuant to the terms of this Agreement, including suspension of the Services pursuant to Section 1(e) or 7(b), will not excuse Customer from its obligation to make payments under this Agreement.
- h. Payment Processor. Payment and collection of Fees is enabled through and executed by a third party payment processors. Transaction fees associated with the individual payment and collection of Fees or amounts under this Agreement are as outlined in the pricing plan provided to Customer. Customer may be required to agree to terms and conditions as required by such third party payment processor from time to time. Prior to using the Services and any components thereof, Customer must have all applicable such third party payment processor's terms and conditions in effect. By using the Services or any component thereof, Customer acknowledges it must be in full compliance with the terms and conditions of such third party payment processor and be in good standing with such third party payment processor

- **8. Confidential Information**

- a. Definitions. For the purposes of this Agreement, a Party receiving Confidential Information (as defined below) will be the “**Recipient**”, the Party disclosing such information will be the “**Discloser**” and “**Confidential Information**” of Discloser means any and all information of Discloser or any of its licensors that has or will come into the possession or knowledge of the Recipient in connection with or as a result of entering into this Agreement. Where Discloser is Agnostiq, Confidential Information includes any information concerning the business, affairs, operations, properties, assets (including, without limitation, technology and intellectual property), employees, customers, suppliers contracts, prospects, liabilities, research, processes or methods of operation proposed by Agnostiq, its affiliates, and the investment that is made available to Customer, as well as any reproductions, summaries, analyses or extracts of such information. Where Discloser is Customer, Confidential Information includes Customer Property and where Discloser is Agnostiq includes all Agnostiq Property. Notwithstanding the foregoing, except with respect to Personal Information, Confidential Information does not include: (i) information already known to Recipient prior to the Effective Date or that subsequently becomes known to Recipient from a third party that has no obligation to the Discloser to keep such information confidential; (ii) information that is publicly available prior to the Effective Date, or that subsequently becomes publicly available through no breach of this Agreement or wrongful act of Recipient; (iii) information received by Recipient from a third party who was free to disclose it without confidentiality obligations; or (iv) information that Recipient can demonstrate (through written records) was independently developed by it by individuals employed or engaged by Recipient who did not participate in any meetings with the Discloser and who developed such without having had any access to, or the benefit of, Discloser’s Confidential Information.
- b. Confidentiality Covenants. Recipient hereby agrees that during the Term and at all times thereafter it will not, except to exercise its rights or perform its obligations under this Agreement:
 - i. disclose Confidential Information of the Discloser:
 - A. in the case the Customer to any person, except to its Permitted Users that have a “need to know” for the purposes of receiving or providing the Services and that have entered into written agreements no less protective of such Confidential Information than this Agreement; or
 - B. in the case of Agnostiq to Agnostiq’s employees, independent contractors, advisors, consultants, agents and its affiliates, that have a “need to know” for the purposes of receiving or providing the Services and that have entered into written agreements no less protective of such Confidential Information than this Agreement and to its subcontractors and contractors to perform the Services or to its subcontractors for the purpose of providing the Services;

- ii. use Confidential Information of the Discloser other than to exercise its rights or perform its obligations under this Agreement; or
- iii. alter or remove from any Confidential Information of the Discloser any proprietary legend.

Each Party will take industry standard precautions to safeguard the other Party's Confidential Information, which will in any event be at least as stringent as the precautions that the Recipient takes to protect its own Confidential Information of a similar type.

- c. Exceptions to Confidentiality. Notwithstanding Section 8(b), Recipient may disclose Discloser's Confidential Information: (i) to the extent that such disclosure is required by applicable law or by the order of a court or similar judicial or administrative body, provided that, except to the extent prohibited by law, the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order; (ii) to its legal counsel and other professional advisors if and to the extent such persons need to know such Confidential Information in order to provide applicable professional advisory services in connection with the Party's business; or (iii) in the case of Agnostiq, to potential assignees, acquirers or successors of Agnostiq if and to the extent such persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other corporate transaction involving the business or assets of Agnostiq.
 - d. Return or Destruction. Upon the termination or expiration of this Agreement and all Order Forms under this Agreement, each Party will promptly return to the other Party or destroy all Confidential Information (excluding any Customer Data which is addressed in Section 11(d) of the other Party in its possession or control within a reasonable amount of time in accordance with the Recipient's data destruction practices). Notwithstanding the foregoing, Agnostiq may retain any electronically archived Customer's Confidential Information, provided that such retained information remains subject to the confidentiality obligations in this Agreement.
 - e. Injunction and Other Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 8 would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.
- **9. Warranty; Disclaimer; Indemnity**
 - a. Customer Warranty. Customer represents and warrants to, and covenants with Agnostiq that: (i) Customer Data will only contain Personal Information in respect of which

Customer has provided all notices and disclosures (including to each Permitted User), obtained all applicable third party consents and permissions and otherwise has all authority, in each case, as required by applicable laws including applicable privacy laws, to enable Agnostiq to provide the Services, including with respect to the collection, storage, access, use, disclosure, Processing and transmission of Personal Information, including by or to Agnostiq and to or from all applicable third parties; (ii) Customer will implement reasonable and appropriate measures designed to help secure Customer's and its Permitted Users' access to and use of the Services; (iii) Customer will not use the Covalent Cloud Services for personal, family or household purposes; (iv) Customer and its Permitted Users will comply with all applicable laws; (v) Customer will not permit any Permitted User to access and use the Services from Russia, China, or any country: (A) subject to any embargo by the United States or Canada; or (B) on the Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury list or on the U.S. Department of Commerce's Denied Persons List or Entity List, or on the U.S. Treasury Department's list of Specially Designated Nationals; and (vi) Customer will comply with Section 12(e).

- b. **GENERAL DISCLAIMER.** AGNOSTIQ DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR THAT THE SERVICES OR (OR ANY PART THEREOF), WILL BE ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, SERVICES (OR ANY PART THEREOF), AND ANY OTHER PRODUCTS AND SERVICES PROVIDED BY AGNOSTIQ TO CUSTOMER ARE PROVIDED "AS IS" AND "AS AVAILABLE". ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY PRODUCTS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD PARTY. CUSTOMER ACKNOWLEDGES THAT IF CUSTOMER CHOOSES TO SUBMIT ANY CUSTOMER INPUT TO THE SERVICES, CUSTOMER DOES SO ENTIRELY AT ITS OWN RISK. TO THE EXTENT PERMITTED BY APPLICABLE LAW, AGNOSTIQ HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, COMPATIBILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, AGNOSTIQ EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY THAT ANY COVALENT MATERIALS, CUSTOMER IP OR OTHER CONTENT PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF SERVICES (OR ANY PART THEREOF) IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

CUSTOMER AND PERMITTED USERS ARE RESPONSIBLE FOR ALL DECISIONS MADE, ADVICE GIVEN, ACTIONS TAKEN, AND FAILURES TO TAKE ACTION BASED ON ANY CUSTOMER'S OR PERMITTED USERS' USE OF THE COVALENT CLOUD SERVICES. COVALENT CLOUD SERVICES USE ARTIFICIAL INTELLIGENCE

AND MACHINE LEARNING MODELS THAT GENERATE PREDICTIONS BASED ON PATTERNS IN DATA. CUSTOMER OUTPUT GENERATED BY AN ARTIFICIAL INTELLIGENCE OR MACHINE LEARNING MODEL IS PROBABILISTIC AND SHOULD BE EVALUATED FOR ACCURACY AS APPROPRIATE FOR CUSTOMER'S OR PERMITTED USERS' USE CASE, INCLUDING BY EMPLOYING HUMAN REVIEW OF SUCH CUSTOMER OUTPUT. GIVEN THE PROBABILISTIC NATURE OF ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING, USE OF ANY AGNOSTIQ PROPERTY MAY IN SOME SITUATIONS RESULT IN INCORRECT CUSTOMER OUTPUT THAT DOES NOT ACCURATELY REFLECT REAL PEOPLE, PLACES, OR FACTS. CUSTOMER WILL EVALUATE THE ACCURACY OF ANY CUSTOMER OUTPUT AS APPROPRIATE FOR ITS USE CASE, INCLUDING BY USING HUMAN REVIEW OF THE CUSTOMER OUTPUT AND CUSTOMER IP. DUE TO THE NATURE OF MACHINE LEARNING, CUSTOMER OUTPUT MAY NOT BE UNIQUE ACROSS USERS AND THE SERVICES OR ANY OTHER AGNOSTIQ PROPERTY MAY GENERATE THE SAME OR SIMILAR CUSTOMER OUTPUT FOR AGNOSTIQ OR A THIRD PARTY. OTHER CUSTOMERS MAY ALSO ASK SIMILAR QUESTIONS AND RECEIVE THE SAME RESPONSE. RESPONSES THAT ARE REQUESTED BY AND GENERATED FOR OTHER USERS ARE NOT CONSIDERED CUSTOMER IP. WITHOUT LIMITING THE FOREGOING, CUSTOMER IS RESPONSIBLE FOR IMPLEMENTING SAFEGUARDS TO PROTECT THE SECURITY AND INTEGRITY OF ITS AND PERMITTED USERS' COMPUTER SYSTEM AND NAY CUSTOMER PROPERTY. AGNOSTIQ DOES NOT GUARANTEE OR WARRANT THAT ANY COMPONENT OF SERVICES OR ANY OTHER AGNOSTIQ PROPERTY IS COMPATIBLE WITH CUSTOMER'S COMPUTER SYSTEM OR THAT THE SERVICES OR ANY LINKS FROM ANY COMPONENT OF THE SERVICES, WILL BE FREE OF DISABLING DEVICES. AGNOSTIQ RESERVES THE RIGHT, BUT HAS NO OBLIGATION, TO MONITOR OR TO TAKE ANY ACTION REGARDING DISPUTES BETWEEN CUSTOMER AND ANY OTHER USER AND WILL HAVE NO LIABILITY FOR CUSTOMER'S OR ITS PERMITTED USERS' INTERACTIONS OR ANY DISPUTES WITH OTHER USERS OR FOR ANY USER'S ACTION OR INACTION. CUSTOMER IS SOLELY RESPONSIBLE FOR ITS CONDUCT ON THE SERVICES AND ITS (OR ITS PERMITTED USERS) INTERACTIONS WITH OTHER USERS.

- c. Customer Indemnity. Customer will defend, indemnify and hold harmless Agnostiq, its employees, officers, directors, affiliates, agents, contractors, successors, and assigns against any and all Losses directly or indirectly arising from or in connection with any Claim from a third party: (i) regarding Customer Property; (ii) alleging Customer's breach of Section 1(d), Section 3(b), Section 3(c), Section 5(b), Section 9(a) or Section 12(e); (iii) arising from Customer's and Permitted Users' unauthorized use of the Services; (iv) arising from Customer's breach or violation of applicable law; (v) alleging that a Customer Application or any other Customer Property infringes any proprietary or personal right of a third party; (vii) relating to the functionality of, the use of, or the inability to use the Customer Application, including any claims of product liability or misleading advertising related to the Customer Application or any other Customer Property; or (viii) use of the Services (or any part thereof) by Customer or any Permitted User in combination or integration with any third party software, Customer Application or service. Customer will fully cooperate with Agnostiq in the defense of any claim defended by Customer pursuant to its indemnification obligations under this Agreement and will not settle any such claim without the prior written consent of Agnostiq.
- **10. Limitation of Liabilities**
 - a. AMOUNT: IN NO EVENT WILL AGNOSTIQ'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF

CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE) OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID TO AGNOSTIQ IN CONNECTION WITH THIS AGREEMENT IN THE 6 MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT.

- b. TYPE: IN NO EVENT WILL AGNOSTIQ BE LIABLE TO CUSTOMER FOR ANY: (I) CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES; (II) LOST OR LOSS OF (A) SAVINGS, (B) PROFIT, (C) DATA, (D) USE, (E) GOODWILL, OR (F) BUSINESS OR SERVICE; (III) BUSINESS INTERRUPTION; (IV) COSTS FOR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (V) PERSONAL INJURY OR DEATH; OR (VI) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY RELATED OR CONNECTED TO THIS AGREEMENT, REGARDLESS OF CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), OR OTHERWISE, AND EVEN IF NOTIFIED IN ADVANCE OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN.
- c. LIMITATIONS PERIOD. NO CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN TWO YEARS AFTER THE EVENT GIVING RISE TO SUCH CLAIM.

- **11. Term and Termination**

- a. Term and Subscription Term. The term of this Agreement commences on the Effective Date and continues until the stated term in all Order Forms have expired or have otherwise been terminated the (“Term”). Subscription to the Covalent Cloud Services commence on the subscription start date and are for the Subscription Term as set forth in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions to the Covalent Cloud Services will automatically renew for additional terms equal to the expiring Subscription Term, unless and until either Party gives the other notice of non-renewal at least thirty (30) days prior to the end of the then-current Subscription Term.
- b. Termination for Convenience. Except as otherwise agreed to in the Order Form or an applicable Addenda, Customer may terminate this Agreement at any time for any reason by discontinuing the use of the Services. Agnostiq may terminate this Agreement for any reason by providing Customer prior advance notice. Provided that upon any termination by a Party pursuant to this Section 11(b): (i) Customer will not be entitled to a refund of any pre-paid Fees; and (ii) if Customer has not already paid all applicable Fees for the then-current Term, any such Fees that are outstanding will become immediately due and payable.
- c. Termination for Cause. Either Party may, in addition to other relief terminate this Agreement for cause: (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period; or (ii) 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. Notwithstanding the foregoing, Agnostiq may terminate this Agreement immediately upon notice to Customer: (A) if Customer breaches Sections 1(d) or Section 12(e) or as otherwise permitted in this Agreement; (B) if there are changes in relationships with third party technology providers; or (C) to comply with applicable law or government requests.

- d. Effect of Termination: Upon expiration or earlier termination of this Agreement:
 - Customer will immediately cease (and ensure that all Permitted Users immediately cease) accessing or using the Services. Within a reasonable period of time following termination, Agnostiq will delete or otherwise render inaccessible any Customer Data that remains in the hardware or systems used by Agnostiq to provide the Services. Notwithstanding the foregoing, Agnostiq will have no obligation to delete or otherwise render inaccessible any Customer Data, where not permissible by applicable law applicable to Agnostiq;
 - all Order Forms and Addenda will terminate;
 - all Fees due and payable, any amounts due to Agnostiq are immediately due and are to be immediately paid by Customer to Agnostiq; and
 - other than as otherwise provided for in this Agreement, no expiration or termination will affect or relieve Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle the Customer to any refund.
- e. Survival. The following Sections, together with any other provision of this Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of this Agreement, will survive expiration or termination of this Agreement for any reason: Section 2 (Ownership; Reservation of Rights), Section 3 (Privacy), Section 7 (Fees and Payment), Section 8 (Confidential Information), Section 9 (Warranty; Disclaimer; Indemnity), Section 10 (Limitation of Liabilities), Section 11(e) (Survival), and Section 12 (General Provisions).

- **12. General Provisions**

- a. Notices. Notices sent to either Party will be effective when delivered in writing and in person or by email (the day of sending by email), one day after being sent by overnight courier, or five days after being sent by first class mail postage prepaid to the official contact designated by the Party to whom a notice is being given. Notices must be sent: (i) if to Agnostiq, to the following address: [X] Email: [X] and (ii) if to Customer, to the current postal or email address that Agnostiq has on file with respect to Customer. Agnostiq may change its contact information by posting the new contact information on Agnostiq's website or by giving notice thereof to Customer. Customer is solely responsible for keeping its contact information on file with Agnostiq current at all times during the Term.

- b. Publicity. Agnostiq may, with the prior approval of Customer, refer to Customer as a customer of Agnostiq in announcements, press or marketing releases, publications, presentations, case studies and other public statements and on Agnostiq's website and other online channels (collectively, "**Publicity**"). If Publicity is approved by Customer, then Agnostiq may use Customer's name, logo and trademark in conjunction with any Publicity and disclose the existence of this Agreement and any testimonials received from Customer in any such Publicity. Customer grants Agnostiq a limited, perpetual, fully paid-up, irrevocable, non-exclusive, non-transferable, and non-sublicensable license to use its logo and trademarks in connection with any Publicity.
- c. Termination for Cause. Either Party may, in addition to other relief terminate this Agreement for cause: (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period; or (ii) 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. Notwithstanding the foregoing, Agnostiq may terminate this Agreement immediately upon notice to Customer: (A) if Customer breaches Sections 1(d) or Section 12(e) or as otherwise permitted in this Agreement; (B) if there are changes in relationships with third party technology providers outside of Agnostiq's control; or (C) to comply with applicable law or government requests.
- d. Assignment. Neither party will assign this Agreement to any third party without the other party's prior written consent. Agnostiq may assign this Agreement without Customer's consent: (i) in connection with a merger, acquisition or sale of all or substantially all of Agnostiq's assets; or (ii) to any affiliate or as part of a corporate reorganization; and effective upon such assignment, the assignee is deemed substituted for Agnostiq as a party to this Agreement and Agnostiq is fully released from all of its obligations and duties to perform under this Agreement. Any purported assignment or delegation by a Party in violation of this Section will be null and void. This Agreement will inure to the benefit of and be binding upon the Parties, their permitted successors and permitted assignees.
- e. Governing Law and Attornment. This Agreement and any action related thereto will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of law principles. The Parties will initiate any lawsuits in connection with this Agreement in Toronto, Ontario, Canada, and irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting therein. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement. This choice of jurisdiction does not prevent Agnostiq from seeking injunctive relief with respect to a violation of Intellectual Property Rights or confidentiality obligations in any appropriate jurisdiction.
- f. Export Restrictions. The Services may not be used in or for the benefit of, exported, or re-exported (a) into any U.S. embargoed countries (collectively, the "**Embargoed Countries**") or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals, any other restricted party lists (existing now or in the future)

identified by the Office of Foreign Asset Control, or the U.S. Department of Commerce Denied Persons List or Entity List, or any other restricted party lists (collectively, "**Restricted Party Lists**"). Without limiting the foregoing, Customer will not directly or indirectly export, re-export or import all or any portion of the Services without first obtaining all required licenses, permits and permissions. Agnostiq makes no representation or warranty that the Services may be exported without Customer first obtaining appropriate licenses or permits under applicable law, or that any such license or permit has been, will be, or can be obtained.

- g. Construction. Except as otherwise provided in this Agreement, the Parties' rights and remedies under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. The terms "include" and "including" mean, respectively, "include without limitation" and "including without limitation." The headings of sections of this Agreement are for reference purposes only and have no substantive effect. The terms "consent" or "discretion", means the right of a Party to withhold such consent or exercise such discretion, as applicable, arbitrarily and without any implied obligation to act reasonably or explain its decision to the other Party.
- h. Force Majeure. Neither Party will be liable for delays caused by any event or circumstances beyond that Party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems (other than those involving that Party's employees), Internet service failures or delays, or the unavailability or Modification by third parties of telecommunications or hosting infrastructure or third party websites ("**Force Majeure**").
- i. Severability. Any provision of this Agreement found by a tribunal or court of competent jurisdiction to be invalid, illegal or unenforceable will be severed from this Agreement and all other provisions of this Agreement will remain in full force and effect.
- j. Waiver. A waiver of any provision of this Agreement must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.
- k. Independent Contractors. Agnostiq's relationship to Customer is that of an independent contractor, and neither Party is an agent or partner of the other. Neither Party will have, and neither Party will represent to any third party that it has, any authority to act on behalf of the other Party.
- l. No Third Party Beneficiaries. Except as set forth in Section 9(c) and 9(d), and except for Agnostiq's licensors, nothing in this Agreement, express or implied, is intended to or will confer upon any person other than the Party and their respective successors and permitted assigns any legal or equitable right, benefit or remedy of any nature under or by reason of this Agreement.
- m. Entire Agreement. This Agreement (including all Order Forms), constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations or other

communications between the Parties, whether written or oral. Any terms and conditions appearing on a purchase order or similar document issued by Customer, or in Customer's procurement, invoicing, or vendor onboarding portal: (i) do not apply to the Services; (ii) do not override or form a part of this Agreement (including without limitation any Order Form); and (iii) are void.

- n. Order of Precedence. In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (1) these Terms of Service; (2) the applicable Order Form; and (3) the Documentation. The Addenda may contain additional or different terms from the body of this Agreement, and in such case, the Addenda will control.
- o. AMENDMENTS. AGNOSTIQ MAY UNILATERALLY AMEND THIS AGREEMENT, IN WHOLE OR IN PART FROM TIME TO TIME (EACH, AN "AMENDMENT"), BY GIVING CUSTOMER PRIOR NOTICE OF SUCH AMENDMENT OR POSTING NOTICE OF SUCH AMENDMENT ON THE WEBSITE. UNLESS OTHERWISE INDICATED BY AGNOSTIQ, ANY SUCH AMENDMENT WILL BECOME EFFECTIVE AS OF THE DATE THE NOTICE OF SUCH AMENDMENT IS PROVIDED TO CUSTOMER OR IS POSTED ON AGNOSTIQ'S WEBSITE (WHICHEVER IS THE EARLIER). CUSTOMER'S CONTINUED USE OF THE SERVICES AFTER ANY CHANGE MEANS CUSTOMER AGREES TO SUCH CHANGE.
- p. English Language. It is the express wish of the Parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

- **13. Definitions**

Unless the context requires otherwise, capitalized terms used in this Agreement have the meaning ascribed to them in this Section 13:

- **"Account Information"** means information about Customer that Customer provides to Agnostiq in connection with the creation or administration of Customer User Account. For example, Account Information includes names, usernames, phone numbers, email addresses and billing information associated with Customer User Account, Services or Customer's subscription to the Covalent Cloud Services.
- **"Addenda"** means any addenda prepared and executed in accordance with the terms of this Agreement (each, an "Addendum", and collectively, the "Addenda"), all as amended from time to time.
- **"Aggregated Data"** has the meaning in Section 2(a).
- **"Agnostiq Property"** has the meaning in Section 2.
- **"API Key"** has the meaning in Section 1(b)(i).
- **"Claim"** means any actual, threatened, or potential civil, criminal, administrative, regulatory, arbitral or investigative demand, allegation, action, suit, investigation or proceeding, or any other claim or demand.

- **“Content”** means software (including machine images), data, text, audio, video, or images.
- **“Covalent Cloud API”** means Agnostiq proprietary application program interface and any related Documentation all of which are designed to facilitate Customer’s access to and use of the Covalent Cloud Services.
- **“Covalent Cloud Services”** has the meaning in Section 1.
- **“Covalent Materials”** means Covalent Cloud APIs, sample code, software libraries, command, line tools, proofs of concept, templates, advice, information, programs (including credit programs) and any other Content made available by Agnostiq or its affiliates through use of the Services or the Covalent Cloud Services, website and other related technology. Covalent Materials does not include the Services or Third Party Services.
- **“Covalent Metadata”** has the meaning in Section 2(d).
- **“Criteria”** has the meaning in Section 5.
- **“Customer Application”** means any Customer application that Customer has built using Customer Input and that is hosted by Agnostiq via the Covalent Cloud Services.
- **“Customer Data”** means any data, information, content, records, and files, including Personal Information, that Customer (or any of its Permitted Users) loads, makes available to and is accessed by, transmits to or enters into the Services, including Account Information.
- **“Customer Input”** has the meaning in Section 2.
- **“Customer IP”** has the meaning in Section 2. The term “Customer IP” does not include any Covalent Materials.
- **“Customer Output”** has the meaning in Section 2.
- **“Customer Property”** means Customer IP and Customer Applications. The term “Customer Property” does not include any Agnostiq Property.
- **“Customer User Account”** has the meaning in Section 5.
- **“Deliverable”** means a deliverable provided to Customer as a result of the Professional Services.
- **“Documentation”** means Agnostiq’s user guides and other end user documentation for the applicable Services available on the online help feature of the Services, as may be updated by Agnostiq from time to time.
- **“End Customer”** means an end user who seeks or acquires a right to use or redistribute Customer Application or otherwise accesses or uses the Covalent Cloud Services under Customer User Account.

- **“Feedback”** has the meaning in Section 2.
- **“Fees”** has the meaning in Section 7.
- **“Free Trial”** has the meaning in Section 1.
- **“High Risk Activities”** means activities that has a: (A) high risk of high risk of physical harm death, serious personal injury, or severe environmental or property damage; (B) high risk of economic harm; or (C) high risk government decision making, including multi-level marketing; gambling; payday lending; automated determinations of eligibility for credit, employment; educational institutions; or public assistance services; military or warfare; the creation or operation of weaponry or weapons development; management or operation of critical infrastructure in energy, transportation, and water, law enforcement or criminal justice; migration or asylum.
- **“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
- **“Losses”** means any and all damages, fines, penalties, deficiencies, losses, liabilities (including settlements and judgments), costs, and expenses (including interest, court costs, reasonable fees and expenses of lawyers, accountants, and other experts and professionals, or other reasonable fees and expenses of litigation or other proceedings or of any Claim, default, or assessment).
- **“Modifications”** means modifications, improvements, customizations, patches, bug fixes, updates, enhancements, aggregations, compilations, derivative works, translations and adaptations, and **“Modify”** has a corresponding meaning.
- **“Order Form”** means any ordering document, online registration, order description or order confirmation referencing this Agreement including any product specific terms, supplements, or Addenda thereto.
- **“Permitted User”** means those Customer’s employees, independent contractors of Customer and End Customers of Customer, authorized by Customer on Customer’s behalf to access and use the Services.
- **“Personal Information”** means information about an identifiable individual.
- **“Privacy Law”** means: (i) all federal and provincial privacy laws applicable to Agnostiq or Customer, including the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5, (“PIPEDA”), the Personal Information Protection Act, R.S.A. 2003, c. P-6.5, the Personal Information Protection Act, R.S.B.C. 2003, c. 63 and an Act respecting the protection of personal information in the private sector, CQLR, c. P-39.1, as amended, updated, re-enacted or replaced from time to time; and (ii) any other applicable laws regarding the Processing of Personal Information.

- **“Privacy Policy”** has the meaning in Section 3.
- **“Process”** or **“Processing”** means to create, access, receive, collect, gather, procure, obtain, receive, acquire, use, transmit, store, process, record, disclose, transfer, adapt, alter, retrieve, release, retain, dispose of, destroy, manage or otherwise handle Personal Information.
- **“Professional Services”** means implementation and configuration services provided by Agnostiq in connection with the Service, as described more fully in an Order Form.
- **“Services”** means: (i) the Professional Services; (ii) Support Services; (iii) Covalent Cloud Services, including any Free Trial; and (iv) any associated offline components associated with the services described in the foregoing subsections, as described in the Documentation. The term “Services” excludes Third Party Services.
- **“Subscription Term”** means the term of each subscription to the Covalent Cloud Services as specified in the applicable Order Form.
- **“Support Services”** has the meaning in Section 6.
- **“Supporting Evidence”** means documents Customer provides as evidence that Customer Application meets the Criteria, including audit reports, standard operating procedures, incident response plans, penetration test reports, data protection impact assessments, data flow diagrams, and system design or architecture diagrams. With the exception of documents or information Customer: (i) have otherwise made public, or (ii) consent to being public, Agnostiq will treat Supporting Evidence as Customer’s Confidential Information.
- **“Term”** has the meaning in Section 11.
- **“Third Party Services”** has the meaning in Section 1(g).