



Terms and Conditions of Solver Partner Program Agreement

- 1) Solver Partner Program Agreement. These Terms and Conditions are part of, and are incorporated by reference into, the Solver Partner Program Agreement entered into between Solver and Partner. Capitalized terms used but not defined herein shall have the meanings given them in the Agreement.
- 2) Appointment. Solver hereby appoints Partner as a non-exclusive authorized reseller or referrer of Solver Software and Services (as defined in Section 11(a)) to Customers subject to the terms of this Agreement, and Partner hereby accepts such appointment.
- 3) License Grant and Distribution Rights. Subject to and conditioned on Partner's compliance with the terms and conditions of this Agreement, and solely in connection with Partner's appointment and for the purposes of its operation as a non-exclusive authorized reseller, Solver hereby grants to Partner, a limited, non-exclusive, non-transferable, and non-sublicensable license during the Term solely to: (a) demonstrate, market, and distribute the Solver Software to Customers solely for such Customers' end use under the "End User License Agreement" (EULA) as so incorporated in or bundled with the Solver Software; (b) use the Solver Software internally for testing, servicing, and supporting the Solver Software and reproduce the Solver Software in the quantities and to the extent necessary for these purposes; and (c) use Solver's manuals, instructions, specifications and other documentation and materials (collectively, "Documentation"), in whole or in part, in connection with the foregoing, reproduce such quantities of the Documentation as are necessary solely for such purposes, and distribute to Customers such Documentation for such purposes ((a) through (c), collectively, the "Permitted Purposes").
- 4) Trademark License and Use.
 - a) Subject to and conditioned on Partner's compliance with the terms and conditions of this Agreement, Solver hereby grants Partner a limited, non-exclusive, non-transferable and non-sublicensable, royalty-free license during the Term to use the Marks (as defined below) of Solver (the "Solver Marks") and reproduce and distribute Marketing Materials (as defined below) solely to market and promote the Solver Software under this Agreement in accordance with Solver's then-current Solver Mark guidelines provided by Solver to Partner whether on the Partner Portal or otherwise as the same may be updated by Solver from time to time. All uses of the Solver Marks, and all goodwill associated therewith, shall inure solely to the benefit of Solver. For purposes hereof, (i) "Mark" means any trademark, service mark, trade name, logo, domain name, or other indicator of source, affiliation, or sponsorship, whether registered or unregistered, and (ii) "Marketing Materials" means any advertising, promotional, or marketing materials for or relating to the Solver Software that Solver may make available to Partner from time to time during the Term.
 - b) Partner shall not use any Solver Marks (whether individually or in combination, in whole or in part): (i) in or in connection with the advertising, promotion, marketing or distribution of any goods, services or technologies other than the Solver Software and the Services; (ii) as part of Partner's corporate or trade name or any domain name; (iii) in any way that is likely to cause confusion, mistake or deception; or (iv) in any way that is likely to dilute, tarnish or otherwise diminish the Solver Marks' distinctiveness, or jeopardize the reputation of or goodwill associated with the Solver Marks, the Solver Software or Solver or the validity or Solver's ownership of the Solver Marks or the registrations thereof.
 - c) Other than such use of the Solver Marks as are expressly permitted under this Section, Partner shall not use, register, or attempt to register any Mark that is identical to or confusingly similar to any of the Solver Marks or that incorporates any of the Solver Marks in whole or in part. Partner shall not at any time during or after the Term challenge, or cause or assist any Person (as defined below) to challenge, the validity of the Solver Marks or Solver's ownership, use or registration of or rights in any of the Solver Marks. For purposes hereof, "Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.
 - d) The Solver Software, Solver Marks, Documentation, Marketing Materials and other information and materials of Solver (collectively, the "Solver Properties") and all Third-Party Materials (as defined below) that are a part thereof are provided to Partner solely for the Permitted Purposes under the express terms of the licenses granted in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Partner or any third party any Intellectual Property Rights (as defined below) or other right, title or interest in or to the Solver Software or other Solver Properties. All uses in this Agreement of the terms "sell," "sale," "resell," "resale," "purchase," "price," and the like mean

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the purchase or sale of a license (i) in the case of Partner, under this Agreement and the EULA; and (ii) in the case of Customers, under the EULA. Nothing in this Agreement grants or conveys, or permits Partner to grant or convey, any ownership right in any of the Solver Properties or Third-Party Materials, or any article or copy thereof or Intellectual Property Rights therein. For purposes hereof, (x) “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, policies or other governmental or judicial requirements, and all similar or equivalent rights or forms of protection, in any part of the world; and (y) “Third-Party Materials” means all materials and information in any form or medium, including any software, documents, data, content, specifications, products, equipment or components of or relating to the Software, that are not proprietary to Solver.

- 5) Partner Obligations. During the Term, Partner shall, in accordance with the terms and conditions of this Agreement and at its own cost: (a) distribute the Solver Software solely under the EULA and ensure that Customers receive, are aware of, and accept the terms and conditions of the EULA before using the Solver Software and promptly report to Solver in writing any actual or suspected EULA non-compliance; (b) advertise, promote, market, and distribute the Solver Software to Customers using Partner’s commercially reasonable efforts to maximize the distribution of, licensing revenues from, and Customer satisfaction with the Solver Software; (c) unless Partner is a Referral Partner, either sell the Software to a minimum of one (1) new Customer under this Agreement (the “Minimum Commitment”) during the Term; (d) unless Partner is a Referral Partner, maintain sufficient knowledge of the industry and products competitive with the Solver Software (including specifications, features and benefits) so as to be able to explain in detail to Customers: (i) the differences between the Solver Software and competing products; and (ii) information on standard protocols and features of the Solver Software; (e) use the Solver Software in accordance with the terms and conditions of the EULA and comply with all Solver rules of conduct, including Solver’s advertising, promotion, marketing, privacy and merchandising policies relating to the Solver Software as set forth in the Partner Portal and all Solver directions and instructions concerning the commercialization of the Solver Software; (f) promptly give Solver written notice of any notice, complaint or claim of which Partner becomes aware concerning the Solver Software, any misuse of the Solver Software, or any act or omission of Partner in violation of this Agreement; (g) conduct business in accordance with applicable law and in a manner that is professional and consistent with good business practice and reflects favorably at all times on the Solver Software and the good name, goodwill, and reputation of Solver; (h) maintain appropriate administrative, physical, and technical safeguards for the protection of the privacy, security, confidentiality, and integrity of Customer Information (as defined below); (i) comply, and ensure that its employees, agents, and contractors comply, with all applicable laws regarding data privacy and security, required data breach notifications and personal information; and (j) provide thirty (30) days’ prior written notice to Solver of any Change of Control (as defined below) of Partner. For purposes hereof, “Customer Information” means any information collected, received, processed, or maintained by or on behalf of Partner from or relating to any Customer in connection with the Software.
- 6) Solver Obligations. At all times during the Term, Solver shall, in accordance with the terms and conditions of this Agreement: (a) apply the applicable Margin Level specified in the Partner Margin Levels table set forth in the Agreement to invoices sent to Partner, as determined by Solver in accordance with the Margin Notes; (b) provide support to Partner as described in this Agreement; (c) provide such Marketing Materials as Solver, in its sole discretion, may deem appropriate for Partner’s marketing of the Solver Software in accordance with this Agreement; and (d) perform its Services and conduct business in accordance with applicable law and in a manner that is consistent with good business practices.
- 7) Relationship. Partner agrees that its relationship with Solver is one of a “reseller” or “referrer.” Use of the term “Partner” herein is for reference purposes only. This Agreement does not create an agency, employer-employee, partnership or joint venture relationship, and does not create a franchise, dealership or business opportunity relationship between the parties. Neither party has the authority to contract for or bind the other without the other’s prior written consent. Each party will be solely responsible for the supervision of its employees and for the fulfillment of all obligations incumbent upon an employer with regard to its employees, including the withholding and payment of income taxes, statutory benefits, and social security taxes, and the provision of health, disability and other benefits or workers’ compensation insurance.
- 8) Confidentiality. Each party agrees (i) to keep confidential the other party’s confidential information (including the terms of this Agreement), (ii) to use such information only for purposes of the business relationship between the parties, and (iii) to take reasonable steps to protect the other party’s confidential information, in each case subject to the terms and conditions set forth in the Mutual Non-Disclosure Agreement to be executed in conjunction with this Agreement.
- 9) Existing Partner. If Partner is currently a Partner under a previously executed Agreement, Partner may keep such Agreement in force through its expiration date, or one year from the date of execution if no expiration date is indicated in the Agreement, whichever occurs earlier. Alternatively, subject to Solver’s approval, Partner may execute this Agreement as early as January 1 of the current term year.
- 10) Insurance. Partner (other than a Referral Partner) shall maintain throughout the Term, at its own cost and expense: (i) Worker’s Compensation insurance at statutory limits; (ii) Commercial General Liability insurance with coverage limits of not less than \$1,000,000 per incident and \$2,000,000 aggregate; and (iii) Errors and Omissions insurance with coverage limits of \$1,000,000 per incident and \$1,000,000 aggregate. Upon request, Partner shall provide Solver with certificates of insurance evidencing the coverages required. Partner’s certificates of insurance must note that the insurers issuing such coverage shall endeavor to provide Solver with at least thirty (30) days’ prior written notice in the event of cancellation or non-renewal of coverage. The coverage referred to under subsection (ii) of this Section shall include Solver as an additional insured.

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11) Support.

- a) It is in Solver's best interests to provide support to Partners and assist Partners in developing skills for training, implementations, and sales demonstrations for the Solver Software. Accordingly, provided that Partner is then-current in its payment of all amounts due to Solver, Solver shall provide free support tickets to assist in supporting Partners (other than Referral Partners) in accordance with Partner's applicable Partner Recognition Level set forth in the Agreement. Each support ticket used by Partner shall be deducted from such Partner's annual ticket allowance unless such support ticket is being used on behalf of a Customer who has an active paid-up support contract with Solver. If Partner is using a support ticket on behalf of a Customer who has an active paid-up support contract with Solver, Partner must include the Customer's name with each support request so the support ticket is not deducted from the Partner's annual allowance. All tickets submitted without a Customer's name will be automatically deducted from the Partner's annual allowance. Support tickets may not be used toward provision of the following services provided by Solver (collectively, "Services"): report creation, 3rd party ETL integrations, Solver Connector configuration, requirements gathering, budget models, general consulting and implementation. These Services will be billable at Solver's then-current standard consulting rates in accordance with Sections 13 and 14 hereof. Notwithstanding anything to the contrary, all support provided by Solver to Partner and/or Customer shall be subject to Solver's current Support Policy on Solver's website at <https://support.solverglobal.com> which may be updated from time to time.
- b) Notwithstanding the provisions of Section 11(a) or any other provisions of this Agreement, Solver shall have no obligation to provide technical support for: (i) altered, damaged or modified Software (other than such altered or modified Software as have been altered or modified by or in accordance with the specifications or Solver's written directions to Partner); (ii) Software that is not the then current release of the Software available from Solver; (iii) Software problems caused by Partner's or the Customer's negligence, hardware malfunction, or other causes beyond the control of Solver; or (iv) Software installed on a hardware or operating system environment that is not supported by Solver.
- c) Except as expressly provided in this Agreement, Partner is solely responsible for providing technical support to Customers for the Solver Software. Partner shall (i) ensure that maintain one (1) dedicated, trained, capable, and qualified Partner technical personnel with sufficient knowledge of the Solver Software per one hundred (100) active customers is/are available during Partner's published business hours of operation to serve as the primary points of contact for Customers' requests for technical support for, and to effectively and efficiently assist Customers' operation of, the Solver Software; (ii) timely respond to existing and prospective Customers' inquiries and requests regarding the general operation and use of the Solver Software, including: (A) providing general information and installation, configuration, and integration support on the Solver Software protocols and features; (B) collecting relevant technical problem identification information; (C) providing assistance to Customers in the diagnosis and correction of problems encountered in using the Solver Software; (D) acting as a liaison between the Customer and Solver in matters that Solver determines in its sole discretion require Solver's participation; and (E) direct Customers to contact only Partner for support for the Solver Software unless the Customer has an active paid-up support contract with Solver.

12) Maintenance Releases. From time to time during the Term, provided that Partner is then-current in its payment of all amounts due to Solver, Solver may make available to Partner at no additional cost Maintenance Releases (as defined below) to the current version of the Software as and when Solver generally releases or makes such Maintenance Release available to Solver's Customers. Promptly upon Partner's receipt of any Maintenance Release, Partner shall distribute such Maintenance Release to its Customers, and prepare and deliver or make available to Customers any updates to the Documentation that are necessary to ensure the Software's performance in accordance with the functional specifications when implemented and used by Customers as directed by such Documentation. Partner hereby acknowledges that Solver is only obligated to support the then-current and immediately previous versions of the Software or as specified in the Support Policy. For purposes hereof, "Maintenance Release" means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Solver may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software.

13) Fees, Expenses and Taxes.

- a) Partner shall pay Solver a license fee for each copy of the Solver Software purchased by a Customer in an amount (the "Software Fee") calculated as follows: (i) the applicable amount set forth in Solver's then-current price list for Partners, as set forth in the Partner Portal, less (ii) the applicable aggregate margin percentage of the amount in subsection (i) which percentage shall be calculated in accordance with the Partner Margin Levels table and Margin Notes in the Agreement.
- b) In connection with the provision of Services by Solver to Partner's Customers, Partner shall pay Solver a fee as specified in the applicable Statement of Work between Partner and Solver (the "Services Fee," and together with the Software Fee, the "Fees").
- c) No Fee deductions, credits or allowances may be taken and no refunds will be provided for early termination by a Customer or otherwise. Fees are subject to change from time to time in Solver's sole discretion. Solver will notify Partner of changes to the Price List, and such changes will become effective following such notification. Notwithstanding the foregoing, Solver shall honor Fees set forth in the Price List immediately preceding the then-current Price List if Partner has quoted a Customer prices from such previous Price List when such Price List was then-current. Solver may request documentary evidence of such quote for verification purposes. In Solver's reasonable discretion, failure to provide such documentary evidence may result in an increase in the Fees charged to Partner in connection with such Customer to account for the difference in Fees between the preceding Price List and the current Price List, and Partner shall pay any such additional Fee together with other Fees and amounts due and owing to Solver in accordance with this Agreement. Partner shall make all payments of Fees in accordance with Section 14.
- d) Expenses. Except as otherwise expressly provided in this Agreement, each party is solely responsible and liable for all costs and expenses it incurs in entering into and performing this Agreement.
- e) Taxes. All Fees and other amounts payable by Partner under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Partner is responsible for collecting and paying all sales, use, and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Partner hereunder, other than any taxes imposed on Solver's income.

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- 14) Payment.
- a) Partner shall make all payments when due under this Agreement in accordance with the terms of this Section. Except as otherwise set forth herein, Partner agrees to pay all invoices in respect of Fees and other charges upon receipt of an invoice from Solver. Upon credit approval by Solver, Solver may, in its sole discretion, offer net 30 payment terms to Partner (except if Partner is a Referral Partner).
 - b) Unless otherwise agreed by Partner and Solver, Solver shall remit invoices to Partner by email to the email address designated by Partner in writing, which email address may be changed by notifying Solver in writing. Partner shall make all payments in U.S. dollars by check, wire transfer or other mutually agreed upon method to the address or account specified in Solver's invoice or such other address or account as Solver may specify in writing from time to time.
 - c) Partner shall pay all amounts due under this Agreement without setoff, deduction, recoupment, or withholding of any kind. Partner bears all credit risk regarding, and is solely responsible for collecting payment for, all sales of Solver Software to Customers and the provision of Services to Customers. Partner's inability or failure to collect the purchase price for Solver Software or Services does not affect Partner's obligation to pay Solver in strict accordance with the terms of this Agreement.
 - d) If Partner fails to make any payment when due then, in addition to all other remedies that may be available: (A) Solver may charge interest on the past due amount at the lesser of 12 % per annum and the maximum amount permitted under applicable law; (B) Partner shall reimburse Solver for all reasonable costs incurred by Solver in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and/or (C) if such failure continues for fifteen (15) days following written notice thereof, Solver may disable, or withhold, suspend, or revoke its grant of a license of, or performance of Services relating to, the Solver Software until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Partner or any other Person by reason of any such action.
 - e) Payment terms for one-time license fee: If a Customer agrees to pay a one-time license fee for the Solver Software, Partner shall not provide net 30 or other payment terms to such Customer. If Partner has net 30 terms with Solver, and prompt payment is not made in connection with any Customer paying a one-time license fee, Solver, in its sole discretion, may shut off the applicable Customer keys thereby preventing Customer access to the Solver Software until such time as Partner has paid Solver in full in connection therewith. Solver may, in its sole discretion, contact the applicable Customer directly to inform them of the situation.
 - f) Payment terms for Subscription and Cloud Services: Regardless of whether Partner has been granted net 30 terms by Solver, such terms shall not apply in connection with Subscription, Cloud-based service or enhancement renewals and support, and Partner shall pay Solver all amounts due and owing in connection with such services before delivery of the Software and keys is made to Customer and/or before any such services are made available to Customer.
 - g) Payment terms for Consulting and Other Services: Solver may, in its sole discretion, require payment in advance of the performance of consulting and other Services, which payment shall be a reasonable estimate of the aggregate fees to be incurred in connection therewith, as determined by Solver. If Solver does not so require advance payment, Solver shall bill Partner directly for such Services.
 - h) Change of Partner by Customer. If a Customer wishes to change from one Partner ("Divesting Partner") to another Partner ("Acquiring Partner"), Solver shall permit such transfer and invoice the Acquiring Partner on a going-forward basis in connection with new sales of Software and/or Services from the date of the transfer; provided, that (i) Customer notifies Solver in writing that it wishes to terminate its relationship with the Divesting Partner, and that all amounts due and owing to the Divesting Partner have been paid in full by Customer; (ii) all amounts due and owing to Solver by the Divesting Partner have been paid in full; and (iii) the Acquiring Partner notifies Solver in writing of such transfer and agrees to indemnify and hold Solver harmless from any and all claims and damages resulting from such transfer.
 - i) Recordkeeping. During the Term and for a period of one (1) year thereafter, Partner shall maintain complete and accurate records relating to the provision of the Software and the Services under this Agreement. Upon Solver's written request, Partner shall allow Partner or Partner's representative to inspect and make copies of such records; provided, that Solver provides Partner with at least ten (10) days' advance written notice of the planned inspection, and any such inspection shall take place during regular business hours.
- 15) Term and Termination.
- a) Term. The Term of this Agreement is the calendar year set forth on the first page of this Agreement, and may be terminated earlier pursuant to any of the express provisions of this Agreement. The Term may be renewed for an additional calendar year upon mutual written agreement of the parties, and the parties shall endeavor to enter into any such renewal no later than thirty (30) days prior to the end of the then-current Term.
 - b) Termination. During the Term:
 - i) either party may, without cause, and without incurring any obligation, liability or penalty by reason of such termination, terminate all or any of: (A) this Agreement; (B) the rights and licenses granted by Solver hereunder; or (C) any services to be performed by such party under this Agreement, in each of the foregoing cases by providing at least thirty (30) days' prior written notice to the other party;
 - ii) Solver may terminate this Agreement, effective upon written notice to Partner, if: (A) Partner fails to pay any amount when due hereunder in accordance with the terms hereof, and such failure continues more than fifteen (15) days after Solver's delivery of written notice thereof; (B) Partner fails to meet the Minimum Commitment; (C) Partner's customer satisfaction surveys as performed by Solver show consistently low levels of satisfaction (3 or less on a 1-10 scale), provided that Solver and Partner shall confer to address such issues before any such termination; (D) Partner is subject to a Change of Control where "Change of Control" means the sale of all or substantially all of the assets of Partner; any merger, consolidation or acquisition of Partner with, by or into another corporation, entity or person; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of Partner in one or more related transactions; (E) Partner does not enter into a new agreement with Solver within thirty (30) days of the expiry of this Agreement; (F) Partner (1) is dissolved or liquidated or takes any corporate action for such purpose; (2) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (3) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (4) makes or seeks to make a general assignment

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- for the benefit of its creditors; or (5) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or (G) Partner breaches any of its obligations under Section 3 or Section 8 hereof.
- iii) either party may terminate this Agreement, effective upon written notice to the other party, if the other party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured fifteen (15) days after the non-breaching party provides the breaching party with written notice of such breach.
- c) Effect of Expiration or Termination. Upon any expiration or termination of this Agreement:
- i) all direct EULA licenses granted to then-existing Customers under this Agreement shall survive in accordance with their terms, and Solver may, in its sole discretion, contact any such Customers upon notice of termination for any purpose including, without limitation, to retain the business of such Customers for itself or another Partner;
 - ii) Partner will not be entitled to (A) any compensation in connection with any renewals of its Customers, and (b) any margin on any invoiced amounts to Partner's Customers in connection with sales initiated after the earlier to occur of expiration/termination of this Agreement or notice thereof;
 - iii) Partner shall immediately cease to represent itself as Solver's authorized Partner, and otherwise desist from all conduct or representations that might lead the public or trade to believe that Partner is authorized by Solver to sell or distribute the Software;
 - iv) subject only to Partner's continued right to retain and use one copy each of the Software and Documentation solely to perform its support obligations to then-existing Customers:
 - (1) all licenses granted to Partner hereunder shall expire or terminate;
 - (2) Partner shall cease all use of the Software and other Solver Properties, in whole or in part, including, without limitation, with respect to any production, marketing, distribution, licensing, sale, maintenance, support or use of the Software, and if Partner wishes to continue internal use of the Solver Software after termination, Partner shall purchase a retail license for such Software from Solver or another Partner;
 - (3) Partner shall promptly: (A) destroy or return to Solver, at Solver's option, all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the Software and the other Solver Properties; and (B) permanently erase the Software and the other Solver Properties from its computer systems; and
 - (4) [Solver shall promptly: (A) return to Partner all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on Partner's Confidential Information; and (B) permanently erase Partner's Confidential Information from its computer systems.]
 - v) if Solver terminates this Agreement pursuant to Section 15(b)(ii), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Partner shall pay such Fees, together with all previously-acrued but not yet paid service charges and reimbursable expenses, within ten (10) days after the effective date of such termination;
 - vi) Partner shall, within ten (10) days after such expiration or termination, certify to Solver in a written instrument signed by a duly authorized officer of Partner that it has complied with the requirements of this Section 15(c); and
 - vii) the terms of any Non-Disclosure Agreement between Partner and Solver shall remain in full force and effect in accordance with its terms.
- 16) Intellectual Property Rights.
- a) Intellectual Property Ownership. All right, title, and interest in and to the Solver Properties and Third-Party Materials, including all Intellectual Property Rights therein, are and will remain, respectively, with Solver and the respective rights holders in the Third-Party Materials. Partner has no right or license with respect to any Solver Properties or Third-Party Materials except as expressly licensed hereunder, under the EULA, or under the applicable third-party license, in each case subject to the requirements and restrictions set forth in this Agreement. All other rights in and to the Solver Properties and Third-Party Materials are expressly reserved by Solver and the respective third-party licensors. Partner hereby unconditionally and irrevocably assigns to Solver or Solver's designee its entire right, title, and interest in and to any Intellectual Property Rights that Partner may acquire in or relating to any of the Solver Properties or Third Party Materials (including any rights in derivative works or patent improvements relating thereto), whether acquired by operation of law, contract, assignment or otherwise.
 - b) Partner Cooperation and Notice of Infringement. Partner shall, during the Term: (i) safeguard the Solver Properties (including all copies thereof) from infringement, misappropriation, theft, misuse, and unauthorized access; (ii) at Solver's expense, take all such steps as Solver may reasonably require to assist Solver in maintaining the validity, enforceability, and Solver's ownership of the Intellectual Property Rights in the Solver Properties; (iii) promptly notify Solver in writing if Partner becomes aware of (A) any actual or suspected infringement, misappropriation, or other violation of Solver's Intellectual Property Rights in or relating to any of the Solver Properties or (B) any claim that any Solver Properties, including any production, marketing, distribution, licensing, sale, use or other disposition of any Software infringes, misappropriates or otherwise violates the rights of any third party; and (iv) at Solver's expense, cooperate with and assist Solver in all reasonable ways in the conduct of any Action (as defined below) described in Section 15(c). For purposes hereof, "Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise.
 - c) Exclusive Right to Bring or Defend Action. Solver has the sole right and discretion, but not the obligation, to prevent or abate any actual or threatened infringement, misappropriation, or violation of Solver's or Partner's respective rights in, and to attempt to resolve any claims relating to, any Solver Properties, including by: (a) prosecuting or defending any Action of any kind; and (b) taking any other lawful action that Solver, in its sole discretion, believes is reasonably necessary to protect, enforce, or defend the validity of Solver's or Partner's rights in the Solver Properties.
- 17) Representations and Warranties.
- a) Mutual Representations and Warranties. Each party represents and warrants to the other party that:

Version 2020

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- i) it is duly organized, validly existing and in good standing as a corporation or other entity under the laws of the jurisdiction of its incorporation or other organization;
 - ii) it has the full right, power and authority to enter into, and to perform its obligations and grant the rights and licenses it grants or is required to grant under, this Agreement;
 - iii) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and
 - iv) when executed and delivered by both parties, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
- b) **Limited Warranty.** Any and all warranties in respect of the Software including, without limitation, warranties of performance and non-infringement, are set forth in the EULA. Subject to the limitations and conditions set forth herein, Solver warrants that Solver the Services will be performed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services.
- c) **Warranty Requirements.** The limited warranties set forth in Section 16(b) apply only if Partner is in compliance with all material terms and conditions of this Agreement (including the payment of all Fees and other amounts then due and owing to Solver) as of the date of Partner's notification of a warranty issue.
- d) **Exceptions.** Notwithstanding any provisions to the contrary in this Agreement, the limited warranty set forth in Section 16(b) does not apply to issues arising out of or relating to:
- i) Software, or the media on which they are provided, that are modified or damaged by Partner, its agents or representatives;
 - ii) any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including any incorporation in the Software of, or combination, operation, or use of the Software in or with, any technology (including any software, hardware, firmware, system, or network) or service not specified for Partner's use in the Documentation;
 - iii) Partner's or any third party's negligence, abuse, misapplication, or misuse of the Software;
 - iv) Partner's failure to promptly install all Maintenance Releases that Solver has previously made available to Partner;
 - v) the operation of, or access to, Partner's or a third party's system or network;
 - vi) Partner's material breach of any material provision of this Agreement; or
 - vii) any other circumstances or causes outside of the reasonable control of Solver.
- e) **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 17(b) AND THE EULA, ALL SOLVER PROPERTIES AND SERVICES, AND ANY OTHER INFORMATION, MATERIALS, OR WORK PRODUCT PROVIDED BY SOLVER ARE PROVIDED "AS IS" AND SOLVER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, AND SOLVER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, SOLVER MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE OR SOLVER PROPERTIES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET PARTNER'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES [EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN SPECIFICATIONS PROVIDED BY SOLVER OR A THIRD-PARTY LICENSOR], OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ANY REPRESENTATIONS AND WARRANTIES OF OR RELATING TO THE SOFTWARE ARE MADE DIRECTLY TO END USERS SOLELY UNDER THE TERMS AND CONDITIONS OF THE END USER'S EULA.
- 18) **Indemnification.**
- a) **Solver Indemnification.** Solver shall indemnify, defend, and hold harmless Partner and Partner's officers, directors, employees, agents, permitted successors, and permitted assigns (each, a "Partner Indemnitee") from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees (collectively, "Losses") incurred by a Partner Indemnitee arising out of or relating to any Action by a third party (other than an Affiliate (as defined below) of a Partner Indemnitee) that arise from or relate to (i) a claim that the Software, Solver Properties and/or the Services infringe a U.S. Intellectual Property Right, or (ii) a material breach by a Solver Indemnitee (as defined below) of the terms of this Agreement. For purposes hereof, "Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Notwithstanding the foregoing, Solver assumes no liability for: (A) infringement combinations, methods or processes in which any of the Products may be used but not covering the Products when used alone; (B) trademark infringements involving any marking or branding not authorized by Solver or involving any marking or branding by Partner that causes the claim; (C) infringements involving the modification of the Software, or use of the Software in combination with other third-party products or software, which if the Product operates alone or was not modified is not infringing; or (D) copying, creating derivative works or distributing material or work that was not authorized by Solver.
 - b) **Partner Indemnification.** Partner shall indemnify, defend, and hold harmless Solver and its Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and permitted assigns (each, a "Solver Indemnitee") from and against any and all Losses incurred by a Solver Indemnitee in connection with any Action by a third party (other than an Affiliate of a Solver Indemnitee) that arise from or relate to a material breach by a Partner Indemnitee of the terms of this Agreement.
 - c) **Indemnification Procedure.** Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 18(a) or Section 18(b), as the case may be. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this Section 18(c) will not relieve the Indemnitor of its obligations except to the extent that the Indemnitor can demonstrate that it has been

materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

19) Limitations of Liability.

- a) EXCLUSION OF DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 19(c), IN NO EVENT WILL SOLVER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY (i) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR (ii) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b) CAP ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN SECTION 19(c), IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF SOLVER AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER EXCEED THE AGGREGATE AMOUNT OF FEES PAID OR PAYABLE BY PARTNER TO SOLVER DURING THE TERM.
- c) Exceptions to Limitations of Liability. The exclusions and limitations in Section 19(a) and Section 19(b) do not apply to: (i) Losses arising out of or relating to a party's breach of its obligations under Section 8 or Section 16; (ii) either party's indemnification obligations under Section 18; (iii) Losses arising out of or relating to a party's gross negligence or more culpable conduct, including any willful misconduct or intentionally wrongful acts; or (iv) a party's obligation to pay attorneys' fees and court costs in accordance with this Agreement.

20) Miscellaneous.

- a) Interpretation. For purposes of this Agreement: (i) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (ii) the word "or" is not exclusive; (iii) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (iv) words denoting the singular have a comparable meaning when used in the plural, and vice versa; and (v) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; and (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.
- b) Notices. Any notice or communication given by either party to the other party pursuant to this Agreement must be in writing and will be deemed to have been given and received when delivered to the address specified by the party to receive the notice by nationally-recognized overnight delivery service or by electronic mail. Any such notice must be given to the Solver at 10780 Santa Monica Blvd., Suite 370, Los Angeles, CA 90025, Attention: Tad Remington, Email: tremington@solverglobal.com, and to Partner at the contact information set forth on the signature page of this Agreement. Either Party may designate a new recipient/address/email address to which notice must be given by giving five (5) calendar days' prior written notice to the other party.
- c) Amendment. Except as otherwise provided herein, this Agreement may be amended or modified by Solver from time to time. Changes to this agreement will be communicated at least 30 days before their effective date.
- d) No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than in a writing signed by an authorized representative of the party to be charged. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement.
- e) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.
- f) Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- g) Assignment. This Agreement, and Partner's rights and obligations herein, may not be assigned, subcontracted, delegated, or otherwise transferred by Partner without Solver's prior written consent, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. The terms of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives.
- h) Governing Law; Venue. This Agreement shall be governed exclusively by the laws of the State of California without regard to its conflicts of law principles. Any action brought hereunder shall be brought exclusively in the federal or state courts, in Los Angeles, California, and both parties hereby consent to the jurisdiction of such courts and to such venue, which both agree is convenient. The parties irrevocably waive all rights they may have to a trial by jury in any judicial proceeding involving any claim relating to or arising under this Agreement.
- i) Arbitration. Partner agrees that any dispute between Partner and Solver which cannot be resolved by good-faith negotiations between the parties will be resolved solely by binding arbitration in Los Angeles, California, before a retired California superior court judge or appellate justice. The arbitration shall be conducted in accordance with the rules of Judicial Arbitration Mediation Services (JAMS) and the arbitrator will be bound by the California Evidence Code. The disputes subject to binding arbitration include, without limitation, disputes regarding breach of this agreement, unpaid invoices, or any claim based upon a statute, as well as any dispute as to the arbitrability of any such claims. The arbitrator's award will be final and binding, and judgment thereon may be entered in any court of competent jurisdiction. Arbitration will be the sole means of resolving any such disputes, and both parties waive their rights to resolve disputes by jury trial or other court proceedings. The prevailing party will be entitled to recover all attorneys' fees, all experts' fees and expenses, and all costs (whether or not such costs are recoverable pursuant to the California Code of Civil Procedure) which may be incurred in connection with either obtaining or collecting any judgment and/or arbitration award, in addition to any other relief or payments to which that party may be entitled.

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- j) Force Majeure. Neither party will be liable for any failure or delay in performance of its obligations under this Agreement (except for any obligations to make payments to the other party) to the extent such failure or delay is caused, without fault of the non-performing party, by fire, flood, earthquake, elements of nature or acts of God; acts of war, terrorism, riots, civil disorders, rebellions or revolutions; quarantines, embargoes and other similar governmental action; or any other similar cause beyond the reasonable control of such party; provided, that the non-performing party shall be excused from its non-performance of affected obligations only for so long as such circumstances prevail and such party continues to attempt to recommence performance whenever and to whatever extent reasonably possible without delay. Any party so delayed in its performance will promptly notify the other and describe in reasonable detail the circumstances causing such delay.
- k) Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- l) Export. Partner agrees not to export, directly or indirectly, any U.S.-source technical data acquired from Solver or any products utilizing such data to countries outside the United States, which export may be in violation of the United States export laws or regulations.
- m) Entire Agreement. This Agreement together with all exhibits, schedules, attachments, and appendices set forth the entire agreement of the parties with respect to the subject matter hereof and thereof and supersede all prior or contemporaneous writings, negotiations, and discussions concerning such subject matter.
- n) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same agreement. Any copy of this Agreement made by reliable means (for example, facsimile or portable document format (.pdf)) shall be considered an original.

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