
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this ____ day of _____, 2023 (the "Effective Date"), by and between the **TOWN OF FIRESTONE**, a Colorado municipal corporation with an address of 9950 Park Avenue, Firestone, Colorado 80504 (the "Town"), and **POLICY CONFLUENCE, INC. (POLCO)**, an independent Consultant with a principal place of business at 8001 Terrace Avenue, #201 Middleton, WI 53562 ("Consultant ") (each a "Party" and collectively the "Parties").

WHEREAS, the Town requires professional services; and

WHEREAS, Consultant has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Consultant shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference and known as **Community Survey Services**.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Consultant proceeds without such written authorization, Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date and shall have an initial term of one year from the effective date. Upon expiration of the initial term, this agreement shall automatically renew for a period of one year.

B. Either Party may serve the other with notice of a desire to amend, supplement or renegotiate specific section(s) of this agreement, in whole or in part. Such notice shall be provided in writing by either Party to the other not more than one hundred and twenty (120) calendar days prior to the anniversary date of this Agreement.

III. COMPENSATION

In consideration for the completion of the Scope of Services by the Consultant, the Town shall pay Consultant an amount not to exceed **\$36,650.00**. This amount shall include all fees, costs, and expenses

incurred by Consultant, and no additional amounts shall be paid by the Town for such fees, costs, and expenses. Consultant may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

IV. PROFESSIONAL RESPONSIBILITY

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Consultant hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Consultant for its professional expertise, Consultant agrees not to employ Sub-Consultants to perform any work except as expressly set forth in the Scope of Services.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Consultant shall be exclusively owned by the Town. Consultant expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Consultant hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Consultant.

If the Town reuses or makes any modification to Consultant's designs, documents or work product without the prior written authorization of Consultant, the Town agrees, to the fullest extent permitted by law, to release the Consultant, its officers, directors, employees and sub-consultants from all claims and causes of action arising from such uses, and shall indemnify and hold them harmless from all costs and expenses, including the cost of defense, related to claims and causes of action to the extent such costs and expenses arise from the Town's modification or reuse of the documents.

The Town expressly acknowledges and agrees that the documents and data to be provided by Consultant under the Agreement may contain certain design details, features and concepts from the Consultant's own practice detail library, which collectively may form portions of the design for the Project, but which separately, are, and shall remain, the sole and exclusive property of Consultant. Nothing herein shall be construed as a limitation on the Consultant's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

VI. INDEPENDENT CONSULTANT

Consultant is an independent Consultant. Notwithstanding any other provision of this Agreement, all personnel assigned by Consultant to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is a Town employee for any purposes.

VII. INSURANCE

A. Consultant agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Consultant pursuant to this Agreement. At a minimum, Consultant shall procure and maintain, and shall cause any Sub-Consultant to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and Consultants as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its Consultants shall be excess and not contributory insurance to that provided by Consultant. Consultant shall be solely responsible for any deductible losses under any policy.

C. Consultant shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

A. Consultant agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Consultant, any Sub-Consultant of Consultant, or

any officer, employee, representative, or agent of Consultant, or which arise out of a worker's compensation claim of any employee of Consultant or of any employee of any Sub-Consultant of Consultant. Consultant's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Consultant, any Sub-Consultant of Consultant, or any officer, employee, representative, or agent of Consultant or of any Sub-Consultant of Consultant.

B. If Consultant is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Consultant's obligation to indemnify and hold harmless the Town may be determined only after Consultant's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual Agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. WORKER WITHOUT AUTHORIZATION

A. Certification. By entering into this Agreement, Consultant hereby certifies that, at the time of this certification, it does not knowingly employ or contract with a worker without authorization, as that term is defined in C.R.S. § 8-17.5-101(9), as amended, who will perform work under this Agreement and that Consultant will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Consultant shall not knowingly employ or contract with a worker without authorization, as that term is defined in C.R.S. § 8-17.5-101(9), as amended, to perform work under this Agreement, or enter into a contract with a Sub-Consultant that fails to certify to Consultant that the Sub-Consultant shall not knowingly employ or contract with a worker without authorization, as that term is defined in C.R.S. § 8-17.5-101(9), as amended, to perform work under this Agreement.

C. Verification.

1. If Consultant has employees, Consultant has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Consultant shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Consultant obtains actual knowledge that a Sub-Consultant performing work under this Agreement knowingly employs or contracts with a worker without authorization, as that term is defined in C.R.S. § 8-17.5-101(9), as amended, who is performing work under this Agreement, Consultant shall: notify the Sub-Consultant and the Town within 3 days that Consultant has actual knowledge that the Sub-Consultant is employing or contracting with a worker without authorization, as that term is defined in C.R.S. § 8-17.5-101(9), as amended, who is performing work under this Agreement; and terminate the subcontract with the Sub-Consultant if within 3 days of receiving the notice required pursuant to subsection 3 hereof, the Sub-Consultant does not stop employing or contracting with the worker without authorization who is performing work under this Agreement;

except that Consultant shall not terminate the subcontract if during such 3 days the Sub-Consultant provides information to establish that the Sub-Consultant has not knowingly employed or contracted with a worker without authorization, as that term is defined in C.R.S. § 8-17.5-101(9), as amended, who is performing work under this Agreement.

D. Duty to Comply with Investigations. Consultant shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Consultant is complying with the terms of this Agreement.

X. CHANGE ORDERS

- A. A Change Order is a written instrument issued after execution of the Agreement signed by Town and Contractor, stating their Agreement, as applicable, upon all of the following:
- a. The scope of the change in the Work;
 - b. The amount of the adjustment to the Contract Price; and
 - c. The extent of the adjustment to the Contract Times(s).
- B. All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Town and Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustment such changes.

XI. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire Agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written Agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

L. Representative Authority. Each person signing this Agreement represents and warrants that he or she is duly authorized and has the legal capacity to execute the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF FIRESTONE, COLORADO

Drew Peterson, Mayor

ATTEST:

Kristi K Bashor, CMC, Town Clerk

APPROVED AS TO FORM:

William P. Hayashi, Town Attorney

POLICY CONFLUENCE, INC. (POLCO)

By:

Alex Pedersen, Chief Financial Officer

EXHIBIT A SCOPE OF SERVICES

- Training and Support: Your subscription includes access to the Services and Polco Materials as described below, which includes training materials, as well as access to technical support services for your Authorized Users. You understand that technical support services are for technical product support, and such services are not to be used as a substitute for proper training and education.
- Engage Module - All Features: Includes Ask, Library, Live Mode, Weighting, and Representativity. \$7,500/year
- Assess Module - NCS Assessment: Pricing valid only if Engage Module is also included (pricing higher if engage is not included) The National Community Survey® (The NCS®): The nation's most trusted community assessment of resident opinion. Pricing is for a single iteration. \$15,000/year
- NCS ½ Page of Custom Questions: \$2,800/year
- NCS Spanish Translation: \$1,350/year
- NCS Custom Benchmark Comparisons: \$2,000/year
- In-Person Presentation of Results: (local rate) \$3,000/year

ALTERNATE A

- Expanded Outreach: Polco will add up to 1,500 additional households to receive the mailed postcard survey invitations and survey packets (up to 4,500 total - including the 3,000 households that are included in the price of The NCS Assessment). \$5,000/year

Each of the Services is governed by and incorporates the Polco Enterprise Terms and Conditions set forth in Exhibit B, and the Website Terms of Use (the "Website Terms" found at <https://info.polco.us/eula>) (each a "Supplement," and collectively with this Order Form, the "Agreement").

EXHIBIT B
POLCO ENTERPRISE TERMS & CONDITIONS

These Enterprise Terms and Conditions (“Enterprise Terms”), along with the terms of the Agreement, shall govern the provision of the Services by Policy Confluence, Inc., a Delaware corporation (“Polco” or “Company”), to the entity or person identified on the Order Form as the purchaser (“Customer”). Customer and Company are each referred to herein as a “Party” and are collectively referred to herein as the “Parties.” All capitalized terms used but not defined herein shall have the respective meanings ascribed to them under the Order Form. The Order Form, Website Terms, and these Enterprise Terms collectively referred to as the “Agreement”.

1. Definitions.

“Authorized User” means each of the individuals authorized to use the Services (defined below in Section 2.1) or Polco Materials pursuant to the terms and conditions of this Agreement, or any additional individuals or Persons authorized to use the Services or Polco Materials as approved solely by Polco, as set forth in the applicable Order Form.

“Customer Data” means, information, data and other content, other than Resultant Data in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services or that incorporates or is derived from the Processing of such information, data or content by or through the Services.

“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.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

“Polco Materials” means any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Polco in connection with the Services or otherwise comprise or relate to the Services. For the avoidance of doubt, Polco Materials include Resultant Data and any information, data or other content derived from Polco’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.

“Process” means to take any action or perform any operation or set of operations that the Services 1 are capable of taking or performing on any data, information or other content. “Processing” and “Processed” have correlative meanings.

“Representatives” means, with respect to a party, that party’s and its affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, and legal advisors.

“Resultant Data” means information, data and other content that is derived by or through the Services from

Processing Customer Data, including, without limitation, statistics and Services analytics, and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

2. Services.

2.1. Services. The Company offers a variety of and products and services accessible through the Company's website <https://polco.us> (the "Website") free of charge including promoting civic engagement by providing tutorials, example questions, sample result dashboards, and a library of best civic engagement practices and other such functionality as may be provided from time to time (collectively, the "Free Content and Services"). During the Term (defined below in Section 7.1) and subject to the and conditioned on Customer's and its Authorized Users' compliance with the terms and conditions of this Agreement, Polco shall use commercially reasonable efforts to provide to Customer and its Authorized Users (a) the Free Content and Services, and (b) any custom survey services as described in applicable Order Form and this Agreement (the "Custom Services," together with Free Content and Services, the "Services"). Polco will use commercially reasonable efforts to make the Services available to the Customer twenty-four (24) hours per day, seven (7) days per week every day of the year, except for: (i) Service downtime or degradation due to a Force Majeure Event (defined below in Section 12); (ii) any other circumstances beyond Polco's reasonable control, including Customer's or any Authorized User's use of third party materials or use of the Services other than in compliance with the express terms of this Agreement or the Terms of Use; and (iii) any suspension or termination of Customer's or any Authorized Users' access to or use of the Services as permitted by this Agreement or the Terms of Use.

2.2. Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties: (a) Company has and will retain sole control over the operation, provision, maintenance, and management of the Services; and (b) Customer has the responsibility for making all arrangements necessary for Customer to have access to the Website and ensuring that all persons who access the Website through Customer's internet connection are aware of this Agreement, the Terms of Use, and the Privacy Policy, and comply therewith.

2.3. Changes. Polco reserves the right, in its sole discretion, to make any changes to the Services or Polco Materials that it deems necessary or useful to: (a) maintain or enhance the quality or delivery of Polco's services to its customers, or (b) to comply with applicable law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services or Polco Materials. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

2.4. Suspension or Termination of Services. Polco may suspend, terminate or otherwise deny Customer's or any Authorized User's access to or use of all or any part of the Services or Polco Materials if: (a) Polco believes, in its sole discretion, that Customer or any Authorized User has failed to comply with, any term of this Agreement, or accessed or used the Services or Polco Materials beyond the scope of the rights granted or for a purpose not authorized under this Agreement; or (b) this Agreement expires or is terminated. This Section 2.4 does not limit any of Polco's other rights or remedies, whether at law, in equity or under this Agreement.

3. Authorization and Customer Restrictions.

3.1. Authorization. Subject to and conditioned on Customer's payment of the fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Polco hereby authorizes Customer to access and use, solely during the Term, the Services and Polco Materials as Polco may supply or make available to Customer. This authorization is non-exclusive and, other than as may be expressly set forth in Section 13.6, non-transferable. Notwithstanding the foregoing, Polco hereby grants to Customer a perpetual, royalty-free, non-transferable license to use any tangible Polco Materials provided to Customer by or through the Services during the Term, which license shall survive the termination of this Agreement.

3.2. Limitations and Restrictions. Customer shall not, and shall not permit any other Person to, access or use the Services or Polco Materials except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Services or Polco Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Polco Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or access or use the Services other than by an Authorized User through the use of his or her own then valid access credentials;
- (e) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services or Polco's provision of services to any third party, in whole or in part;
- (f) access or use the Services or Polco Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Polco customer), or that violates any applicable law;
- (g) access or use the Services or Polco Materials for purposes of competitive analysis of the Services, the development, provision or use of a competing software service or product or any other purpose that is to Polco's detriment or commercial disadvantage; or
- (h) otherwise access or use the Services or Polco Materials beyond the scope of the authorization granted under Section 3.1.

3.3. Customer Responsibilities. Except as otherwise determined by Polco, Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). In the event Polco obtains or provides any such Equipment, Polco shall only be responsible for maintaining such Equipment. Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

4. Fees; Payment Terms.

4.1. Fees. Customer shall pay Polco the fees ("Fees") for the Services on or prior to the Invoice Date set forth in the applicable Order Form, which shall be payable to Polco in US dollars in the amounts and

pursuant to the payment schedules set forth on the applicable Order Form. To the extent Fees are not set forth on the applicable Order Form Polco may, in its sole discretion, modify and increase Fees upon providing written notice to Customer at least sixty (60) calendar days prior to the commencement of any Renewal Term, and the applicable Agreement will be deemed amended accordingly.

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

4.3. Late Payment. If Customer fails to make any payment when due, then a 1.5% charge per month (or the applicable amount allowed by law, whichever is less) shall be assessed on any amount past due. Furthermore, should Customer fail to settle amounts past due within thirty (30) days of Customer's invoice receipt, Polco may, without notice, (i) suspend performance of the Services until all past due amounts and interest thereon have been paid, or (ii) terminate this Agreement. Customer shall reimburse Polco for all costs in collecting any late payments or interest, including actual attorneys' fees, court costs and collection agency fees.

4.4. No Deductions or Setoffs. All amounts payable to Polco under this Agreement shall be paid by Customer to Polco in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

5. Intellectual Property Rights.

5.1. Ownership of Services and Polco Materials. All right, title and interest in and to the Services, Polco Materials and the Resultant Data, including all Intellectual Property Rights therein, are and will remain with Polco. Customer has no right, license or authorization with respect to any of the Services or Polco Materials except as expressly set forth in Section 3.1. All other rights in and to the Services and Polco Materials are expressly reserved by Polco and the respective third-party licensors. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Polco an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

6. Confidentiality.

6.1. Confidential Information. In connection with this Agreement, each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). "Confidential Information" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including, but not limited to, information relating to the Disclosing Party's technology, software, code, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, in each case whether or not marked, designated or otherwise identified as "Confidential". Without limiting the foregoing, all Polco Materials are the Confidential Information of Polco and the financial terms of this Agreement are the Confidential Information of Polco. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the

Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

6.2. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for three (3) years after the Term: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of performing obligations under and in accordance with this Agreement; (ii) are informed of the confidential nature of the Confidential Information and bound by written confidentiality and restricted use obligations at least as protective as the terms set forth in this Section 6.2; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; and (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 6.

6.3. Residual Works. In addition to other rights and provisions in this Agreement, Polco shall be free to use for any purpose the Resultant Data resulting from access to or work with the Confidential Information or any information or ideas provided by Customer with respect to the Services.

6.4. Feedback. The Customer may from time to time provide suggestions, comments or other feedback ("Feedback") to Polco with respect to the Services. Both parties agree that all Feedback is and shall be given entirely voluntarily. Feedback, even if designated as confidential by Customer, shall not, absent a separate written agreement, create any confidentiality obligation for Polco. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, Polco will own the Feedback and shall be free to use, disclose, protect (e.g., patent, copyright, trademark, trade secret, etc.), reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

6.5. Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 6; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 6.5, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

7. Term and Termination.

7.1. Term. The initial term of this Agreement shall be for a period of twenty-four (24) months from the Effective Date ("Initial Term"). The Initial Term shall automatically renew for additional successive twelve

(12) month periods (each, a “Renewal Term”, and together with the Initial Term, the “Term”), unless earlier terminated pursuant to this Agreement or either party gives the other party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current Term.

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

- (a) Polco may terminate this Agreement, effective immediately upon written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after the date such amounts are due; or (ii) breaches any of its obligations under Section 3.2 (Limitations and Restrictions) or Section 6 (Confidentiality);
- (b) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; or
- (c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

7.3. Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- (a) all rights, licenses, consents and authorizations (including, without limitation, access to the Services) granted by either party to the other hereunder will immediately terminate;
- (b) Customer shall immediately cease all use of any Services and Polco Materials and (i) promptly return to Polco, or at Polco’s written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Polco’s Confidential Information; and (ii) permanently erase Polco’s Confidential Information from all systems Customer directly or indirectly controls; except to the extent and for so long as required by applicable law and all such information and materials will remain subject to all confidentiality requirements of this Agreement;
- (c) Polco may disable all Customer and Authorized User access to the Services; and
- (d) if Polco terminates this Agreement pursuant to Section 7.2, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable.

7.4. Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3.2, Section 5, Section 6, Section 7.3, this Section 7.4, Section 8, Section 9, Section 10, Section 11, and Section 13.

8. Representations and Warranties.

8.1. Representations and Warranties. Customer represents and warrants to Polco that it has the full right,

power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; and Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Polco and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law. Additionally, Customer represents and warrants that Customer will use (and will cause any Authorized Users to use) the Services and Polco Materials only in compliance this Agreement, and all applicable laws and regulations.

8.2. **DISCLAIMER OF WARRANTIES.** ALL SERVICES ARE PROVIDED “AS IS” AND POLCO HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND POLCO 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, POLCO MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ANY THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

9. Indemnification.

9.1. Indemnification. Customer shall to the extent provided by law indemnify, hold harmless and defend Polco and its affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all losses, liability, claims, damages, actions, penalties, costs, or expenses of whatever kind, including actual attorneys’ fees and the costs of enforcing any right to indemnification under this Agreement, arising out of or relating to (a) any actual or alleged infringement of a third party’s Intellectual Property Rights from use of Customer Data; (b) any act or omission by Customer or any Authorized Users in connection with use of the Services; c) Customer’s or any Authorized User’s use of the Services or Polco Materials other than as expressly allowed by this Agreement; (d) Customer’s or any Authorized User’s breach of this Agreement; or (e) any actual or alleged infringement of a third party’s Intellectual Property Rights resulting from Customer’s or any Authorized User’s modifications and/or combinations of the Services or Polco Materials. Customer shall inform Polco as soon as practicable of any claim or action alleging such infringement or unauthorized disclosure, and shall not settle any claim or action unless Polco consents to such settlement in writing.

10. Mitigation.

10.1. Mitigation. If any of the Services or Polco Materials are, or in Polco’s opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer’s or any Authorized User’s use of the Services or Polco Materials is enjoined or threatened to be enjoined, Polco may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Services and Polco Materials materially as contemplated by this Agreement; (b) modify or replace the

Services and Polco Materials, in whole or in part, to make the Services and Polco Materials non-infringing, or (c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and Polco Materials, and require Customer to immediately cease any use of the Services and Polco Materials or any specified part or feature thereof. THIS SECTION 10.1 SETS FORTH CUSTOMER'S SOLE REMEDIES AND POLCO'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND POLCO MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

11. Limitations of Liability.

11.1. EXCLUSION OF DAMAGES. IN NO EVENT WILL POLCO 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: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, , OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, 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.

11.2. CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF POLCO AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS 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, EXCEED THE AGGREGATE AMOUNT PAID BY THE CUSTOMER TO POLCO WITHIN THE IMMEDIATELY PRECEDING 12 MONTHS. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12. Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond either party's reasonable control (a "Force Majeure Event"), including, but not limited to, failures or interruptions of communications facilities or equipment of third parties, labor strikes or slowdowns, shortages of resources or materials, acts of God, natural disasters, fire, world events, delay or disruption of shipment or delivery, trespass or interference of third parties, or similar events or circumstances outside either party's reasonable control, whether or not otherwise enumerated. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more.

13. General Provisions.

13.1. Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such

further actions, necessary to give full effect to this Agreement.

13.2. No Agency. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties.

13.3. Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing by electronic mail or other electronic means to the address of the party specified by the parties from time to time.

13.4. Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

13.5. Notices sent in accordance with the notice provisions in the Order Form will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by email, (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the fifth day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

13.6. Assignment. Customer shall not assign or otherwise transfer any of its rights or obligations under this Agreement without Polco's prior written consent, which consent Polco may give or withhold in its sole discretion. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation or reorganization involving Customer will be deemed to be a transfer of rights or obligations under this Agreement for which Polco's prior written consent is required. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section 13.6 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

13.7. Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving.

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

13.9. Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

13.10. Counterparts. This Agreement may be executed in counterparts, including by facsimile or pdf, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. The Parties may execute this Agreement and any amendment hereto in the form of an

electronic record utilizing electronic signatures, as such terms are defined in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001, et. seq.). Electronic signatures, or signatures transmitted electronically via PDF or similar file delivery method is legal, valid, and binding upon execution and delivery for all purposes and each shall have the same effect as an original signature.