Software Evaluation License Agreement

THIS SOFTWARE EVALUATION LICENSE AGREEMENT AND ALL DOCUMENTS INCORPORATED BY REFERENCE (COLLECTIVELY, THE “AGREEMENT”) IS A LEGAL CONTRACT BETWEEN YOU (“YOU” OR “CUSTOMER,” EITHER AN INDIVIDUAL OR THE ENTITY ON WHOSE BEHALF YOU ARE EXECUTING THIS AGREEMENT) AND SPARKCOGNITION, INC. (“WE”, “US”, “SPARKCOGNITION”) WHICH GOVERNS YOUR ACCESS TO AND USE OF THE SPARKCOGNITION SOFTWARE AND TECHNOLOGY MADE AVAILABLE TO YOU BY SPARKCOGNITION HEREUNDER (THE “SC SOFTWARE”) AS A SOFTWARE-AS-A SERVICE THROUGH SPARKCOGNITION’S PLATFORM (“SAAS SERVICE”), SOLELY FOR YOUR INTERNAL EVALUATION PURPOSES, SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AND WE ARE ALSO COLLECTIVELY REFERRED TO AS THE PARTIES. BY ACCESSING AND USING THE SC SOFTWARE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT ACCESS AND USE THE SC SOFTWARE. THIS AGREEMENT IS EFFECTIVE AS OF THE DATE OF YOUR ACCEPTANCE OF THIS AGREEMENT (“EFFECTIVE DATE”).

For mutual consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. PROVISION OF SC SAAS SERVICES

1.1 SC SaaS Services. Subject to the terms and conditions of this Agreement, SparkCognition will make available to Customer the SC SaaS Services on a non-exclusive, non-sublicenseable, and non-transferable basis for a period of 15 days from the Effective Date (or such longer period provided in SparkCognition’s sole discretion) (“Evaluation Period”) to: (a) access and use the SC SaaS Services and related user documentation (the "Documentation") provided by SparkCognition solely for Customer's internal evaluation purposes by the authorized number of employees or contractors of Customer approved by SparkCognition ("Authorized Users"); (b) subject to any usage limits, quantities or other parameters specified by SparkCognition with respect to Customer’s licensed use of the SC Software (“Usage Allowance”), and (c) in accordance with any additional SC SaaS Services rights and specified by SparkCognition. Other license rights, terms and restrictions specified by SparkCognition are incorporated by reference into this Section 1.1. For clarification, SparkCognition will not deliver, and Customer has to right to receive, any SC Software for download on Customer’s premises (including for installation on Customer’s third party service provider’s cloud service).

1.2 Customer will not use the SC SaaS Services for any purpose other than evaluating and testing such SC SaaS Services internally in connection with assessing whether Customer desires to enter into a commercial license agreement with SparkCognition for the SC Software or SC SaaS Services. This Agreement does not provide a commercial license and Customer's use of the SC Software or SC SaaS Services after the Evaluation Period is subject to the Parties' entering into and executing a separate commercial license agreement.
1.3 Use Restrictions. Customer will not use the SC Software or Documentation for any commercial purposes or for any purposes beyond the scope of the license granted in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Customer will not at any time, directly or indirectly: (a) copy, modify, or create derivative works of the SC Software, SC SaaS Services or the Documentation, in whole or in part; (b) rent, lease, lend, use for timesharing or service bureau purposes, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available or use the SC Software, SC SaaS Services or the Documentation to or for the benefit of any third party; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the SC Software or SC SaaS Services in whole or in part; (d) remove any proprietary notices from the SC Software, SC SaaS Services or the Documentation; (e) use the SC Software or SC SaaS Services in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (f) interfere with or disrupt the integrity or performance of the SC SaaS Services or any data contained therein; (g) attempt to gain unauthorized access to the SC platform or its related data, systems or networks; or (h) perform vulnerability, load or any other test of the SC platform without SparkCognition’s prior written consent.

1.4 Reservation of Rights. SparkCognition reserves all rights not expressly granted to Customer 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 Customer or any third party any intellectual property rights or other right, title, or interest in or to the SC Software, SC SaaS Services and Documentation.

2. Customer Responsibilities. Customer is responsible and liable for all uses of the SC Software, SC SaaS Services and Documentation resulting from access provided by Customer, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer will take reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the SC Software or SC SaaS Services, and will cause Authorized Users to comply with such provisions.

3. Confidential Information. During the Evaluation Period, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated or otherwise identified as "confidential" (collectively, "Confidential Information"). Confidential Information does not include information that, at the time of disclosure is: (a) was or becomes available to the receiving Party ("Recipient") on a nonconfidential basis from a source other than the other Party ("Discloser") or its Representatives; provided that such source is not bound by any confidentiality agreement with, or other contractual, legal or fiduciary obligation of secrecy to Discloser; (b) at the time of disclosure or thereafter is or becomes available to and widely known by the public as to be reasonably regarded as public information, other than as a result of disclosure by Recipient or any of its Representatives in breach of this Agreement; (c) is developed by Recipient independently of any disclosure hereunder or reference to Discloser’s Confidential Information, as evidenced by Recipient’s records, and without violating any of Recipient’s obligations under this Agreement; or (d) is disclosed by Recipient with Discloser’s prior written express approval. Recipient will maintain all of Discloser’s Confidential Information in confidence and will protect such information with the same degree of care that Recipient exercises with its own Confidential Information, but in no event less than a reasonable degree of care. Recipient will not use Discloser’s Confidential Information except to carry out its rights and obligations under this Agreement. Recipient will not divulge Discloser’s Confidential Information or any
information derived therefrom to any third party except to Recipient’s affiliates, and its and their employees, directors, officers, advisors, consultants, subcontractors or other agents or representatives ("Representatives"), and will limit access to and use of any of Discloser’s Confidential Information to those Representatives of Recipient who have a need to use the information to exercise Recipient’s rights under or perform this Agreement, and who are subject to a contractual, professional or other obligation to keep such information confidential, with such obligation no less protective of Discloser than this Section. We may disclose information concerning this Agreement and the transactions contemplated hereby, including providing a copy of this Agreement, to any or all of the following: (i) potential acquirers, merger partners, investors, lenders, financing sources, and their personnel, attorneys, auditors and investment bankers, solely in connection with the due diligence review of such Party by such persons and provided that such disclosures are made in confidence, (ii) our outside accounting firm, (iii) our outside legal counsel. All of Discloser’s Confidential Information disclosed to Recipient, and all copies thereof, are and will remain the property of Discloser.

4. Intellectual Property Ownership; Feedback.

4.1 Customer acknowledges that, as between Customer and SparkCognition, SparkCognition owns all right, title, and interest, including all intellectual property rights, in and to the SC Software, SC SaaS Services and Documentation.

4.2 SparkCognition will have the unrestricted right to use or act upon any suggestions, ideas, enhancement requests, feedback or recommendations ("Feedback") provided by Customer relating to the SC Software, SC SaaS Services and Documentation.

5. Disclaimer of Warranties. THE SC SOFTWARE, SC SAAS SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" AND SPARKCOGNITION HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. SPARKCOGNITION 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. SPARKCOGNITION MAKES NO WARRANTY OF ANY KIND THAT THE SC SOFTWARE, SC SAAS SERVICES AND DOCUMENTATION, 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.

6. Limitations of Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SPARKCOGNITION WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.

7. Term and Termination. This Agreement is effective as of the Effective Date and, unless terminated earlier pursuant to this Section 7, will continue in effect until the expiration of the Evaluation Period. SparkCognition may terminate this Agreement with or without notice to Customer for any or no reason. Customer may terminate this Agreement for any or no reason upon written notice (email is sufficient) to SparkCognition. Upon expiration or earlier termination of this Agreement, the license and rights granted hereunder will also terminate and Customer will cease using and delete, destroy, or return all
copies of the SC Software or SC SaaS Services, as applicable, and Documentation, and upon request by SparkCognition certify such in writing. This Section 7 and Sections 1.3, 1.4, 2, 3, 4, 5, 6 and 8 survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

8. **Miscellaneous.**

11.1 **Governing Law and Dispute Resolution.** The governing law, jurisdiction, and dispute resolution provisions for any controversy or dispute arising out of or relating to this Agreement depend on where the Customer is domiciled: (a) If Customer is domiciled in the United States, Canada or Mexico (“North America”): (i) the laws of the State of Texas govern all matters arising out of this Agreement, excluding rules as to choice and conflict of law, and (ii) each Party consents to the exclusive jurisdiction and venue of the federal and state courts of Texas and agree that any action, suit, proceeding or dispute relating to this Agreement will be brought only in the federal and state courts for Travis County, Texas; provided, however, that an action for injunctive relief may be filed in a jurisdiction where the actions or Party to be enjoined is located. The Parties hereby exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods. EACH PARTY FURTHER AGREES THAT ANY ACTION, SUIT OR PROCEEDING RELATED TO THIS AGREEMENT WILL BE TRIED TO THE BENCH AND EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY SUCH ACTION; and (b) If Customer is domiciled outside of North America: (i) the laws of the State of New York govern all matters arising out of this Agreement, excluding rules as to choice and conflict of law, and (ii) all disputes arising out of or in connection with this Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The place of the arbitration will be New York City, New York. The language of the arbitration will be English. Judgment upon any award(s) rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The Parties waive any right to appeal the arbitral award, to the extent a right to appeal may be lawfully waived. Each Party retains the right to seek judicial assistance: (A) to compel arbitration; (B) to obtain interim measures of protection before or pending arbitration, (C) to seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect the unauthorized disclosure of its proprietary or confidential information, and (D) to enforce any decision of the arbitrator(s), including the final award. The arbitrator(s) will award to the prevailing Party, if any, as determined by the arbitrator(s) its reasonable attorneys’ fees and costs, including the costs of the arbitration. The Parties undertake to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by the other Party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in legal proceedings before a court or other judicial authority.

11.2 **Attorneys’ Fees.** If any action is brought to enforce any provision of this Agreement or to declare a breach of this Agreement, then the prevailing Party will be entitled to recover, in addition to any other amounts awarded, reasonable legal and other related costs and expenses, including attorney's fees, incurred thereby. For purposes of this Section only, "prevailing Party" means the Party that prevails on a majority of causes of action in such dispute.

11.3 **U.S. Government Users.** If Customer is an agency, department, or other entity of the United States Government ("U.S. Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the SC Software or SC SaaS Services, manuals, or any technical specifications, or any related documentation of any kind, including technical data (only for purposes of this Section, referred to as “Software and documentation”), is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies. The Software and documentation is commercial computer software and
commercial computer software documentation. The use of the Software and documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto.

11.4 **English Language.** This Agreement is in the English language only, which language will be controlling in all respects. No translation, if any, of this Agreement into any other language for convenience or to meet local requirements will be of any force or effect in the interpretation of this Agreement or in determination of the interests of either Party hereto. Furthermore, all correspondence, notices, claims, suits and other communication between the Parties hereto will be written or conducted in English. It is the express wish of the Parties that this Agreement and/or any related documents have been drawn up in a language other than French. French translation: *Il est de la volonté expresse des parties que le présent contrat et/ou tous les documents qui s’y rattachent soient rédigés dans une langue autre que le français.*

11.5 **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter herein, and supersedes all prior or contemporaneous negotiations, representations, promises, and agreements concerning the subject matter. Any modifications of this Agreement, or waiver of any rights, must be in writing and signed by both Parties. The failure of either Party to require performance by the other Party of any provision hereof will not affect the full right to require such performance at any time thereafter; nor will the waiver by either Party of a breach of any provision hereof be taken or held to be a waiver of the provision itself. The terms of this Agreement will prevail notwithstanding any different, conflicting, or additional terms that may appear in any purchase order or other Customer document. In the event that any of the provisions of this Agreement are held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Customer will comply with all applicable laws including, without limitation, export laws, restrictions, and regulations of the United States or foreign agency or authority related to the SC Software, SC SaaS Services and Services. Customer will not export, or allow the export or re-export of the SC Software, SC SaaS Services and Services in violation of any such laws, restrictions or regulations. The Parties are independent contractors. Nothing contained herein or done pursuant to this Agreement will constitute a joint venture, partnership or agency for any purpose. Neither this Agreement nor any of Customer’s rights or obligations hereunder may be assigned by Customer in whole or in part without the prior written approval of SparkCognition, and any attempted assignment or delegation in violation of the foregoing is void. This Agreement is binding upon the Parties and their successors and permitted assigns. Any notice, request, or other communication will be given in writing under this Agreement and will be deemed to have been given by either Party to the other Party upon receipt. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.