

APPENDIX C

Software as a Service/Data as a Service Terms

This Appendix C applies to Software as a Service and/or Data as a Service (individually or collectively the “Services”) provided by AEM under the Agreement. Services means services providing accessibility to and use of the on-demand features and functionality of centrally hosted software made available by AEM via a computer or telecommunications network, but specifically excludes data import services, training services, consulting services, advisory services, software development and customization services, and other Professional Services. The Services may require hardware to be installed in order to function, and you hereby authorize AEM or its designee to install any necessary hardware (as reflected on the Order Form) pursuant to the requirements herein. The hardware component is not a sale of goods. All right, title, and interest (including all intellectual property rights) in, and to the Services, hardware and any data or services provided (including all copies thereof) not expressly granted herein shall remain with AEM.

Capitalized terms used in this Appendix C that are not defined herein shall have the meanings ascribed elsewhere in the Agreement. Capitalized terms that are defined in this Appendix C and elsewhere in the Agreement shall have the meanings ascribed in this Appendix C.

Any implementation services, installation services, configuration services, or other Professional Services provided by AEM under the Agreement with respect to any SaaS Solution shall be described in the applicable Statement of Work and shall be governed by Appendix B (Professional Services Terms).

1. Services.

- 1.1. Right to Access and License. AEM hereby grants Customer a non-exclusive, worldwide right to access and use the Services during the Order Term for such Services, as specified on the Order Form (Schedule A). AEM hereby also grants Customer a non-exclusive, fully paid-up, royalty-free, worldwide license to (a) access, install, execute, reproduce, and use in connection with the Services any hardware, software, interface, web site, platform, system, process, or technology provided or made available by AEM in connection with the rights granted under this Section 1.1 (Right to Access and License) (“**Technology**”), and (b) combine the Technology with the Services, Customer Data, and data provided or made available by AEM, for Customer’s internal business purposes. (“**Solution**” means the Services and the Technology, collectively.) Not later than the first provision of Services under the applicable Order, AEM will provide or make available to Customer the related Technology.
- 1.2. Data Rights. AEM retains all rights to data generated or delivered through the Software (“hereinafter “Data”) other than Customer Data (defined below). AEM grants Customer a limited license for use of such Data, in connection with Customer’s internal business purposes, but for no other purpose. AEM shall have exclusive rights for resale or to otherwise use Data provided by AEM through the Service. To the extent that the provision of the Software or other Services requires AEM to collect information from Customer employees, members or other constituents (collectively “Customer Data”) Customer hereby grants to AEM a non-exclusive royalty-free, worldwide license to store, reproduce, distribute and display the Customer Data in connection with the provision of the Services hereunder.

2. Software Updates and Upgrades

- 2.1. Maintenance Updates. AEM shall provide Customer with continuing maintenance of the most current release of the Services during the Term, subject to the terms herein. Such maintenance shall include the correction of material defects or bugs discovered in the Services.
- 2.2. New Releases and Upgrades. AEM may develop from time-to-time new releases of and/or enhancements to the Services. Such enhancements shall be provided for Customer’s use during the Term then current pricing.
- 2.3. New Products and Sun-Setting. AEM reserves the right to “sunset”, i.e., discontinue and end support for versions of the Services and replace them with new versions when technically necessary or advantageous to do so. AEM shall use all commercially reasonable efforts to notify Customers well in advance of any planned sunset and provide information on the any new version being planned. AEM cannot guarantee backward compatibility or complete feature parity between old and new versions.

3.

4. Installation/Preventive Maintenance. Installation will be provided as described on the Order Form. Preventive Maintenance, if purchased, is as described on the attached Professional Services Terms, incorporated herein by reference, and shall be limited to one (1) visit per year. Preventive Maintenance covers all labor, calibration or other testing, and repair of hardware not requiring parts. Preventive Maintenance does not cover parts or the relocation of hardware. At the time of the site visit, Customer shall allow all reasonable access for the purpose of supplying necessary maintenance and/or the installation. If non-standard equipment (e.g., a lift) is required to access hardware, Customer shall either supply such equipment or cover the rental expense.
5. Hardware Repair/Replacement Parts. Out-of-Warranty replacement or repair work involving parts will be quoted at then-current pricing. Customer agrees that, prior to scheduling any repair visit requiring parts, it will consult with technical support by phone, to determine whether it is possible to resolve any issues in that manner. In the event that such troubleshooting does not resolve the issue(s), a follow-up visit will be scheduled, and charged at then-current rates.
6. Technical Requirements. Customer agrees to connect, at its expense, the hardware to a full-time Internet connection. Customer further agrees to always maintain such hardware in an operational mode and to permit AEM authorized outside access to system data through the Internet connection. The Internet expense is solely Customer's obligation.
7. Lightning Disclaimer. Experience has shown that the resolution, timeliness, and format in which lightning data are presented within various displays and products, does not provide a total solution with regard to addressing concerns regarding the presence of convective activity and/or lightning and their potential impact on the safety of personnel and/or safeguarding of facilities, whether it be of immediate or short-term concern. Interpretation and application of the data, as well as any comparative analysis and/or prognosis or similar activities done by any user, are done so solely at the user's risk and have not directly or indirectly been implied, condoned or recommended by AEM and/or its data suppliers.
8. **Disclaimer of Implied Warranties.** THE SERVICES INCLUDE DATA SOURCED FROM THIRD PARTIES INCLUDING GOVERNMENT SOURCES AND ARE DELIVERED OVER A VARIETY OF COMMUNICATION NETWORKS, INCLUDING THE PUBLIC INTERNET. AS SUCH, EXCEPT AS PROVIDED ABOVE, THE SERVICES AND DATA DISPLAYED THEREIN ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS PROVIDED HEREIN, AEM MAKES NO WARRANTY, EXPRESS OR IMPLIED, TO CUSTOMER, OR TO ANY AUTHORIZED USER OR THIRD PARTY, INCLUDING ANY WARRANTIES OF QUALITY, ACCURACY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT AEM IS NOT RESPONSIBLE FOR THE ABSOLUTE ACCURACY OF ANY INFORMATION OR DATA CONTAINED IN THE SERVICES, AND AEM SHALL NOT BE LIABLE FOR ANY LOSSES RESULTING FROM CUSTOMER'S OR ANY AUTHORIZED USER'S RELIANCE OR NON-RELIANCE ON ANY SUCH INFORMATION OR DATA UNDER ANY CIRCUMSTANCES.
9. Restrictions. Customer shall not, and shall not permit any Representative to: (i) resell, sublicense, distribute or otherwise provide access to the Data to any third party or use the Data outside the scope of the license granted herein; (ii) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Data; (iii) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Data for any purpose without the express written consent of AEM; (iv) combine Data with the personally identifiable information for the purpose of targeted advertising; (v) use the Data to conduct or promote any illegal activities; (vi) use the Data to generate Campaigns in violation of a third party website's terms of use; (vii) use the Data to stalk, harass or harm another individual; (viii) impersonate any person or entity, or otherwise misrepresent its affiliation with a person or entity; or (ix) use any portion of the Data or AEM's tradenames or trademarks in any manner that may give a false or misleading impression, attribution, or statement as to AEM, or as to any third party. Customer agrees to use the Data only for lawful purposes and in compliance with all applicable laws, rules and regulations issued by governing authorities or industry self-regulatory groups. Customer shall indemnify, defend and hold AEM harmless against any damages, losses, claims or judgments arising out of any violation of this Agreement.