Trajectory Software-as-a-Service

Terms of Service

The SaaS terms of service (the "**Agreement**"), is by and between TRAJECTORY GROUP, INC. with offices located at 250 The Esplanade, Suite 400, Toronto, ON, Canada, M5A1J2 ("**we**", or "**Service Provider**") and you ("**you**" or "**Customer**"). Service Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**." This Agreement governs Customer's access and use of the Service Provider's software-as-a-service offering, as specified in the applicable sales estimate (each a "**Sales Estimate**"), (collectively, the "**Services**").

BY USING ANY PORTION OF THE SERVICES, YOU: (A) ACCEPT THIS AGREEMENT AND AGREE THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS; AND (B) REPRESENT AND WARRANT THAT: (1) YOU HAVE CAREFULLY READ AND UNDERSTOOD THE TERMS OF THIS AGREEMENT; (2) CUSTOMER IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY; AND (3) YOU HAVE THE RIGHT, POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER.

IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU MUST NOT ACCESS OR USE THE SERVICES. THIS AGREEMENT IS ENFORCEABLE AGAINST ANY PERSON OR ENTITY THAT ACCESSES OR USES THE SERVICES. NO LICENSE OR PERMISSION TO USE THE SERVICES IS GRANTED (WHETHER EXPRESSLY, BY IMPLICATION OR OTHERWISE), AND THIS AGREEMENT EXPRESSLY EXCLUDES ANY RIGHT CONCERNING THE ACCESS TO OR USE OF THE SERVICES (OR ANY PART THEREOF) THAT YOU DID NOT: (A) LAWFULLY ACQUIRE; OR (B) THAT IS NOT A LEGITIMATE OR AUTHORIZED USE OF THE SERVICES, AS DETERMINED BY SERVICE PROVIDER, IN SERVICE PROVIDER'S SOLE DISCRETION.

In addition to the terms of this Agreement, all information that we collect, receive or process in connection with your use of the Services is governed by our Data Processing Agreement ("**DPA**"), as found at: www.TrajectoryInc.com/Agreements. You consent to all actions we take with respect to your information consistent with our DPA. Where it is reasonable to do so, or permitted by law, we may rely on implied consent.

1.   Definitions.

        (a)   "**Aggregated Statistics**" means data and information related to Customer's use of the Services that is used by Service Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

        (b)   "**Authorized User**" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (ii) for whom access to the Services has been purchased hereunder.

(c)   "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services.

(d)   "**Documentation**" means Service Provider's user documentation relating to the Services.

(e)   "**Fees**" has the meaning set forth in Section 5.

(f)   "**Service Provider IP**" means the Services, the Documentation, and any and all intellectual property provided to Customer or any Authorized User in connection with the foregoing. For the avoidance of doubt, Service Provider IP includes Aggregated Statistics and any information, data, or other content derived from Service Provider's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

(g)   "**Service Suspension**" has the meaning set forth in Section 2(e).

(h)   "**Services**" means the software-as-a-service offering described in the applicable Sales Estimate.

2.   <u>Access and Use</u>.

(a)   <u>Provision of Access</u>. Subject to and conditioned on Customer's payment of Fees and compliance with all the terms and conditions of this Agreement, Service Provider hereby grants Customer a non-exclusive, non-transferable right to access and use the Services, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Service Provider shall provide to Customer the necessary passwords and network links or connections to allow Customer to access the Services. The total number of Authorized Users will not exceed the number set forth in the Sales Estimate except as expressly agreed to in writing by the Parties and subject to any appropriate adjustment of the Fees payable hereunder.

(b)   <u>Documentation License</u>. Subject to the terms and conditions contained in this Agreement, Service Provider hereby grants to Customer a non-exclusive, non-sublicenseable, non-transferable license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.

(c)   <u>Use Restrictions</u>. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; (v) use the Services or Documentation 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; or (vi) engage in any other activities that may be deemed by the Service Provider to be inappropriate.

Any violation of the above limitations or restricted activities shall be deemed a material breach of this Agreement for which Service Provider, in its sole discretion, may terminate this Agreement and your access to the Services.

(d)   Reservation of Rights. Service Provider 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 Service Provider IP.

(e)   Suspension. Notwithstanding anything to the contrary in this Agreement, Service Provider may suspend Customer's and any Authorized User's access to any portion or all of the Services if: (i) Service Provider reasonably determines that (A) there is a threat or attack on any of the Service Provider IP, (B) Customer's or any Authorized User's use of the Service Provider IP disrupts or poses a security risk to the Service Provider IP or to any other customer or vendor of Service Provider, (C) Customer, or any Authorized User, is using the Service Provider IP for fraudulent or illegal activities, (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding, or (E) Service Provider's provision of the Services to Customer or any Authorized User is prohibited by applicable law; (ii) any vendor of Service Provider has suspended or terminated Service Provider's access to or use of any third-party services or products required to enable Customer to access the Services; (iii) for any non-payment by Customer; or (iv) Customer's failure to renew Customer's subscription to the Services (any such suspension described in sub clause (i), (ii), (iii), or (iv) a "**Service Suspension**"). Service Provider shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Service Provider shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Service Provider will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.

(f)   Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Service Provider may monitor Customer's use of the Services and collect and compile Aggregated Statistics. As between Service Provider and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Service Provider. Customer acknowledges that Service Provider may compile Aggregated Statistics based on Customer Data input into the Services. Customer agrees that Service Provider may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law.

(g)   Confidentiality. You hereby acknowledge and agree that the Services, Sales Estimate (including the pricing set out therein), and Documentation (including any code of such) are the proprietary and confidential information of Service Provider, and You shall maintain the confidentiality of the Services and Documentation, and any other confidential information of Service Provider using at least as great a degree of care as You use to maintain the confidentiality of Your own confidential information and in no case less than

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reasonably prudent care. Any disclosure by You of Service Provider's confidential information will cause immediate, irreparable harm to Service Provider for which no adequate remedy at law exists, and for which equitable remedies, as well as any other available legal remedies, may be awarded by a court of competent jurisdiction. You agree to safeguard the Services (including all copies thereof) from misappropriation, theft, misuse, unauthorized access and unauthorized use. You shall promptly notify Licensor if You become aware of any such misappropriation, theft, misuse, unauthorized access or unauthorized use and fully cooperate with Service Provider, at Service Provider's sole expense, in any legal action taken by Licensor to enforce its rights in and to the Services.

3.   Customer Responsibilities.

(a)   General. Customer is responsible and liable for all uses of the Customer Data, the 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 shall use all reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services and shall cause Authorized Users to comply with such provisions.

(b)   Third-Party Materials. The Services may display, include or make available third-party content (including data, information, applications and other products, services and/or materials) or provide links to third-party websites or services, including through third-party advertising ("**Third Party Materials**"). You acknowledge and agree that Service Provider is not responsible for Third Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect thereof. Service Provider does not assume and will not have any liability or responsibility to You or any other person or entity for any Third Party Materials. Third Party Materials and links thereto are provided solely as a convenience to you and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

4.   No Obligation of Support. Service Provider has no obligation to provide Services support or updates, upgrades, bug fixes, patches, enhancements and other error corrections, new features, or technical support for the Services (collectively, including related documentation, "**Support/Updates**"), or to continue to provide or enable any particular features or functionality. Service Provider may from time to time, however, in its sole discretion develop and provide Support/Updates without any notice to you. Support/Updates may also modify or delete in their entirety certain features and functionality.

5.   Fees and Payment. Customer shall pay Service Provider the fees ("**Fees**") as set forth in the applicable Sales Estimate. Service Provider may, upon written notice to Customer, increase Fees from time to time, in Service Provider's sole discretion.

6.   Intellectual Property Ownership.

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(a)   Service Provider IP. Customer acknowledges that, as between Customer and Service Provider, Service Provider owns all right, title, and interest, including all intellectual property rights, in and to the Service Provider IP and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Materials.

(b)   Customer Data. Service Provider acknowledges that, as between Service Provider and Customer, Customer owns all right, title, and interest, including all intellectual property rights, in and to the Customer Data. Customer hereby grants to Service Provider a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Service Provider to provide the Services to Customer, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics.

7.   Disclaimer of Warranties.

THE SERVICES ARE PROVIDED "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. SERVICE PROVIDER, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES AND YOUR APPLICATION(S), INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, SERVICE PROVIDER PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

8.   Limitation of Liability.

IN NO EVENT WILL SERVICE PROVIDER 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: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, AGGRAVATED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE, OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER SERVICE PROVIDER WAS

ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO SERVICE PROVIDER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR ONE THOUSAND DOLLARS ($1.000.00), WHICHEVER IS LESS.

9.   Indemnification.

Customer agrees to defend (at Service Provider's request), indemnify, and hold Service Provider harmless from and against any claims, liabilities, damages, losses, and expenses, including without limitation, reasonable attorney's fees and costs, arising out of or in any way connected with any of the following (including as a result of Customer's direct activities or those conducted on Customer's behalf): (i) Customer's use of the Services; (ii) Customer's breach or alleged breach of this Agreement; (iii) Customer's violation of any third-party right, including without limitation, any intellectual property right, publicity, confidentiality, property or privacy right; or (iv) Customer's violation of any laws, rules, regulations, codes, statutes, ordinances or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities; (v) any misrepresentation made by Customer. Customer will cooperate as fully required by Service Provider in the defense of any claim. Service Provider reserves the right to assume the exclusive defense and control of any matter subject to indemnification by Customer, and Customer will not in any event settle any claim without the prior written consent of Service Provider. Customer agrees that Service Provider assumes no responsibility for the content Customer submits or makes available through the use of the Services.

10.   Term and Termination.

(a)   Term. The term of this Agreement shall be for a period of one (1) year, commencing on the date that Customer initially accesses the Services, and will automatically renew each year until Customer cancels Customer's subscription to the Services by notifying Service Provider to stop use of Customer's form of payment (for example, by way of a credit card) on file with Service Provider.

(b)   Termination. In addition to any other express termination right set forth in this Agreement:

   (i)   Service Provider may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Service Provider's delivery of written notice thereof; or (B) breaches any of its obligations hereunder;

   (ii)   Customer may terminate by cancelling Customer's subscription to the Services as stated in Section 10(a) above; or

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(iii)   either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) 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; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) 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.

(c)   <u>Effect of Expiration or Termination</u>. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Services (including Service Provider IP) and, without limiting Customer's obligations hereunder, Customer shall delete, destroy, or return all copies of the Service Provider IP. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

11.   <u>General</u>.

This Agreement, along with the terms on any order form page, constitute the entire agreement between the Parties with respect to the Services. If any provision in this Agreement is found to be illegal, unenforceable or invalid, the remaining provisions shall survive in full effect. You may not assign this Agreement or any interest in this Agreement without the prior written approval of Service Provider. This Agreement shall not be construed to create any employment, partnership, joint venture, and franchise or agency relationship between You and Service Provider or to authorize either Party to enter into any commitment or agreement binding on the other Party. No failure of either Party to exercise or enforce any of its rights under this Agreement will act as a waiver of those rights. This Agreement may only be modified, or any rights under it waived, by a written document executed by both Parties. This Agreement and all related documents and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, are governed by, and construed in accordance with, the laws of the State of New York. Any legal suit, action, litigation, or proceeding of any kind whatsoever in any way arising out of, from or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, the services provided hereunder, and all contemplated transactions, shall be instituted in the courts of the State of New York, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, litigation, or other proceeding brought in any such court. Service Provider will not be responsible or liable to Customer, or deemed in default or breach hereunder by reason of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to circumstances or causes beyond Service Provider's reasonable control. All notices and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given on the date sent by e-mail if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient. Such communications must be sent to Service Provider at: operations@trajectoryinc.com and will be sent to Customer at the

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contact information indicated in the Sales Estimate (or to such other address as may be designated by a Party from time to time in writing).

12.   <u>Last Update</u>. This Agreement was last updated on January 1, 2023