

## **SAAS SERVICES AGREEMENT**

This SaaS Services Agreement (“Agreement”) is entered into today (the “Effective Date”) between Baysient LLC, a Delaware company with a place of business at 8814 Tropical Court Fort Myers, FL (“Company”), and you, the customer. This Agreement includes the following Terms and Conditions which contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if agreed to by the parties after today.

**Baysient LLC**

### **TERMS AND CONDITIONS**

#### **1. SAAS SERVICES AND SUPPORT**

1. Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services. As part of the registration process, Customer will identify an administrative user name and password for Customer’s Company account. Company reserves the right to refuse registration of, or cancel passwords it deems inappropriate. Except for individuals identified in the Order Form or otherwise authorized by Company, Customer will not share its user name or password credentials with any other person and Customer will remain responsible for maintaining the security of such credentials.
2. Subject to the terms hereof, Company will provide Customer with reasonable technical support services in accordance with Company’s standard practice.

#### **2. RESTRICTIONS AND RESPONSIBILITIES**

1. Customer will not use the Services except as expressly directed in accordance with this Agreement and the documentation provided by the Company. Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services (“Software”); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.
2. Customer will not use the Software or the Services in any manner that would violate any federal, state, local, or foreign laws, treaties, rules, regulations, regulatory guidance, directives, policies, orders or determinations of (or agreements with), and mandatory written direction from (or agreements with), any federal, state, or local government agency, including export laws, sanctions regulations, and all federal and state statutes or regulations (“Applicable Law”). Further, Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.
3. Although Company has no obligation to monitor Customer’s use of the Services, Company may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the terms herein.

4. 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"). 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.

### **3. CUSTOMER DATA**

1. Customer does not transfer any ownership rights or title to any data that Customer provides Company for the purpose of Company performing the Services on Customer's behalf (the "Customer Data").
2. Customer warrants that all Customer Data (i) has been collected by Customer in accordance with applicable data privacy laws, and (ii) will be transmitted in a manner that is free of viruses or other harmful code. Customer agrees that as between the parties, Customer is responsible for compliance as the data controller (or data exporter) under all applicable data privacy laws with respect to the Services.
3. Company will not store the Customer Data.
4. Except as otherwise expressly prohibited in this Agreement, Company shall have the right to collect and analyze information relating to the provision, use and performance of various aspects of the Services and related systems and technologies information concerning, to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.
5. Company utilizes reasonable administrative, physical and technical safeguards designed to protect Customer Data from unauthorized disclosure. Company verifies such physical and technical safeguards as described at <https://www.baysient.com/legal/privacy-policy/>. If either party believes that there has been a material disclosure under any applicable data privacy law of Customer Data to anyone other than an authorized party or Company, such party must promptly notify the other party, and take responsible steps to include reasonable cooperation, to mitigate the effects and to minimize the damage resulting from the disclosure. Customer shall provide Company with an e-mail address to which Company will send such notifications.

### **4. CONFIDENTIALITY; PROPRIETARY RIGHTS**

1. Any non-public business or technical information that Company provides Customer in connection with this Agreement, including, without limitation, information regarding the features, functionality, and performance of the Service, as well as the terms of this Agreement or Order Form, will constitute "Company Proprietary Information." Customer agrees: (i) to take reasonable precautions to protect Company Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any Company Proprietary Information. Company Proprietary Information will exclude any information that Customer can document is or has become generally available to the public.
2. In the event a governmental authority or court of competent jurisdiction, pursuant to Applicable Law, requires that Customer to disclose Company Proprietary Information, disclose Customer Data, the party subject to such requirement will notify the other party as soon as reasonably practicable and permitted. The party subject to such disclosure requirement will (i) use all reasonable efforts to limit the scope of such disclosure to that which is legally required, and (ii) use reasonable efforts to obtain confidential treatment or protection by order of any such information that is disclosed; and (iii) permit,

subject to Applicable Law, the other party to seek a protective order or to otherwise challenge or limit the scope of the disclosure prior to the disclosure being made. .

3. . Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with support, and (c) all intellectual property rights related to any of the foregoing. Customer is not obligated to provide any feedback, suggestions or other ideas for improvements to the Software or Services (“Feedback”), nor is Customer permitted to create any modifications, but in the event Customer does so, Customer hereby grants Company a perpetual, royalty-free license, with the right to grant and authorize sub-licenses, to use such feedback or modifications in the products or services that Company offers, sells, provides and distributes.

## **5. PAYMENT OF FEES**

1. Customer will pay Company the then applicable fees described in the Order Form for the Services in accordance with the terms therein (the “Fees”). If Customer’s use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company’s customer support department. If Customer fails to timely pay any disputed fees or other amounts due under any Order Form, Company may, without limiting any other rights or remedies, suspend performance of the Services under such Order Form until Company receives all undisputed amounts due.
2. Company may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, computed and compounded daily from the date due until the date paid, plus all expenses of collection and may result in immediate termination of Service. Payment of interest does not cure or excuse any payment default and is without prejudice to any other rights or remedies available to Company. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company’s net income.

## **6. TERM AND TERMINATION**

1. Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the “Term”), unless either party requests termination at least ninety (90) days prior to the end of the then-current term.
2. In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days’ notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided.
3. If the Agreement, or any Order Form expires or is terminated for any reason contained herein, (a) all liabilities accrued hereunder prior to the effective date of termination or expiration shall survive, (b) Customer will pay Company all fees and other amounts under the Order Form(s) that accrued prior to the effective date of expiration or termination, and (c) all sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **7. WARRANTY AND DISCLAIMER**

1. Each party warrants to the other that: (a) this Agreement and each Order Form has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it; (b) no third-party authorization or approval is required in connection with such party's execution, delivery, or performance of either this Agreement or any such Order Form; (c) the execution of each Order Form does not violate and Applicable Law or the terms of any other agreement to which it is a party or by which it otherwise is bound.
2. Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's standard published policies then in effect (the "Policy") and all Applicable Law.
3. Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.
4. However, Company does not warrant that the Services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND FREEDOM FROM VIRUSES OR HARMFUL CODE.

## **8. LIMITATION OF LIABILITY**

COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, OR LOST REVENUES OR LOST PROFITS; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY DAMAGES OR OTHER MONETARY REMEDIES THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. MISCELLANEOUS**

1. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.
2. This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent.
3. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

4. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever.
5. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.
6. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.
7. The Agreement is for the benefit of, and will be enforceable by, the parties only. The Agreement is not intended to confer any right or benefit on any third party. No action may be commenced or prosecuted against a party by any third party claiming as a third party beneficiary under the Agreement.
8. This Agreement shall be governed by the laws of the State of Delaware without regard to its conflict of laws provisions. Any suit hereunder will be brought in the federal or state courts located in the State of Delaware, and the parties submit to the personal jurisdiction thereof.
9. Company shall not be liable for any delay or failure to perform its obligations under this Agreement if prevented from doing so by a cause or causes beyond its reasonable control. Without limiting the generality of the foregoing, such causes include fires, floods, storms, earthquakes, riots, terrorism, strikes, blackouts, wars or war operations, civil disturbances, pandemics, restraints of government, utility or communications failures, computer hackers, denial of service attacks, software viruses, telecommunications slow-downs or failure, erroneous data transmission, or causes which could not with reasonable diligence be controlled or prevented by Company.

Patent Pending T3 Time to Target

Version 1.0.0