



BLACKDIAMOND  
ADVISORY

# Software Subscription Agreement

This Software Subscription Agreement (this “Agreement”) governs Customer’s access to and use of Black Diamond Advisory’s (“BDA”) Services and is effective on the Order Schedule Effective Date. By executing an Order Schedule, using or accessing the Products, Customer and BDA (each a “Party” and, collectively, the “Parties”) agree to the terms of this Agreement and acknowledge that Customer has read, understands, and agrees to be bound by this Agreement. If Customer is entering into this Agreement on behalf of a company, business or other legal entity, Customer represents that Customer has the authority to bind such entity to this Agreement, in which case the term “Customer” shall refer to such entity. BDA may update or modify this Software Subscription Agreement at any time, and BDA shall provide reasonable notice to Customer of any such updates or modifications. If BDA modifies the terms of this Agreement in a way that is materially adverse to the Customer, and Customer provides written notice to BDA that such modifications are not acceptable to Customer within thirty (30) days following BDA’s notice to Customer of such modifications, then (i) such modifications shall not apply to Customer for the then-current Applicable Term or Renewal Term, but (ii) such modifications shall apply to Customer starting with the next renewal term unless the Agreement is first terminated pursuant to Section 11.

## 1. DEFINITIONS.

**(a) “Applicable Term”** means the term stated in an Order Schedule, beginning on the Effective Date.

**(b) “Initial Term”** means the initial term of this Agreement, which begins on the Effective Date and continues for the specified Initial Term after the Start of Use Date, as set forth in the Order Schedule.

**(c) “Billing Period”** means a period of time starting from a date of one payment and ending on a day before the next payment.

**(d) “Authorized User”** means an employee or agent of Customer, or a Permitted Entity, who is allocated privileges for the Software. Authorized Users may also include Customer’s or a Permitted Entity’s agents, contractors, and/or professionals provided: i) they use the Software for the sole benefit of Customer under the terms of this Agreement; and ii) they are under obligation of non-disclosure substantially similar as the confidentiality terms in this Agreement.

**(e) “Customer Data”** means information that Customer provides for loading, storage, or processing using the Software and such output of the Software as results from the operation of the Software on that data.

**(f) “BDA Privacy Policy”** means BDA’s privacy policy governing BDA’s processing of its customers’ personal data, which is in compliance with all applicable laws and regulations.

**(g) “Documentation”** means the then-current BDA user guides and manuals of the Software. During the Applicable Term BDA will not change the Documentation in a manner that materially reduces the functionality to users of Software that are substantially similar to Customer.

**(h) “Effective Date”** means the date on which the Order Schedule which incorporates this Agreement by reference was executed by the Parties.

**(i) “Named User”** privileges with respect to an Authorized User permit one Authorized User to access all functionality of the Software.

**(j) “Order Schedule”** means a BDA ordering document which may include information such as, but is not limited to, Customer name, Product that is the subject of this Agreement, Applicable Term and fees, which is executed by the parties.

**(k) “Permitted Entity”** means a corporation, company, partnership, joint venture, or other entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, Customer where “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management of such an entity, whether through the ownership of voting securities, by contract, or otherwise.

**(l) “Product”** means the BDA software product(s) set forth on the Order Schedule.

**(m) “Professional Services”** means consulting services as set out in a Statement of Work executed between the parties.

**(n) “Renewal Date”** means a first date, after the Initial Term, on

which Agreement can be renewed. See Section 9 for renewal terms.

**(o) “Service(s)”** means BDA’s provision of the Software and the Support Services pursuant to the terms of this Agreement.

**(p) “Software”** means any BDA software product(s) (including code, applications, databases, libraries, and related works of authorship) identified in an Order Schedule and made available to Customer via the OneStream Solution Exchange and accessed through the OneStream Platform, as further described in the Documentation.

**(q) “Start of Use Date”** means the first date that BDA will make Product available to Customer.

**(r) “Support Services”** means the support available by the BDA according to the details as provided to Customer upon request. means the then current support services as specified in Support Service and Support Levels found at: <https://blackdiamondadvisory.com/legal-documents/>

**(s) “Type of Subscription”** means a type subscription, such as month-to-month or yearly or multi-yearly term, the Customer has agreed to.

**(t) “Update”** means a release, version, or bug fix with respect to the Software that BDA makes available to its customers at no additional charge in excess of the service fees for the applicable Service(s). Updates do not include any other service, other software, or future products that BDA offers separately.

## 2. STRUCTURE.

This “Agreement” consists of this Software Subscription Agreement, including the Documentation, together with all Order Schedules.

Any conflict between the documents of this Agreement shall be resolved according to the following order of precedence: (i) the Order Schedule, (ii) this Software Subscription Agreement, and (iii) the Documentation.

## 3. SERVICE.

**(a)** BDA will, during the Applicable Term, make available on a non-exclusive, nontransferable basis to Customer and Permitted Entities the Software solely for the internal business operations of Customer and any Permitted Entities. The Software is licensed, not sold, to Customer.

**(b)** Customer may, during the Applicable Term, make available the Software to Authorized Users solely for the internal business operations of Customer and the Permitted Entities.

**(c)** An Authorized User must be an employee, consultant, contractor, agent, or other person that is performing services for Customer and that uses the Product solely on behalf of Customer. Customer is liable and responsible for all Authorized Users and Customer shall have a written contract in place with all Authorized Users that obligates such Authorized Users to confidentiality terms that are at least as protective of the Product as the terms of Section 15 of this Agreement.



(d) Upon request of PS, Customer shall provide the written, signed agreement of any person that is an Authorized User. Customer will be liable to BDA for all acts or omissions of any Permitted Entity and/or Authorized User that would, if committed or omitted by Customer, be a breach of this Agreement. User.

(e) No Generic Authorized Users. A generic, group, nested, or shared account (e.g., FinanceUser, SalesUser, or other shared or generic user accounts are not permitted) cannot be an Authorized User. A person who is an Authorized User cannot share or authorize another person to use his or her Authorized User account.

(f) Changes to Authorized Users. Customer may make changes to each Authorized User no more than twice during a Billing Period. Unless special approval is obtained from BDA, when a person is removed or deleted as an Authorized User during a Billing Period, that person cannot be reinstated as one of the Authorized Users for the remainder of the same Billing Period

(g) Additional Authorized Users and Additional Fees. If Customer adds Authorized Users so a total number of Authorized Users exceeds the Number of Authorized Users, Customer will be responsible for paying any additional license charges set forth in the Order Form or the fees in effect at the time of the change.

#### 4. USE RESTRICTIONS.

Except as expressly permitted by this Agreement, Customer may not, and may not allow any third party to: (i) decompile, disassemble, decrypt, or reverse-engineer any Software; (ii) remove any product identification or proprietary-rights notices from any Software or the Documentation; (iii) sell, lease, lend, or otherwise make available any Software to a person other than as permitted by this Agreement, whether for timesharing, service bureau, or other purposes; (v) modify, or create derivative works of, any Software; (vi) use any virtual session, automated process, or any other means to make greater use of any Software than is permitted under this Agreement and/or the applicable Order Schedule; (vii) use the Software in a manner inconsistent with the Agreement.

#### 5. EVALUATION/NOT FOR RESALE LICENSE.

If Customer acquired an Evaluation or Not For Resale license as set forth in the applicable Order Schedule, Customer may install the Software on Customer's internal computing system for a period consistent with the license key provided to Customer. Customer is acquiring only the limited right to use a single copy of the Software for evaluation purposes. Customer is not acquiring any rights to the Software itself. Customer may not re-sell or otherwise transfer an Evaluation or Not for Resale License.

#### 6. LICENSE TYPES.

The Software is licensed by Named User, as set forth in the applicable Order Schedule. Customer may allow its third party contractors or service providers to use the Software on Customer's behalf provided that they are bound to use the Software solely to perform services for Customer and provided that Customer is liable and responsible for such third parties.

#### 7. SUPPORT AND PROFESSIONAL SERVICES.

(a) BDA will provide to Customer Support Services during the Applicable Term. BDA will provide to Customer Support Services during the Applicable Term as set forth in the Support Services and Service Levels Schedule [attached hereto / located at <https://blackdiamondadvisory.com/legal-documents/>

(b) Where Customer requires Professional Services with respect to the Service in excess of Support Services (including, but not limited to, integration and configuration), the parties will contract for such services under a separate Master Services Agreement and Statement of Work. A breach by a party with respect to Professional Services will not itself be a breach by that party with respect to other Services.

(c) BDA does not recommend upgrading OneStream Software without first checking compatibility with the Software.

#### 8. TERM.

(a) The Applicable Term shall commence as specified on each Order Schedule and continue for the period as specified therein.

(b) If BDA or Customer has not, by the date that is 60 days prior to the end of the then-current Applicable Term, given notice to the other party that it intends to not renew the Software and related Services, the Software set out in the applicable Order Schedule will automatically renew for additional one-year terms (each, a "Renewal Term"). BDA may increase the price during any renewal term by up to the increase in CPI (US Consumer Price Index All Items Urban Consumers) as published by the US Department of Labor for the most recent 12 month period above the pricing effective at the end of the Applicable Term prior to the renewal period.

#### 9. PAYMENT TERMS AND TAXES.

(a) BDA shall invoice for Service fees annually in advance at the beginning of the Applicable Term, unless otherwise provided in an Order Schedule.

(b) All amounts under this Agreement that are not subject to a good faith dispute of which Customer has given BDA written notice are due within 30 days after the date of the invoice. If Customer fails to timely pay any amount as required by this Agreement, Customer will pay BDA late fees at the lower of 1.5% per month or the highest rate permitted by law.

(c) All amounts shall be billed in the currency stated in the Order Schedule executed by the parties, and if no currency is stated then in United States Dollars.

(d) Customer will pay all sales, use, VAT, GST, or other comparable taxes associated with the Service, or other goods, or services provided pursuant to this Agreement but excluding taxes on BDA's income ("Taxes"). BDA will, according to state and other applicable law, invoice and remit Taxes to the applicable taxing authority on Customer's behalf.

(e) Customer will make all payments without reduction for any withholding taxes applicable under applicable laws. Where withholding tax could apply, Customer shall provide to BDA such evidence as BDA reasonably requests to establish that such Taxes have been paid.

(f) With respect to any tax matter which is not explicitly covered by this Section, Customer and BDA will assist each other in good faith.

(g) No Customer requirement for purchase order numbers or other clerical or similar requirements will delay or reduce any Customer obligation under this Agreement.

#### 10. REFERENCE.

BDA will not use Customer's trademarks or trade dress in a press release or public promotional communication. Notwithstanding the foregoing, BDA may include Customer's name in a confidential list of BDA's customers that BDA may provide to BDA's potential customers.

#### 11. TERMINATION.

(a) Either party may terminate the applicable Order Schedule upon notice to the other party if:

- (i) The other party materially breaches this Agreement and fails to cure such material breach within 30 days (10 days for payment obligations) after the aggrieved party gives written notice of such breach (it being understood that, if the breach cannot be cured, no cure period will apply); or
- (ii) The other party becomes unable generally to pay its debts as they become due, ceases to do business in the ordinary course, or dissolves, winds up, or its governing body approves such dissolution or winding up.

(b) Termination is not an exclusive remedy.

(c) Upon expiration or termination for any reason of the Agreement or the applicable Order Schedule:

- (i) All of Customer's rights and use of the Software will immediately cease; and Customer shall delete or otherwise remove all copies and instances of the Software



installed on Customer's systems.

- (ii) BDA will, at Customer's request made at any time prior to the 10<sup>th</sup> calendar day after the effective date of termination, provide to Customer, in industry-standard electronic form, a copy of such Customer Data as BDA then holds using the Software.
- (d) If Customer terminates this Agreement under Section 11(a), BDA will refund to Customer any prepaid fees that Customer has by then paid but that BDA has not earned, whether by performance or passage of time.
- (e) The provisions of Section 14 will survive according to their terms. The provisions of Sections 1, 10, 11, 13, 14, 15, 16, and 18 will survive indefinitely any termination of this Agreement.

## 12. WARRANTY.

(a) BDA hereby warrants to Customer that for a Warranty Period described in (b), the Product will substantially conform to the functional description set forth in its associated documentation. Any implied warranties on the Product is limited to the Warranty Period, to the extent such warranties cannot be disclaimed under (e) below. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. BDA does not warrant that use of the Product will be uninterrupted or error free.

(b) The Warranty Period will continue until the first to occur of: (i) the termination date of the Agreement; (ii) a starting date of a Billing Period for which payment was not received by BDA, or (iii) ninety (90) days from Start of Use Date. The warranty cannot be renewed, restarted, or extended beyond the Warranty Period, regardless of a renewal of the Agreement or changes in the Authorized Users.

(c) The warranty in this Section will not apply to the extent that: (i) the Software is not used in accordance with this Agreement or the Documentation; (ii) the Software or any part thereof has been modified other than by BDA or with BDA's written approval; or (iii) Customer fails to accept an Update proffered by BDA that would cause the Software to conform to the warranty.

(d) To claim the benefit of the warranty in Section 12(a), Customer must: (i) notify BDA of the non-conformity and (ii) provide the BDA sufficient detail to allow BDA to reproduce the nonconformity.

(e) TO THE MAXIMUM EXTENT PERMITTED BY LAW, BDA'S SOLE AND EXCLUSIVE LIABILITY FOR ANY BREACH OF THE WARRANTY) SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE SOFTWARE, UNLESS, IN BDA'S OPINION, SUCH REPAIR OR REPLACEMENT WOULD BE INADEQUATE OR IMPRACTICAL, IN WHICH CASE BDA WILL REFUND ANY PREPAID FEE THAT CUSTOMER HAS PAID BUT THAT BDA HAS NOT EARNED. CUSTOMER WILL THEREUPON CEASE ALL USE OF THE SOFTWARE AND THE APPLICABLE ORDER SCHEDULE WILL TERMINATE.

(f) TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, INCLUDING AS SPECIFIED IN SUPPORT SERVICES, (i) BDA AND ITS LICENSORS DISCLAIM ANY AND ALL IMPLIED WARRANTIES; (ii) BDA AND ITS LICENSORS DO NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE; (iii) BDA AND ITS LICENSORS MAKE NO WARRANTY AGAINST INTERFERENCE WITH ENJOYMENT, INFRINGEMENT, MERCHANTABILITY, ACCURACY, OR FITNESS FOR PURPOSE.

(g) The Software operates utilizing public networks, including the internet, which is not under the control of OneStream and is inherently insecure. BDA makes no representations, warranties, or guarantees of any kind, express, implied, statutory, or otherwise, oral or written, with respect to the performance or security of any public network.

## 13. INTELLECTUAL PROPERTY INDEMNITY.

(a) BDA will indemnify, defend, and hold harmless Customer and

each Permitted Entity from any claim by a third party that the Software infringes upon that third party's patent, copyright or trademark, or misappropriates that third party's trade secret, provided that: (i) Customer gives to BDA prompt notice of the claim; and (ii) Customer and each Permitted Entity give to BDA sole control of the defense and/or settlement of the claim and reasonable assistance in conducting such defense and/or settlement. BDA will reimburse all reasonable out-of-pocket expenses incurred by Customer in providing such assistance. BDA will not, without Customer's written consent (which consent Customer will not unreasonably withhold) enter into any settlement agreement that binds an indemnitee that involves any substantive term other than the payment by BDA of money and the release of the liability of the indemnitee.

(b) Customer will indemnify, defend, and hold harmless BDA from any claim by a third party that any software uploaded or used by Customer in the Software (including through the OneStream code editor function which allows Customer to write or otherwise insert business rules and formulas), infringes upon a third party's patent, copyright or trademark, or misappropriates a third party's trade secret, provided that: (i) BDA gives to Customer prompt notice of the claim and (ii) BDA gives to Customer sole control of the defense and/or settlement of the claim and reasonable assistance in conducting such defense and/or settlement. Customer will reimburse all reasonable out-of-pocket expenses incurred by BDA in providing such assistance. Customer will not, without BDA's written consent (which consent BDA will not unreasonably withhold) enter into any settlement agreement that binds BDA that involves any substantive term other than the payment by Customer of money and the release of the liability of the indemnitee.

(c) BDA's obligations under this Section will be reduced to the extent that the claim arises out of, or relates to: (i) goods, services, or software not supplied by BDA under this Agreement; (ii) use of the Software in a manner not expressly authorized by this Agreement; (iii) customizations, modifications, alterations of or changes to the Software not approved in writing by BDA; (iv) combination of the Software with other goods, services, processes, or software where the alleged infringement would not exist but for such combination; (v) Software that is not the most current release and version if infringement would be avoided by use of the most current release or version; or (vi) Customer's continuation of the allegedly infringing activity after being notified thereof.

(d) If the Software infringes upon a third party's proprietary right or if BDA reasonably believes that the same is likely to occur, BDA may, at its option (in addition to, and not in lieu of, BDA's obligations under Section 13(a)), (i) procure for Customer the right to continue use of the Software; (ii) provide a modification to the Software so that its use becomes non-infringing; (iii) replace the Software with software that is substantially similar in functionality and performance; or (iv) if options (i) - (iii) are not commercially reasonable, then refund to Customer such Software or other fees as Customer has by then paid but that BDA has not earned by performance or the passage of time, whereupon Customer will cease using the Software and destroy or return the Software to BDA and this Agreement will terminate.

(e) This Section states BDA's sole obligation, and Customer's exclusive remedy, for any third party claim of infringement, violation, or misappropriation of intellectual property or other proprietary rights.

## 14. CONFIDENTIALITY.

(a) "Confidential Information" of a party means any information belonging to, or held by, the party, that is: i) designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure; and ii) the subject of commercially reasonable efforts by the party under the circumstances to keep it



from becoming generally known to the public.

**(b)** Each party, as a receiving party, will do the following things with regard to the Confidential Information of the other party:

- (i)** Not disclose the Confidential Information to any third party other than the receiving party's employees, agents, contractors, and/or professionals as permitted under this Agreement.
- (ii)** Use, and permit the use of, the Confidential Information only for the purpose of performing its obligations, or enjoying its rights, under this Agreement (the "Purpose").
- (iii)** Disclose the Confidential Information only to such of the receiving party's employees, agents, contractors, and professionals as have a bona fide need to possess or know the Confidential Information in the course of accomplishing, or advising the disclosing party with regard to, the Purpose.
- (iv)** Cause each employee, agent, contractor, or professional to whom the receiving party discloses the Confidential Information to be bound by an obligation of confidentiality that is at least as rigorous as the obligations contained in this Agreement.
- (v)** Return or destroy all written or other tangible copies of Confidential Information in the receiving party's possession or direct or indirect control, including all extracts and copies thereof, within a reasonable time after, and in accordance with, the disclosing party's request.

**(c)** Nothing in this Section will prevent the receiving party from disclosing or using the Confidential Information of the disclosing party to the extent that:

- (i)** It is or becomes known to the public without any breach by the receiving party of its confidentiality obligations;
- (ii)** It is received from a third party that is not under an obligation of confidentiality. Of which the receiving party knew or had reason to know;
- (iii)** It is independently developed by the receiving party without use of the disclosing party's Confidential Information; or
- (iv)** It is required by law to be disclosed, provided that the receiving party, to the extent not prohibited by law:
  - (A)** Provides to the disclosing party as much notice as is practicable of such requirement;
  - (B)** Provides to the disclosing party, at the disclosing party's request and expense, such reasonable assistance in seeking confidential treatment; and
  - (C)** Discloses only such Confidential Information as the receiving party, upon advice of its counsel, believes is required to be disclosed.

**(d)** If the receiving party discloses Confidential Information or is likely to use or disclose Confidential Information in breach of the receiving party's obligations under this Agreement, the disclosing party will be entitled to seek equitable relief, including injunctive relief and specific performance. The rights in this paragraph are in addition to any other rights of the disclosing party under this Agreement, at law, or in equity.

**(e)** These confidentiality obligations will continue for the longer of:

- (i)** Five (5) years after expiration or termination of this Agreement; or
- (ii)** The time during which the Confidential Information remains a trade secret (as that term is defined in the Uniform Trade Secrets Act) of the disclosing party.

**(f)** The provisions of this Section replace and supersede any confidentiality agreement or nondisclosure agreement between the parties that existed prior to, or on, the Effective Date.

## 15. RIGHTS.

**(a)** BDA and its licensors shall own all rights, title and interest, and all copyrights, patents, trademarks, or other intellectual property or

other proprietary rights in the Services (including the Software) and all derivatives, improvements, enhancements, or modifications thereto. BDA and its licensors reserve all rights not expressly granted in this Agreement.

**(b)** Customer shall own all rights, title and interest in, and all copyrights, patents, trademarks, or other intellectual property or proprietary rights in, Customer Data.

## 16. LIMITATION OF REMEDIES AND DAMAGES.

**(a)** To the maximum extent permitted by law, except in the case of BDA's gross negligence, willful misconduct, fraud, obligation under Section 10 (Intellectual Property Indemnity), or breach of an obligation under Section 14 (Confidentiality), regardless of the basis of recovery claimed, whether under contract tort, negligence, strict liability, or other theory:

- (i)** BDA'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNT OF FEES PAID BY CUSTOMER FOR THE LAST 12 MONTHS OF THE SERVICES (OR, IF 12 MONTHS HAVE NOT BY THEN PASSED, THE AMOUNT THAT WOULD HAVE BEEN PAYABLE HAD THE TERM OF THE AGREEMENT RUN 12 MONTHS); and
- (ii)** NEITHER BDA NOR ITS LICENSORS WILL BE LIABLE FOR LOSS OF PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND.
- (iii)** ONESTREAM AND BDA'S LICENSORS WILL HAVE NO LIABILITY, WHETHER IN CONTRACT, IN TORT OR OTHERWISE UNDER THIS AGREEMENT.

**(b)** The limitations in this Section apply notwithstanding that BDA or its licensors know, or have reason to know, of the possibility of any particular kind of damages or that such limitations cause a remedy to fail of its essential purpose.

## 17. COMPLIANCE WITH LAWS.

**(a)** Both parties agree to comply with all applicable laws in connection with its obligations under this Agreement.

**(b)** Privacy:

- (i)** All transfers of Customer Data out of the European Union, European Economic Area, or Switzerland will be governed by the Standard Contractual Clauses as approved by the EU Commission Decision of 4 June 2021 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council or any further version approved by EU Commission Decision.
- (ii)** In the event that personal data is processed by BDA on Customer's behalf in connection with the Services, then both BDA and Customer will execute a mutually acceptable data processing agreement.
- (iii)** Upon request, BDA will provide Customer with BDA's then current BDA Privacy Policy.

**(c)** Each party will, and will cause its employees, directors, and officers (and, in the case of Customer, its Permitted Entities and Authorized Users) to comply with all applicable laws relating to anti-bribery and anti-corruption including, but not limited to, the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010 (each an "Anti-Bribery Law"). Each party will not, and will cause its Permitted Entities, employees, directors, and officers to not, accept bribes or kickbacks in any form.

**(d)** Import/Export.

- (i)** Each Service is subject to U.S. and international laws, restrictions, and regulations that may govern the import, export, and use of the Service ("Export Laws"). Each party agrees to comply with Export Laws that apply to such party's use or provision of the Service.
- (ii)** Customer represents and warrants that neither it nor any Permitted Entity or Authorized User is (A) an entity barred by the applicable Export Laws from participating in export activities (each a "Barred Entity") or (B) owned or



controlled by a Barred Entity. A Barred Entity includes, but is not limited to, an entity located in any country subject to an embargo or other sanctions by the U.S. Government ("Embargoed Country"), which currently includes Cuba, Iran, North Korea, Russia, Syria, and Covered Regions of Ukraine (Crimea, Donetsk and Luhansk), or an entity designated on a "Denied Party List" maintained by the U.S. Government, including, but not limited to the U.S. Treasury Department's Specially Designated National's List administered by the Office of Foreign Assets Control and the U.S. Commerce Department's Entity List administered by the Bureau of Industry and Security.

- (iii) Customer will not export, re-export, transfer, or otherwise use the export-controlled products in any Embargoed Country or allow any of its employees and affiliates to access any Service from any Embargoed Country.
- (iv) Customer will not export, re-export, or transfer, either directly or indirectly, any Service to a Barred Entity or allow a Barred Entity to access any Service.
- (v) Customer will not use any Service for any purpose prohibited by Export Laws, including, but not limited to, the design, development, or production of nuclear, chemical, or biological weapons, or rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems.
- (vi) Without limiting Customer's payment obligations, Customer shall not make any payments to BDA using a sanctioned financial institution.

#### 18. GENERAL.

(a) The Agreement shall be governed by and construed under the laws of the State of Delaware without regard for the conflict of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to the Agreement.

(b) Any suit or other action arising out of, or related to, this Agreement may be brought only in the Delaware state courts.

(c) Any notice required or permitted to be given under this Agreement must be in writing and will be effective (i) upon personal delivery; (ii) if given by courier or mail service, at the time that the notice is delivered (or an attempt is made to deliver the notice, regardless of whether refused) to the receiver's premises; or (iii) if by e-mail, when sent, provided that sender receives no indication within four hours after sending that the e-mail message failed to reach the receiver. The addresses for notice are those in the preamble to this Agreement. Either party may change its notice address by providing notice to the other party.

(d) BDA and its licensors may collect, use, and disclose quantitative data derived from the use of the Services for product development, performance, management, and improvement purposes, provided that any such data is aggregated upon collection and then anonymized, and therefore not identifiable as about Customer, or containing Customer Data or Confidential Information.

(e) Neither party may assign any right or obligation under this Agreement. Notwithstanding the foregoing, either party may assign all, but not less than all, of its rights and obligations under this Agreement (i) to any affiliate of the party or (ii) in connection with a public offering or with the sale, acquisition, or merger of all or substantially all of the party's business, assets, or equity.

(f) If a provision of the Agreement or portion thereof is unenforceable under applicable law, it shall be omitted from the Agreement without invalidating the remainder of such provision or the Agreement. The waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach.

(g) Neither party will be in breach of this Agreement to the extent that its performance (other than payment obligations) is prevented or delayed by a force majeure event, including but not limited to, war, riot, severe weather, earthquake, volcanic eruption, act of terrorism, government action, or other condition or circumstance not reasonably within the control of the affected party, provided that the affected party gives notice to the other party of the condition or circumstance not reasonably within the control of the affected party, provided that the affected party gives notice to the other party of the condition or circumstances and re-commences performance promptly after the applicable condition or circumstance ceases.

(h) The provisions of the Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

- (i) BDA's licensors are third parties that have licensed their products or services to BDA for resale and include, without limitation, Preferred Strategies. All of BDA's licensors are an intended third party beneficiary entitled to enforce the terms of this Agreement against Customer directly to the extent any licensors may deem such enforcement necessary or advisable to protect its rights. The Agreement represents the entire agreement between the parties with respect to the subject matter of this Agreement and expressly supersedes any prior representations, warranties, and/or agreements with respect to the subject matter of this Agreement. No additional or conflicting term in a purchase order or procurement system will have any effect and BDA may accept and process such forms as an administrative convenience without being deemed to have accepted any additional or different term.