



## MASTER SUBSCRIPTION AND SERVICES AGREEMENT

This Master Subscription and Services Agreement (“**Master Agreement**”) is an agreement by and between the customer identified in the Order Form (“**Customer**”) and Validity, Inc. (“**Validity**”), effective as of the latest date by which the first Order Form is fully executed by both Parties (“**Effective Date**”). Customer and Validity are collectively referred to as the “**Parties**” and individually as a “**Party**.”

### 1. Definitions

Defined terms used in this Agreement have the meanings set forth below or as otherwise provided in this Agreement:

“**Affiliate(s)**” means any entity that directly controls, is controlled by, or is under common control with the subject entity. For purposes of this Agreement, “control” means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Agreement**” means collectively, this Master Agreement (including any attached exhibits), all Order Forms, the DPA and any other terms incorporated by reference herein.

“**Beta Services**” means a Subscribed Offering that Validity may offer from time to time for certain services to Customer as closed or open beta services under a beta, labs, preview, non-production or similar designation for the purpose of testing and evaluation.

“**Certification Program**” means Validity’s e-mail certification program which is designed to help facilitate the delivery and legitimacy of e-mail sending, through the process of requiring sender to meet certain mailing practices and standards, contingent upon the truthfulness, accuracy and completeness of Customer Data.

“**Customer Data**” means any electronic data and information submitted by Customer or its Users via the Platform in the course of accessing and using the Subscribed Offerings.

“**Documentation**” means the user guides, manuals, on-line help, software release notes, instructions, performance descriptions, design documents, test materials, operation guides, training materials and other materials provided by Validity in written or electronic format referring to or relating to the use of the Subscribed Offerings.

“**DPA**” means the Data Processing Addendum located online at <https://www.validity.com/resources/DPA-04-08-2021.pdf>, which is incorporated into and forms part of this Agreement.

“**Order Form**” means an ordering document signed by Validity and Customer (or any of its Affiliates) for the license of specific Subscribed Offerings or provision of related

professional services by Validity, and that incorporates the terms of this Master Agreement by reference. Each Order Form is incorporated into and forms part of the Agreement.

“**Platform**” means any hosted software as-a-service platform provided by Validity to Customer under this Agreement as specified in an Order Form.

“**Reports**” mean any document containing Customer Data (in PDF, CSV or other exportable format) that Customer is able to generate via the Platform.

“**Software**” means any software distributed by Validity to Customer under this Agreement for use in connection with a Subscribed Offering, including any APIs, pixels, and applications (but excluding any hosted software used to provide the Platform).

“**Subscribed Offerings**” means the Software, Platform, Beta Services, and Documentation, including any upgrades, modified versions, bug fixes or updates thereto as provided by Validity.

“**Subscription Term**” means the period identified in the Order Form during which Customer and its Users are permitted to use or access the Subscribed Offerings pursuant to the terms set forth in this Agreement, subject to earlier termination in accordance with this Agreement.

“**User**” means an individual who Customer (or its Affiliate) authorizes to use the Subscribed Offerings under its account and on its behalf, including Customer’s (or its Affiliate’s) employees or contractors.

## **2. Access and Obligations**

- (a) Subject to the terms of this Agreement, during the Subscription Term, Validity hereby grants to Customer a limited, non-exclusive, non-sublicensable (other than to third-party Users acting on its behalf), and non-transferrable right to: (i) install any Software in accordance with the Documentation and use such Software solely in connection with the Subscribed Offering; (ii) use the Subscribed Offering in accordance with Documentation and solely for the internal business purposes of Customer to optimize the performance of its email marketing, data management or sales functions; and (iii) make a limited number of copies of the Documentation for internal use and only as necessary to support Customer’s use of the Subscribed Offerings, provided that all such copies retain Validity’s trademark, copyright and other proprietary legends and logos.
- (b) If the Subscribed Offerings provide Customer with the ability to create Reports, Validity hereby grants to Customer a perpetual, irrevocable (except if this Agreement is terminated for breach by Validity), non-exclusive, non-transferable license and right to make a limited number of copies of Reports solely for the internal business purposes of Customer to optimize the performance of its email marketing, data management or sales functions.

- (c) Customer's Affiliates may also access and use the Subscription Offerings for the Subscription Term on the same terms as Customer, provided that (i) such Affiliate executes an Order Form, and (ii) the combined use of the Subscription Offerings hereunder by Customer and its Affiliates shall in no event exceed the terms under each applicable Order Form. All references to "Customer" in this Agreement shall include any such Affiliate that enters into an Order Form, and Customer and such Affiliate(s) shall be jointly and severally liable for any breach of this Agreement by Customer or its Affiliates.
- (d) Customer may accept or decline to use Beta Services in its sole discretion. Beta Services are for evaluation purposes only, and Customer agrees to be bound by any additional terms applicable to the Beta Services provided by Validity. Validity provides no warranties for any of the Beta Services, and Validity has no obligation to correct or repair any Beta Services. Validity shall have the sole authority and discretion to determine the period of time for testing and evaluation of Beta Services and further reserves the right to fully or partially discontinue Beta Services at any time and for any reason, temporarily or permanently, with or without notice. Validity shall have no liability to Customer or any third party for any harm or damage arising out of or in connection with any of the Beta Services.
- (e) Customer shall not directly or indirectly (including through any third party):
  - (i) Modify, adapt, translate, incorporate into or with other software, or create a derivative work or an improvement of, any part of the Subscribed Offerings;
  - (ii) Disclose the results of any benchmarking of the Subscribed Offerings;
  - (iii) Copy, reproduce or duplicate the Subscribed Offerings, by any means or in any manner, except for creating Reports;
  - (iv) Decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Subscribed Offerings by any means whatsoever;
  - (v) Impact the quality of other users' experience when using the same or other Validity products and services;
  - (vi) Introduce malicious programs, viruses, malware, or other harmful software or mechanisms into the Platform, including any software designed to interfere with its proper operation or that accesses (or attempts to access) a computer or data without authorization;
  - (vii) Attempt to circumvent authentication or security of any host, network or account or use or knowingly permit others to use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Subscribed Offerings;

- (viii) Use any robot, spider, scraper, or other automated method, software or program designed to access or scrape the Platform for any purpose;
  - (ix) Share login credentials across multiple Users or otherwise enable multiple Users to access the Platform through a single User account;
  - (x) Submit any Customer Data or material to the Subscribed Offering that infringes or misappropriates the intellectual property rights of any third party or otherwise violates the privacy or other proprietary right of any third party;
  - (xi) Sell or resell any aspect of the Subscribed Offering or otherwise make the Subscribed Offering available to any third party for a fee; or
  - (xii) Falsify User identification information, impersonate any person or entity or provide misleading information about itself or a User.
- (f) Customer is responsible and liable for all acts and omissions with respect to access or use of the Subscribed Offerings by or on behalf of Customer or that otherwise occurs via any Platform account made available to Customer, whether such access or use is permitted by or in violation of this Agreement. Customer will be responsible for ensuring that its Users comply with the terms of this Agreement, and references to Customer in this Section 2 shall be interpreted to mean Customer and its Users.
- (g) Customer will protect any login credentials in its possession or control that are used to access any Subscribed Offerings from unauthorized access, use and disclosure and will not share any such credentials with any third party. Customer shall (i) promptly notify Validity in writing of any unauthorized access to or use of any of its Platform accounts or account credentials; and (ii) ensure that it exits (logs off) from each account at the end of each session. For the avoidance of doubt, Validity cannot and shall not be liable for any loss, damage or other liability arising from Customer's failure to comply with these requirements or from any unauthorized access to or use of Customer's account. Customer is responsible for the accuracy, quality, integrity, and legality of Customer Data. Customer shall abide by (and be responsible for its compliance with) applicable laws, rules, orders and regulations in connection with Customer's use of the Subscribed Offerings, including any processing of Customer Data via the Subscribed Offerings. Validity does not assume any responsibility for, or undertake to verify, the accuracy or completeness of the Customer Data. Customer is solely responsible for backing up its data. Validity shall not have a duty to back up data or to restore data that is lost in the course of the provision of Subscribed Offerings.
- (h) Customer may install or otherwise elect to use Validity-approved third-party services with and as permitted by the Subscribed Offerings ("Third-Party Services"), including customer relationship management systems. Any use by Customer of Third-Party Services is solely the responsibility of Customer and the applicable Third-Party Services provider and Validity shall in no way be responsible for the performance of the Third-Party Services. Customer acknowledges that providers of such Third-Party Services may have access to Customer Data in connection with the interoperation and support of

Third-Party Services with the Subscribed Offerings. To the extent Customer authorizes the access or transmission of Customer Data through a Third-Party Service, Validity shall not be responsible for any use, disclosure, modification or deletion of such Customer Data or for any act or omission on the part of such Third-Party Services provider or its service. Customer acknowledges that Validity is not responsible for any issues of accessibility relating to Customer Data or any other performance issues to the extent caused by Third-Party Services, including failure to connect with such Third-Party Services.

- (i) Validity shall not be responsible or liable for any failure in the Subscribed Offerings to the extent resulting from or attributable to (i) unsuitable Customer Data uploaded into the Subscribed Offerings or otherwise provided to Validity; (ii) quality of Customer Data or failures to deliver Customer Data to Validity; or (iii) any products, software, equipment or services used by Customer (other than the Subscribed Offering); or (iv) Customer's negligence, willful misconduct, breach of this Agreement or other unauthorized access or use of the Subscribed Offering.
- (j) To the extent Customer is applying for a Certification Program, Customer shall provide any additional cooperation Validity reasonably deems necessary or desirable in connection with the Subscribed Offerings as a condition of being accepted into or remaining in the Certification Program.

### **3. Price and Payment**

- (a) Fees. Customer shall pay Validity the fees set forth in the applicable Order Form for the Subscription Term (the "**Fees**"). Fees shall increase by 3% upon renewal for each Subscription Term unless otherwise stated in an applicable Order Form.
- (b) Taxes. Fees are exclusive of and do not include any taxes, duties, or similar charges imposed by any government. Customer shall pay or reimburse Validity for all federal, state, dominion, provincial, or local sales, VAT, use, personal property, import, export, excise or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement, other than taxes based upon Validity's net income.
- (c) Invoicing and Payment. Validity shall invoice Customer in accordance with any instructions agreed upon in the applicable Order Form. Unless otherwise stated in an Order Form, invoiced charges shall be paid thirty (30) days from invoice date. Customer shall pay all applicable Fees when due and, if Fees are being paid via credit card or other electronic means, Customer authorizes Validity to charge Fees using Customer's selected payment method. If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase order document at the time of purchase; and (ii) acknowledges that any terms and conditions included on a Customer purchase order shall not apply and are of no force or effect. Customer's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public or private comments made by Validity regarding future functionality or features. Customer is responsible for maintaining complete and accurate billing and contact information with Validity.

- (d) Overdue Charges. Any Fees not paid when due shall accrue interest at the rate of 1.5% per month or the maximum rate permitted by law, whichever is higher.
- (e) Suspension/Termination of Subscribed Offerings. Without limitation of its other rights, Validity may suspend or terminate Customer's access to the Subscribed Offerings for Customer's failure to pay any Fees when due if Customer has failed to cure such non-payment after Validity provides Customer with ten (10) days' notice of such non-payment. Validity may also suspend Customer's access to the Subscribed Offerings if it deems reasonably necessary to prevent harm to the Subscribed Offerings, Customer Data or its or its other customers' systems, data or property. In the event that Subscribed Offerings are suspended, Customer shall continue to be charged all applicable Fees for the Service during any period of suspension after Subscribed Offerings are reinstated.

#### 4. Confidentiality

- (a) Definition of Confidential Information. "**Confidential Information**" means all information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Without limitation, the Parties agree that (i) Customer's Confidential Information includes Customer Data; (ii) Validity's Confidential Information includes the Subscribed Offerings and Reports; and (iii) Confidential Information of each Party includes the terms of this Agreement, pricing and other terms set forth in Order Forms hereunder, as well as marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such Party. Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party or any unauthorized act of a third party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information.
- (b) Confidentiality Obligations. The Receiving Party shall (i) not use any Confidential Information of the Disclosing Party for any purpose other than to exercise its rights or perform its obligations under this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, shall not disclose Confidential Information of the Disclosing Party except to the Receiving Party's and its Affiliates' employees, contractors and agents who need access to the Confidential Information for purposes consistent with this Agreement, have been clearly informed of their obligation to maintain the confidential status of such Confidential Information, and who are subject to non-disclosure obligations that are at least as restrictive as those set forth herein.
- (c) Required Disclosure. The Receiving Party may disclose the Disclosing Party's Confidential Information when and to the extent required by law, regulation or court order, but only after it, if legally permissible: (a) uses commercially reasonable efforts

to notify the Disclosing Party; and (b) gives the Disclosing Party an opportunity to challenge the disclosure.

- (d) Equitable Relief. The Parties agree that any disclosure of Confidential Information in breach of this Section 4 may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Disclosing Party may be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief without the necessity of showing actual damages.

## 5. Intellectual Property Rights

- (a) As between the Parties, all intellectual property rights in and to the Subscribed Offerings, including all copyright, trade secret, patent, trademark, and other proprietary or industrial property rights in and to the Subscribed Offerings and any improvements thereto, are the sole and exclusive property of Validity. Customer shall not contest or challenge or take any action inconsistent with or that may damage or impair Validity's ownership or intellectual property rights in and to the Subscribed Offerings. Further, Customer hereby grants Validity a non-exclusive, perpetual, worldwide, irrevocable, transferable, sublicensable, and fully paid-up license to use or exploit for any purpose any suggestions, ideas, enhancement requests, feedback or recommendations provided by Customer, its Affiliates or its Users relating to Validity, any Subscribed Offering or any other of its products or services ("**Feedback**"). Any intellectual property rights which may be created as a result of Validity using or acting upon such Feedback shall vest in and remain the property of Validity. Customer does not acquire any rights, express or implied, hereunder with respect to the Subscribed Offerings or otherwise other than those rights expressly granted under this Agreement.
- (b) Subject to the limited rights granted under this Agreement, Customer exclusively owns all right, title and interest in and to all Customer Data. No rights are granted to Validity under this Agreement other than the limited licenses expressly set forth in this Agreement. Customer hereby grants to Validity the non-exclusive, royalty-free right to access, use, copy, distribute, perform, display and process Customer Data during the Subscription Term to: (a) provide and improve the Subscribed Offerings, including to prevent or address service or technical problems; (b) perform other activities at Customer's direction or request, including processing initiated by Users in their use of the Subscribed Offerings; or (c) as compelled by law. Further, each Party will comply with its obligations under the DPA in connection with its processing of Customer Data subject to the DPA.
- (c) Customer further grants Validity a perpetual, irrevocable, non-exclusive right to generate de-identified or aggregated data from Customer Data and to use such de-identified or aggregated data to provide and improve its products and services, provided, however that Validity does not (i) identify the source of any such data, or (ii) disclose any such data to any third party other than to its subcontractors and permitted assigns. The rights granted to Validity under this Section 5 may be sublicensed to subcontractors or affiliates that perform work on behalf of Validity and are transferable only in connection with Validity's permitted assignment of this Agreement.

- (d) This Section 5(d) applies only if the Customer has applied to participate in, or is approved to participate in, the Certification Program. To the extent the Subscribed Offerings include the Certification Program, and subject to ongoing (i) Certification Program compliance, (ii) compliance with all other terms and conditions of this Agreement, (iii) timely payment of applicable Fees, and (iv) compliance with any other specific usage guidelines provided by Validity from time to time (the “**Usage Guidelines**”), Validity grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the Subscription Term, to use the word marks “Return Path Certified” and “Return Path Certification Program” (the “**RP Trademarks**”) if Customer is accepted into the Certification Program and continues to be in good standing in the Certification Program. Customer’s use of the RP Trademarks shall inure to the benefit of Validity and shall not create for Customer any right, title or interest in or to such RP Trademarks. All right, title and interest to the RP Trademarks remains in Validity. Upon the earlier of (y) notice by Validity or (z) termination of this Agreement, Customer shall cease all use of the RP Trademarks.

## 6. **Warranties and Disclaimer**

- (a) **Mutual**. Each Party represents and warrants that it has full power and authority to enter into this Agreement, and it has all adequate licenses or consents to grant the rights hereunder, and to carry out its obligations hereunder.
- (b) **Subscribed Offering**. During the Subscription Term, Validity warrants that (i) the Subscribed Offerings shall perform in material conformance with the applicable Documentation; (ii) it shall not materially decrease the functionality of the Subscribed Offerings; and (iii) it shall use commercially reasonable technical means designed to detect disabling devices, viruses, trojan horses, trap doors, back doors, time bombs, cancelbots and other computer programming routines designed to damage or detrimentally interfere with the use of the Subscribed Offerings. The foregoing warranties shall not apply to Beta Services. Customer’s sole and exclusive remedy for any breach of the warranty under this section shall be for Validity to repair or correct any non-conforming aspect of the Subscribed Offerings or to terminate the Agreement in accordance with Section 9.
- (c) **Disclaimer**. EXCEPT AS PROVIDED IN THIS SECTION, THE SUBSCRIBED OFFERINGS ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND. VALIDITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

## 7. **Indemnification**

- (a) **Indemnification by Validity**. Validity shall defend Customer against any claim by a third party alleging that the Subscribed Offerings, when used in accordance with this Agreement, infringes any U.S. intellectual property right of such third party, and shall indemnify and hold harmless Customer from and against any damages and costs awarded against Customer by a court or regulator of competent jurisdiction or agreed in settlement by Validity (including reasonable attorneys’ fees) resulting from such claim. If Customer’s use of the Subscribed Offerings results (or in Validity’s opinion is



likely to result) in an infringement claim, Validity may either: (a) substitute functionally similar products or services; (b) procure for Customer the right to continue using the Subscribed Offerings; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement or the applicable Order Form. The foregoing indemnification obligation of Validity shall not apply to the extent the applicable claim is attributable to: (1) the modification of the Subscribed Offerings by any party other than Validity or based on Customer's specifications or requirements; (2) the combination of the Subscribed Offerings with any other products, technologies or services; or (3) Customer's (including its Users or Affiliate's) breach of this Agreement.

- (b) Indemnification by Customer. Customer shall defend Validity against any claim by a third party arising from or relating to any Customer Data or Customer's use of the Subscribed Offerings, and shall indemnify and hold harmless Validity from and against any damages and costs awarded against Validity or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim.
- (c) Indemnification Procedures. In the event of a potential indemnity obligation under this section, the indemnified Party shall: (i) promptly notify the indemnifying Party in writing of the claim, (ii) allow the indemnifying Party the right to control the investigations, defense and settlement (if applicable) of such claim at the indemnifying Party's sole cost and expense, and (iii) upon request of the indemnifying Party, provide all necessary cooperation at the indemnifying Party's expense. Failure by the indemnified Party to notify the indemnifying Party of a claim under this section shall not relieve the indemnifying Party of its obligations under this section, however the indemnifying Party shall not be liable for any litigation expenses that the indemnified Party incurred prior to the time when notice is given or for any damages and/or costs resulting from any material prejudice caused by the delay or failure to provide notice to the indemnifying Party in accordance with this section.
- (d) This section sets forth Customer's sole remedy with respect to any third-party claim of intellectual property infringement.

**8. Limitation of Liability**

- (A) EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS IN SECTION 7, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES (INCLUDING DATA LOSS OR CORRUPTION, BUSINESS INTERRUPTION, LOST BUSINESS OR LOST PROFITS) EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (B) EXCEPT FOR EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO VALIDITY IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT THAT GAVE RISE TO THE CLAIM.

**9. Term and Termination**

- (a) Term. The term of this Agreement shall commence on the start of the first Subscription Term and shall thereafter continue until the Subscription Term specified in all Order Forms has expired, unless sooner terminated pursuant to the terms and conditions of this Agreement. Unless otherwise stated on an Order Form, each Subscription Term shall automatically renew for successive additional periods of twelve (12) months each, unless either Party provides written notice of non-renewal at least sixty (60) days prior to the end of the then-current Subscription Term. The term of this Agreement and all Subscription Terms shall automatically terminate when all Subscription Terms on all Order Forms have terminated or expired.
- (b) Termination. Without limiting any other rights or remedies available, either Party has the right to terminate this Agreement immediately with notice to the other Party, if (i) the other Party is in material breach of the terms of this Agreement and such breach remains uncured for more than thirty (30) days after such Party receives notice of the breach from the non-breaching Party, or (ii) if the other Party is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary or compulsory liquidation, or a receiver or administrator is appointed over its assets, or if the equivalent of any such events under the laws of any of the relevant jurisdictions occurs to such Party. Upon termination of this Agreement for any reason whatsoever, any license or right that Customer has been granted, other than the license in Section 2(b) with respect to Reports in Customer's possession as of the termination date, shall terminate immediately; provided, however that if Validity terminates this Agreement for material breach, then Customer's license under Section 2(b) shall also terminate on the effective date of termination.
- (c) Effect of Termination. Upon termination of a single Order Form, Customer shall immediately cease use of the Subscribed Offerings specified in that Order Form and shall promptly pay all amounts owed under that Order Form. Upon termination of this Agreement, Customer shall cease all use of all Subscribed Offerings, and promptly pay to Validity all unpaid fees for the period prior to termination. It is Customer's responsibility to remove any Software from Customer's properties. Validity shall have no responsibility for any data that is sent to Validity via Software that Customer has failed to remove.
- (d) Survival. The termination of this Agreement shall not affect the survival and enforceability of any provisions of this Agreement which are expressly or impliedly intended to remain in force after such termination or expiration. Without limiting the foregoing, the following sections shall survive any termination of this Agreement: Sections 2(b), 2(f)-(i), 3, 4, 5(a) and (c), 6(a) and (c), 7, 8, 9(c) and (d), and 10.

**10. Miscellaneous**

- (a) Entire Agreement. This Agreement sets forth the entire agreement between the Parties and supersedes all previous written and oral agreements and communications relating to the subject matter of this Agreement. Any printed terms or conditions on any

Customer purchase order, click-through terms or agreements, customer form or questionnaire or similar documentation issued by Customer are null and void and shall not be binding upon Validity unless specifically agreed to, in writing, by the Parties with explicit reference to this Section. Validity may change the terms of this Master Agreement by providing notice of the change to Customer. Validity may provide such notice by posting the revised terms on its website, by sending an email to the email address on file for Customer or by providing notice through the Subscribed Offerings. If Customer does not agree with the change, Customer must immediately discontinue using the Subscribed Offerings. Customer will be deemed to have agreed to be bound by the change if Customer continues using the Subscribed Offerings following Validity's provision of notice regarding such change. All Order Forms incorporating a link to this Master Agreement are governed by the current version of the Master Agreement then in effect and found at the link made available on that Order Form, which amends and supersedes all prior versions of the Master Agreement with respect to all existing Order Forms.

- (b) Force Majeure. Neither Party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) if the delay or failure results from any cause beyond such Party's reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, pandemic, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.
- (c) Independent Contractors. The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the Parties. Neither Party shall have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.
- (d) Export Control. Customer agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) Customer represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terroristsupporting" country, (ii) Customer shall not (and shall not permit any third parties to) access or use any Subscribed Offerings in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall not submit to any Subscribed Offerings any information that is controlled under the U.S. International Traffic in Arms Regulations.
- (e) Anti-Corruption. Customer shall comply with the United States Foreign Corrupt Practices Act, the UK Bribery Act and all applicable international antibribery laws. Neither Customer nor any of its employees, contractors or agents may make an offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act of decision of an official

of any foreign government or the U.S. government (including a decision not to act) or inducing such a person to use his/her influence to affect any such governmental act or decision in order to assist in obtaining, retaining or directing any business via or in relation to this Agreement. A foreign governmental official shall include any person holding an executive, legislative, judicial or administrative office, whether elected or appointed, or of any public international organization, such as the United Nations or the World Bank, or any person acting in any official capacity for or on behalf of such government, public enterprise or state-owned business, any political party or party official, any political candidate or any person or entity who Customer knows or has reason to believe shall give part of any part of any payment to any of the aforementioned categories of people for such purpose.

- (f) View Time Optimization (“VTO”). This section only applies if Customer elects to use VTO. Customer, its agents, suppliers and subcontractors grant the right to access and use, ingest, reproduce, duplicate, format, store, distribute, display and perform customer content, as necessary to provide VTO. Customer agrees not to, directly or indirectly, reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets while using VTO. Customer further agrees not to sell, resell, distribute, rent, lease, license, sublicense, or assign its rights to use VTO or to use VTO outside the permitted territory. Validity may immediately cease providing VTO; (1) to prevent or protect against fraud, (2) to protect customers, personnel, facilities, equipment, network or services, (3) if any VTO campaign or sender is not compliant with applicable law or VTO terms, or (4) if a Customer engages in activities that would negatively impact business reputation.
- (g) Government End User. If Customer is the U.S. Government or an agency thereof, Customer (i) with respect to civilian agencies, shall grant protection for the Subscribed Offerings as “commercial computer software” and related documentation in accordance with the terms of 48 C.F.R. 12.212 of the Federal Acquisition Regulations; and (b) for use by or on behalf of the Department of Defense, shall grant protection for any Subscribed Offerings as “commercial computer software” and related documentation in accordance with the terms of 48 C.F.R. 227.7202-1 of the DoD FAR Supplement. This Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data. Validity shall comply with the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) relating to anti-discrimination and affirmative action. Validity shall also comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices.
- (h) Dispute Resolution. Each Party agrees that before it seeks any form of legal relief, it shall provide written notice to the other Party of the specific issue(s) in dispute (and reference the relevant provisions of the Agreement between the Parties which are allegedly being breached). Within thirty (30) days after such notice, senior executives of the Parties shall hold at least one meeting (in person or by video or tele-conference) for the purpose of attempting in good faith, to resolve the dispute. The Parties agree to maintain the confidential nature of all disputes and disagreements between them,

including informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision.

- (i) Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of Delaware, without regard to conflicts of law provisions and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The Parties hereby consent to the exclusive jurisdiction of the state and federal courts located in the State of Delaware in any action arising out of or relating to the Agreement.
- (j) Publicity. Customer hereby authorizes Validity to identify Customer as a customer of the Subscribed Offerings in public relations and marketing materials.
- (k) Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that either Party may assign this Agreement to an Affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such Party's assets.
- (l) Waiver. No failure or delay by either Party to enforce any provision of this Agreement shall constitute a waiver of that provision or affect such Party's right to require the future performance thereof.
- (m) Severability. If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.
- (n) Order of Precedence. In the event of any conflict between the terms of the Order Form and the terms of the Master Agreement, the terms of the Master Agreement shall govern unless a provision in the Order Form specifically references the Section of the Master Agreement that the Parties have agreed to amend or supersede.
- (o) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same agreement.
- (p) Interpretation. The term "including" will be interpreted in all cases to mean "including without limitation."



## DATA PROCESSING ADDENDUM

This Data Protection Addendum (“**DPA**”) will apply if and to the extent incorporated into a Master Subscription and Services Agreement (“**Master Agreement**”) entered into by Validity and Customer.

### 1. DEFINITIONS

Capitalized terms used but not defined below or in Attachment 1 to this DPA will have the meanings set forth in the Master Agreement.

### 2. DATA PROCESSING AND PROTECTION

2.1 **Limitations on Use.** Validity will Process Personal Data only: (a) in a manner consistent with documented instructions from Customer, including with regard to transfers of Personal Data to a third country, which will include Processing as authorized or permitted under the Master Agreement, including as specified in Attachment 2 to this DPA; and (b) as required by Data Protection Law, provided that Validity will inform Customer (unless prohibited by such Data Protection Law) of the applicable legal requirement before Processing pursuant to such Data Protection Law.

2.2 **CCPA.** Validity will Process Personal Data subject to the CCPA as a service provider and will not retain, use, or disclose any Personal Data for any purpose other than for the specific purpose of performing the Services, or as otherwise permitted by the CCPA for service providers, including by not retaining, using, or disclosing the Personal Data for a commercial purpose other than to provide the Services.

2.3 **Confidentiality.** Validity will ensure that persons authorized by Validity to Process any Personal Data are subject to appropriate confidentiality obligations.

2.4 **Security.** Validity will implement measures designed to protect Personal Data that meet or exceed applicable requirements under Data Protection Law, including, as applicable, requirements under Article 32 of the GDPR. These measures include technical and organizational measures, such as the use of firewalls, access control protocols, business continuity measures, penetration tests and patch management protocols.

2.5 **Return or Disposal.** At the choice of Customer, Validity will delete or return (and delete existing copies of) all Personal Data after the end of the provision of Services unless Data Protection Law requires the storage of such Personal Data by Validity, in which case Validity will only further retain and process such Personal Data for the limited duration and purposes required by such Data Protection Law.

2.6 **Customer Obligation.** Customer will not Process any Personal Data via the Services that includes any special categories of Personal Data, as described in Article 9 of the

GDPR, or any other Personal Data that may be subject to heightened data security obligations, such as data subject to U.S. breach notification obligations or any protected health information.

### 3. ASSISTANCE

- 2.1 **Data Subject's Rights Assistance.** Taking into account the nature of the Processing, Validity will reasonably assist Customer by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to requests for exercising any individual's privacy or data protection rights provided under Data Protection Law, including rights laid down in Chapter III of the GDPR.
- 2.2 **Security and Assistance.** Taking into account the nature of Processing and the information available to Validity, Validity will reasonably assist Customer in ensuring compliance with its security obligations under Article 32 of the GDPR.
- 2.3 **Personal Data Breach Notice and Assistance.** Validity will notify Customer of any Personal Data Breach without undue delay after becoming aware of such Personal Data Breach. Taking into account the nature of Processing and the information available to Validity, Validity will assist Customer in ensuring compliance with Customer's notification obligations under Data Protection Law in connection with any Personal Data Breach, including in ensuring compliance with Customer's obligations pursuant to Articles 33 and 34 of the GDPR.
- 2.4 **Data Protection Impact Assessment Assistance.** Taking into account the nature of Processing and the information available to Validity, Validity will assist Customer in ensuring compliance with the obligations under Articles 35 and 36 of the GDPR.

### 4. AUDITS

Upon Customer's request, Validity will make available to Customer information necessary to demonstrate Validity's compliance with this DPA in the form of an ISO 27001/27018 (where applicable) or SOC 2 certification or compliance summary report. These materials will be deemed the confidential information of Validity under the Master Agreement. If Customer reasonably believes Validity is in material breach of this DPA, or if required by a supervisory authority, then, subject to the terms of this Section 4, Customer may conduct an on-site audit (at its expense) of Validity's systems and procedures as may be necessary to verify Validity's compliance with this DPA. Customer will provide no less than 30 days' advance notice of its request for any such on-site audit, and will cooperate in good faith with Validity to schedule any such audit on a mutually agreed upon date and time (such agreement not to be unreasonably withheld by either party). Any such on-site audit must occur during Validity's normal business hours and be conducted by a nationally recognized independent

auditor. The auditor conducting such audit will (and Customer will be responsible for ensuring that the auditor will): (a) comply with reasonable and applicable on-site policies and procedures provided by Validity, (b) sign a standard confidentiality agreement with Validity, and (c) not unreasonably interfere with Validity's business activities. Customer will provide written communication of any audit findings to Validity, and the results of the audit will be the confidential information of Validity. Customer shall reimburse Validity for any time expended to support or facilitate any such on-site audit at Validity's then-current professional services rates, which Validity will provide to Customer upon request.

## 5. SUBPROCESSORS

Customer authorizes Validity to use subcontractors to Process Personal Data in connection with the provision of Services to Customer ("**Subprocessor**"). Validity will provide Customer with a current list of Subprocessors promptly following a Customer written request. Validity will notify Customer of any intended changes concerning the addition or replacement of its Subprocessors, and provide Customer with the opportunity to object to such changes. Customer will not object to any such change unless it has a reasonable belief that such change poses a materially new data protection risk to the Personal Data. Customer will notify Validity in writing of any such objection within 10 days of receipt of Validity's written notice of the change or will waive its right to object. If Customer provides written notice of its objection within such period and Validity determines it cannot accommodate such objection, Validity may terminate the Master Agreement upon notice to Customer without liability. Validity will impose data protection obligations upon any Subprocessor that are no less protective than those included in this DPA. Validity will remain liable for any acts or omissions of its Subprocessors.

## 6. DATA TRANSFERS

Validity may Process the Personal Data in the United States and other jurisdictions where its Subprocessors are located. If any Personal Data originates from a Member State in the European Economic Area, UK or Switzerland and is subject to the GDPR ("**Data Transfer**"), the parties will conduct such Data Transfer in accordance with this section 6. Any Data Transfer will be conducted pursuant to the Standard Contractual Clauses (which will be deemed executed by the parties as of the effective date of this DPA), and the following terms will apply: (a) Customer will be referred to as the "Data Exporter" and Validity will be referred to as the "Data Importer" in such clauses with relevant Customer name and address details from this DPA and the Master Agreement being used accordingly; (b) details in Attachment 2 of this DPA will be used to complete Appendix 1 of those clauses; (c) any audits authorized under the Standard Contractual Clauses will be conducted pursuant to Section 4 of this DPA, and (d) Section 2.4 of this DPA will be used to complete Appendix 2 of those clauses. "**Standard Contractual Clauses**" means Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council



(notified under document C(2010) 593) (the text of which is available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087>), as may be replaced or superseded by the European Commission.

## **7. MISCELLANEOUS**

The terms of this DPA will control to the extent there is any conflict between this DPA and the Master Agreement. Except as amended and modified by this DPA, the terms and provisions of the Master Agreement remain unchanged and in full force and effect. Without limiting the foregoing, the limitation of liability clauses, governing law clause and forum selection clause of the Master Agreement will apply to any disputes arising out this DPA.

## **Attachment 1: Definitions**

For purposes of this DPA, the following terms will have the meaning ascribed below:

**“Data Protection Law”** means the GDPR, Member State laws implementing the GDPR, the CCPA, and any other data protection laws that apply directly to Validity in connection with its Processing of Personal Data.

**“CCPA”** means the California Consumer Privacy Protection Act of 2018, as amended, including any regulations promulgated thereunder.

**“GDPR”** means (a) the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), and (b) such law as incorporated into United Kingdom law by the Data Protection Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (each as amended, superseded, or replaced).

**“Personal Data”** means the Customer Data Processed by Validity on behalf of Customer in connection with the Services that consists of “personal data” or “personal information” (or analogous variations of such terms) under Data Protection Law, as further described under Attachment 2.

**“Personal Data Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data.

**“Process”** or **“Processing”** means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

## **Attachment 2 - Scope of Processing**

### **Subject-Matter and Duration of Processing**

Validity Processes Personal Data in connection with the subject matter specified under the Master Agreement (including the Order Form) and until the Master Agreement terminates or expires, unless otherwise agreed upon by the parties in writing.

### **Nature and Purpose of Processing (i.e., Processing operations)**

Validity's Processing operations depends on the Services that Customer utilizes, as further described on the Order Form. For example, some Services involve data cleansing (create, read, update and delete operations), while others help Customer improve the effectiveness of its email campaigns.

### **Types of Personal Data**

Depending on the Services that the Customer has purchased, the following types of Personal Data may be relevant:

- Contact information, including email addresses, phone numbers and postal addresses.
- Activity information associated with email campaigns (collected via pixels or similar tracking technology), including IP address, mail provider, email address, approximate geolocation (derived from IP), user-agent string (e.g., browser and other technical device information communicated in a log file).

### **Categories of Data Subjects**

Individuals that Customer wishes to communicate with, as determined by Customer.

### **Special Categories of Data (if appropriate)**

None anticipated.

### **Data exporter (if applicable)**

Customer, as defined in the Master Agreement.

### **Data importer (if applicable)**

Validity, as defined in the Master Agreement.