

## **END USER LICENSE AGREEMENT**

THIS END USER LICENSE AGREEMENT (THIS “**AGREEMENT**”) IS ENTERED INTO BETWEEN THE SYMEND ENTITY NOTED BELOW IN SECTION 13 AND YOUR ORGANIZATION (THE “**CLIENT**” OR “**YOU**”) AS OF THE EFFECTIVE DATE. BY CLICKING “AGREE” (OR ITS EQUIVALENT), ACCEPTING THIS AGREEMENT, SIGNING AN ORDER FORM, OR USING THE SYMEND SERVICES, YOU AGREE AND ACCEPT THE TERMS OF THIS AGREEMENT, WHICH BECOME A BINDING LEGAL COMMITMENT BETWEEN YOU AND SYMEND.

### **1. Definitions**

Capitalized terms have the following meanings:

“**Affiliate**”: A company controlled by, under common control with or controlling a party during the period of such control.

“**Agreement**”: The terms of this End User License Agreement, Order Form and associated Statement of Works, entered into by Client and Symend.

“**Artifacts**”: Documents or mock-ups of visual communications (e.g. emails or web pages).

“**Client**”: The individual accepting this Agreement in order to use the Symend Services or if using on behalf of an organization, then that organization and the individual accepting this Agreement represents that he or she has the authority to bind such organization to this Agreement.

“**Client Data**”: Any data, information or material submitted by Client, or stored by Client in the Symend Platform. For clarity, Client Data does not include non-identifiable (anonymized) aggregate data compiled by Symend.

“**Confidential Information**”: Information that one party (the “**Disclosing Party**”) provides to the other party (“**Receiving Party**”) that is identified in writing at the time of disclosure as confidential or that reasonably would be understood to be confidential given the nature of the information or the circumstances of its disclosure.

“**Effective Date**”: The last date this Agreement is executed or the first date of Client’s access or use of the Symend Services in any manner, as applicable.

“**Intellectual Property Rights**”: Rights under patents and applications thereto, copyrights, trademarks, service marks, trade names, domain name rights, trade secret rights, and all other intellectual property and proprietary rights, including rights under common law.

“**Malicious Code**”: Viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.

“**Modifications**”: Any work that modifies the Symend Services by Symend or a third-party, including to modify, add, or discontinue the Symend Services, at any time, for any reason.

“**Order Form**”: An ordering document specifying the Services to be provided hereunder that is entered into between Client and Symend or any of its Affiliates, including any addendum and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“**Party**”: Either the Client or Symend, as the case may be, and “**Parties**” shall mean both collectively.

**“Professional Services”**: Any consulting services or other services set out in a SOW.

**“Reseller Partner”**: An authorized reseller, distributor or other partner of Symend.

**“Statement of Work” or “SOW”**: The descriptions of Symend Services entered into by the parties which are made under and incorporate the terms of this Agreement.

**“Symend Platform”**: Service through which Symend hosts and makes available software, data analytics and campaign content provided by Symend to automate debt recovery activities, and such additional product offerings as Symend may provide from time to time.

**“Symend Services” or “Services”**: Collectively the provision of the Symend Platform, Professional Services, and any other service as agreed to by the parties.

**“Third-Party Materials”**: materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Symend.

**“User”**: You the Client if acting as an individual or if accepting this Agreement for an organization, the individual employee, contractor or agent of Client authorized by Client to use the Symend Platform.

## **2. Platform Services**

- (a) Subject to the terms and conditions of this Agreement, Symend will make the Symend Platform available to Client through a web-based platform in accordance with the number of permitted seats as stated in an applicable SOW or Order Form. Client will: (i) be responsible for all Users’ compliance with this Agreement; (ii) be solely responsible for the accuracy, quality, integrity, and legality of Client Data and the means by which it acquires and uses such Client Data; (iii) use the Symend Platform only in accordance with the applicable documentation and applicable law (including export, data protection and privacy laws, and laws relating to electronic messages); (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Symend Platform; (v) be responsible for ensuring that its processes, business rules, operations, and plans regarding its outreach (the **“Outreach Plans”**) complies with all applicable law and acknowledges that Symend is not obligated, nor has it taken or will take, any action with respect to the Outreach Plans to ensure it complies with all applicable law; and (vi) notify Symend in writing immediately of: (A) any unauthorized use of, or access to, the Symend Platform, or (B) any notice or charge of noncompliance with any applicable law, rule or regulation asserted or filed against Client in connection with Client Data.
- (b) Client, and any third-parties acting on behalf of or for Client, will not, directly or indirectly: (i) resell, rent, distribute, market, commercialize or otherwise transfer rights or usage to the Symend Services or any modified version or derivative work of the Symend Platform created by or for Client; (ii) attempt or knowingly permit or encourage others to attempt, to translate, decompile, decipher, disassemble, reverse engineer or otherwise decrypt or discover the source code or otherwise replicate the functionality of all or any portion of the Symend Services; (iii) copy any features, functions, user interfaces, look and feel or graphics of the Symend Platform; (iv) send, store or spam unlawful, infringing, obscene or libelous material, or Malicious Code; (v) attempt to gain unauthorized access to, or disrupt the performance of the Symend Platform; (vi) use any property of Symend contained in or accessible through the Symend Platform for the purpose of building a competitive product or service; (vii) use the Symend Platform, or permit it to be used, for the purposes of product benchmarking or other analysis or evaluation intended for publication, without

Symend's prior written consent; (viii) modify, adapt, translate, or create derivative works based on the Symend Platform, or (ix) use in any manner in contravention of applicable law.

- (c) Symend reserves the right to make Modifications to the Symend Services at its sole discretion.. Symend will use commercially reasonable efforts to notify Client of any such Modifications to the Symend Platform. However, Symend reserves the right to make Modifications without such notice if needed to comply with law, protect or enforce legal rights, or otherwise to address or prevent an emergency. Symend will provide updates to Client's instance of the Symend Platform from time to time.
- (d) Symend reserves the right to suspend the Symend Services immediately upon notice to Client if Symend, acting reasonably and in good faith, believes that Client has violated this Agreement, harm or damages has or will occur due to Client data being incorrect, incomplete, or misleading, or to continue to provide the Symend Services constitutes or will constitute harm to Client, Symend, or any third party.

### **3. Use of Third-Party Materials**

- (a) Client acknowledges and agrees that the Symend Services depend on Third-Party Materials and that, notwithstanding any other provision in this Agreement, Client acknowledges the requirement to accept the applicable Third-Party Materials license agreement. Symend is not and will not be responsible for any failure, malfunction, or other deficiency in respect to the Symend Services to the extent that it is caused by or related to Third-Party Materials (in each case a "Third-Party Failure") or losses arising therefrom. For the avoidance of doubt, Symend's indemnification obligations under Section 11(b) do not include Third-Party Failures or any losses arising therefrom.

### **4. Professional Services & Support Services**

- (a) Symend will perform Professional Services, including services to implement the Symend Platform for Client, if any, and services to manage the Client's use of the Symend Platform, if any, in accordance with a SOW. Symend warrants the Professional Services will be performed in a good and workmanlike manner. As Client's sole remedy and Symend's entire liability for any breach of the foregoing warranty set forth in this Section 4(a), Symend will, at its sole option and expense, promptly re-perform the non-conforming Professional Services.
- (b) During the applicable Term, Symend may provide certain support services in accordance with Symend's then-current support policy, and as identified in any applicable Order Form. In the event that the level of support is not identified in any Order Form, Client shall receive the standard support level that is included in the Symend Service at no additional cost.

### **5. Client Affiliates & Symend Reseller Partners**

- (a) Client Affiliates may purchase and use the Symend Services subject to the terms of this Agreement by executing an Order Form and/or SOW hereunder that incorporates by reference the terms of this Agreement, and in each such case, all references in this Agreement to Client shall be deemed to refer to such Client Affiliate for purposes of such Order Form and/or SOW. The Customer Affiliate agrees to be bound by this Agreement and the applicable Order Form and/or SOW executed by such Customer Affiliate.
- (b) This Agreement specifies the terms and conditions under which the Symend Services will be provisioned by Symend to Client, whether purchased directly through Symend or indirectly through a Reseller Partner. Purchases through a Reseller Partner will be placed through a separate agreement or ordering document between the Client and Reseller Partner, which may address,

amongst other items, terms and conditions relating to the quantity of products and services purchased ("**Reseller Sales Agreement**"). As the Reseller Sales Agreement is between Reseller Partner and Client, any dispute relating to the Reseller Sales Agreement shall be handled directly between Customer and the Reseller Partner. In the event of any conflict between this Agreement and the Reseller Sales Agreement, this Agreement shall govern as between Symend and Client.

## **6. Proprietary Rights and Data Management**

### **(a) Ownership.**

- (i) Except as expressly stated in this Agreement, Symend, and the respective rights holders in the Third-Party Materials, retains all right, title and interest in and to the Symend Platform, Third-Party Materials and Artifacts, including any derivative works, and no Intellectual Property Rights to the Symend Platform and Artifacts are granted by Symend to Client under this Agreement, either expressly or by implication, estoppel or otherwise. Symend's name, logo, and trademarks are owned by Symend, and no right is granted to Client except by written consent of Symend.
- (ii) Client or its Users may, from time to time, provide suggestions, enhancement or feature requests or other feedback to Symend regarding the Symend Platform (collectively, "**Feedback**"). Feedback, even if designated as confidential by Client or User, will not create any confidentiality obligations for Symend. Symend will be free to use, disclose, reproduce, license or otherwise distribute Feedback in its discretion, without restriction or obligation of any kind or nature.

### **(b) Client Data/Business Information.**

- (i) As between Client and Symend, Client retains all right, title and interest in the Client Data. Except for the licensed right to use the Client Data to provide the Symend Services and perform its obligations and rights under this Agreement, no Intellectual Property Rights to the Client Data are granted by Client to Symend, either expressly or by implication, estoppel or otherwise.
  - (ii) Client's name, logo, and trademarks are owned by Client, and Client grants to Symend the non-exclusive right, for the term of this Agreement, to use its name, logos, and other trademarks solely for the purpose as stated in Section 13(L) below and to provide the Symend Services. No right is granted to Symend except as expressly permitted herein or by written consent of Client.
  - (iii) Client grants Symend the right to use, access and otherwise process the Client Data: (A) to provide the Symend Services to its clients, including the Client; (B) to perform its obligations and rights under this Agreement, including, but not limited to, investigate any fraud, scam, or unlawful conduct; (C) to assess, improve and create new functionality and features for the Symend Platform and new products and services in connection therewith; and (D) to comply with applicable laws. Symend may aggregate and anonymize Client Data ("**Aggregated Data**") and thereafter use such Aggregated Data for research and development, other internal business purposes, and for product or service benchmarking or other analysis for the purpose of publication. Aggregated Data shall not be considered Client Data.
  - (iv) Depending on where Client operations are located, Symend's data processing addendum, as described further at <https://symend.com/DPA>, which may be amended and updated from time to time, may also apply to the personal data of others (such as Client customers and employees) that you provide to Symend.
- (c) Symend shall maintain commercially reasonable security measures in accordance with industry standards with respect to its facilities, employees, representatives, and contractors and other matters relating to this Agreement including, but not limited to, the implementation of physical,

administrative, technical safeguards, security, and access controls as described further at <https://www.symend.com/security> (as may be updated from time to time).

## **7. Fees**

- (a) Client agrees to pay all fees in accordance with an Order Form and applicable SOW.
- (b) Invoices will be payable within 30 days of issuance. Unless explicitly stated otherwise in the applicable SOW, all fees are non-refundable. Overdue amounts are subject to interest at a rate of two percent per month (24% per year), or the maximum rate permitted by applicable law, whichever is lower. If any charge owing by Client to Symend is 30 days or more overdue, Symend may, without limiting its other rights and remedies, suspend Client's access to the Symend Platform until such amounts are paid in full.
- (c) Client will pay all applicable federal, state and provincial sales, use, and goods and services taxes, imposed on the fees and charges paid by Client hereunder other than Symend's taxes on income. Symend's invoices will show any such taxes as a separate line item in each invoice.

## **8. Term and Termination**

- (a) This Agreement will remain in force for a period of time as set forth in an Order Form or SOW until terminated as set forth in Section 8(b) below or if no such term period exists, then for a period of two (1) years. This Agreement shall automatically renew annually for additional one (1) year terms unless terminated in accordance with the terms set forth herein. The termination of this Agreement does not terminate any Order Form and/or applicable SOW in force unless otherwise agreed to by the parties in the Order Form and/or applicable SOW. Each Order Form and/or SOW will remain in force for the term set out in such document, and the terms of this Agreement incorporated therein will remain in force.
- (b) Termination by Client or Symend. Either party may terminate this Agreement: (i) upon written notice to the other party of its intent not to renew by providing not less than 60 days' notice before the expiration of the then effective term; (ii) if a party materially breaches its obligations under this Agreement and it remains uncured for 30 days following receipt of written notice of such breach; or (iii) if a party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
- (c) Effect of Termination. Upon termination of this Agreement, Symend may immediately deactivate Client's access to the Symend Platform. Symend may keep copies of Client Data for up to 90 days solely to the extent necessary for the performance of its obligations or as otherwise required by applicable law. In no event will any termination relieve Client of the obligation to pay any fees payable to Symend for the period prior to the effective date of termination.
- (d) Transition Support. Provided Client has paid all outstanding fees and is not in breach of this Agreement, in the event of any expiry or termination of this Agreement or any SOW in effect, Symend shall provide Client with transition assistance to migrate Client Data to another supplier. Such transition assistance shall be for a period of up to 3 months and Symend reserves the right to invoice Client for such transition assistance on a time and materials basis at Symend's then prevailing rates.
- (e) Surviving Provisions. Sections 1, 2, 5, 6, 7 (until all outstanding fees are paid), 8(c), 8(e), 8(e), 9, 11, 12, and 13 survive termination of this Agreement.

## **9. Data**

- (a) Neither Receiving Party nor its agents, employees, officers, directors or representatives will disclose or cause to be disclosed any Confidential Information of Disclosing Party, except: (i) to those employees, representatives, or contractors of the Receiving Party who require access to the Confidential Information in order for Receiving Party to exercise its rights under this Agreement and who are bound by a written agreement, with confidentiality terms at least as restrictive as these terms; or (ii) as required by applicable law or governmental regulation, subject to Receiving Party providing to Disclosing Party sufficient written notice to allow Disclosing Party to seek a protective order or otherwise prevent the disclosure. Nothing in this Agreement will prohibit or limit Receiving Party's disclosure or use of Confidential Information (other than personal information) that: (A) was previously known to it without obligation of confidence; (B) was independently developed by or for it without use of or access to Disclosing Party's Confidential Information; (C) was acquired by it from a third-party that was not under an obligation of confidence with respect to such information; or (D) is or becomes publicly available through no breach by Receiving Party of this Agreement. The terms of this Agreement and all non-public information provided by Symend to Client as part of the Symend Services are the Confidential Information of Symend. Client Data is the Confidential Information of Client.
- (b) The Receiving Party shall exercise the same care in preventing unauthorized disclosure or use of the Confidential Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care. Reasonable care includes informing its subcontractors, agents, representatives, advisors, employees, officers and directors and Affiliates and, where applicable, their directors, officers and employees, of the confidential nature of the Confidential Information and the terms of this Agreement, directing them to comply with these terms and ensuring that they are subject to an appropriate duty to maintain confidence. Each party shall notify the other party if it becomes aware of or has reasonable grounds to suggest that the unauthorized disclosure of Confidential Information of the other party has occurred or is likely to occur
- (c) The Receiving Party acknowledges that disclosure of Disclosing Party's Confidential Information may cause serious and irreparable harm that remedies at law may be inadequate to protect against and Disclosing Party may be entitled to obtain equitable relief, including restraining orders or injunctions, in addition to all other remedies, for any violation or threatened violation of this Section. The terms of this Agreement are the Confidential Information of Symend. Client Data is the Confidential Information of Client.
- (d) Subject to Section 8(c) for Client Data, within 5 days after Disclosing Party's request, Receiving Party will return or destroy Disclosing Party's Confidential Information; provided, however, that Receiving Party will be entitled to retain archival copies solely for legal, regulatory or compliance purposes unless otherwise prohibited by law.
- (e) With respect to information that is personally identifiable of a human individual that Symend obtains from the Client in the performance of the Symend Services ("**Personal Information**"), in addition to the above obligations and restrictions that relate to such Personal Information as part of the Client's Confidential Information, Symend also agrees that with respect to such Personal Information, it will process and use such information only in accordance with applicable law, Client's privacy policy, and Symend's privacy policy (to the extent applicable) as described further at <https://www.symend.com/privacy> (as may be updated from time to time).

## 10. **Warranties, Exclusive Remedies and Disclaimers**

- (a) Symend warrants that to its knowledge, using commercially reasonable measures, the Symend Platform will not contain any Malicious Code. If the Symend Platform does not conform to the warranty set out in this Section, Symend will use commercially reasonable efforts to cure the non-conforming portions of the Symend Platform, provided that Client notifies Symend within 30 days

of such breach of the warranty in this Section. This Section states the Client's sole and exclusive remedy for a breach of any of the warranties contained in this Section.

- (b) Client warrants that: (i) it has the legal power to enter into this Agreement; (ii) it has all rights in and to the Client Data necessary to permit Symend to exercise its rights and use the Client Data in accordance with this Agreement, including, but not limited to: a) obtaining all necessary approvals or consents of its customers so that Client may process its customers' personally identifiable information, b) the right of the Client to assign or subcontract Client's obligations to Client's vendors, partners, and subcontractors; and c) the right of Symend to store Client Data in either Canada or the United States, as determined solely in Symend's discretion, acting reasonably; (iii) the Client Data will not violate the rights of any third party; and (iv) the Client Data and the media on which it resides does not contain any Malicious Code
- (c) EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SYMEND SERVICES ARE PROVIDED STRICTLY ON AN "AS IS" BASIS, AND ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## 11. Indemnities

- (a) Client will, at its expense: (i) defend or settle any third-party claims, actions and demands brought against Symend and Symend's Affiliates, officers, directors, employees and agents; and (ii) pay all damages awarded therein against the Symend indemnified parties or agreed upon in a settlement by Client (including other reasonable costs and legal fees incurred by Symend or its Affiliates in connection with enforcing this Section 11(a)) arising from: (A) Client's breach or violation of the licenses, responsibilities and restrictions set out in Section 2; (B) claims that Client Data or Symend's transmission, usage, or hosting of Client Data infringes or violates the rights of a third-party; (C) claims of a third-party related to a violation by Client of this Agreement; or (D) claims that Client failed to comply with applicable laws in its performance of this Agreement.
- (b) Symend will, at its expense: (i) defend or settle any third-party claims, actions and demands brought against Client and Client's Affiliates, officers, directors, employees and agents; and (ii) pay all damages finally awarded therein against any of Client indemnified parties or agreed upon in a settlement by Symend (including other reasonable costs and legal fees incurred by Client or its Affiliates in connection with enforcing this Section 11(b)) arising from claims that the Symend Platform or Artifacts infringe Intellectual Property Rights of a third-party in Canada or the United States of America; provided that: (A) the infringement was not the result of the combination of the Symend Platform or Artifact with a product not provided by Symend; (B) Client is not in material breach of this Agreement at the time of the claim; and (C) the claim is not the result of the unintended use of the Symend Platform or Artifact by Client.
- (c) The party or other person entitled to seek indemnification pursuant to this Section 10 (the "**Indemnified Party**") will: (i) promptly notify the other party obligated to provide such indemnification (the "**Indemnifying Party**") in writing of any such claim; (ii) give sole control of the defense and settlement of any such claim to the Indemnifying Party; provided that the Indemnifying Party may not settle any claim in a manner that adversely affects the Indemnified Party's rights, imposes any obligation or liability on the Indemnified Party or admits liability or wrongdoing on the part of the Indemnified Party, in each case, without Indemnified Party's prior written consent; and (iii) provide all information and assistance reasonably requested by the Indemnifying Party, at the

Indemnifying Party's expense, in defending or settling such claim. The Indemnified Party may join in the defense of such claim at the Indemnified Party's own expense.

## **12. Limitation of Liability**

- (a) IN NO EVENT WILL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE, THE TOTAL AMOUNT PAYABLE BY CLIENT TO SYMEND DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION GIVING RISE TO THE LIABILITY.
- (b) NOTWITHSTANDING THE LIMITATION OF LIABILITY IN SECTION 12(A), THE LIMITATION OF LIABILITY SHALL NOT APPLY TO LIMIT CLAIMS ARISING FROM: (I) CLIENT'S BREACH OF THE LICENSES, RESPONSIBILITIES AND RESTRICTIONS SET OUT IN SECTION 2; (II) CLIENT'S PAYMENT OBLIGATIONS UNDER SECTION 7; (III) FRAUD; (IV) GROSS NEGLIGENCE; (V) WILLFUL MISCONDUCT; OR (VI) THE INDEMNIFICATION OBLIGATIONS IN SECTION 11.
- (c) EXCEPT FOR A BREACH OF THE LICENSES, RESPONSIBILITIES AND RESTRICTIONS SET OUT IN SECTION 2, EITHER PARTY'S FRAUD, WILLFUL MISCONDUCT, GROSS NEGLIGENCE, AND INDEMNIFICATION OBLIGATIONS UNDER SECTION 11, IN NO EVENT WILL EITHER PARTY BE LIABLE, FOR ANY LOST PROFITS OR REVENUE OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, ARISING UNDER THIS AGREEMENT, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **13. General**

- (a) For clarity and additional certainty, nothing in this Agreement will restrict Symend from the exploitation and licensing of any ideas, concepts, know-how, methodologies or techniques of general application that Symend may learn, develop or acquire in the performance of the Symend Services ("**Know-how**") provided that nothing in this Section will authorize Symend to disclose any Confidential Information of the Client that may form part of such Know-how.
- (b) Neither party may assign any of its rights or obligations without the prior written consent of the other party (not to be unreasonably withheld or delayed), except in connection with a merger, acquisition, or corporate reorganization. This Agreement will bind and enure to the benefit of the parties, their respective successors and permitted assigns.
- (c) Symend and Client are independent contractors, and nothing in this Agreement or any attachment hereto will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties.
- (d) This Agreement will be governed by and construed in accordance with the following, without regard to conflicts of laws and principles that would cause the laws of another jurisdiction to apply: i) if Client is domiciled in the United States, the laws of the State of Colorado and the federal laws of USA applicable therein; or ii) if Client is domiciled anywhere outside the United States, the laws of the Province of Alberta and the federal laws of Canada shall apply. Client and Symend agree to submit to the personal and non-exclusive jurisdiction of the courts located in the applicable jurisdiction. Both Client and Symend irrevocably waive their rights to a trial by jury of any claim or cause of action based upon or arising out of or related to this Agreement.
- (e) If the Client is domiciled in the United States, the Symend entity entering into this Agreement shall be Symend US Inc. If the Client is domiciled anywhere outside the United States, the Symend entity entering into this Agreement shall be Symend Inc.



- (f) Neither party will be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including but not limited to, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, pandemics, public health emergencies of international or national concern, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's reasonable control, and denial of service attacks. The party relying upon the force majeure is not required to provide notice to the other party prior to invoking such right, but will utilize reasonable good faith efforts to do so.
- (g) This Agreement represents the entire agreement of the parties and supersedes all prior discussions, emails, or agreements and is intended to be the final expression of their agreement. To the extent there is a conflict between this Agreement, an Order Form and a SOW, the terms of this Agreement will prevail, unless expressly agreed by the parties in an Order Form or a SOW.
- (h) No failure or delay by a party in exercising any right hereunder will constitute a waiver of such right.
- (i) Symend may update this Agreement from time to time. Symend will provide at least thirty (30) days prior written notice of any material updates in advance of the effective date; provided however, Symend may not be able to provide such notice if the update results from changes in laws, regulations, or other requirements as required under applicable boards, industry associations or agencies, governing bodies or other quasi-governmental entity. Following such notice, your continued use of the Symend Services constitutes acceptance of the updated Agreement.
- (j) If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be modified and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted, and the remaining provisions will remain in effect.
- (k) If there is any conflict between this Agreement and any other agreement entered into between Symend and the Client, which is signed by authorized representatives of Symend and Client, such other agreement prevails.
- (l) Symend may subcontract this Agreement or any part of it without the prior written consent of Client, provided Symend shall remain responsible for the conduct of its subcontractors.
- (m) Client grants Symend the right to use its name, logo, and a description of Client's use case to refer to Client on Symend's website and marketing or promotional materials, subject to Client's standard trademark usage guideless as expressly provided to Symend. Such usage shall not be deemed to be Client's endorsement of the Symend Services.