

# AtomAI Solutions Inc.

## MASTER PROFESSIONAL SERVICES AGREEMENT

This **MASTER PROFESSIONAL SERVICES AGREEMENT** ("Agreement"), is made and entered into as of the date of last signature below (the "Effective Date"), by and between AtomAI Solutions Inc., a corporation organized under the laws of the state of California, with offices at 254 Chapman Rd, Suite 208 #16317, Newark, Delaware 19702 ("AtomAI"), and the customer identified on the associated Statement of Work ("Customer") ("Customer"). AtomAI and Customer may be referred to in this Agreement individually as a "Party" and collectively as the "Parties."

### 1. BACKGROUND, OBJECTIVES, CONSTRUCTION AND INTERPRETATION

**1.1 Background and Objectives.** This Agreement will serve as a framework under which AtomAI will provide certain information technology services (the "Services"), as described in a statement of work executed by an authorized signatory of both Parties (each, a "Statement of Work"), incorporated herein, and as further requested by Customer from time to time during the term of this Agreement and agreed upon in a Statement of Work.

### 1.2 Definitions.

- (A) Capitalized terms used in this Agreement have the meanings assigned to them in the applicable Section. Terms, acronyms and phrases that are used in the information technology industry or other pertinent business context should be interpreted in accordance with their generally understood meaning in such industries or business context.
- (B) The word "include" and its derivatives (such as "including" and "includes") mean "include without limitation."

### 1.3 References and Interpretation.

- (A) Headings, captions and titles used in this Agreement are included for convenience only and in no way define the scope or content of this Agreement or are to be used in the construction or interpretation of this Agreement. Any reference to a particular article or article number or exhibit is a reference to that specified article, article or exhibit of this Agreement, except to the extent that the cross-reference expressly refers to another document.
- (B) If there is a conflict or inconsistency between the terms of this Agreement and any Statement of Work, the terms of this Agreement will prevail except to the extent that the Statement of Work specifically and expressly states an intent to supersede specific terms of this Agreement with applicability only to that executed Statement of Work. Notwithstanding the preceding sentence, no Statement of Work will be effective to: (1) expand, eliminate or restrict the scope of any indemnity obligation set forth in Article 11; (2) change any limitation of liability set forth in Article 12; (3) settle or resolve any dispute between the Parties; or (4) eliminate or restrict AtomAI's rights set forth in Section 5.4.

## 2. SCOPE OF SERVICES

**2.1 Provision of Services.** AtomAI will perform the Services identified in each Statement of Work entered into and executed by each of the Parties under the terms of this Agreement. Absent a Statement of Work, this Agreement does not, in and of itself, represent a commitment by either Party to provide any minimum amount of charges or Services.

**2.2 Statements of Work.** From time to time during the term of this Agreement, Customer may ask AtomAI to perform services that are not described in a Statement of Work. Following any such request, AtomAI will prepare and deliver a new statement of work. Each Statement of Work will, at a minimum, contain:

- (A) a description of the work AtomAI is expected to perform in connection with such project, including a description of any Deliverables;
- (B) a prospective schedule for commencing and completing such work; and
- (C) AtomAI's prospective charges for such work.

If a proposed Statement of Work is mutually acceptable to the Parties, the Parties will execute the Statement of Work. Each Statement of Work will be a separate agreement and, except for any provisions of this Agreement that are specifically excluded or modified in such Statement of Work (subject to Section 1.3(B)), each Statement of Work will incorporate and be subject to all the terms and conditions of this Agreement.

**2.3 Modification of a Statement of Work.** Either Party may request modifications to a Statement of Work by submitting a written change order request to the other Party (each, a "Change Order"). If acceptable to both Parties, the Change Order will be executed by the Parties and will become part of the applicable Statement of Work. Neither Party will be bound by the terms of any Change Order until it is executed by both Parties.

**2.4 Cooperation.** Customer understands AtomAI's performance is dependent on Customer's timely and effective cooperation, and that the quality of the Services is dependent on Customer providing timely and accurate information to AtomAI and access to the required Customer resources in accordance with the objectives of the applicable Statement of Work. Accordingly, any delay or nonperformance by AtomAI will be excused if and to the extent that such delay or nonperformance results from Customer's failure to perform its responsibilities so long as AtomAI uses commercially reasonable efforts to perform notwithstanding Customer's failure (it being agreed that AtomAI will have no obligation to incur additional expenses in connection with such efforts unless Customer agrees in writing to reimburse AtomAI for such expenditures).

### **3. TERM, TERMINATION AND SUSPENSION OF SERVICES**

**3.1 Term.** The term of this Agreement will begin on the Effective Date and will continue in effect until the later of (A) three (3) years after the Effective Date, and (B) the expiration or earlier termination of the last remaining Statement of Work, unless extended or terminated earlier in accordance with the terms of this Agreement. The Parties may agree to extend the term by written agreement.

**3.2 Termination for Cause.** If a Party commits: (A) a material breach of this Agreement that is capable of being cured within thirty (30) days after notice of breach (ten (10) days in the case of breach due to non-payment) from the non-breaching Party, but is not cured within such period, or (B) a material breach of this Agreement that is not subject to cure with due diligence within thirty (30) days of written notice thereof, then the non-breaching Party may, by giving written notice to the breaching Party, terminate this Agreement or the applicable Statement of Work, as of a date specified in the notice of termination.

**3.3 Right to Suspend Services.** Without limiting any of its rights under this Agreement, if undisputed invoices under this Agreement are at any time delinquent for thirty (30) days or more, AtomAI may partially or totally suspend its performance of Services under this Agreement and any Statement of Work in accordance with Section 3.2, without liability to Customer until such time as Customer brings its account current and provides assurances, reasonably acceptable to AtomAI, that Customer can and will meet its future payment obligations under this Agreement.

**3.4 Termination for Convenience.** Customer may terminate this Agreement or any Statement of Work for convenience and without cause at any time by giving AtomAI at least ten (10) business days' prior written notice designating the termination date.

**3.5 Consequences of Termination.** If this Agreement or any Statement of Work is terminated in accordance with the terms of this Article, Customer will pay AtomAI for all Services performed before the termination date in accordance with the terms of this Agreement or the applicable Statement of Work, including the cost of any third-party licenses procured for Customer that cannot be canceled. Termination of a Statement of Work will not affect any other Statements of Work then in effect. Termination of this Agreement will result in immediate termination of all Statements of Work then in effect.

## **4. AtomAI PERSONNEL**

### **4.1 Oversight and Responsibility.**

- (A)** AtomAI will assign an adequate number of AtomAI personnel to perform the Services. AtomAI personnel will be properly trained and fully qualified for the Services they are to perform.
- (B)** AtomAI may utilize subcontractors and AtomAI affiliates to perform the Services, and elements of the Services may be performed from locations outside the United States.
- (C)** AtomAI will be responsible for the appropriate oversight and supervision of all AtomAI employees and any subcontractors who perform Services hereunder, each considered "AtomAI personnel" for purposes of this Agreement. AtomAI will remain responsible for any Services performed by subcontractors to the same extent as if AtomAI performed such Services itself.

## **5. PROPRIETARY RIGHTS**

**5.1 Customer IP.** As between Customer and AtomAI, all right, title and interest in and to Customer IP (as defined below) will remain the exclusive property of Customer. To the extent necessary to provide the Services, Customer hereby grants AtomAI, solely to provide the Services, a non-exclusive, non-transferable, fully paid-up and royalty-free, limited right to access and use Customer IP; provided that the rights granted to AtomAI hereunder will automatically expire effective upon the date that AtomAI ceases, for any reason, to provide the applicable Services. For purposes of this Agreement, "Customer IP" means (A) software and tools, (B) processes, procedures and methodologies, (C) formulas, templates and formats, and (D) documents and other written materials, whether proprietary to Customer or licensed to Customer from third parties (other than AtomAI), that are provided to AtomAI by Customer in order for AtomAI to provide the Services and fulfill its obligations under this Agreement.

### **5.2 AtomAI IP.**

- (A)** As between AtomAI and Customer, all right, title and interest in and to AtomAI IP (as defined below) will remain the exclusive property of AtomAI. Except to the extent that the Parties enter into separate license agreements with respect to any software or other products provided by AtomAI (in which case such products will be governed by the terms of those license agreements), AtomAI hereby grants to Customer a perpetual, non-exclusive, worldwide, fully paid-up and royalty-free license to access and use (and to allow third parties to access and use solely for the benefit of Customer) the AtomAI IP, for no additional consideration to the extent necessary to receive or use the Services or any deliverable. Notwithstanding the foregoing, if a Statement of Work: (i) provides for Services and Deliverables to be provided to Customer on a trial or pilot basis, Customer's license to access and use any AtomAI IP necessary to receive or use the Services or Deliverables provided as part of such trial or pilot will not be perpetual, but will be limited to the period of such trial or pilot, or (ii) includes the purchase of a license to use a AtomAI

proprietary product for a specific period of time, Customer's license to use such product will not be perpetual, but will be limited to the period set forth in the applicable Statement of Work.

- (B) Nothing in this Section will be construed to grant Customer any right to separate AtomAI IP from the deliverable into which it is incorporated and Customer will not (and will not knowingly allow any third party to) adapt, modify, translate, reverse engineer, decompile, disassemble or attempt to decode or disassemble, as broadly defined, any source code or underlying algorithms of any AtomAI IP or part thereof. Customer will not sell, rent, lease, sublease, license, lend, market or commercially exploit such AtomAI IP or use AtomAI IP for the benefit of any party not contemplated by the applicable Statement of Work, or assign or transfer any rights with respect to AtomAI IP granted under this Agreement (except as contemplated in Section 15.2).
- (C) For purposes of this Agreement, "AtomAI IP" means, without limitation, and in addition to any and all non-enumerated intellectual property of any nature owned by AtomAI and/or to which AtomAI has a right of ownership or other assignable right of interest, any (i) software, code, programs and tools, (ii) processes, procedures and methodologies, (iii) formulas, designs, templates and formats, and (iv) documents and other written materials, whether proprietary to AtomAI or licensed to AtomAI from third parties (other than Customer or its affiliates) that are used to provide the Services, together, in each case, with any modifications or enhancements thereto and derivative works based thereon. Customer acknowledges and agrees that with respect to any AtomAI IP licensed to AtomAI from third parties, any rights granted to Customer hereunder or under any Statement of Work, will be subject to all restrictions set forth in the applicable third-party agreements.

**5.3 Developed Property and Works for Hire.** Subject to Section 5.2, AtomAI acknowledges and agrees that Customer will have all right, title and interest in and to all Developed Property (as defined below) developed while providing the Services. All Developed Property developed under this Agreement in accordance with the terms of a Statement of Work will be deemed to be "works for hire." To the extent any Developed Property is not deemed "works for hire" by operation of law, AtomAI hereby irrevocably assigns, transfers and conveys to Customer, without further consideration, all of its right, title and interest in and to such Developed Property (including all patent, copyright, trademark, trade secret and other intellectual property and proprietary rights). AtomAI will execute any documents or take any other actions as may be reasonably necessary, or as Customer may reasonably request, to perfect the ownership rights defined in this Section. For purposes of this Agreement, "Deliverables" means the results of AtomAI's performance of Services in the applicable Statement of Work and paid for by Customer. "Developed Property" means any Deliverables that also include intellectual property generated or developed specifically for Customer by AtomAI under a Statement of Work and paid for by Customer. To qualify as Developed Property under this Agreement, the applicable Deliverables must be explicitly and specifically called out to include the intellectual property in a Statement of Work and such Statement of Work must include a written acknowledgement by AtomAI that the Parties intend to transfer the rights to such intellectual property to Customer upon payment by Customer.

**5.4 Residual Knowledge.** Nothing in this Agreement will restrict a Party from using Services-related ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques that are general in nature and retained in the unaided mental impressions of the Party's personnel, which either Party, individually or jointly, develops or discloses under this Agreement; provided that, in doing so, each Party does not breach its obligations under Article 7 or infringe the intellectual property rights of the other Party or third parties who have licensed or provided materials to the other Party. The Parties acknowledge AtomAI has the right to: (A) provide consulting or other services of any kind or nature to any person or entity as AtomAI, in its sole discretion, deems appropriate, and (B) use any works of authorship or other intellectual property included in the Deliverables (other than Developed Property and Customer IP, if any) to develop for itself, or for others, materials or processes similar to those contemplated or produced under this Agreement.

## **6. CHARGES AND INVOICES**

**6.1 General.** Subject to the provisions of this Agreement, Customer will pay AtomAI the fees set forth in each Statement of Work (including any Change Orders thereto).

**6.2 Reimbursement of Expenses.** Customer agrees to reimburse AtomAI for costs and expenses incurred in connection with AtomAI's performance of the Services, including any copy and delivery charges, material fees and reasonable travel expenses (including air travel, ground transportation, lodging, meals and incidentals); provided Customer has pre-approved such expenses in writing (which approval may be evidenced in a Statement of Work). AtomAI will provide Customer with receipts or other documentation substantiating all such reimbursable costs and expenses.

**6.3 Invoices and Payment.** AtomAI will invoice Customer for all amounts due under a Statement of Work: (A) in accordance with the schedule set forth in such Statement of Work, in the case of fixed fee engagements, and (B) monthly in arrears, in the case of Services provided on a time and materials basis. For Services performed on a time and materials basis, the invoice will include substantiating documentation, including the hourly rate of AtomAI Personnel performing Services and documentation indicating the hours worked and work performed. Each invoice submitted to Customer pursuant to this Agreement will be due and payable by Customer within thirty (30) days of receipt.

**6.4 Taxes.** All amounts payable under this Agreement and any Statement of Work are exclusive of taxes, unless otherwise stated in such Statement of Work. Accordingly, AtomAI will add an amount equal to all applicable taxes and duties, however designated, that relate to or arise out of AtomAI's provision of the Services (other than taxes based upon AtomAI's net income), which amounts will be separately itemized on all invoices provided to Customer, unless Customer provides AtomAI with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any taxes from its payments to AtomAI, Customer must provide AtomAI with an official tax receipt or other appropriate documentation to support such payments. If Customer does not pay any taxes invoiced by AtomAI for which Customer is responsible, AtomAI may make such payments on Customer's behalf and Customer agrees to promptly reimburse AtomAI for such payments.

**6.5 Disputed Fees and Late Payments.**

(A) Customer agrees to notify AtomAI no later than ten (10) days before the payment due date of an invoice from AtomAI, if Customer disputes any amount or item in such invoice in good faith. Notwithstanding any dispute, Customer will pay the undisputed portion of an invoice when due. If Customer withholds any amount associated with disputed amounts pursuant to this Section, Customer will provide AtomAI with a written description of the basis for such withholding. Upon resolution of a dispute involving any withheld amounts, Customer will immediately pay AtomAI such portion, if any, of the disputed amount agreed or determined to be owed AtomAI.

(B) Payments against such delinquent amounts owed by Customer will be applied first to the principal unpaid balance. If Customer is delinquent in paying its invoices, AtomAI may suspend further work on behalf of Customer in accordance with Section 3.3. Customer is responsible for all reasonable expenses (including attorneys' fees) incurred by AtomAI in collecting delinquent amounts, except where such delinquent amounts are due to invoicing errors by AtomAI.

**7. CONFIDENTIALITY**

**7.1 Disclosure of Confidential Information.** The Parties agree that during AtomAI's performance of the Services, each Party may access, receive or exchange information that is confidential in nature. For purposes of this Agreement "Confidential Information" will include all information, in any form, furnished or made available, directly or indirectly, by one Party ("Disclosing Party") to the other Party ("Recipient") that is marked confidential, restricted, or is otherwise designated as confidential. Confidential Information will also include information that, by virtue of the nature of the information or the circumstances surrounding

disclosure, a reasonable party would understand to be proprietary to Disclosing Party or confidential, including without limitation: (A) any personally identifiable information or financial information of any individual; (B) information concerning the operations, affairs or business of a Party, a Party's financial affairs, or a Party's relations with its vendors, customers or employees; (C) in the case of Customer, Customer IP; and (D) in the case of AtomAI, AtomAI IP.

**7.2 Exclusions.** Confidential Information does not include, and this Article does not apply to, information that (A) is or subsequently becomes published or available to the public through no fault of Recipient, (B) is received by Recipient from a third party without a duty of confidentiality; (C) is independently developed by Recipient without use of or reference to Disclosing Party's Confidential Information, or (D) was in Recipient's possession or was known to Recipient before it was disclosed to Recipient by Disclosing Party.

**7.3 Restrictions on Disclosure and Use.** The Parties agree:

- (A) Neither Party will make any use of the other Party's Confidential Information or any copies thereof, for any purpose other than those contemplated by this Agreement.
- (B) Neither Party will reveal, disclose or provide access to the other Party's Confidential Information to any third party without the prior written consent of such Party, provided that both Parties may share Confidential Information with their responsible employees, contractors, or agents who have a need to know such Confidential Information to perform their duties. Customer understands that all materials provided to Customer by AtomAI are provided solely for Customer's internal use. Notwithstanding anything to the contrary in this paragraph, AtomAI may disclose Confidential Information to properly authorized entities as and to the extent necessary for performance of the Services, so long as in each such case, the receiving entity first agrees to the obligations described in this Article.
- (C) Recipient will take security precautions at least as great as the precautions Recipient takes to protect its own confidential information, and at any rate will take commercially reasonable security precautions to ensure that no one, other than a person authorized pursuant to this Section, gains access to Disclosing Party's Confidential Information without Disclosing Party's prior written consent. If Recipient becomes aware of any unauthorized use or disclosure of Disclosing Party's Confidential Information, Recipient will promptly notify Disclosing Party of such unauthorized use or disclosure and will assist Disclosing Party in remedying such unauthorized use or disclosure.
- (D) Recipient is permitted to disclose Confidential Information as required by law, regulation or subpoena, provided that Recipient will, to the extent permitted by law: (i) give Disclosing Party prompt notice of any such requirement, which notice must be sufficient to permit Disclosing Party to seek relief to prevent such disclosure, (ii) cooperate with Disclosing Party to secure confidential treatment of the Confidential Information, and (iii) disclose only that portion of Disclosing Party's Confidential Information that is legally required.
- (E) Confidential Information is and will remain the exclusive property of Disclosing Party. Each Party agrees that it will have no proprietary interest in the other Party's Confidential Information and that nothing contained in this Agreement will be construed to grant either Party any rights, by license or otherwise, to any of the other Party's Confidential Information disclosed pursuant to this Agreement.
- (F) The obligations set forth in this Section will apply to Confidential Information provided, furnished or otherwise disclosed by Disclosing Party to Recipient, whether before or after the Effective Date.

**7.4 Controlling Provisions.** For purposes of this Agreement, and each Statement of Work, the provisions of this Article will have precedence over and supersede any confidentiality or non-disclosure agreement executed by the Parties before the Effective Date.

## **8. DATA PROTECTION**

**8.1 Data Protection Legislation.** In performing the Services, AtomAI will comply with, and will ensure that all AtomAI personnel comply with, the data protection and privacy legislation, guidelines and industry standards applicable to the Services including, if applicable to the data involved, 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, repealing Directive 95/46/EC (“GDPR”) (such applicable legislation, guidelines and industry standards, “Data Protection Laws”). AtomAI will not, by any act or omission on AtomAI’s part, place Customer in breach of any applicable Data Protection Laws. For purposes of this Article, the terms “processing” and “personal data” will have the meanings given in the GDPR. To the extent that the GDPR applies to any personal data processed by AtomAI, in that the personal data applies to data subjects who are in the European Economic Area (“EEA”) and the processing activities relate to activities identified in Article 3 of the GDPR, the Parties agree that Customer is the “controller” of such data and AtomAI is acting as a “processor” of such data, as such terms are defined in the GDPR.

**8.2 Processing of Personal Data.** If the Services involve the processing by AtomAI of personal data on behalf of Customer, AtomAI will:

- (A) process personal data provided by or on behalf of Customer only as needed to perform its obligations under this Agreement and the applicable Statements of Work and to provide the Services, and will comply with, and only act on, instructions from or on behalf of Customer regarding the processing of that personal data;
- (B) impose a duty of strict confidentiality on any AtomAI personnel authorized to access or process personal data;
- (C) implement appropriate technical and organizational safeguards to ensure a level of security appropriate to the risk to personal data and protect the personal data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access; and
- (D) at Customer’s discretion, evidenced by Customer’s written request, delete or return all such personal data to Customer upon termination or expiration of this Agreement, or following the conclusion of the Services related to processing such personal data, and delete any existing copies, unless otherwise required by applicable law.

**8.3 Processing by Subcontractors.** AtomAI will ensure that any subcontractor engaged by AtomAI that may access or process personal data provided by or on behalf of Customer only uses such personal data in accordance with the terms of this Agreement and has entered into an agreement with AtomAI that contains provisions at least as protective of Customer’s personal data as those set forth in this Section. AtomAI will remain fully liable to Customer for the performance of its subcontractors’ obligations.

**8.4 Breach.** AtomAI will promptly inform Customer of any suspected or confirmed data protection breaches or unauthorized or unlawful processing, loss or destruction of, or damage to, personal data impacting Customer, any such notice to be provided within 72 hours after AtomAI becomes aware of such event, which notice will describe the nature of the breach and the measures taken or proposed to be taken to address such breach.

**8.5 Additional Provisions under the GDPR.** In the case of personal data for which Customer is the data controller and the provisions of the GDPR apply to AtomAI's processing of such data (if, for example, the processing by AtomAI (i) is carried out in the context of the activities of an establishment of Customer in the EEA or (ii) the personal data relates to data subjects who are in the EEA and the processing relates to the offering to them of goods or services in the EEA or the monitoring of their behavior in the EEA), AtomAI will:

- (A) process personal data in relation to which Customer is the data controller only in accordance with specific documented instructions from or on behalf of Customer, including as set forth in this Agreement and any Statements of Work, unless otherwise required by applicable European Union or European Member State law (in which case, AtomAI will inform Customer of such legal requirement, unless that law prohibits such disclosure on important grounds of public interest);
- (B) obtain prior consent to engage any third party (including subcontractors) to process such personal data on behalf of Customer, ensure that such third-party subcontractor is subject to the provisions set forth in Section 8.3, and inform Customer of any intended changes concerning the addition or replacement of such third parties, giving Customer the opportunity to object to such changes;
- (C) taking into account the nature of the processing, assist Customer, through appropriate technical and organizational measures (insofar as possible), in meeting its obligations under applicable law to respond to requests for exercising the data subject's rights;
- (D) assist Customer in ensuring compliance with any applicable obligations under the GDPR related to security, breach notification, data impact assessments and prior consultation with the supervisory authorities, taking into account the nature of processing and the information available to AtomAI;
- (E) provide relevant information and assistance, as reasonably requested in writing by Customer, to demonstrate AtomAI's compliance with its obligations imposed by this Agreement with respect to such personal data, and allow for and cooperate with privacy and security audits, including inspections, conducted by Customer or another auditor designated by Customer (any such audits to be conducted during AtomAI's normal business hours at upon no less than thirty (30) days' prior written notice); and
- (F) not transfer personal information from a country located in EEA to a country outside the EEA unless Customer has consented to such transfer and such transfer is pursuant to an appropriate data transfer mechanism or agreement that complies with applicable law.

**8.6 Processing by Third Parties.** For purposes of clarification, the provisions of this Article only apply to any processing of personal data by AtomAI on behalf of Customer. Customer hereby agrees and acknowledges that AtomAI is not responsible or liable for any processing of personal data that may be done by third parties in connection with any third-party software, applications or other products, even if the Services contemplate Customer's use of such third-party software, applications or other products.

**8.7** In case of a conflict between this Section 8 and any data protection agreement or addendum ("DPA") executed between the Parties in relation to Services provided under this Agreement, the provisions of the DPA shall prevail.

## **9. REPRESENTATIONS, WARRANTIES AND COVENANTS**

**9.1 Authorization.** Each Party represents and warrants to the other that: (A) it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and (B) the execution, delivery and performance of this Agreement and the



consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party.

**9.2 Performance of Services.** AtomAI represents, warrants and covenants to Customer that the Services will be performed by qualified personnel with promptness and diligence in a workmanlike manner, consistent with applicable industry standards.

**9.3 Viruses and Disabling Code.** AtomAI will use commercially reasonable efforts to prevent the coding or introduction of viruses, disabling code or similar items into Customer systems by AtomAI or its agents; and AtomAI will, in the event a virus, disabling code or similar item is found to have been introduced into any software Deliverables or Customer systems by AtomAI or its agents, at no additional charge, assist Customer in reducing the effects of the virus, disabling code or similar item.

**9.4 Disclaimer.** OTHER THAN AS PROVIDED IN THIS AGREEMENT, NEITHER PARTY PROVIDES ANY EXPRESS WARRANTIES OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE. IN ADDITION, AtomAI MAKES NO EXPRESS OR IMPLIED WARRANTIES RELATING TO THIRD-PARTY PRODUCTS OR SERVICES.

**9.5 Limited Warranty.** If any implied warranties, guarantees or conditions implied by local law cannot be waived, then any such implied warranties are limited in duration to 90 days from delivery of the applicable Service or deliverable.

## **10. INSURANCE**

During the term of this Agreement, AtomAI will keep in force the following insurance coverage with insurers having an A.M. Best rating of A-, VIII or better:

- Workers Compensation as required by statute and Employers' Liability with \$1,000,000 per accident, \$1,000,000 disease policy limit, and \$1,000,000 disease per employee.
- Commercial General Liability with \$1,000,000 per occurrence and \$2,000,000 aggregate.
- Professional Liability/Errors & Omissions with \$5,000,000 per occurrence and \$5,000,000 aggregate, including information security coverage with \$1,000,000 per occurrence/aggregate.
- Employment Practices Liability with \$1,000,000 per occurrence/aggregate.
- Excess Liability or Umbrella Liability with \$6,000,000 per occurrence and \$6,000,000 aggregate.

## **11. INDEMNIFICATION**

**11.1 By AtomAI.** AtomAI agrees to indemnify, defend, and hold Customer harmless from and against all losses, liabilities, damages, and related costs (including settlement costs and reasonable attorneys' fees) (collectively, "Losses") arising out of a third-party claim that any AtomAI IP, Deliverables or Developed Property infringe or misappropriate any patent, copyright, trade secret or trademark of a third party. Notwithstanding the foregoing, in no event will AtomAI have any obligations or liability under this Section arising from: (A) use of any deliverable in a modified form or in combination with materials not furnished or approved in writing by AtomAI, (B) use by Customer or its agents of any Deliverable in a manner not reasonably consistent with the applicable specifications, requirements or instructions by AtomAI for such item, (C) AtomAI's compliance with Customer's design or request for customized features; or (D) any content, information or data provided by Customer or other third parties.

**11.2 By Customer.** Customer will indemnify, defend and hold AtomAI harmless from and against all Losses arising out of (A) a third-party claim that Customer IP or other materials provided to AtomAI by

Customer infringe or misappropriate any patent, copyright, trade secret or trademark of a third party; (B) any deficiency (including penalties and interest) relating to taxes that are the responsibility of Customer; or (C) a third-party claim arising out of or relating to AtomAI's use of any Customer content, provided such use complies with the terms of this Agreement.

**11.3 Infringement.** If any Deliverable becomes, or in AtomAI's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, AtomAI will, at its expense: (A) secure the right to continue using the Deliverable; (B) replace or modify the Deliverable to make it non-infringing, provided that any such replacement or modification will not degrade the performance or quality of the Deliverable; or (C) if AtomAI cannot accomplish either of the foregoing using commercially reasonable efforts, and only in such event, AtomAI will remove the Deliverable and any related charges will be equitably adjusted to reflect such removal.

**11.4 General.** The Party seeking indemnification (the "Indemnatee") will promptly notify the other Party of the claim and cooperate with the indemnifying Party in defending the claim. The indemnifying Party will have full control and authority over the defense, provided that: (A) any settlement requiring the Indemnatee to admit liability, pay any money, or take (or refrain from taking) any action, will require the Indemnatee's prior written consent, such consent not to be unreasonably withheld or delayed; and (B) the Indemnatee may join in the defense of a claim with its own counsel at its own expense. THE INDEMNITIES PROVIDED IN THIS ARTICLE ARE THE ONLY REMEDY UNDER THIS AGREEMENT FOR VIOLATION OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## **12. LIABILITY**

### **12.1 Limitation of Liability.**

- (A) IN NO EVENT WILL EITHER PARTY BE HELD LIABLE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA, BUSINESS INTERRUPTION OR LOST PROFITS), WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, OR OTHERWISE, EVEN IF SUCH PARTY IS AWARE OF OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.
- (B) EXCEPT AS PROVIDED IN SECTION 12.2, NEITHER PARTY MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AGGREGATE AMOUNT PAID OR PAYABLE TO AtomAI BY CUSTOMER UNDER THE APPLICABLE STATEMENT(S) OF WORK GIVING RISE TO SUCH LOSS (EXCLUDING ANY LICENSE FEES PAID FOR THIRD-PARTY PRODUCTS).
- (C) No action, regardless of form, arising out of the transactions under this Agreement, may be brought by either Party more than one (1) year after the loss occurred, except that an action for non-payment may be brought within one (1) year of the date of last payment.

**12.2 Exceptions to Limitation of Liability.** The limitations set forth in Section 12.1(B) will not apply to: (A) damages occasioned by a Party's breach of its obligations with respect to the other Party's intellectual property rights, (B) Losses that are the subject of indemnification obligations under this Agreement, or (C) Losses determined to be the direct result of a Party's gross negligence, bad faith, or intentional or willful misconduct.

## **13. FORCE MAJEURE**

No Party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or other acts of God, pandemics, epidemics (or resurgence thereof), riots, civil disorders, acts of terrorism, or any other similar cause beyond the reasonable control of such Party. Any Party so delayed in

its performance will promptly notify the Party to whom performance is due by telephone (to be confirmed in writing within five (5) days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay. This Section will not apply, however, to Customer's payment obligations under this Agreement.

#### **14. DISPUTE RESOLUTION AND GOVERNING LAW**

All claims, disputes or controversies arising out of or relating to this Agreement, including disputes relating to the interpretation of any provision of this Agreement or any Party's performance or breach hereunder, will be resolved as set forth in this Section. All negotiations pursuant to this Section will be confidential and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence.

**14.1 Dispute Resolution and Arbitration.** In the event of a claim, controversy or dispute, the Parties will consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If the Parties cannot reach settlement within a period of sixty (60) days, then either Party may, upon written notice to the other Party, request that the unresolved dispute be settled by binding arbitration conducted in Los Angeles, California by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules, as amended (the "AAA Rules"), provided that notwithstanding any contrary provision within the AAA Rules, the arbitrator must determine the rights and obligations of the Parties according to the substantive laws of the state of California. The Parties will select an arbitrator, who will be an attorney with at least ten (10) years' experience in commercial and contract law, provided that if the amount in dispute is greater than \$500,000, the dispute will be heard by a panel of three (3) arbitrators, with each Party selecting one (1) arbitrator and the AAA selecting the third arbitrator. If the Parties are unable to agree on an arbitrator(s), the arbitrator(s) will be selected according to AAA Rules. Each Party will bear its own expenses and will share equally the fees of the arbitrator(s), provided that the arbitrator(s) will have the discretion to award the prevailing Party all or part of its attorneys' fees and costs, including the costs of the arbitrator(s), if the arbitrator(s) find that the position taken by the other Party on material issues was without substantial foundation. The arbitrator(s) will not have the power to add to, subtract from or modify any of the terms or conditions of this Agreement. The arbitrator(s) rendering judgment upon disputes between the Parties will deliver a written opinion within fifteen (15) business days following conclusion of the hearing, setting forth findings of fact, conclusions of law and the rationale for the decision. Any award, which may include legal and equitable relief, will be final and binding and judgment may be enforced by any court of competent jurisdiction.

**14.2 Equitable Relief.** Notwithstanding the foregoing, if a Party determines, in good faith, that a breach or threatened breach of the terms of this Agreement by the other Party would result in irreparable harm, such that a temporary restraining order or other form of injunctive relief is the only appropriate and adequate remedy, such Party may proceed directly to court and may obtain such relief without bond (if permitted by law). The Parties further acknowledge and agree either Party may proceed directly to court if the other Party breaches or threatens to breach its obligations under Article 5 (Proprietary Rights), Article 7 (Confidentiality), or Article 8 (Data Protection).

**14.3 Governing Law; Jurisdiction and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to its choice of law principles. For any litigation that may arise under Section 14.2 of this Agreement or to enforce an award in accordance with Section 14.1, the Parties irrevocably and unconditionally submit to the non-exclusive jurisdiction and venue (and waive any claim of *forum non conveniens*) of the United States District Court for the Central District of California located in Los Angeles or the Los Angeles Superior Court. The Parties further consent to the jurisdiction of any court located within a district that encompasses assets of a Party against which judgment has been rendered for the enforcement of such judgment or award against the assets of such Party.

**14.4 No Limitation on Rights.** Each Party agrees that the provisions contained in this Article do not limit either Party's right to terminate this Agreement as provided in Article 3.

## 15. GENERAL PROVISIONS

**15.1 Notices.** All notices, requests, consents, approvals, acknowledgements and waivers under this Agreement (other than routine operational communications) will be in writing. Notice will be deemed duly given when (A) delivered personally, (B) one (1) day after being given to an overnight courier with a reliable system for tracking delivery (charges prepaid), (C) when sent by electronic mail with a copy sent by another means specified in this Section, or (D) six (6) days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Customer:	Contact Details in the Associated Statement of Work (or as otherwise amended by the parties)
If to AtomAI:	AtomAI Solutions, Inc. 254 Chapman Road, Suite 208 #16317 Attention: Chief Operating Officer Email: <a href="mailto:legal@atom-ai.com">legal@atom-ai.com</a>

A Party may change its address or designee for notification purposes by giving the other Party written notice of the new address or designee, and the date upon which it will become effective.

**15.2 Binding Nature and Assignment.** This Agreement is binding on the Parties and their respective successors and assigns. Either Party may assign this Agreement in connection with a merger, change of control, consolidation, or sale or other disposition of all or substantially all of its assets, provided that the successor of interest agrees to the terms of this Agreement in writing. Any other assignment will be null and void, except with the other Party's prior written consent.

**15.3 Relationship of the Parties.** AtomAI and Customer are independent contractors and this Agreement does not create an agency, partnership or joint venture. Neither Party is an agent of the other Party and has no authority to represent or bind the other Party as to any matters, except as expressly authorized in this Agreement or in a Statement of Work.

**15.4 Publicity.** Customer acknowledges and agrees that AtomAI has the right to: (i) identify Customer as a customer of AtomAI and/or identify Customer as a User of the Services on AtomAI's website, social media, marketing materials or public announcements; (ii) use Customer's name and logo (in accordance with any trademark guidelines Customer provides); and (iii) subject to Customer's prior written consent, participate in AtomAI case studies or testimonials in connection with the Services. Customer may revoke any of the aforementioned rights at any time by emailing [legal@AtomAI.com](mailto:legal@AtomAI.com).

**15.5 Waiver of Default.** No delay or omission by either Party to exercise any right or power under this Agreement will be construed to be a waiver thereof. A waiver by either Party of any breach or covenant will not be construed to be a waiver of any succeeding breach or of any other covenant.

**15.6 Third Party Beneficiaries and Use of Work.** Neither Party intends this Agreement to benefit or create any right or cause of action in or on behalf of, any person or entity other than the Parties. Customer understands and agrees that Services performed by AtomAI under this Agreement are intended only for the parties specified in the applicable Statement of Work and may be misleading or inappropriate if used in another context or for another party. Customer agrees not to use any Deliverables or documents produced under this Agreement or a Statement of Work for any purpose other than the intended purpose without AtomAI's prior written consent.

**15.7 Survival.** The provisions of Article 3.5 (Consequences of Termination), Article 5 (Proprietary Rights), Article 7 (Confidentiality), Article 8 (Data Protection), Section 9.4 (Disclaimer), Article 11 (Indemnification), Article 12 (Liability), Article 14 (Dispute Resolution and Governing Law) and this Section 15.7 (Survival), as well as any other provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement, will survive expiration or termination of this Agreement and continue in full force and effect for the period set forth therein, or if no period is set forth therein, indefinitely.

**15.8 Severability.** If any provision of this Agreement is found to be invalid, illegal or otherwise unenforceable in any respect, that provision will be deemed to be restated to reflect as nearly as possible the original intent of the Parties in accordance with applicable law. The remainder of this Agreement will remain in full force and effect.

**15.9 Entire Agreement; Amendment and Waiver.** This Agreement and each Statement of Work, including any exhibits referred to herein or therein, each of which is incorporated herein for all purposes, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to the subject matter contained in this Agreement. Customer may require a Purchase Order (“PO”) in connection with its invoice for payment of Fees under this Agreement. Any terms and conditions in any Customer PO will not apply to or modify this Agreement nor shall they take precedence over this Agreement, even if the PO terms and conditions state that its terms supersede any other conflicting terms. No change, waiver or discharge will be valid unless made in writing and signed by an authorized representative of the Party against which such change, waiver or discharge is sought to be enforced.

**15.10 Counterparts; Electronic Signatures.** This Agreement may be executed in any number of counterparts, including but not limited to PDF, e-signature (i.e., DocuSign) or any other electronic equivalent format, all of which taken together will constitute one single agreement between the Parties. The Parties agree that this Agreement, any Statement of Work, or any other document in connection therewith, may be electronically signed, and that any electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.