



2023 – v4, as of November 28, 2023

## DiligenceVault

### TERMS AND CONDITIONS

#### RECITALS

A. Company operates the Services and provides access to its Customers;

and

B. Customer desires to access and use the Services, and Company is willing to provide such access, subject to the terms and conditions of this Agreement.

Company and Customer may be referred to herein collectively as the **“Parties”** or individually as a **“Party”**.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### 1. DEFINITIONS

(a) **“Aggregated Data”** means any data that is collected, derived, or aggregated from the Customer’s and/or its Authorized Users’ use of the Services.

(b) **“Appropriate Security Measures”** means commercially reasonable technical and procedural controls designed to (i) protect Customer Data and Authorized Users, and Platform Users’ details against destruction, loss, alteration, and unauthorized access, and (ii) prevent the introduction of Malicious Code into the Services.

(c) **“Authorized User(s)”** means an employee, client, or contractor whom Customer has authorized to use the Services.

(d) **“Company IP”** means the Services, the underlying software provided in conjunction with the Services, algorithms, interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the Services, Documentation, Aggregate Data, all improvements, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing.

(e) **“Customer Data”** means all information, data, content, and other materials, in any form or medium, that is submitted, posted, collected, transmitted, or otherwise provided by or on behalf of Customer through the Services or to Company in connection with Customer’s use of the Services.

(f) **“Documentation”** means the operator and user manuals, video tutorials, training materials, specifications, minimum system configuration requirements, compatible device and hardware list, and including, without limitation, information about tangible and intangible property which may relate to technology, audits or any other reports or similar materials provided in hard copy, electronic form or orally by Company to Customer (including any revised versions thereof) relating to the Services or the Company.

(g) **“Entities”** means an investment partner and related strategies, products and vehicles, and service providers, which are tracked by Customer on the platform for data collection, report generation, and/or monitoring.

(h) **“GDPR”** means 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).

- (i) **"Implementation Services"** means the implementation and/or other implementation services, if any, to be provided by Company to Customer as set forth in the relevant Order Form.
- (j) **"Intellectual Property Rights"** means patent rights (including, without limitation, patent applications and disclosures), inventions, copyrights, trade secrets, know-how, data and database rights, mask work rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.
- (k) **"Order Form"** means a (i) mutually executed order form or other mutually agreed upon ordering document signed by authorized representatives of each Party; (ii) purchase order issued by Customer and accepted by Company in writing; or (iii) quote issued by Company and accepted by Customer, in each case which references this Agreement and sets forth the applicable Services and/or Implementation Services to be provided by Company.
- (l) **"Malicious Code"** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.
- (m) **"Person"** means any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity.
- (n) **"Personal Data"** means any information that relates to an identified or identifiable natural person to the extent that such information is protected as personal data under applicable laws and regulations.
- (o) **"Platform User(s)"** means employees, contractors, clients, and affiliates of all customers of the Company, excluding Authorized Users.
- (p) **"Projects"** means any diligence project for maintaining standard DDQs, database DDQs, as well as digitizing and completing Word and Excel based DDQs for firm, strategy, product, or vehicle hierarchies on the platform.

(q) **“Shared Data”** means any data or information exchanged among Customer and Platform Users in connection with the use of Services. It can be provided by (a) Customer or Authorized Users to another Platform User and/or (b) any of Company’s Platform Users to Customer. Such information includes, but is not limited to, email, entity’s name and contacts, address, business association, questionnaire responses, documents or related data tracked on platform for data collection, report generation, and / or monitoring.

(r) **“Subscription Capacity”** means the limits, volume or other measurement or conditions of permitted use for the applicable Service as set forth in the applicable Order Form, including any limits on the number of Entities permitted to use the Services based on Customer’s subscription tier.

(s) **“Service(s)”** means the use of any of our software modules, related sites, apps, communications or any other services provided by the Company.

(t) **“Statement of Work” or “ SoW”** means a form that outlines specific details, requirements, and expectations of a customized project or a contract.

(u) **“Use”** means to use and access the Services in accordance with this Agreement and the Documentation.

## **2. SERVICES; ACCESS AND USE.**

(a) Services. Subject to the terms and conditions of this Agreement, Company hereby grants Customer a limited, non-exclusive, non-transferable (except in compliance with Section 13(f)) right to use the Services during the Term, solely for Customer’s business purposes in accordance with, and subject to, the Subscription Capacity.

(b) Use Restrictions. Customer will not at any time and will not permit any Person (including, without limitation, Authorized Users) to, directly or indirectly: (i) use the Services in any manner beyond the scope of rights expressly granted in this Agreement; (ii) modify or create derivative works of the

Services or Documentation, in whole or in part; (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Services, in whole or in part; (iv) frame, mirror, sell, resell, rent or lease use of the Services to any other Person, or otherwise allow any Person to use the Services for any purpose other than for the benefit of Customer in accordance with this Agreement; (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any Person, or that violates any applicable law; (vi) interfere with, or disrupt the integrity or performance of, the Services, or any data or content contained therein or transmitted thereby; or (vii) access or search the Services (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Services features provided by Company for use expressly for such purposes; (viii) to harvest, collect, gather or assemble information or data regarding other users, including email addresses, without their consent, (ix) to transmit through or post on the Service unlawful, harassing, libelous, abusive, harassing, fraudulent, tortious, defamatory, threatening, harmful, abusive, libelous, invasive of another's privacy, vulgar, obscene or otherwise objectionable material of any kind or nature or material which is harmful in any way; (x) transmit any material that contains software viruses or other harmful or deleterious computer code, files or programs such as trojan horses, worms, time bombs, cancelbots; (xi) to interfere with or disrupt servers or networks connected to the Service or violate the regulations, policies or procedures of such networks; (xii) to attempt to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service through password mining or any other means; (xii) to harass or interfere with another user's use and enjoyment of the Service, (xiii) to submit to or store in the Service any protected health information unless the User has informed Company in advance and executed an agreement in the form determined by the Company; (xiii) use the Services, Documentation or any other Company Confidential Information for the purposes of A) monitoring its availability, penetration or security testing, or B) benchmarking or competitive analysis with respect to

competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Services.

(c) Authorized Users. Customer will not allow any Person other than Authorized Users to access or use the Services. Customer may permit Authorized Users to Use the Services, *provided* that (i) Customer ensures each Authorized User complies with all applicable terms and conditions of this Agreement, (ii) Customer is responsible for acts or omissions by Authorized Users in connection with their use of the Services and (iii) Customer shall request Company's prior written approval before providing access to Authorized Users that are Customer's agents or independent contractors that provide services that compete with the Company or the Services. Customer will, and will require all Authorized Users to, use all reasonable means to secure user names and passwords and software used to access the Services in accordance with customary security protocols, and will promptly notify Company if Customer knows or reasonably suspects that any user name and/or password has been compromised.

(d) Third-Party Services. Certain features and functionalities within the Services may allow Customer and its Authorized Users to interface or interact with, access and/or use compatible third-party services, products, technology and content (collectively, "Third-Party Services") through the Services. Company provides these Third-Party Services only as a convenience and such services are not required for the use of the Services, therefore Company does not review, approve, monitor, endorse, warrant, or make any representations with respect to any Third-Party Services, or any product or service provided in connection therewith. Company does not provide any aspect of the Third-Party Services and is not responsible for their privacy policy or compliance with applicable laws to provide their services, and neither any compatibility issues, errors or bugs in the Services or Third-Party Services caused in whole or in part by the Third-Party Services or any update or upgrade thereto. Customer is solely responsible for maintaining the Third-Party Services and obtaining any associated licenses and consents necessary for Customer to use the Third-Party Services in connection with the Services. CUSTOMER RELATIONSHIP WITH SUCH THIRD-PARTY SERVICE

PROVIDERS ARE GOVERNED SOLELY BY CUSTOMER'S AGREEMENT(S) WITH SUCH THIRD-PARTY SERVICES PROVIDERS. COMPANY DISCLAIMS ANY LIABILITY IN CONNECTION WITH CUSTOMER'S USE OF SUCH THIRD-PARTY SERVICES.

(e) Reservation of Rights. Subject to the limited rights expressly granted hereunder, Company reserves and, as between the Parties, will solely own the Company IP and all rights, title, and interest in and to the Company IP. No rights are granted to Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein. Customer acknowledges and agree that Company is not obligated to monitor or police Customer's Data, including uploaded data and Shared Data transmitted through the Services and that Company shall not be responsible for the data content or transmissions. Although Company is not obligated to monitor access to or use of the Services or Customer's Data or to review any Customer's Data, Company has the right to do so for the purpose of operating the Services, to ensure compliance with the terms of this Agreement.

(f) Ownership. All rights, title, and interest, including any Intellectual Property Rights under applicable law evidenced by or embodied in, attached, connected, or related to the Services and any and all derivative works thereof are and will remain owned solely by the Company or its licensors. This Agreement does not convey to Customer any right or interest in or to the Services other than as expressly set out herein, and nothing herein constitutes a waiver of the Company's Intellectual Property Rights under any law.

(g) Feedback. From time to time, Customer or its Authorized Users, employees, contractors, or representatives may provide Company with suggestions, comments, feedback or the like with regard to the Services (collectively, "Feedback"). Company and its affiliates own all rights, title and interest, including all related Intellectual Property Rights in all Feedback received in connection with Company's business purposes and Services, including, without limitation, the testing, development, enhancement, maintenance and improvement of the Services.

### **3. FEES AND PAYMENT.**

(a) Fees. The Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the “Fees”). If Customer’s use of the Services exceeds the Subscription Capacity set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees at the Company’s then current rates or in the manner provided herein or in the Order Form. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon sixty (60) days prior written notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared in order to receive an adjustment or credit. Inquiries should be directed to Company’s customer support department.

(b) Billing and Payments. The Company may choose to bill through an invoice, in which case, payment for invoices issued in any given month must be received by Company within the period and terms defined in the Order Form. Payments due to Company under this Agreement must be made in U.S. dollars by check, wire transfer of immediately available funds to an account designated by the Company or such other payment method mutually agreed by the Parties. The Customer will reimburse Company for all reasonable costs and expenses incurred (including reasonable attorneys’ fees) in collecting any late payments that are not subject to a good faith dispute.

(c) Taxes. Customer is responsible for all sales, use, ad valorem and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by Customer to Company hereunder, other than any taxes imposed on Company’s income. Without limiting the foregoing, in the event that Customer is required to deduct or withhold any taxes from the amounts payable to Company



hereunder, Customer will pay an additional amount, so that Company receives the amounts due to it hereunder in full, as if there were no withholding or deduction.

#### **4. CONFIDENTIAL INFORMATION.**

(a) As used herein, "Confidential Information" means any information that one Party (the "Disclosing Party") provides to the other Party (the "Receiving Party") in connection with this Agreement, whether orally or in writing, that is designated as confidential or that reasonably should be considered to be confidential given the nature of the information and/or the circumstances of disclosure. For clarity, the Services and the Documentation will be deemed Confidential Information of Company, and Customer Data is Confidential Information of Customer. However, Confidential Information will not include any information or materials that: (i) were, at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party; (ii) were rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party; (iii) are rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the Disclosing Party; or (iv) are independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party. Without limiting the foregoing, nothing in this Agreement will limit or restrict Company's ability to use or disclose any general know-how, experience, concepts and/or ideas that Company or its personnel acquire or obtain in connection with the performance of Company's obligations hereunder.

(b) The Receiving Party will maintain the Disclosing Party's Confidential Information in strict confidence, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under this Agreement. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except (i) to those employees, representatives, or contractors ("Representatives") of the Receiving Party who have a bona fide need to know such Confidential Information to perform under this Agreement and

who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in this Agreement, or (ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice, if legally permitted, to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure. The Receiving Party shall at all times remain responsible for any violations of this confidentiality clause by any of its Representatives.

(c) The terms and conditions of this Agreement will constitute Confidential Information of each Party but may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

## **5. SECURITY, SUPPORT AND SERVICE LEVELS.**

(a) Security. Company has implemented and will maintain Appropriate Security Measures based on industry best practices and it will make reasonable commercial efforts to ensure that no other contaminants, including commands, instructions, devices, bugs, or other malware, are introduced into the platform. Company's Security Measures are available at [link](#). Company may, from time to time, update these security measures but will not materially reduce them during the Term of the Agreement.

(b) Support. Company will provide Customer with reasonable technical support for the n Services in accordance with the support terms set forth in the [SLA and Support Services](#).

(c) Service Levels. Subject to the terms and conditions of this Agreement, Company will use commercially reasonable efforts to make the Services available in accordance with the service levels set forth in the [SLA and Support Services](#). Customer acknowledges and agrees that the service levels are performance targets only and any failure of Company to meet any service level will not result in any breach of this Agreement.

## **6. CUSTOMER DATA AND PERSONAL DATA.**

(a) Company acknowledges that, as between Customer and Company and except as set forth in Section 6(b), Customer owns and retains all rights, title and interests in and to all Customer Data.

(b) Customer hereby grants Company a non-exclusive, worldwide, royalty-free right and license to use, host, reproduce, display, perform, and modify the Customer Data solely for the purpose of hosting, operating, improving and providing the Services, Implementation Services and Company's other related products, services and technologies during the Term.

(c) Company may use non-identifiable or anonymized Aggregated Data and analytics information arising from Customer's use of the Services, for analytics information, create statistics, product enhancement, identifying industry developments and monitor the performance and use of the Service.

(d) Customer represents and warrants that (i) it has obtained and will obtain and continue to have, during the Term, all necessary rights, authority and licenses for the access to and use of the Customer Data (including for any Personal Data provided or otherwise collected pursuant to [Company's privacy policy](#)) as contemplated by this Agreement, (ii) Company's use of the Customer Data in accordance with this Agreement will not violate any applicable laws or regulations or cause a breach of any agreement or obligations between Customer and any third party, (iii) will remain responsible and liable for compliance with applicable privacy laws regarding the collection, retention and use of the Personal Data collected as part of the provision of the Services hereunder.

(e) Company expressly disclaims any liability which results directly or indirectly from in consequence of, or in any way relating to (i) the Customer's actual or alleged failure to obtain explicit agreement from any individual before storing any of their personal information not collected through the Services in the Company's platform (i.e. storing documents not directly collected through the Services) and (ii) Authorized Users and Platform Users downloading and sharing Customer Data or Confidential Information out of the Services platform

(f) If Customer Data that is Personal Data originating in the European Economic Area, Switzerland, and/or the United Kingdom is transferred by Customer to Company in a country that has not been found to provide an adequate level of protection under applicable data protection laws, the Parties agree that the transfer shall be governed by Module Two's obligations in the Annex to the Commission Implementing Decision (EU) 2021/914 of 4 June 2021 on standard contractual clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council ("Standard Contractual Clauses") as supplemented by the terms of which are incorporated by reference in the [Data Processing Addendum \("DPA"\)](#).

(g) The Company's DPA and Standard Contractual Clauses are available [here](#). Each Party's signature to the Agreement shall be considered a signature to the Standard Contractual Clauses to the extent that the Standard Contractual Clauses and the DPA apply hereunder.

(h) Company may engage third-party service providers to process Personal Data on behalf of Customer ("Sub-Processors"). Customer hereby provides Company with a general authorization to engage the Sub-Processors listed in "[Annex 3](#)" of DPA. Company will provide thirty (30) days prior written notice before engaging a new Sub-Processor, and notify Customer. Customer may reasonably object to Company's use of a new Sub-Processor as stated in the DPA section "Objection Right for New Sub-processors".

(i) To the extent GDPR rules apply, Company shall process Personal Data, from the Permitted Locations only. If the Company wishes to change any of the Permitted Locations, it shall give the Customer prior written notice of such change. "Permitted Locations" shall mean the United States of America.

## **7. REPRESENTATIONS AND WARRANTIES.**

(a) Each Party hereby represents and warrants to the other Party that: (i) it is duly organized, validly existing and in good standing under its jurisdiction of organization and has the right to enter into this Agreement and (ii) the execution, delivery and performance of this Agreement and the

consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party.

(b) If Customer purchases module form ADV service, Customer acknowledges that such module is based on publicly available advisor filings information posted on websites and in databases operated and maintained, made public by the SEC and obtained by the Company. The Company makes no representations or warranties as to the accuracy of any advisor's data or to any derivative information thereof.

## **8. INDEMNIFICATION.**

(a) Company Indemnification. Subject to Section 8(d), Company will defend Customer against any claim, suit or proceeding brought by a third party ("Claims") alleging that Customer's Use of the Services infringes or misappropriates such third party's Intellectual Property Rights, and will indemnify and hold harmless Customer against any damages and costs awarded against Customer or agreed in settlement by Company (including reasonable attorneys' fees) resulting from such Claim.

(b) IP Remedies. If Company reasonably believes the Services (or any component thereof) could infringe any third party's Intellectual Property Rights, Company may, at its sole option and expense, use commercially reasonable efforts to: (i) modify or replace the Services, or any component or part thereof, to make it non-infringing; or (ii) procure the right for Customer to continue use. If Company determines that neither alternative is commercially practicable, Company may terminate this Agreement, in its entirety or with respect to the affected component, by providing written notice to Customer. In the event of any such termination, Company will refund to Customer a pro-rata portion of the Fees that have been paid for the unexpired portion. The rights and remedies set forth in this Section 8 will constitute Customer's sole and exclusive remedy for any infringement or misappropriation of Intellectual Property Rights in connection with the Services.

(c) Customer Indemnification. Subject to Section 8(d), Customer will defend Company against Claims, in connection with the use of the Services, arising from (i) any Customer Data, including, without limitation, (A) any Claim that the Customer Data infringe, misappropriate or otherwise violate any third party's Intellectual Property Rights or privacy or other rights; or (B) any Claim that the use, provision, transmission, display or storage of Customer Data violates any applicable law, rule or regulation; and (ii) use of the Services by Customer or its Authorized Users in a manner that is not in accordance with this Agreement or the Documentation, including, without limitation, any breach of the license restrictions in Section 2(b), and in each case, will indemnify and hold harmless Company against any damages and costs awarded against Company or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such Claim.

(d) Indemnification Procedures. The Party seeking defense and indemnity (the "Indemnified Party") will promptly (and in any event no later than thirty (30) days after becoming aware of facts or circumstances that could reasonably give rise to any Claim) or promptly after knowledge of an actual Claim, notify the other Party (the "Indemnifying Party") of the Claim for which indemnity is being sought, and will reasonably cooperate with the Indemnifying Party in the defense and/or settlement thereof. The Indemnifying Party will have the sole right to conduct the defense of any Claim for which the Indemnifying Party is responsible hereunder (*provided* that the Indemnifying Party may not settle any Claim without the Indemnified Party's prior written approval unless the settlement is for a monetary amount, unconditionally releases the Indemnified Party from all liability without prejudice, does not require any admission by the Indemnified Party, and does not place restrictions upon the Indemnified Party's business, products or services). The Indemnified Party may participate in the defense or settlement of any such Claim at its own expense and with its own choice of counsel or, if the Indemnifying Party refuses to fulfill its obligation of defense, the Indemnified Party may defend itself and seek reimbursement from the Indemnifying Party.

## **9. IMPLEMENTATION SERVICES WARRANTY; DISCLAIMER.**

Company warrants that Implementation Services will be performed in a good and workmanlike manner consistent with applicable industry standards. This warranty will be in effect for a period of thirty (30) days from the completion of any Implementation Services. As Customer's sole and exclusive remedy and Company's entire liability for any breach of the foregoing warranty, Company will promptly re-perform any Implementation Services that fail to meet this limited warranty. EXCEPT AS EXPRESSLY SET FORTH HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, IMPLEMENTATION SERVICES AND OTHER COMPANY IP ARE PROVIDED ON AN "AS IS" BASIS, AND COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ITS AUTHORIZED USERS OR TO ANY OTHER PARTY REGARDING THE COMPANY IP, THE SERVICES, IMPLEMENTATION SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COMPANY HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, COMPANY HEREBY DISCLAIMS ANY WARRANTY THAT THE USE OF THE SERVICES OR IMPLEMENTATION SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

#### **10. LIMITATIONS OF LIABILITY.**

(a) Exclusion of Damages. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT FOR (I) ANY INFRINGEMENT BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS AND/OR (II) FRAUD OR WILFUL MISCONDUCT BY EITHER PARTY, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE SERVICES OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE COMPANY IP OR THE PROVISION OF THE SERVICES AND IMPLEMENTATION SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

(b) Total Liability. IN NO EVENT WILL EITHER COMPANY'S AND ITS AFFILIATES OR THE CUSTOMER'S TOTAL LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES IN CONNECTION WITH THIS AGREEMENT EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO COMPANY IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

(c) Basis of the Bargain. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

## **11. TERM AND TERMINATION.**

(a) Term. The initial Term of this Agreement begins on the Effective Date and expires at the end of the Initial Term specified in the relevant Order Form (the "Initial Term"). Following the Initial Term, this Agreement will automatically renew for additional periods of two (2) years (each, a "Renewal Term," and together with the Initial Term, the "Term"), unless (i) either Party provides the other with at least thirty (30) days' written notice of its intent not to renew this Agreement prior to the end of the then-current Term or (ii) otherwise agreed in the applicable Order Form.

(b) Termination. In addition to any other remedies it may have, either Party may also terminate this Agreement upon thirty (30) days' notice, if the other Party materially breaches any of the terms or conditions of this Agreement, including Customer non-payment. Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of forty-five (45) days, but thereafter Company will delete stored Customer Data, except for Shared Data, if available, associated with Platform Users active within the Services after the effective date of termination. For clarity, subscription to ADV module alone does not incur in Shared Data between Authorized Users and Platform Users. Upon expiration or termination of this Agreement: (i) the



rights granted pursuant to Section 2(a) will terminate; and (ii) Customer will return or destroy, at Company's sole option, all Company Confidential Information in its possession or control, including permanent removal of such Company Confidential Information (consistent with customary industry practice for data destruction) from any storage devices or other hosting environments that are in Customer's possession or under Customer's control, and at Company's request, certify in writing to Company that the Company Confidential Information has been returned, destroyed or, in the case of electronic communications, deleted. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due or otherwise accrued through the effective date of expiration or termination, or entitle Customer to any refund.

(c) Survival. This Section 11(c) and Sections 1, 2(b), 2(c), 2(f), 3, 4, 6, 7, 8, 9, 10, 11(b) and 13 survive any termination or expiration of this Agreement.

## **12. TRADEMARKS.**

Customer hereby grants Company a limited, non-exclusive right and license to use and display Customer's name and associated logos (the "Customer Marks") during the Term in connection with (i) the hosting, operation and maintenance of the Services; and (ii) except as otherwise agreed in the Order Form, for Company's marketing and sales purposes solely to list Customer as Company's client. For clarity, except as for the situations described herein, Company will not use Customer Marks for any other purposes without prior written consent. All goodwill and improved reputation generated by Company's use of the Customer Marks ensures the exclusive benefit of Customer. Company will use the Customer Marks in the form stipulated by Customer and will conform to and observe such standards as Customer prescribes..

## **13. GENERAL.**

(a) Entire Agreement. This Agreement, including its exhibits, is the complete and exclusive Agreement between the Parties with respect to its subject matter and supersedes any and all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to its subject matter. This Agreement may be amended or modified only by a written

document executed by duly authorized representatives of the Parties. In the event of any conflict, ambiguity or inconsistency between any provisions in this Agreement and any order form, this Agreement shall govern and control; unless the order form specifically states that is expressly amending a provision in this Agreement and such amendment is duly signed by authorized representatives of the Parties.

(b) Notices. All notices required or permitted under this Agreement will be in writing, will reference this Agreement, and will be sent to the relevant email address set forth below in accordance with this Section 13(b). All notices will be deemed to have been duly given when receipt is electronically confirmed, if transmitted by email. If to Company: Email: [legal@diligencevault.com](mailto:legal@diligencevault.com)

If to Customer: email included in the Order Form.

(c) Waiver. Either Party's failure to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of this Agreement will be effective unless it is in writing and signed by the Party granting the waiver.

(d) Severability. If any provision of this Agreement is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the Parties, and the remaining provisions of this Agreement will remain in full force and effect.

(e) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of New York without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in New York County, New York and the Parties irrevocably consent to the personal jurisdiction and venue therein.

(f) Assignment. Neither Party may assign or transfer this Agreement, by operation of law or otherwise, without the other Party's prior written consent. Any attempt to assign or transfer this Agreement without such consent will be void. Notwithstanding the foregoing, either Party may assign or transfer this Agreement to a third party that succeeds to all or substantially all of the assigning Party's business and assets relating to the subject matter of this Agreement, whether by sale, merger, operation of law or otherwise. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the Parties and their respective successors and permitted assigns.

(g) Equitable Relief. Each Party agrees that a breach or threatened breach by such Party of any of its obligations under Section 4 or, in the case of Customer, Section 2(b), may cause the other Party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or threatened breach, the other Party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

(h) Force Majeure. Neither Party will be responsible for any failure or delay in the performance of its obligations under this Agreement (except for any payment obligations) due to causes beyond its reasonable control, which may include, without limitation, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics, epidemics, public health emergencies, governmental orders and acts (including government-imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God. If the Services are not accessible due to a mutually agreed upon force majeure event, the Term of the Agreement shall be extended by the length of the force majeure event.

(i) Subcontracting. Company may use subcontractors, and other third-party providers ("Subcontractor(s)") in connection with the performance of its own obligations hereunder as it deems appropriate; *provided* that (i) the Company remains responsible for the performance of each such Subcontractor and (ii) all Subcontractors that have access to Customer Data are reviewed by the Company in accordance with its diligence procedures. Notwithstanding anything to the contrary in this Agreement, with respect to any third-party vendors including any hosting or email service vendors, Company will use commercially reasonable efforts to guard against any damages or issues arising in connection with such vendors, but will not be liable for the acts or omissions of such third-party vendors except to the extent that it has been finally adjudicated that such damages or issues are caused directly from the gross negligence or willful misconduct of Company, unless such damages or issues are otherwise required by law.

(j) Export Regulation. Customer will comply with all applicable federal laws, regulations and rules that prohibit or restrict the export or re-export of the Services or software, or any Customer Data, outside the United States ("Export Rules"), and will complete all undertakings required by Export Rules, including obtaining any necessary export license or other governmental approval.

(k) U.S. Government End Users. The Services, software and Documentation are "commercial computer software" and "commercial computer software documentation," respectively, as such terms are used in FAR 12.212 and other relevant government procurement regulations. Any use, duplication, or disclosure of the software or its documentation by or on behalf of the U.S. government is subject to restrictions as set forth in this Agreement.

(l) Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing in this Agreement will be construed to establish any partnership, joint venture or agency relationship between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other's behalf without the other Party's prior written consent.

(m) No Third-Party Beneficiaries. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.

(n) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same Agreement.