Desktop as a Service (DaaS) Subscription Agreement

Last Updated: August 22, 2018

This Desktop as a Service Subscription Agreement (the "**Agreement**") is between Workspot, Inc. with its principal place of business at 1901 S. Bascom Avenue, Suite 900, Campbell, CA 95008 USA ("**Workspot**") and _____ (**"Company"**) each a party to this Agreement. The terms of this Agreement are as follows:

Section 1. Definitions

In addition to terms defined elsewhere in this Agreement, the following terms will have the following specified meanings:

"***Administrative User***" means an End User designated by Company in an applicable Order Form who is authorized to have administrative access to and control over the Workspot Control.

"***Affiliate***" means, with respect to a party, any entity which directly or indirectly controls, is controlled by or is under common control with a party, where "control" means ownership or control, directly or indirectly, of more than fifty percent (50%) of the voting interests of a subject entity.

"***Company Data***" means any and all electronic data or information, including software developed by a party other than Workspot (except for Microsoft Products) ("**External Software**"), submitted to, uploaded to, or stored in the Workspot Hosted Virtual Desktop Service by End Users.

"***Documentation***" means the applicable written reference information in electronic form provided with the Workspot DaaS Services or the Microsoft Product, as may be updated by Workspot or Microsoft, respectively, from time to time.

"***End User***" means an individual who is authorized and identified by Company to Workspot to use   Workspot DaaS Services and/or the Microsoft Product. End Users may be employees, independent contractors engaged to be End Users on behalf of Company employees of Affiliates, and Company is responsible for each End User's compliance with the terms of this Agreement and for Fees incurred by those End Users.

"**End User Device**" means the End User device (e.g. laptop, tablet, PC, mobile phone) on which the Workspot Client is installed and by which the End User accesses the Workspot DaaS Services.

"**Effective Date**" means the earlier of the date Company submits, and Workspot receives, the first Order Form under this Agreement or the date Company begins the use of the Workspot DaaS Services and thereby accepts this Agreement.

"**Fees**" means the amounts payable by Company to Workspot for Services or other agreed upon charges as stated in the applicable Order Form.

"**Infrastructure as a Service**" (or "**IaaS**") means scalable, on-demand computing services provided over the Internet for purposes of processing, data storage, application usage, and networking (also known as a form of cloud services).

"**Intellectual Property Rights**" means any and all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction, including applications and registrations for any of the foregoing.

"**Laws**" means all applicable laws, regulations, statutes, rules, orders and other requirements of any applicable international, federal, state or local governmental authority.

"**Malicious Code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents programs, or the like.

"**Microsoft**" means the Microsoft Corporation with headquarters located at One Microsoft Way, Redmond, WA 98052.

"**Microsoft Azure**" means the IaaS services used by Workspot to provide the Workspot Hosted Virtual Desktop Service. Company's and End Users' use of Microsoft Azure is governed by the Microsoft terms of service affirmatively entered into by Company upon commencement of use of Microsoft Azure ("**Microsoft Azure Agreement**"). "**Microsoft Customer Agreement**" means the Microsoft agreement with Company that is used to grant a right to the applicable Microsoft Product to Company. The Microsoft Customer Agreement is an integral part of this Agreement.

"**Microsoft Product**" means the rights to Microsoft online services, which may include Microsoft software technology subject to Microsoft's Customer Agreement, resold to Company by Workspot for use on the Workspot Hosted Desktop Services. Online Product Services and Microsoft Products ordered shall be set forth in the Order Form.

"**Online Product Services**" means subscriptions which provide access to the Workspot Platform, the Workspot Hosted Virtual Desktop Service, the Microsoft Product, or other designated applications, including, without limitation, mobile and desktop applications.

"**Order Form**" means the ordering documents for Company's purchase of Services and subscriptions to the Workspot DaaS Services, Microsoft Azure services and/or the Microsoft Product hereunder. Orders will be deemed accepted by Workspot upon the earlier of when the requested access to the Workspot Control or the Microsoft Product has been provisioned by Workspot or when Workspot otherwise informs Company in writing of Workspot's acceptance of such Order ("**Order Form Effective Date**"). Order Forms shall be deemed incorporated herein by reference. The first Order Form is attached hereto and incorporated herein as Attachment 1.

"**Purchased Services**" means services that Company or a permitted Affiliate obtained under an Order Form. Purchased Services include Online Product Services and additional services, such as installation, implementation, and training services, as described in greater detail in Section 2.

"**Subscription Term**" means the subscription term for the Online Product Services specified in an Order Form.

"**Taxes**" means taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction.

"**Third Party Software**" means third party software that is embedded in or otherwise provided with the Workspot Platform. As used in this Agreement, Third Party Software is expressly excluded from the defined terms "Workspot Platform," "External Software," "Microsoft Product," and from Microsoft Azure proprietary software.

"**Workspot DaaS Services**" means, collectively, the Workspot Platform and the Workspot Hosted Virtual Desktop Service, and/or portions thereof.

"**Workspot Control**" means the generally available and implemented modules of Workspot's proprietary software, including updates thereto, that is accessible through a web browser and, as and when such functionality is made available by Workspot in its sole discretion, allow Company's Administrative Users to configure, manage and monitor the Workspot proprietary software applications for which Company has purchased services.

"**Workspot Hosted Virtual Desktop**" means a user interface individually configured for each End User and accessed through a unique login identifier. The "**Workspot Hosted Virtual Desktop Service**" connects the End User via that interface to the

hosted Workspot Hosted Virtual Desktops with Company applications and Company data. A Workspot Hosted Virtual Desktop can be Inactive or Active.
"**Inactive**" is the state of a Hosted Virtual Desktop that is not provisioned and not accessible by End Users.
"**Active**" is the state of a Hosted Virtual Desktop that is provisioned and accessible by End Users.

"***Workspot Platform***" means, collectively: 1) Workspot Control, 2) Workspot Client, the Workspot proprietary software that Workspot makes available for downloading and installation by Company and/or its End Users on devices or operating system releases that Workspot determines to support in its sole discretion that enable an End User to access and use any or all of the functionality of the Workspot DaaS Services; and 3) other Workspot proprietary software applications required for enabling the Workspot DaaS Services.

Section 2. Workspot Offerings. Company's Purchased Services under this Agreement are specified in the Order Form. Workspot offers the following services and products for purchase ("Workspot Services"):

2.1 Workspot DaaS Services. Workspot provides access and subscriptions to the Workspot DaaS Services. As part of the Workspot DaaS Services, Workspot provides access for Company to Microsoft Azure under an authorized reseller agreement for use with the Workspot Hosted Virtual Desktop Services. Workspot reserves the right to contract with a different IaaS provider for the Workspot Hosted Desktop Services. Workspot may implement, as it deems appropriate, power management controls during periods of inactivity for any Workspot Hosted Virtual Desktop, which may result in a short reactivation delay for such virtual desktop when activity resumes.

2.2 Workspot DaaS Disaster Recovery Service. To provide additional assurance of business continuity for Company and its End Users, Company may subscribe to the Workspot DaaS Disaster Recovery Service, under which Company may activate, utilize and de-activate the recovery service through Workspot Control, as further described at https://www.workspot.com/legal/daas-disaster-recovery, provided that Company has properly configured such service as instructed under the associated Documentation in advance of activation.

2.3 Microsoft Product. Workspot resells access and subscription services to the Microsoft Product as an authorized reseller.

2.4 Management Services. Upon written agreement of the parties as reflected in an Order Form, Workspot will execute Management Services on behalf of Company as described in the respective Order Form or a mutually executed statement of work referencing this Agreement. Such Management Services may pertain to the operation of the Workspot DaaS Services and/or the Microsoft Product, including

assisting with interoperability issues among the Workspot Platform and/or the Microsoft Product used by Company. Fees for such Management services will be set forth in an Order Form.

2.5 Professional Services. Upon written agreement of the parties as reflected in an Order Form, Workspot will perform implementation services for Company as described in the respective Order Form or a mutually executed statement of work referencing this Agreement ("**Implementation Services**"). Such Professional Services may be performed remotely and may include services related to the Workspot Platform and/or the Microsoft Product, as described in the Order Form. Fees for the Professional Services will be set forth in an Order Form.

2.6 Training Services. Workspot will provide training for Administrative Users, as identified in an applicable Order Form, to perform administrative functions necessary for the set-up and maintenance of accounts for End Users' access and utilization of the Online Product Services (**"End User Accounts"**) such as the application of activation keys and configuration of the End User Accounts. Training Services will also include instruction provided to Administrative Users regarding the functionality and interoperability of the Online Product Services.

2.7 Support Services and Service Levels. In the event Company is unable to resolve inquiries placed by a Company's End User regarding the operation of the Online Product Services generally or an incident requiring technical support (each an "**Incident**"), Workspot will provide certain levels of support for the resolving of the Incident. Support Services will be provided remotely and are posted with their service levels on Workspot (https://www.workspot.com/legal/DaaSSLA) ("DaaS SLA").

Section 3. Company Obligations.

3.1. Implementation of the Online Product Services. Company will be responsible for installing the software required for access to and use of the Online Product Services on the Hosted Virtual Desktops and, in the case of the Workspot Client, on the End User Devices. Unless specified in the Order Form, Workspot will not perform Implementation Services, including effectuating integration and interoperability between the Online Product Services and software products and services of third parties that are utilized by Company but not provided under this Agreement.

3.2. Training of End Users. Company must conduct regular training to assure that End Users are able to use the Workspot DaaS Services and the Microsoft Product in accordance with the respective services' specifications.

3.3. Compliance with this Agreement. Company is responsible for End Users' compliance with the terms of this Agreement and all applicable laws. Any violation by Company or Company's End Users of the terms of this Agreement constitutes

Company's material breach of the Agreement. In the event of Company's or an End User's violation of the terms of the Agreement, Workspot may immediately suspend or terminate the Agreement.

3.4. First Response to Incidents. In the event of an Incident submitted by a Company's End User, Company will have the obligation to provide the necessary response or technical support directly to the End User, Company must exercise utmost diligence in its efforts to resolve Incidents. Only after an unsuccessful attempt at resolving an Incident, Company may escalate the Incident to the next level of support and submit the Incident to Workspot's support.

3.5. Acceptance of and Compliance with Microsoft Customer Agreement and the Microsoft Azure Agreement, and End User License Terms. Company has an obligation to assure that it has and its End Users have accepted, will keep in force, and are abiding by the Microsoft Azure Agreement and by the respective Microsoft Customer Agreement and end user terms for each individual service during the Subscription Term. Company may not use Microsoft Azure or the Microsoft Product prior to agreeing to the respective Microsoft Customer Agreement and End Users may not use any service prior to affirmatively accepting the respective terms of use.

3.6. External Software. Company is responsible for any software, product or service that a third party licenses, sells or makes available that Company installs or uses with the Workspot DaaS Services. Company's use of that software, product or service is governed by separate terms between Company and that third party. Workspot is not a party to and is not bound by any of those separate terms. Company represents and warrants that Company's use of the DaaS Services does not and will not violate any third-party rights, including any Intellectual Property Rights, and rights of publicity and privacy. Company will ensure that Company's use of the DaaS Services, including in relation to External Software, complies at all times with Company's privacy policies and all applicable laws and regulations, including any encryption requirements.

3.7. Company Data. Company is solely responsible for all aspects of maintenance and management of Company Data including without limitation content, accuracy, quality, integrity and legality of Company Data. Company will comply with the Content Obligations found at (https://www.workspot.com/legal/ContentObligations) ("Content Obligations"). Workspot is not responsible for the backup of Company Data on any part of the Workspot DaaS Services and may not be liable for any change or alteration of Company Data. Upon termination or expiration of a Subscription Term, all Company Data stored in the Workspot Hosted Virtual Desktop Service for that Subscription will immediately be deleted and Company agrees that it is Company's responsibility to take appropriate measures to retain backup copies of Company Data outside of the Workspot Hosted Virtual Desktop Service prior to termination or expiration of the applicable Subscription Term.

3.8. Disaster Recovery Readiness. Company is solely responsible for providing regular disaster recovery readiness updates as further described in **Workspot DaaS Disaster Recovery Service.** (https://www.workspot.com/legal/daas-disaster-recovery).

Section 4. License, Use and Restrictions

4.1. License Grant.

(a) *Workspot Platform.* During the Subscription Term, subject to the terms and conditions of this Agreement, the applicable Order Form and Company's payment of Fees, Workspot hereby grants to Company a worldwide, nonexclusive, non-transferable, non-sublicensable, limited, revocable license, solely for Company's internal business purposes to permit the number of End Users and the Capacity (defined in the applicable Order Form) of the respective Workspot Hosted Desktop as designated on an Order Form, to: 1) download and use the Workspot Client on the End Users' designated End User Devices; (2) access and use the Workspot Hosted Virtual Desktop Service and other Workspot proprietary software for use in the Workspot DaaS as described in the Purchased Services on the applicable Order Form; and 3) access and use the Workspot Control in connection with the administration of the Workspot proprietary software applications. For Named End Users, End User subscriptions are for designated End Users and cannot be shared or used by more than one named End User but may be reassigned by Company via Workspot Control to new End Users replacing former End Users who no longer require use of the respective Workspot proprietary software applications. A Concurrent End User will be assigned to a pool of resources which if busy will not be able to accommodate usage by an additional End User until the busy condition is resolved.

(b) *Restrictions on Use of the Workspot DaaS Services.* Company shall use the Workspot DaaS Services solely for Company's business purposes, in compliance with all applicable Laws, and shall not: (i) sell, resell, rent, lease, sublicense, distribute, lease, time-share, decompile, reverse engineer or reverse assemble, modify, translate or create derivative works of the Workspot DaaS Services or any functionality that is made available through the Workspot Platform or attempt to discover any source code or underlying ideas or algorithms of the Workspot Platform; (ii) make the Workspot DaaS Services available to any third party that is not an End User of the Workspot DaaS Services under this Agreement or make available to any third party any information or functionality that is made available through the Workspot DaaS Services; (iii) send through or store infringing or unlawful material in or using the Workspot DaaS Services; (iv) knowingly send through or store Malicious Code in or using the Workspot DaaS Services; (v) attempt to gain unauthorized access to, or disrupt or interfere with the integrity or performance of, the Workspot DaaS Services, any part thereof, or the data contained therein; (vi) access or use the Workspot DaaS Services for the purpose of

building a competitive product or service or copying its features, functions, graphics or user interface or otherwise using or exploiting any intellectual property rights of Workspot underlying the Workspot DaaS Services in a manner that is not authorized herein; or (vii) use the Workspot DaaS Services, or permit either to be used, for purposes of product evaluation, benchmarking or other comparative or competitive analysis intended for publication without Workspot's prior written consent. The Documentation may include additional restrictions or limitations to the use of the Workspot DaaS Services, and Company agrees to comply with any such restrictions or limitations. In the event of a conflict between the Documentation and this Agreement, this Agreement shall control. Workspot reserves the right to immediately suspend Company's access to and use of the Workspot DaaS Services if Workspot determines, in its reasonable discretion, that Company is violating (or has violated) any of the provisions set forth in this Section.

(c) *Microsoft Azure and Microsoft Product*. Company is responsible to assure that its access and use of Microsoft Azure and the Microsoft Product are in compliance with the license rights and obligations specified in the Microsoft Azure Agreement and the respective Microsoft customer agreements and Microsoft end user license terms. Company may not use any Microsoft Product or Microsoft Azure offered to Company under this Agreement or used in conjunction with the Workspot Platform prior to accepting Microsoft's terms for use of the respective Microsoft Product or Microsoft Azure.

(d) *Deliverables*. To the extent any software, hardware, documentation or other tangible deliverables results from Implementation Services, Training Services, and/or Management Services ("**Deliverables**"), as between Workspot and Company, such Deliverables and all Intellectual Property Rights therein remain the exclusive property of Workspot. Workspot grants Company a limited, personal, revocable, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to use the Deliverables for Company's internal business purposes solely in connection with Company's use of the Workspot DaaS Services and the Microsoft Product.

4.2. Company's Use of the Workspot DaaS Services. Through the use of Workspot Control, Company will configure, manage and monitor the Workspot proprietary software applications which are a part of the Purchased Services. Workspot Control will provide an administration capability allowing Administrative Users to add and delete End Users, set and modify associated access and security policies, and activate and de-activate the Workspot DaaS Disaster Recovery Service, as further described in the associated Documentation. Company is responsible (i) for administering End User names and passwords and for all activities conducted under Company's End Users' usernames and passwords; (ii) for Company's End Users' compliance with this Agreement and the end user terms of use for all Online Product Services; (iii) for the content, accuracy, quality, integrity and legality of the Company Data and of the means by which Company acquired the Company Data; (iv) for

using commercially reasonable efforts to prevent unauthorized access to or use of the Workspot DaaS Services and notifying Workspot promptly of any such unauthorized access or use; and (v) for any third party products or services used or exchanged by Company in connection with the Purchased Services.

An End User will download the appropriate Workspot Client onto the End User's End User Device. Through the Workspot Control, an Administrative User will allow an End User to access the Hosted Virtual Desktop Service as identified in the applicable Order Form via the Workspot Client on the End User Device after authorizing that End User's email address. The End User's use of the Workspot DaaS Services is subject at all times to the terms of this Agreement, including without limitation the terms of Section 4. Company's or End User's failure to comply with any terms of Section 4 will result in Company's material breach of the Agreement.

4.3. Rights Reserved. All rights or licenses not expressly granted herein are reserved.

4.4. No High Risk Use. Customer is prohibited from using the Purchased Services in any application or situation where their failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("**High Risk Use**"). The Customer alone bears all liability arising of or related to High Risk Use.

Section 5. Fees and Payment

5.1. Fees. During the Subscription Term, Company shall be responsible for Fees specified in the applicable Order Form. Except as otherwise specified herein or in an Order Form: (a) Fees are quoted and payable in United States dollars; and (b) Company's obligation to pay all Fees is non-cancelable, and Fees paid are non-refundable. Upon automatic renewal of a Subscription Term per Section 11.1, as subject to the terms of any agreements between Customer and Microsoft for use of the Microsoft Product resold under this Agreement, the fees due for the Purchased Services on the applicable Order Form will be the then-current list prices published by Workspot.

5.2. Fee Increases. In the event that the parties mutually agree in writing to any extension of a Subscription Term or upgrade in the Purchased Services, Company shall be responsible for issuing payment to Workspot based upon the then-current list price for such extension or services upgrade, unless otherwise set forth in the applicable Order Form. Notwithstanding the foregoing, Company acknowledges that Workspot may, from time to time, add additional services, upgrades, features or functionality to the Workspot DaaS Services that Workspot does not make generally available without payment of additional Fees, and that Company's access to and use of such additional services, upgrades, features and functionality may require payment by Company of additional Fees.

5.3. Invoicing and Payment Terms. All Fees payable to Workspot under this Agreement shall be set forth in an invoice in accordance with the terms and conditions set forth in this Section. Manner of Payment shall be specified in the Order Form. All fees shall be paid in U.S. dollars. If Company is making payments for Fees via credit card, Company shall provide accurate payment information, and Company hereby authorizes Workspot to charge such credit card for all Fees in an applicable Order Form for the initial Subscription Term and any renewal thereof. In the event that Company chooses a non-automatic charging method, Company shall pay all Fees via credit card or by other means specified by Workspot in an applicable Order Form within thirty (30) days of the date of the applicable invoice issued by Workspot or within such period as otherwise specified in the applicable Order Form. Such payment shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. In the event Company disputes in good faith any invoiced Fees, Company will provide written notice of the disputed amount within thirty (30) days of receiving such invoice and timely pay any undisputed portion of such invoice. The parties will cooperate in good faith to resolve any disputed invoice or portion thereof within 30 days of notice of dispute. If Company has elected to pay Fees via credit card and the credit card is charged back to Workspot, or if any Fees invoiced to Company are not paid within thirty (30) days of invoice, Workspot may: (i) with respect to chargebacks, cease charging Company's credit card and invoice Company for the amount charged back and any future Fees; (ii) accelerate the payment of any Fees payable; (iii) immediately suspend the Workspot DaaS Services until payment is made; (iv) impose a late payment charge of the lower of one and one half percent (1.5%) per month and the highest interest rate permitted by applicable law; and/or (v) immediately terminate the *applicable* Order Form for which Fees were due and/or terminate this Agreement.

5.4. Taxes. Unless otherwise stated in an Order Form or invoice, the Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). Company is responsible for paying all Taxes (except those based on Workspot's income) associated with the Workspot DaaS Services or other Services purchased hereunder, and will pay, indemnify and hold Workspot harmless from any Taxes and any costs associated with the collection or withholding thereof, including penalties and interest.

Section 6. Intellectual Property Ownership and Consent to Use of Data

6.1. Intellectual Property Ownership. As between the parties and subject to the license grants under this Agreement, Workspot shall own and retain all right, title, and interest in and to the Workspot Platform (and all information made available through the Workspot DaaS Services (excluding Company Data)), and all Intellectual Property Rights in and to any of the foregoing. As between Microsoft and

Company and subject to the license grants under the Microsoft Customer Agreement, which is an integral part of this Agreement, Microsoft shall own and retain all right, title, and interest in and to the Microsoft Product (and all information made available through the Microsoft Products and Microsoft Azure (excluding Company Data)), and all Intellectual Property Rights in and to any of the foregoing. As between the parties and Microsoft, Company shall own and retain all right, title and interest in and to the Company Data, and all intellectual property rights in and to any of the foregoing. Company may export or delete Company Data from the Workspot Hosted Virtual Desktop Service at any time during the applicable subscription term.

6.2. Feedback. Company hereby agrees to assign and hereby does assign to Workspot all Intellectual Property Rights in and to any suggestions, enhancement requests, recommendations or other feedback provided by Company or its Administrative Users or End Users relating to the Workspot DaaS Services or any aspect thereof.

6.3. Consent to Use of Data. Company grants and agrees to grant Workspot (a) a non-exclusive, royalty-free license during the Subscription Term to use the Company Data, including technical information about the device on which the Workspot DaaS Services is accessed, solely to facilitate the provision of the Purchased Services and provide Implementation Services (if any), product support and other services to Company related to the Workspot DaaS Services, and (b) a non-exclusive, royalty-free perpetual license to use the Company Data for statistical, analytical and other aggregate non-personally identifiable use.

Section 7. Representations and Warranties

7.1. Company Warranties. Company represents and warrants that Company (i) shall not infringe the Intellectual Property Rights of any third party; (ii) will maintain in force and will comply with all applicable Microsoft Customer Agreements at all times during the Subscription Term; and (iii) will comply with all applicable employment data privacy and protection laws, including without limitation any required notifications to End Users, and others while using the Workspot DaaS Services and collecting, maintaining and handling personal data and (iv) will comply with Content Obligations.

7.2. Workspot Warranties. Workspot represents and warrants that (i) Implementation Services, and Support Services will be performed in a professional and workmanlike manner; and (ii) for thirty (30) days from the date of delivery to Company ("**Workspot Platform Warranty Period**"), the Workspot Platform, when used in accordance with the Documentation and the terms of this Agreement, will perform in material conformance with the applicable Documentation; and (iii) the Workspot Platform will comply with Third Party Software licenses.

7.3. Company's sole and exclusive remedies, and Workspot's sole and exclusive obligations, for breach of the warranties set forth in Section 7.2 are as follows: (a) if Company promptly notifies Workspot of a breach of the warranty set forth in Section 7.2(i), Workspot will promptly reperform such Implementation Services or Support Services, as applicable, at no additional cost to Company, and (b) if Company notifies Workspot of a breach of the warranty set forth in Section 7.2(ii) within the Workspot Platform Warranty Period, Workspot will either fix the Workspot proprietary software applications to remedy the defect or terminate the applicable Order Form and (i) if the subscription to the Workspot DaaS Services was purchased directly from Workspot, provide Company with a pro-rata refund of any pre-paid Fees for the remainder of the Subscription Term and (ii) if the subscription for the Workspot DaaS Services was purchased through a reseller, promptly provide a certification to such reseller that Company is qualified for a pro rata refund. The warranties set forth in Section 7.2 are null and void to the extent any Workspot proprietary software application: (i) fails to conform with this warranty as a result of its use with any External Software or third party hardware; or (ii) is used for an unintended purpose, is used other than in accordance with its Documentation, or is otherwise used in breach of this Agreement.

7.4. *No Warranty*. EXCEPT AS PROVIDED IN THIS SECTION 7, THE WORKSPOT PURCHASED SERVICES, ARE PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND. EXCEPT AS EXPRESSLY PROVIDED HEREIN, WORKSPOT MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES THAT MAY ARISE BY OPERATION OF LAW. WITHOUT LIMITING THE FOREGOING, WORKSPOT DOES NOT WARRANT THAT THE WORKSPOT DAAS SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. Company assumes total responsibility and risk for Company's use of the Workspot DaaS Services. The Workspot DaaS Services are provided on an "as available" basis, and Workspot will not be responsible for any loss of Company Data or any data related thereto.

7.5. *Microsoft Warranties and External Software Warranties*. For warranties and remedies concerning the Microsoft Product and Microsoft Azure, Company must refer to the Microsoft Customer Agreement and the Microsoft Azure Agreement, respectively. Workspot does not make any representations and does not assume any responsibility whatsoever with regards to the performance of the Microsoft Product, Microsoft Azure, or any External Software installed on the Workspot Hosted Virtual Desktop Service by the End User.

7.6. *New Releases of Existing Products*. Company acknowledges and agrees that Workspot as well as Microsoft may modify or release new versions of any item of the Online Product Services. Specifically, Company acknowledges and agrees that Workspot may modify or release a new version of components of the Workspot

DaaS Services at any time and for any reason, including where prompted by third-party suppliers. Workspot reserves the right to add new features or functionality to, or remove existing features or functionality from, the Workspot DaaS Services.

Section 8. Confidentiality; Privacy; Company Data

8.1. Confidentiality. As used herein, "**Confidential Information**" means all confidential and proprietary information of either party, whether oral or written, that is designated or identified as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure, including the terms and conditions of this Agreement, the Workspot DaaS Services, End User mobile device activation key codes, business and marketing plans, Company Data, technical information, product designs, trade secrets and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party without restriction on use or disclosure prior to its disclosure by the receiving party; (iii) was independently developed by the receiving party without breach of any obligation owed to the disclosing party as evidenced by documentation; or (iv) is rightfully received from a third party without restriction on use or disclosure.

8.2. The receiving party shall not use or disclose any Confidential Information other than to exercise its rights and/or perform its obligations under this Agreement, except with the disclosing party's prior written consent or as otherwise required by law or legal process. Notwithstanding the foregoing, the receiving party may disclose Confidential Information to its Affiliates or other agents who have a bona fide need to know such Confidential Information; provided, that each such Affiliate or agent is bound by confidentiality obligations at least as protective as those set forth herein. The receiving party shall protect the confidentiality of the Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). The receiving party shall promptly notify Workspot if it becomes aware of any actual or reasonably suspected breach of confidentiality of Confidential Information.

8.3. If the receiving party is compelled by law or legal process to disclose Confidential Information, it shall provide the disclosing party with prompt prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's expense, if the disclosing party wishes to contest the disclosure.

8.4. If the receiving party discloses (or threatens to disclose) any Confidential Information in breach of this Section, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being acknowledged by the parties that any other available remedies may be inadequate.

8.5. Upon any termination of this Agreement, the receiving party shall continue to maintain the confidentiality of the Confidential Information for five (5) years and, upon request, return to the disclosing party or destroy (at the disclosing party's election) all materials containing such Confidential Information, with the exception of information required to be retained by law or for internal archival and procedural purposes, provided that Company's final export of Company Data shall be conducted in accordance with this Agreement. Notwithstanding the foregoing, any Confidential Information relating to a trade secret of a party shall be maintained as confidential by the other party for so long as such Confidential Information remains protected as a trade secret.

8.6. Company Data. Company is solely responsible for the content of all Company Data. Company will secure and maintain all rights in Company Data necessary for Workspot to provide the Purchased Services to Company without violating the rights of any third party or otherwise obligating Workspot to Company or to any third party. Workspot does not and will not assume any obligations with respect to Company Data or to Company's use of the Workspot DaaS Services other than as expressly set forth in this agreement or as required by applicable law. Workspot will use Company Data only to provide Customer with the Purchased Services, including for purposes compatible with the provision of such services. Workspot does not acquire any rights in the Company Data except for the grant of rights necessary for Workspot to provide the Purchased Services to Company. The foregoing does not affect Workspot's intellectual property ownership rights under Section 6.

Section 9. Indemnification

9.1. Company Indemnification. Company agrees to defend, indemnify and hold Workspot and its employees, contractors and agents harmless from and against any and all actual or threatened third party (including Microsoft) claims, suits, actions or proceedings (collectively, "**Workspot Claims**"), including all related damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of or relating to a Workspot Claim that (i) the Company Data or Workspot's transmission, providing of access, hosting, or otherwise processing thereof infringes or violates the Intellectual Property Rights of such third party; (ii) Company's use of the Workspot DaaS Services, the Microsoft Product, or Microsoft Azure in violation of this Agreement or the Microsoft Customer Agreement infringes or violates the rights of such third party; (iii) Company's failure to comply with applicable Laws (including without limitation all applicable data privacy and protection laws (including, without limitation, any required notifications to End Users)), rules or regulations in its performance of this Agreement; or (iv) violation of the High Risk Use prohibition under Section 4.3 of this Agreement. Company shall pay Workspot any damages and reasonable costs and expenses (including reasonable legal fees) incurred by Workspot that are directly attributable to such Workspot Claim.

9.2. Workspot Indemnification. Workspot agrees to defend, indemnify and hold Company and its employees, contractors and agents harmless from and against any and all actual or threatened third party claims, suits, actions or proceedings (collectively "**Company Claims**", including all related damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including but not limited to reasonable attorneys' fees) arising out of or relating to a Company Claim that Company's, or an End User's use of the Workspot Platform as permitted hereunder infringes or misappropriates the Intellectual Property Rights of a third party. Notwithstanding the foregoing, Workspot shall have no such indemnification obligation under this Section, to the extent such infringement or misappropriation is related to or arises from: (i) Company's use of the Workspot Platform, or any part thereof, with software, data products, processes, or materials not provided or authorized by Workspot (including, without limitation, Company Data and the Microsoft Product) and the infringement or misappropriation would not have occurred but for such use with other software, data products, processes, or materials (including the Company Data); (ii) modifications to the Workspot Platform made by Company (including Company Affiliates, Administrative Users and/or End Users) and not authorized by Workspot; or (iii) modifications to the Workspot DaaS Services, undertaken by Workspot at Company's specific direction. If Workspot's right to provide any part of the Workspot Platform is enjoined for claims of infringement, or in Workspot's opinion is likely to be enjoined, Workspot may at its election and expense, either: (a) replace or modify the relevant part of the Workspot Platform, as applicable, so that it no longer infringes or misappropriates, while still providing equivalent functionality; (b) obtain a license for Company to continue to use the Workspot Platform, in accordance with this Agreement; or (c) immediately terminate this Agreement and any Order Form then in effect, and upon Company's return of the respective Workspot proprietary software applications and discontinuation of the use of the Workspot Platform, (i) if the subscription to the Workspot DaaS Services was purchased directly from Workspot, provide Company with a pro-rata refund of any pre-paid Fees for the remainder of the Subscription Term and (ii) if the subscription for the Workspot DaaS Services was purchased through a reseller, promptly provide a certification to such reseller that Company is qualified for a pro rata refund. Workspot shall pay Company any damages and expenses finally awarded against Company and settlements agreed to in writing by Workspot and reasonable costs and expenses (including reasonable legal fees) incurred by Company that are directly attributable to such Company Claims. Notwithstanding Workspot's indemnification obligations, the foregoing shall be Company's sole and exclusive remedy and Workspot's sole and exclusive obligation with respect to any claim of intellectual property infringement.

9.3. Procedure. The obligations of each indemnifying party are conditioned upon receiving from the party seeking indemnification: (i) the exclusive right to control and direct the investigation, defense and related settlement of any claims(ii) prompt written notice of the claim (but in any event notice in sufficient time for the indemnifying party to respond without prejudice) and (iii) all reasonably necessary

cooperation of the indemnified party. Counsel that the indemnifying party selects for the defense or settlement of a claim must be consented to by the indemnified party prior to counsel being engaged to represent the indemnifying party on behalf of the indemnified party (such consent not to be unreasonably withheld or delayed). The indemnified party and its counsel will cooperate as fully as reasonably required, and provide such information as reasonably requested, by the indemnifying party in the defense or settlement of any claim. The indemnifying party shall not in any event, consent to any judgment, settlement, attachment, or lien, or any other act adverse to the interests of any indemnified party without the prior written consent of each relevant indemnified party (such consent not to be unreasonably withheld or delayed).

Section 10. Limitation of Liability

10.1. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL WORKSPOT HAVE ANY LIABILITY TO COMPANY FOR ANY LOST PROFITS, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF COMPANY DATA (OR ANY DATA RELATED THERETO) OR ANY INTERRUPTION OF BUSINESS OR FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR OTHER INDIRECT DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, EXCEPT TO THE EXTENT OF WORKSPOT'S FRAUD, GROSS NEGLIGENCE, BAD FAITH OR WILLFUL MISCONDUCT. THE FOREGOING DISCLAIMER WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

10.2. Limitation of Liability. COMPANY AGREES THAT IN THE EVENT OF ANY CLAIM OR CAUSE OF ACTION BY COMPANY ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT OR ANY OF THE WORKSPOT SERVICES, THE TOTAL MAXIMUM AMOUNT OF WORKSPOT'S LIABILITY TO COMPANY, AND REGARDLESS OF THE NATURE OF THE CLAIM ASSERTED BY COMPANY, SHALL BE THE FEES PAID BY COMPANY TO WORKSPOT WITHIN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY, PROVIDED, HOWEVER, THAT WITH RESPECT TO WORKSPOT'S INDEMNIFICATION OBLIGATION, WORKSPOT'S MAXIMUM LIABILITY SHALL BE LIMITED TO THREE TIMES (3X) THE FEES PAID BY COMPANY TO WORKSPOT IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

THE FOREGOING DISCLAIMER WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS SET FORTH IN THIS SECTION ARE INTEGRAL TO THE AMOUNT OF FEES CHARGED IN CONNECTION WITH MAKING THE SERVICES AVAILABLE TO COMPANY, AND THAT, WERE WORKSPOT TO ASSUME ANY

FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER.

Section 11. Term and Termination

11.1. Term of the Agreement. This term of this Agreement shall commence on the Effective Date and continue until all Subscription Terms have expired or been terminated. Except as otherwise specified in the applicable Order Form, all Subscription Terms shall automatically renew for additional periods equal in duration to the expiring Subscription Term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant Subscription Term.

11.2. Termination for Cause. Either party may terminate this Agreement immediately without further notice if the other party breaches its obligations under this Agreement and does not remedy such breach within thirty (30) calendar days of the date on which the breaching party receives written notice of such breach from the non-breaching party.

11.3. Termination of Third Party-Related Services. Workspot may terminate services dependent on third-party suppliers where the third party terminates its agreement with Workspot through no fault of Workspot. In the event of such termination, Workspot will provide notice to Company as promptly as reasonably feasible following its receipt of the third-party's termination notice. Workspot will have no responsibility to Company for any costs or damages resulting from such termination. In the case of Microsoft's termination of its service provider and reseller agreement with Workspot without cause, Company will continue to have access and services related to the Microsoft Product until the shorter of twelve (12) months or the minimum period of required performance under the applicable, then current Order Form.

11.4. Upon Termination. Upon termination or expiration of this Agreement and/or an Order Form, (a) Workspot shall have no obligation to maintain or provide any Company Data and will immediately thereafter, unless legally prohibited, delete all Company Data in its systems or otherwise in its possession or under its control; (b) Company shall cease all use of the Workspot Platform and the Microsoft Product and any non-transferred Azure tenancies upon termination or expiration of this Agreement, (c) Company shall uninstall the respective proprietary software applications and respective Microsoft Product software from each End User's End User Device on which it is installed and provide written certification to Workspot that Company has uninstalled the respective Workspot proprietary software applications and the respective Microsoft Product software from each such End User Device, in each case, promptly after any termination or expiration of this Agreement.

11.5. Effect of Termination. Upon any expiration or termination of this Agreement: (a) Company's right to use the DaaS Services shall cease, and Workspot shall have no further obligation to make the Workspot Platform or the Microsoft Product available to Company; (b) except as otherwise expressly stated herein, all rights and licenses granted to Company under this Agreement will immediately cease; (c) except as provided in Section 11.4, Workspot will have no obligation with respect to any Company Data; and (d) Company will pay immediately any unpaid Fees payable for the remainder of the Subscription Term under any applicable Order Form in effect prior to the termination date.

11.6 *Survival*. Any terms and conditions of this Agreement that by their nature extend beyond expiration or termination hereof, shall survive, including Section 1 and Sections 5 through 12.

Section 12. Miscellaneous

12.1. Reference and Publicity. Company agrees to consider the following upon reasonable request by Workspot: (i) serving as a reference, (ii) publicizing Company's name as a customer of Workspot, and (iii) collaborating on case studies as Company realizes a return on investment following successful deployment.

12.2. Relationship of Parties. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

12.3. Entire agreement, Amendment and language. This Agreement may only be modified upon written acceptance of the modifications by both parties. Notwithstanding the preceding, modifications which are the result of an amendment of the service provider and reseller agreement between Microsoft and Workspot will automatically and immediately become part of this Agreement. In the event of an amendment to the Microsoft-Workspot agreement which affects Company, Workspot will send notice to Company at the electronic mailing address provided during Company's registration. Company will have the right to refuse the amendment and terminate the Agreement. Unless Company refuses the amended terms and terminates this Agreement in writing within 30 days of receipt of the notice of change of terms, the modified terms will take effect on the date noted in the notice or 30 days following receipt of notice, whichever is later. If there are any conflicting or additional terms in a Company purchase order, the conflicting terms of this Agreement shall control and any additional terms in the Company purchase shall be of no force or effect. All conflicting or additional terms in a Company purchase order are hereby rejected. This Agreement (including all Order Forms) represents the entire agreement between the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written, oral or otherwise, concerning its

subject matter. Questions about the Agreement may be addressed to Contracts@Workspot.com.

12.4. No Waiver. No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in full force and effect.

12.5. Notice. All notices to Company will be sent to the electronic address in the contact information provided by Company in this Agreement unless otherwise set forth in the Order Form and will be considered received within one business day following dispatch. All notices to Workspot must be sent to legal@workspot.com as well as to the Legal contact for notices set forth in the Order Form and will be considered received within one business day following dispatch.

12.6. Construction. The section headings of this Agreement are for convenience only and have no interpretive value. Whenever used in this Agreement, regardless of whether specified, the terms "includes," "including," "e.g.," "for example" and other similar terms are deemed to include the term "without limitation" immediately thereafter. For purposes of this Agreement: (i) the word "or" is not exclusive and the word "and/or is the inclusive "or" and (ii) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Any Exhibits, addenda, attachments and the like, referred to herein will be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

12.7. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), or any other "force majeure" event.

12.8. Assignment. Neither party may assign any rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party, except that Workspot may assign this Agreement without Company's prior written consent in the event of a merger, acquisition, or other change of control. Any attempted assignment in breach of this Section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective permitted successors and permitted assigns.

12.9. Governing Law. This Agreement and any claims related thereto shall be governed exclusively by the internal laws of the State of California, without regard to

its conflicts of laws rules, and all disputes hereunder shall be subject to the exclusive jurisdiction of the state or federal courts located in San Jose, California. The parties hereby irrevocably consent to the jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

12.10. Order of Precedence. This Agreement supersedes all preceding agreements between the parties, including click-through agreements that Company or an End User may have agreed to during trial or previous subscription services to any Workspot services. In the event of a conflict between this Agreement and an Order Form, this Agreement shall control unless the non- preprinted portion of the Order Form expressly (referring to the relevant section of the Agreement) and specifically states otherwise.