

## Terms of Service

**Date Last Modified: October 23, 2023**

These Terms of Service ("Terms") are a legally binding agreement between you (a single natural or legal person, hereinafter referred to by the term (hereinafter "Customer" or "You" or words of similar import) and Measured, Inc. a Delaware corporation located at 1801 Rockmoor Ave. Austin, TX 78703 (hereinafter "Measured", or "Us", "We", "Our" or words of similar import) with regard to Your use of the Services as further described below.

IMPORTANT - PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE SERVICES. BY REQUESTING, ACCESSING OR USING THE SERVICES IN ANY FORM OR MEDIA, CUSTOMER CONFIRMS THAT CUSTOMER HAS READ AND UNDERSTANDS THESE TERMS AND THAT CUSTOMER AGREES TO BE BOUND BY THESE TERMS. IF CUSTOMER DOES NOT AGREE OR DOES NOT WISH TO BECOME A PARTY TO THESE TERMS, CUSTOMER SHOULD NOT REQUEST, ACCESS OR USE THE SERVICES. CUSTOMER CONFIRMS THAT IT UNDERSTANDS THESE TERMS AND AGREES TO BE BOUND BY THESE TERMS BY EXECUTING AN ORDER FORM OR ONLINE ORDERING DOCUMENT REFERENCING THESE TERMS. ANY ORDER FORM OR ONLINE ORDERING DOCUMENT OR WEBPAGE PROVIDED BY MEASURED SHALL BE REFERRED TO HEREIN AS AN "ORDER FORM" OR "SOF".

IF CUSTOMER IS ENTERING INTO THESE TERMS ON BEHALF OF (AND FOR USE ON BEHALF OF) A COMPANY, GOVERNMENTAL ENTITY OR OTHER ENTITY (AN "ENTITY"), CUSTOMER REPRESENTS THAT IT HAS THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS. THE TERM "CUSTOMER" REFERENCED HEREIN REFERS TO: (1) THE ENTITY, ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES OR (2) YOU, AS AN INDIVIDUAL, IN THE CASE OF A NON-LEGAL ENTITY.

THE "EFFECTIVE DATE" FOR THESE TERMS IS THE EARLIER OF THE FIRST DATE OF ANY APPLICABLE ORDER FORM OR THE FIRST DAY CUSTOMER REQUESTS, USES OR ACCESSES THE SERVICES. EACH ORDER FORM MAY NOT BE CANCELLED ONCE THESE TERMS HAS BEEN ACCEPTED, AND NO REFUNDS WILL BE GRANTED.

We update these Terms from time to time. If you have an active subscription to the Subscription Service (defined below), Measured will let You know when we update these Terms via in-application notification or by email (if You subscribe to receive email updates). If you do not have an active subscription, an updated set of terms will be indicated by the "Date last modified" date above.

### 1. DEFINITIONS

**"Affiliates"** means any corporation, partnership or other entity now existing or hereafter organized that directly or indirectly controls, is controlled by or under common control with a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.

**"Authorized User"** means individuals who are authorized by You to use the Services. Authorized Users consist of Your employees, advertising agencies, and contractors who are using the Services solely on Your behalf.

**"Benchmark Category Insights"** are a specific category of Insights that use aggregated and anonymized data from multiple Measured customers to illustrate trends relating to media performance. Benchmark Category Insights are licensed and distributed to Measured customers who have ordered (a) a subscription that includes access to certain Benchmark Category Insights (as described in the applicable Order Form), or (b) certain Measured products or services whose Order Form includes media performance reporting, where such Order Form includes access to certain Benchmark Category Insights. Benchmark Category Insights do not include any PII.

**"Customer Support Services"** means any consulting, implementation, configuration, training, or other professional services that may be provided to You under a SOF.

**"Data"** means text, images, documents, materials, statistics, graphics, and all other forms of data or communication.

**"Data Processing Agreement"** or **"DPA"** means Measured's data processing agreement set forth at <https://www.measured.com/dpa/>, which is incorporated by reference herein and applies to the processing of Your Data by Measured.

**"Data Protection Laws"** means all laws related to privacy, data protection, or collection of, access to, or processing of Personal Information that are applicable to a party in connection with its activities relating to these Terms as the

same may be amended from time-to-time, including the EU General Data Protection Regulation, UK Data Protection Act 2018, the Federal Act on Data Protection of Switzerland, the California Consumer Privacy Act, the Colorado Privacy Act, the Connecticut Data Privacy Act, the Virginia Consumer Data Protection Act, and the Utah Consumer Privacy Act.

**“Documentation”** means any manual and other documentation regarding the Subscription Service made generally available by Measured to its customers, as maybe updated from time to time.

**“Insights”** means insights, reports, benchmarks and other analysis that may be provided to You by Measured as part of the Services if you have ordered a subscription that includes Insights. Insights do not include any PII.

**“Login Information”** means an Authorized User’s name, job title, and business email address, which may be collected by Measured when an Authorized User registers for and uses the Portal.

**“Materials”** means any work product, deliverables, programs, interfaces, modifications, configurations, reports, documentation or other material delivered in the performance of Customer Support Services.

**“SOF”** or **“Order Form”** means the document signed by You that further described the Services You are purchasing. The Order Form may be a statement of work.

**“Our Data”** means all Data that We make available to You in connection with the Services. Our Data also includes knowledge database articles that may be made available from time to time via the Portal.

**“Personal Information”** means information about your customers and has the meaning as set forth in the Data Privacy laws. You shall not make available to Measured, any Personal Information unless the parties have executed Measured’s Data Processing Addendum.

**“Portal”** means Measured’s client portal, accessible via a username and password, that allows You to access the Services You have ordered.

**“Process”** (including any grammatically inflected forms thereof) means any operation or set of operations which is performed on Data or on sets of Data, whether or not by automated means, including without limitation collection, recording, organization, structuring, storage, adaptation or alteration, access, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**“Services”** means the specific Subscription Service(s), the Portal, Customer Support Services, Materials, Insights, Benchmark Category Insights, and Our Data identified in the applicable Order Form and provided to You under these Terms. You acknowledge and agree that we shall only provide you with the specific Services specified on the Order Form, and not any other products or services that Measured may offer.

**“Subscription Service”** means Measured’s proprietary subscription-based software solution(s) identified in the applicable Order Form.

**“User Data”** means any Personal Information of your Authorized Users that we may collect and use in order to provide the Services to You.

**“Usage Data”** means anonymized or aggregated data, statistics, usage analytics and analysis derived from the Services and Your use thereof.

**“Your Data”** means any anonymized or pseudonymized Data or Personal Information of your customers, supporters, followers or prospects or that to the extent We Process such Data or Personal Information solely on Your behalf under these Terms. Your Data includes any data or materials that You receive from a third party (or authorize a third party to provide to Measured, such as data from a social media platform or an advertising agency). Your Data shall not include any Personal Information unless (a) the parties have executed Measured’s Data Protection Addendum, and (b) the Order Form (or the table set forth in the DPA) states that Personal Information shall be provided for the performance of Services ordered by You.

## 2. SERVICES

Subject to these Terms, and in consideration for the payment of fees set forth on the applicable Order Form, Measured will provide Services to You that involve the use of Your Data in order to provide various analytics services to You as further set forth in an Order form or SOF. Except for User Data, unless the Order Form (or the table set forth in the DPA) specifically identifies Personal Information to be shared, You will not share any sensitive or identifiable Personal Information with us, and you will ensure that only anonymized or pseudonymized Personal Information or Data is shared with us. If the applicable Order Form (or the DPA) states that Personal Information will be shared, (a) Measured will only use Personal Information in accordance with Your written instructions; and (b) any use of Personal Information in the provision of Services will be subject to the terms of the DPA.

We hereby grant to You, solely during the term of the applicable Order Form, a non-exclusive, non-transferable (except as set forth in Section 12 under the paragraph titled "Assignment") license to access and use the Services solely for Your internal business purposes. This license is restricted to use by You and Your Authorized Users and does not include the right to use the Services on behalf of any third party. Any Services not expressly identified on the SOF shall not be provided. You are responsible for procuring and maintaining the network connections that connect You to the Services.

If You have purchased Customer Support Services, then the Customer Support Services are provided under the terms of these Terms and the applicable SOF. Any Customer Support Services not expressly identified on the SOF shall not be provided.

Measured will use commercially reasonable efforts to provide the Subscription Services in accordance with [the Service Level Addendum](#) incorporated into these Terms.

### **3. YOUR OBLIGATIONS**

You are responsible for all activities conducted, or directions or instructions issued, by You or under Your Authorized User logins and for Your Authorized Users' compliance with these Terms. Unauthorized use, resale, or commercial exploitation of the Services in any way is expressly prohibited. You shall not (and shall not allow Your Authorized Users or any third party to): (i) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Services; or (ii) access the Services to build a competitive product or service or copy any ideas, features, functions, or graphics of the Services. Except as expressly permitted in these Terms, You shall not copy, license, sell, transfer, make available, lease, time-share, distribute, or assign this license to access and use the Services to any third-party. You and Your Authorized Users will not attempt to or actually re-identify any previously aggregated, deidentified, or anonymized data that is provided to You in Our Data or any Benchmark Category Insight (if You are provided access to and use of Benchmark Category Insights). You shall be liable for any breach of these Terms by any of Your Authorized Users. In addition to Our other remedies hereunder, We reserve the right upon notice to You to terminate any Authorized User's right to access the Services if such Authorized User has violated any of the restrictions contained in these Terms.

You are solely responsible for all Your Data, including the accuracy, integrity, and quality of Your Data and You retain ownership of all right, title, and interest in and to all Your Data. You represent and warrant that: (i) You either own fully and outright or otherwise possess and have obtained (and paid for) all rights, approvals, licenses, consents, clearances, releases, and permissions as are necessary to provide Your Data for use in connection with the Services, and Measured will not be obligated to execute a separate agreement with any third party in order to access or use Your Data for the purposes of providing the Services as described in this Agreement; (ii) Your Data, or any use thereof as permitted by these Terms, shall not infringe the intellectual property rights or proprietary rights of a third party; and (iii) You shall comply with all laws, ordinances, codes, regulations, rules, policies, regulations and procedures and the requirements of any other public or private authority in the provision of Your Data hereunder; (iii) Your Data has been lawfully collected pursuant to a prominent and publicly accessible privacy notice, on Your respective digital properties and/or otherwise at the point of collection, that satisfies the transparency, choice and other requirements of applicable Data Protection Laws regarding collection, use and disclosure, and (iv) the transfer of such data to Measured and use and/or disclosure in connection with the Services will conform with all applicable data protection law, Your privacy notice and any agreement to which You are bound, and You will not instruct or direct Measured to receive, store, transfer, use or disclose such data in a manner that would violate any of the foregoing.

You will clearly and conspicuously post notices regarding the collection, transfer, and use of data in connection with the sharing of Your Data with Measured to provide the Services and such notice shall (i) be in compliance with all applicable Digital Advertising Alliance Self-Regulatory Principles; and (ii) include an appropriate choice mechanism to offer consumers an opportunity to opt out from targeted or behavioral advertising such as interest-based or cross-contextual advertising. Neither You nor Your Authorized Users shall use the Services to: (a) send, upload or otherwise transmit Your Data that is unlawful or invasive of another's privacy; (b) upload or otherwise transmit, display or distribute Your Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit Your Data or any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Services or networks connected to the Services; or (e) violate any applicable law or regulation.

You are responsible for ensuring that You and any third party that provides data files follow industry recommended security practices to ensure no security vulnerabilities are introduced into Measured's environment. Measured will have no liability to You or any third party as a result of any failure to adhere to such practices.

You will issue appropriate instructions to all Authorized Users having access to Your Data concerning the terms, conditions, and restrictions contained in these terms and Measured's privacy policy. You will ensure that reasonable safeguards are in place to prevent unauthorized access to or use or disclosure of Your Data. Only those Authorized Users who have reason to access Your Data pursuant to the purposes permitted under these terms may, at any time, access or use Your Data within Measured's environment.

You acknowledge and agree that use of the Subscription Services requires participation by You and your Authorized Users. If the Services described in your Order Form includes testing, You acknowledge and agree that You and your Authorized Users are responsible for running any such tests and that Measured is not responsible or liable for Your or Your Authorized Users failure to run any such tests during the term of the applicable Sales Order.

You hereby grant to Us a worldwide, non-exclusive, royalty-free right and license to (a) use Your Data to provide the Services to You, and (b) to use Your Data in combination with other data for the purpose of providing the Services, including creating Insights and Benchmark Category Insights. You acknowledge and agree that during the term of these Terms and thereafter, We may collect, analyze, copy, display and use Usage Data for the purposes of providing, operating, analyzing, and improving the Services and other Measured products and services. Measured may disclose Usage Data to its partners, customers, and on its public facing website for the purposes of benchmarking and online marketing, provided however Measured will not disclose any Usage Data unless it is in an aggregated and anonymized format that would not permit a third party to identify the data as associated with You or any individual.

#### **4. FEES**

Customer agrees to pay Measured all fees set forth in the applicable Order Form ("Fees") in accordance with this Agreement and the Order Form. If not otherwise specified on an Order Form, all such Fees (except Fees subject to a good faith dispute) will be due within thirty (30) days of the invoice date and shall be paid in United States dollars. Except as otherwise specifically provided in this Agreement, all Fees paid and payable to Measured hereunder are non-cancelable and non-refundable. If Customer fails to pay any Fees due under this Agreement by the due date, in addition to any other rights or remedies it may have under this Agreement or by matter of applicable law, (i) Measured reserves the right to suspend the Services upon thirty (30) days written notice, until such amounts are paid in full, and (ii) Measured will have the right to charge interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law until Customer pays all amounts due; provided that Measured will not exercise its right to charge interest if the applicable charges are under reasonable and good faith dispute and Customer is cooperating diligently to resolve the issue.

You will pay all pre-approved reasonable travel and out-of-pocket expenses incurred by Us in connection with any Services rendered.

Fees are exclusive of taxes. You are responsible for the payment of all sales, use and similar taxes arising from or relating to the Services rendered hereunder, except for taxes related to Our net income and any taxes or obligations imposed upon Us under federal, state and local wage laws.

## **5. CONFIDENTIALITY**

During the term of these Terms, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the Discloser, without any obligation of confidentiality; (ii) becomes known to the Recipient directly or indirectly from a source other than one having an obligation of confidentiality to the Discloser; (iii) becomes publicly known or otherwise publicly available, except through a breach of these Terms; or (iv) is independently developed by the Recipient without use of the disclosing party's Confidential Information. The Services are Measured's Confidential Information.

Each party (a "Recipient") shall use the same degree of care that it uses to protect its own confidential information of like kind (but in no event using less than a reasonable standard of care) to not disclose or use any Confidential Information of the other party (a "Discloser") except as reasonably necessary to perform Recipient's obligations or exercise Recipient's rights pursuant to these Terms or with the Discloser's prior written permission. Either party may disclose the Confidential Information of the other on a need-to-know basis to its Affiliates, and to its and their employees, agents, contractors and service providers bound by confidentiality obligations at least as restrictive as those in this section. To the extent required by Law, Recipient's disclosure of Discloser's Confidential Information shall not be considered a breach of these Terms provided that Recipient promptly provides Discloser with prior notice of such disclosure (to the extent legally permitted) and reasonable assistance, at Discloser's cost, if Discloser wishes to contest the disclosure. Discloser shall have the right to seek injunctive relief to enjoin any breach or threatened breach of this section, it being acknowledged by the parties that other remedies may be inadequate.

## **6. LIMITED WARRANTY**

We warrant that during the term of any SOF for the Subscription Service, the Subscription Service will conform, in all material respects, with its Documentation. We make no warranty regarding features or services provided by third parties. For any breach of the above warranty, We will, at no additional cost to You, provide remedial services necessary to enable the Subscription Service to conform to the warranty. You will provide Us with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this Section 6 are Your sole remedies for breach of this warranty. This warranty will only apply if the Services have been utilized by You in accordance with the SOF and these Terms.

WE DO NOT REPRESENT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES WILL BE CORRECTED. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY US. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED. YOU ASSUME ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES ARE ACCURATE OR SUFFICIENT FOR YOUR PURPOSES. MEASURED IS NOT RESPONSIBLE OR LIABLE FOR YOUR OR YOUR AUTHORIZED USERS' FAILURE TO USE THE SUBSCRIPTION SERVICES.

## **7. OUR INTELLECTUAL PROPERTY**

You acknowledge and agree that as between Us and You, all right, title and interest in and to the (i) Services (and all our other products and services) and (ii) all improvements, derivatives, enhancements, modifications, releases, configurations, methodologies, related technologies, and the like ("Modifications") to the Services created by any party, and (iii) any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied in (i) and/or (ii) or associated therewith are and shall remain Ours or Our licensors' sole and exclusive property, and We in no way convey any right or interest in the Services or any Modifications other than a limited license to use the Services in accordance herewith. We also retain ownership of all right, title and interest in and to all Usage Data. We retain ownership of any and all methods, know-how or techniques related to our Services, including without limitation, the programming and processing of data, developed by Us prior to or while providing the Services.

## **8. LIMITATION OF LIABILITY**

EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS, OR YOUR BREACH OF OUR INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOSS OF PROFITS, OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF DATA AND LOST PROFITS AND COSTS, IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THESE TERMS, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. OUR TOTAL CUMULATIVE LIABILITY TO YOU FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THESE TERMS, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE FEES ACTUALLY PAID BY YOU TO US UNDER THE ORDER FORM FOR THE SERVICES WHICH FORM THE SUBJECT OF THE CLAIM DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

## **9. TERM & TERMINATION**

These Terms will begin on the Effective Date as set forth above and will continue until otherwise terminated under this Section 9. The term of each SOF shall be set forth on the SOF. We reserve the right to change the rates, applicable charges and usage policies for all Services (or any part thereof) and to introduce new charges, in each case to be effective at the start of the next renewal date, by providing You written notice (by email) of the change at least 60 days prior to the next renewal date.

Either party may terminate these Terms or any SOF (i) immediately in the event of a material breach of these Terms or any such SOF by the other party that is not cured within thirty (30) days of written notice from the other party, or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing. Termination of a SOF will not terminate these Terms. Termination of these Terms will however terminate all outstanding SOFs. Either party may also terminate these Terms by providing 30 days' prior written notice to the other party, if there are no outstanding SOFs then currently in effect. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of these Terms and each SOF.

Upon any termination or expiration of these Terms or any applicable SOF, We will no longer provide the applicable Services to You, and You will stop using the Services. You will pay Us for all fees that had accrued prior to the termination date. Within thirty (30) days following termination of these Terms, each party will promptly return or destroy Confidential Information of the other party in its possession (provided that any Confidential Information that is Your Data shall be deleted in accordance with the process outlined below). Within thirty (30) days following termination (the "Data Retrieval Period"), You may retrieve Your Data in accordance with established and reasonable system access procedures. After such period, We will have no further obligation to store and/or make available Your Data and shall delete the same within thirty (30) days following the end of the Data Retrieval Period.

## **10. INDEMNIFICATION**

We will indemnify, defend and hold You harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against You alleging that the use of the Services as permitted hereunder infringes any United States patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Services in violation of these Terms or applicable law, (b) use of the Services after We notify You to discontinue use because of an infringement claim, (c) any claim relating to Your Data, (d) modifications to the Services made by anyone other than Us (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Services with software, materials, data or equipment which was not provided by Us, to the extent that Your liability for such claim would have been avoided in the absence of such combination, operation, or use; or (f) compliance by Us with Your custom requirements or specifications if and to the extent such compliance with Your custom requirements or specifications resulted in the infringement. If the Services are held to infringe, We will, at Our own expense, in Our sole discretion use commercially reasonable efforts either (a) to procure a license that will protect You against such claim without cost to You; (b) to replace the Services with non-infringing Services without material loss of functionality; or (c) if (a) and (b) are not commercially feasible, terminate these Terms or the applicable SOF and refund to You any prepaid unused fees paid to Us for the infringing Services. The rights and remedies granted to You under this Section 10 state Our entire liability, and Your

exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

You shall indemnify, defend, and hold Us harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Us that arises out of or results from a claim resulting from Your breach of Section 3 (Your Obligations).

The indemnified party shall (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying party shall not settle any claim without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

## 11. GENERAL PROVISIONS

**Modifications to these Terms.** We may modify any part or all of these Terms by posting a revised version here <https://www.measured.com/service-terms/>. The revised version will become effective and binding the next business day after it is posted, unless you are a customer with an active subscription. If you are a customer with an active subscription, the revised version will become effective and binding on the date of your next renewal. We will use commercially reasonable efforts provide you notice of any material revisions by email or via in-application notification. If You would like to receive an email notification when Measured updates these Terms, please email Measured here [tosupdates@measured.com](mailto:tosupdates@measured.com). If You do not agree with a modification to these Terms, You must notify Measured in writing within thirty (30) days after Measured sends notice of the revision. If You give Us this notice, then Your Order Form will continue to be governed by the terms and conditions of the Terms prior to modification until Your next renewal date, after which the current terms posted will apply.

**Entire Agreement.** These Terms, including all terms and conditions incorporated herein via URL or reference, and all SOFs, contains the entire agreement between the parties, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. Other than as set forth above in the paragraph titled "Modifications to these Terms", only a written amendment that refers to these Terms or the applicable SOF and that is signed by both parties may amend these Terms or such SOF. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by You shall be of no force or effect, even if the purchase order is accepted by Us. In the event of any conflict between the terms of these Terms and any SOF, the SOF shall control. These Terms shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the party drafting these Terms in construing or interpreting the provisions hereof.

**Assignment.** These Terms shall be binding upon and for the benefit of each party and their permitted successors and assigns. Either party may assign these Terms and all SOF as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except as expressly stated in these Terms, neither party may otherwise assign its rights or delegate its duties under these Terms either in whole or in part without the prior written consent of the other party, and any attempted assignment or delegation without such consent will be void. Notwithstanding the foregoing, we may use Affiliates independent contractors or subcontractors to assist in the delivery of Services; provided, that We remain liable for the actions or omissions of the Affiliates, independent contractors or subcontractors and for the payment of their compensation.

**Feedback.** You acknowledge that any suggestions, comments, improvements, ideas, requests for Modifications or feedback provided to Us relating to the Services or any of Our other services (the "Feedback") are voluntarily provided by You, and You agree that the Feedback may be used by Us without compensation, accounting or attribution to You, and You hereby grant Us a transferable, sublicensable, worldwide, perpetual, irrevocable, royalty-free, fully paid up right and license to freely exploit and make available all Feedback.

**Governing Law.** These Terms shall be governed by and construed in accordance with the laws of the State of New York, USA without regard to its conflict of law provisions. Any dispute arising between the parties will be settled in

an action commenced and maintained in any court sitting in New York, New York. The parties irrevocably consent and submit to the exclusive personal jurisdiction of such courts if there is any dispute between them and agree not to challenge or assert any defense to the jurisdiction of such courts.

***Relationship of the Parties.*** Each party is an independent contractor, and nothing in these Terms shall be construed as a partnership or creating the relationships of employer and employee, or principal and agent, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

***Force Majeure.*** Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

***Notices:*** Measured may provide notices to You via email or via the Portal. You must provide notices to Measured by email to [notices@measured.com](mailto:notices@measured.com). Either party may change its address by giving written notice of such change to the other party.

***No Third-Party Beneficiaries.*** Nothing contained in these Terms is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a party to any such person.

***Modifications to the Services.*** We may make modifications to the Services or particular components of the Services from time to time provided that such modifications do not materially degrade any functionality or features of the Services.

***Waiver and Severability.*** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either party to exercise any of its rights under these Terms will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of these Terms will not affect the validity or enforceability of any of the other provisions hereof, and these Terms will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.