



## Quinyx General Terms and Conditions

These General Terms and Conditions (“General Terms and Conditions”) are made part of the Agreement (as defined below) between Quinyx AB. (“Quinyx”) and the Customer listed in the Order which references these General Terms and Conditions. These General Terms and Conditions will govern the use and provision of any Services purchased by Customer as described in any Order. Any terms not defined herein have the meaning given to them in the applicable Order.

### 1. DEFINITIONS

**1.1 “Affiliate”** means with respect to either party on any applicable date of determination, any other entity directly or indirectly controlling, controlled by or under common control with such party as of such date. For purposes of this definition, an entity shall be deemed to control another entity if it owns or controls, directly or indirectly, at least fifty percent (50%) of the voting equity of another entity (or other comparable interest for an entity other than a corporation).

**1.2 “Agreement”** means the Order, these General Term and Conditions, and, where applicable, any Statement of Work and any other appendix included by reference (as varied from time to time in accordance with these General Terms and Conditions).

**1.3 “Access Credentials”** means login information, passwords, security protocols, and policies through which Users access the Quinyx Services.

**1.4 “Customer Content”** means the data and content uploaded or submitted into the Services by or on behalf of Customer.

**1.5 “Confidential Information”** means all written or oral information, disclosed by one party (the “Disclosing Party”) to the other (the “Recipient”), related to the business, products, services or operations of the Disclosing Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including, without limitation: (a) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (b) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, employees, suppliers and agents; and (c) information regarding the skills and compensation of the Disclosing Party’s employees, contractors, and other agents.

**1.6 “Documentation”** means the documentation, user manuals, policies, help files and videos, and other materials that describe the features, functions and operation of the Services.

**1.7 “Go Live Date”** shall mean the date on which Customer begins use of the Quinyx Services, as integrated into Customer’s system, as determined in Quinyx’s sole discretion.

**1.8 “Intellectual Property”** or “IP” means (a) patents, patent applications and statutory invention registrations, (b) trademarks, service marks, trade dress, logos, trade names, corporate names, domain names, and other source identifiers, (c) copyrights and mask works, (d) trade secrets under applicable law, including confidential and proprietary information and know-how, and (e) any other proprietary rights and protections, whether currently existing or hereafter developed or acquired, arising under law, including, in each case, all applications, issuances and registrations with respect thereto.

**1.9 “Order”** means the document signed by an authorized representative of each party that references these General Terms and

Conditions and identifies the specific Services to be made available and the fees to be paid.

**1.10 “Personal Information”** means any Customer Content that identifies any specific individual and is protected under applicable privacy laws, rules and regulations.

**1.11 “Quinyx Information Security Standard Policies and Procedures”** means Quinyx’s policies and procedures set forth at: [https://enjoy.quinyx.com/hubfs/iGoMoon2017/PDFs/Quinyx\\_Information\\_Security.pdf?t=1523976583623](https://enjoy.quinyx.com/hubfs/iGoMoon2017/PDFs/Quinyx_Information_Security.pdf?t=1523976583623), as may be amended from time to time by Quinyx, in its sole discretion.

**1.12 “Quinyx Service”** means any service provided by Quinyx through the standard Quinyx Workforce Management solution pursuant to the Order and as described in the relevant product data sheet(s) available at [https://app.quinyx.com/feature\\_list.html](https://app.quinyx.com/feature_list.html).

**1.13 “Services”** means the Quinyx Service, the Solution, the Solutions and any other services set forth in an Order.

**1.14 “Solutions”** means all services and products other than the Quinyx Service, (e.g. adaptation, customization, hardware, SMS, training, consultancy services) that are provided by Quinyx to the Customer as set out in an Order (as may be further elaborated in any statement of work agreed to by the parties), and all IP therein

**1.15 “User”** means each of Customer’s employees and independent contractors who are provided Access Credentials by Customer or Quinyx. The number of Users authorized by Quinyx to access the Quinyx Services is set forth in the applicable Order.

### 2. ACCESS, RIGHTS, RESTRICTIONS AND SECURITY

**2.1 Access Grant to Quinyx Service.** Subject to Customer’s compliance with the terms and conditions contained in this Agreement, including the restriction on the number of Users set forth in any Order, Quinyx grants to Customer a non-exclusive, non-transferable (except as set forth in Section 8.1), non-sublicenseable, limited right to allow the number of Users set forth in the applicable Order to access and use the Quinyx Service during the Term (as defined below). Customer assumes the sole responsibility for the Customer’s selection of the Services, and Customer shall comply with all Documentation related to the use of the Services.

**2.2 Support and Technical Service.** During the Term, Quinyx agrees to use commercially reasonable efforts to make the Quinyx Service available to Customer in accordance with the service level requirements set forth in Exhibit A.

**2.3 Access Credentials.** Customer will safeguard, and ensure that all Users safeguard the Access Credentials. Customer will be responsible for all acts and omissions of Users. Customer will notify Quinyx immediately if it learns of any unauthorized use of any Access Credentials or any other known or suspected breach of security.



(h) **Customer Restrictions.** During the Term (as defined in Section 7) and thereafter, Customer shall not, and shall not permit any of its employees, contractors or Users to, directly or indirectly: (a) act as a reseller or distributor of, or a service bureau for, the Services or otherwise use, exploit, make available or encumber any of the Services to or for the benefit of any third party; (b) use or demonstrate the Services in any way that is in competition with Quinyx, including, without limitation, accessing the Services in Order to build a competitive product or service; (c) reverse engineer, disassemble or decompile the Services or attempt to derive the source code or underlying ideas or algorithms of any part of the Services (except to the limited extent applicable laws specifically prohibit such restriction); (d) remove any notice of proprietary rights from the Services; (e) copy, modify, translate or otherwise create derivative works of any part of the Services; (f) use the Services in a manner that interferes or attempt to interfere with the proper working of the Services or any activities conducted on the Services, including bypassing or attempting to bypass any privacy settings or measures used to prevent or restrict access to the Services; (g) use manual or automated software, devices, robot, spider, or other processes to “crawl” or “spider” or to retrieve, index, “scrape”, “data mine” or in any way gather information, content or other materials from the Services in an unauthorized manner or reproduce or circumvent the navigational structure or presentation of the Services; (h) use the Services in a manner which interferes with or disrupt its integrity or performance; (i) use or allow the transmission, transfer, export, re-export or other transfer of any software, technology or information forming a part of the Services in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction; or (j) use the Services to share or store inappropriate materials, including (i) materials containing viruses or other harmful or malicious code; (ii) unsolicited mail (spam); (iii) materials (including Customer Content) to which Customer does not have sufficient rights; (iv) harassing, tortious, or defamatory materials; or (v) other materials prohibited by applicable international, federal, state, or local laws and regulations.

**2.4 Customer Obligations.** Customer will be responsible for obtaining and maintaining, at Customer’s expense, all of the necessary telecommunications, computer hardware, software, and Internet connectivity required by Customer or any User to access the Services from the Internet. Customer shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services, and notify Quinyx promptly of any such unauthorized use known to Customer. In addition, Customer will provide such cooperation, facilities, materials, information and resources, irrespective of whether it concerns in-house or third party resources, as reasonably requested by Quinyx, including any obligations identified in an Order. The Customer will collaborate with Quinyx in the appropriate manner and promptly respond to reasonable requests for consultation, information, decisions and approvals. The Customer will review documents received and shall ensure that the environment where Services shall be applied, fulfills the minimum requirements specified by Quinyx.

**2.5 Solutions.** Quinyx shall use commercially reasonable efforts to provide certain Solutions related to Customer’s use of the Services as indicated on an Order. Excluding those agreed between the parties in the Order or a separate statement of work, Quinyx will have no obligation to provide or perform such services for or on behalf of Customer. In addition, Customer agrees to complete all implementation obligations specified in an Order or provided by Quinyx to Customer in writing (the “**Implementation**”).

**Tasks”).** In the event that Customer does not complete the Implementation Tasks, Customer shall be subject to additional fees. Quinyx hereby grants to Customer a non-exclusive, non-transferable license to use any deliverables, work product or other materials (“**Deliverables**”) developed by Quinyx in the performance of the Solutions and delivered to Customer, upon Customer’s payment in full of all amounts due hereunder, solely in conjunction with, and consistent in scope with, Customer’s permitted use of the Quinyx Service under this Agreement. Quinyx may utilize any and all methods, computer software, know-how or techniques related to programming and processing of data, developed by it while providing the Solutions, including for use in future releases of any of its products or services.

## **2.6 Proprietary Rights and Confidential Information**

### **(a) Confidential Information**

(i) **Use and Disclosure.** During this Agreement, each party will have access to the other party’s Confidential Information. Except as otherwise expressly permitted, and without limiting each party’s obligations, under this Agreement, each Recipient agrees as follows: (A) it will not disclose the Confidential Information of the Disclosing Party to anyone except its Affiliates and its and their employees and independent contractors who have a need to know and who have been advised of and have agreed to treat such information in accordance with the terms of this Agreement (each a “**Representative**”) and (B) it will not use or reproduce the Confidential Information disclosed by the Disclosing Party for any purpose other than exercising its rights and performing its obligations as described herein. Each Recipient will be liable for the acts and omissions of its Representatives with respect to the Disclosing Party’s Confidential Information.

(ii) **Exceptions.** The provisions of Section 2.6 (a)(i) will not apply to Confidential Information that: (A) becomes generally available to the public through no fault of the Recipient; (B) is lawfully provided to the Recipient by a third party free of any confidentiality duties or obligations; (C) Recipient can prove, by clear and convincing evidence, was already known to the Recipient without restriction at the time of disclosure; or (D) Recipient can prove, by clear and convincing evidence, was independently developed by employees and contractors of Recipient who had no access to the Confidential Information.. Notwithstanding Section 2.5 (a)(i), each party may disclose Confidential Information to the limited extent required by a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order will first have given written notice to the other party and made a reasonable effort to obtain a protective order.

### **(b) Customer Content**

(i) **Customer Content.** Customer is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Customer Content. Customer will obtain all third party licenses, consents and permissions needed for Quinyx to use the Customer Content to provide the Services.

(ii) **License in Customer Content.** Customer grants to Quinyx, on behalf of itself and its Users, a non-exclusive license to use the Customer Content as necessary for purposes of providing the Services. Except for the limited licenses granted to Quinyx in any Customer Content, as between Customer and Quinyx, Customer reserves all right, title and interest in the Customer Content. Notwithstanding anything to the contrary herein, Customer agrees that Quinyx has the right to collect, use and analyze any deidentified information derived from the Customer Content (collectively, the “**Deidentified Data**”) for Quinyx’s lawful business purposes, including to improve and enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services and any other Quinyx offerings. Quinyx may disclose Deidentified Data solely in aggregate form in connection with its business.



(c) **Services.**

Except for the limited access grant provided to Customer in this Agreement, Quinyx reserves all right, title and interest in its intellectual property and business, including the Services, Documentation, and Quinyx trademarks. Unless otherwise expressly set forth in an Order, and except for any Customer Content, all work product or services provided or developed pursuant to this Agreement or any Order (including any modifications and improvements to any Services pursuant subsection (d) or any intellectual property developed pursuant to subsection (e) below), and all intellectual property and other proprietary rights derived therefrom, will be the sole and exclusive property of Quinyx. Quinyx retains ownership of all Deliverables received, compiled or developed by Quinyx in the performance of this Agreement.

(d) **Continuous Development.**

Customer acknowledges that Quinyx may continually develop, deliver and provide to Customer on-going innovation to the Quinyx Services in the form of new features, functionality, and efficiencies. Accordingly, Quinyx reserves the right to modify the Services, or any Quinyx Services, from time to time. Some modifications will be provided to Customer at no additional charge. In the event Quinyx adds additional functionality to a particular Service, Quinyx may condition the implementation of such modifications on Customer's payment of additional fees provided Customer may continue to use the version of the Quinyx Services that Quinyx makes generally available (without such features) without paying additional fees.

(e) **Feedback.**

Quinyx in its sole discretion, may utilize all comments and suggestions, whether written or oral, furnished by Customer to Quinyx, including such comments and suggestions of Users, in connection with its access to and use of the Services (all comments and suggestions provided by Customer hereunder constitute, collectively, the "**Feedback**"). Customer hereby grants Quinyx, on behalf of itself and its Users, a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into Quinyx products and services without any obligation of compensation or attribution to Customer.

**3. DATA MANAGEMENT; SECURITY.**

**3.1 Security, Access and Use.** Quinyx will maintain a comprehensive information security program consistent with industry standards and the Quinyx Information Security Standard Policies and Procedures that contains appropriate administrative, technical, physical, organizational and other security safeguards reasonably designed to protect Personal Information from unauthorized disclosure, loss, destruction, unavailability or alteration. Such information security program will include business continuity and disaster recovery plans that are consistent with industry standards and are designed to protect against loss of Customer Content. In the event that Quinyx has reason to believe that there has been any unauthorized access to, or loss of, Personal Information from its systems or premises, then it will promptly notify Customer according to its policies and protocols Quinyx aligned with the data type and nature of the event.

**4. CONSIDERATION.**

**4.1 Invoices.** Except as otherwise set forth in any Order, all fees related to Customer's access to the Quinyx Service will be invoiced by Quinyx in advance on an annual basis ("**Service Fees**"). All fees related to the Solutions shall be made on a time and material basis according to the rate card specified in the Order (the "**Fees for Solutions**"). Unless otherwise set forth in any Order, all Fees for Solutions and any other fees

set forth in an Order will be invoiced in arrears within ten (10) days of the end of the month in which such services were rendered. The Service Fees, Fees for Solutions and all other fees set forth in the Order will be referred to herein as "**Fees**".

**4.2 Fees.** Customer will pay the Fees to Quinyx in accordance with the payment schedule set forth in the applicable Order. Unless otherwise specified in any Order, all invoices issued by Quinyx Will be due and payable thirty (30) days after receipt by Customer. All Fees will be paid in U.S. dollars and exclude all applicable sales, use, and other taxes. Any portion of the Fees that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. The Fees exclude, and Customer will be solely responsible for, all sales, use, excise, withholding and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity in connection with the Services (excluding taxes based solely on Quinyx's income).

**4.3 Expenses.** Customer will reimburse Quinyx for any pre-approved travel and out-of-pocket expenses incurred by Quinyx in connection with the provision of Services, provided that Customer has approved such expenses in writing or via email.

**5. WARRANTIES; DISCLAIMERS; LIMITATIONS ON LIABILITY**

**5.1 General Representations.** Each party represents and warrants that: (a) as of the Effective Date and throughout the Term, it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that the execution and performance of the Agreement, or use of the Services, will not conflict with or violate any provision of any law having applicability to such party; and (c) that the Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms.

**5.2 Limited Warranty.**

(a) Subject to the **Unscheduled Downtime**, Customer Requirements and the other terms and conditions of Exhibit A attached **hereto**, Quinyx warrants a 99.5% Service Availability – 24 hours per day in each respective calendar month outside planned maintenance windows. For any breach of the foregoing warranty, Quinyx will, at no additional cost to Customer, provide the remedy described in Exhibit A, pursuant to the terms and conditions of Exhibit A. The remedies set out in this subsection are Customer's sole remedies for breach of the warranty set forth in this Section 5.2(a).

(b) Quinyx warrants that during the term of any Order for the Quinyx Service, the Quinyx Service will conform, in all material respects, as described in the then-current relevant product data sheet(s) available at [https://app.quinyx.com/feature\\_list.html](https://app.quinyx.com/feature_list.html). For any breach of the foregoing warranty, Quinyx will, at no additional cost to Customer, provide remedial services necessary to enable the Quinyx Service to conform to the foregoing warranty. Customer will provide Quinyx with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies for breach of the warranty set forth in this Section 5.2(b). Such warranty shall only apply if the Quinyx Service has been utilized by Customer in accordance with the Order and this Agreement.

**5.3 Customer Content.** Customer represents and warrants that it has obtained and will maintain throughout the Term, all rights, consents and permissions for Customer to make available the Customer Content to Quinyx and for Quinyx to use the Customer Content as contemplated herein.



**5.4** Compliance with Laws. Customer will use the Services and provide Customer Content in accordance with all applicable laws, rules and regulations.

**5.5** Third Party Hardware. To the extent Customer has purchased any hardware (“**Third Party Hardware**”), as indicated on the Order, such Third Party Hardware is provided on an as-is, pass through basis. Customer is solely responsible for complying with all terms and conditions governing Customer’s use of the Third Party Hardware. All warranties, indemnification and support obligations, if any, with respect to any Third Party Hardware is provided by the applicable third party licensor or supplier. Quinyx does not provide any warranty, indemnification or support with respect to any Third Party Hardware. In the event that such Third Party Hardware contains a warranty from a third party licensor or supplier, Customer shall notify Quinyx of any issues related to such Third Party Hardware, and in Quinyx’s sole discretion, Quinyx may work directly with the third party licensor or manufacturer to remedy the faulty hardware.

**5.6** Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 5 OF THE AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. QUINYX DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE SERVICES WILL BE ACCURATE, WITHOUT INTERRUPTION, OR ERROR-FREE. QUINYX MAKES NO WARRANTY REGARDING FEATURES OR SERVICES PROVIDED BY THIRD PARTIES.

**5.7** Disclaimer of Indirect Damages. EXCEPT AS SET FORTH IN SECTION 5.9 BELOW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL QUINYX BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES.

**5.8** Limitations on Liability. EXCEPT AS SET FORTH IN SECTION 5.9 BELOW, EACH PARTY’S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT OF FEES RECEIVED BY QUINYX UNDER THE APPLICABLE ORDERING DOCUMENT DURING THE SIX (6) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION ON LIABILITY WILL NOT APPLY TO A PARTY’S INDEMNIFICATION OBLIGATIONS, AND ALL AMOUNTS OF DAMAGES AWARDED AND ALL AMOUNTS AGREED TO IN A MONETARY SETTLEMENT OF THE CLAIMS PURSUANT TO A PARTY’S INDEMNIFICATION OBLIGATIONS SHALL BE TREATED AS DIRECT DAMAGES REGARDLESS OF ANY CHARACTERIZATION BY THE COURT(S) OR IN THE SETTLEMENT AGREEMENT(S) THAT SUCH DAMAGES, OR PORTION(S) THEREOF, CONSTITUTE SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

**5.9** Exceptions. THE LIMITATIONS SET FORTH IN SECTIONS 5.7 AND 5.8 SHALL NOT APPLY TO FEES OWED HEREUNDER OR TO CUSTOMER’S BREACH OF SECTION 2.4. FURTHERMORE, BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN LIABILITY, IN SUCH JURISDICTIONS THE LIABILITY OF QUINYX WILL BE LIMITED

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TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 5 WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED, ANY LIMITED REMEDY HEREIN IS HELD TO FAIL OF ITS ESSENTIAL PURPOSE OR THE FORM OF THE CLAIM OR CAUSE OF ACTION, WHETHER IN CONTRACT, WARRANTY, STATUTE, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE).

## **6. INDEMNIFICATION**

**6.1** Quinyx Indemnity. Quinyx will indemnify, defend and hold Customer, its directors, officers, and employees (each a “**Customer Indemnified Party**”) harmless from and against any and all losses, damages, liability, costs and expenses awarded by a court or agreed upon in settlement, as well as all reasonable and related attorneys’ fees and court costs (collectively “**Losses**”) arising out of any third party claim to the extent alleging that the Quinyx Service infringe any U.S. patent, copyright, trademark or trade secret.

**6.2** Exclusions. Section 6.1 will not apply if the alleged claim arises, in whole or in part, from: (a) a use or modification of the Services by Customer or any User in breach of this Agreement, (b) a combination, operation or use of the Services with other software, hardware or technology not provided by Quinyx if the claim would not have arisen but for the combination, operation or use, or (c) the Customer Content (any of the foregoing circumstances under clauses (a), (b) or (c) will be collectively referred to as a “**Customer Indemnity Responsibility**”).

**6.3** Customer Indemnity. Customer will indemnify, defend and hold harmless Quinyx, its directors, officers, and employees (each a “**Quinyx Indemnified Party**”) from and against any and all Losses arising out of any third party claim (a) alleging a Customer breach of any Customer representation or warranty in Section 5, and (b) arising out of any Customer Indemnity Responsibility.

**6.4** Indemnification Process. The foregoing indemnification obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action provided however, that the indemnifying party’s indemnity obligations will be waived only if and to the extent that its ability to conduct the defense are materially prejudiced by a failure to give notice, (b) reasonably cooperating and assisting in such defense and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying party with the understanding that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party, without consent.

**6.5** Infringement. If the Quinyx Services are, or in Quinyx’s opinion, are likely to become, the subject of any infringement- related claim, then Quinyx will, at its expense and in its discretion: (a) procure for Customer the right to continue using the Quinyx Services; (b) replace or modify the infringing technology or material so that the Quinyx Services become non-infringing and remain materially functionally equivalent; or (c) terminate the Order pursuant to which the Quinyx Services are provided and give Customer a refund for any pre- paid but unused Fees.

**6.6** THE PROVISIONS OF THIS SECTION 6 STATE QUINYX’S ENTIRE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDIES FOR ANY CLAIM THAT THE SERVICES INFRINGE A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHT.

## **7. TERM AND TERMINATION**

**7.1** Term. Unless as otherwise agreed to in an Order, the term of this Agreement will commence on the Effective Date and shall remain in effect for three (3) years (the “**Initial Term**”) from the Go- Live Date.



Thereafter, this Agreement shall automatically renew for successive one (1) year terms (each a “**Renewal Term**”), unless either party provides notice to the other of its intention not to renew at least thirty (30) days prior to expiration of the Initial Term or the then-current Renewal Term. The Initial Term and all Renewal Terms will collectively be referred to as the “**Term**”.

**7.2** Termination. Either party may terminate this Agreement or any Order, at its discretion, effective immediately upon written notice to the other if the other party materially breaches any provision of this Agreement and does not substantially cure the breach within thirty (30) days after receiving written notice.

**7.3** Suspension of Service(s). At any time during the Term, Quinyx may, immediately upon notice to Customer, suspend access to any Service for the following reasons: (a) a threat to the technical security or technical integrity of the Services; (b) any amount due under this Agreement is not received by Quinyx within fifteen (15) days after it was due, provided that Quinyx shall give Customer five (5) business days prior written notice (email is sufficient) of its intent to suspend pursuant to this Section 7.3(b), and no such suspension shall occur if payment is made within the five (5) business day period, or (c) breach or violation by Customer of any laws, rules, or regulations.

**7.4** Return of Customer Content. Within thirty (30) days following termination of this Agreement for any reason, Quinyx, upon Customer’s written request and at Customer’s expense, will return all Customer Content to Customer in Quinyx’s standard format. Thereafter, Quinyx reserves the right to permanently and definitively delete the Customer Content (unless Customer has timely requested, and Quinyx has not yet complied with Customer’s request to return the Customer Content). Upon Quinyx’s request, Customer agrees to acknowledge its receipt of Customer Content.

**7.5** Effects of Termination. Upon termination or expiration of this Agreement for any reason, (a) all Fees set forth on the Order and any other amounts owed to Quinyx prior to such termination or expiration and all unpaid Fees will be immediately due and payable and (b) all licensed and access rights granted to Customer will immediately cease to exist. Sections 1, 2.4, 2.6, 4, 5, 6, 7.4, 7.5 and 8 will survive any expiration or termination of this Agreement.

## **8. GENERAL**

**8.1** Assignment. This Agreement shall be binding upon and for the benefit of Quinyx, Customer, and their permitted successors and assigns. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that either party may assign this Agreement in connection with a corporate reorganization, merger, acquisition, or sale of all or substantially all of its assets. Any attempted assignment or delegation in violation of this Section 8.1 will be null, void and of no effect. Furthermore, Quinyx may assign this Agreement to any Affiliate. Quinyx may use independent contractors and subcontractors to assist in the delivery of Services; provided, however, that Quinyx shall remain liable for the actions or omissions of such independent contractors or subcontractors and for the payment of their compensation.

**8.2** Publicity. During the Term and thereafter, Quinyx may refer to Customer as a Quinyx customer, orally and in writing (including in promotion or marketing materials and on Quinyx’s website and social media postings). In addition, the parties may also discuss producing a more detailed reference or case study outlining the work that Quinyx is providing to the Customer provided that Quinyx may not publicly use, produce or publish such detailed reference or case study without the Customer’s prior written consent.

**8.3** Non-Solicitation. During the Term, and for six (6) months thereafter, to the maximum extent enforceable under applicable law, each party agrees not to solicit for hire any employees of the other party, without such party’s prior written consent; provided, however that the foregoing shall not be construed so as to prohibit or limit either party from soliciting or recruiting an employee of the other party (a) in connection with a job search conducted generally in the media, through the Internet or through professional recruiters or employment agencies, or (b) who approaches such party about the possibility of employment with such party without first having been intentionally personally solicited or recruited by such party.

**8.4** Notices. All notices, consents, and approvals under this Agreement must be delivered via email to Quinyx at [legal@quinyx.com](mailto:legal@quinyx.com) and to Customer at the email address set forth in the Order and will be effective upon submission (a read receipt may be requested). Either party may change its address by giving notice of the new address to the other party.

### **8.5** Governing Law; Disputes.

(a) This Agreement will be governed by the laws of the State of New York, without reference to its conflicts of law principles. The United Nations Convention for the International Sale of Goods will not apply to this Agreement. **THE PARTIES IRREVOCABLY WAIVE ALL RIGHTS UNDER APPLICABLE LAW TO A TRIAL BY JURY.**

(b) Any dispute, controversy or claim arising out of or relating to this Agreement or an Order, or the breach, termination or validity thereof shall be finally settled in arbitration in accordance with the JAMS procedures pursuant to its Streamlined Arbitration Rules and Procedure, but a single arbitrator. The arbitration shall be conducted in New York, New York in the English language. The award shall be final and binding on the Parties and judgement on the arbitrator’s award may be entered into any court having jurisdiction. Unless provided otherwise herein, the arbitrator may not award non-monetary or equitable relief of any sort. The arbitrator shall have no power to award damages inconsistent with this Agreement. No discovery shall be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the party seeking discovery. Each party shall bear its own costs of the arbitration. The fees and expenses of the arbitrator shall be shared equally by the Parties. All aspects of the arbitration shall be treated as confidential, including but not limited to the possibility or existence of the proceedings, the proceedings themselves, any statements made during the course of the proceedings, documents and other information submitted by the Parties or prepared by the arbitrator(s), and the final award. Neither the Parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a party shall give written notice to all other parties and shall afford such Parties a reasonable opportunity to protect their interests.

(c) Notwithstanding Section 8.5(b) above, Quinyx may, in its sole discretion, bring any claim or dispute arising out of or in connection with its Intellectual Property before any courts and/or administrative authorities having jurisdiction over the subject matter of such claim or dispute.

(d) Nothing in this Agreement shall be deemed to limit the Parties’ rights to seek interim injunctive relief or to enforce an arbitration award in any court of law.



**8.6 Remedies.** Notwithstanding any other provision of this Agreement, both parties acknowledge that (a) any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement, or (b) any breach by Customer of the restrictions set forth in Section 2.4, may in each case may cause the disclosing party (or with respect to (b), Quinyx) irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party shall be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

**8.7 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**8.8 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

**8.9 No Third Party Beneficiaries.** The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity (including any User or any Employee) other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

**8.10 Construction.** The parties negotiated this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the drafting party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the words: "including" means "including but not limited to,".

**8.11 Restricted Rights Legend (United States Government Use Limitations).** The following provision applies only if Customer is a branch or agency of the United States Government or is purchasing the Services on behalf of the United States Government. The Services are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (SEPT 1995) and are provided to the Government for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 (JUN 1995) and 227.7202-3 (JUN 1995). Use, duplication, or disclosure of the Quinyx Service and Documentation by the United States Government is subject to the restrictions set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR- 52-227.19, as applicable.

**8.12 Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a natural disaster, war, act of terror, or any other event beyond the reasonable control of such party. The affected party will use reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

**8.13 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.

## EXHIBIT A

### Service Level Agreement (“SLA”)

1. **DEFINITIONS.** The following capitalized terms will have the definitions set forth below:

**11 “Force Majeure”** means any act, event, or occurrence beyond Quinyx’s reasonable control, including, without limitation, issues arising from bugs or other problems in the software, firmware or hardware of Quinyx’s suppliers, outages or issues with upstream providers or network carriers, acts of God, fires, floods, storms, landslides, epidemics, lightning, earthquakes, drought, blight, famine, quarantine, blockade, governmental acts or inaction, orders or injunctions, war, insurrection or civil strife, sabotage, explosions, labor strikes, work stoppages, and acts of terror.

**12 “Scheduled Downtime”** means the total amount of time during any calendar month, measured in minutes, during which Customer is not able to access the Service due to planned system maintenance performed by Quinyx. Quinyx will provide Customer with reasonable prior notice of such Scheduled Downtime.

**13 “Total Monthly Time”** means the total minutes in the relevant calendar month less Scheduled Downtime.

**14 “Unscheduled Downtime”** means the total amount of time during any calendar month, measured in minutes, during which the Customer is not able to access the features and functions of the Services, other than Scheduled Downtime. Unscheduled Downtime shall not include any period during which the Services are unavailable as a result of (i) non-compliance by Customer with any provision of this SLA; (ii) incompatibility of Customer’s equipment or software with the Service; (iii) actions or inactions of Customer or third parties; (iv) Customer’s use of the Services after Quinyx has advised Customer to modify its use of the Services, if Customer did not modify its use as advised; (v) acts or omissions of Customer or Customer’s employees, agents, contractors, or vendors, or anyone gaining access to the Services by means of Customer’s passwords or equipment; (vi) performance of Customer’s systems or the Internet or any Third Party Hardware; (vii) any systemic Internet failures; (viii) network unavailability or Customer’s bandwidth limitations; or (ix) Scheduled Downtime.

**15 “System Availability”** means, with respect to any particular calendar month, the ratio obtained by subtracting Unscheduled Downtime during such month from the Total Monthly Time, and thereafter dividing the difference so obtained by the Total Monthly Time. Represented algebraically, System Availability for any particular calendar month is determined as follows:

$$\text{System Availability} = \frac{\text{Total Monthly Time} - \text{Unscheduled Downtime}}{\text{Total Monthly Time}}$$

2. **SYSTEM PERFORMANCE**

**21 System Availability:** Quinyx will undertake commercially reasonable measures to ensure that System Availability equals or exceeds ninety-nine point five percent (99.5%) during each calendar month (the “**Service Standard**”). The measuring point for System Availability is the availability of the Service at Quinyx’s hosting provider’s data center’s internet connection points.

**22 System Monitoring and Measurement:** The measuring point for System Availability is the availability of the Service at Quinyx’s hosting provider’s data center’s internet connection points. All measurements of System Availability will be calculated on a monthly basis for each calendar month during the Term based on the records of Quinyx. Quinyx’s records regarding System Availability will be final and each party agrees not to dispute such records.

3. **CUSTOMER REQUIREMENTS.**

Customer is responsible for: (a) the maintenance and management of its computer network(s), servers, and software, Third Party Hardware and any equipment or services related to maintenance and management of the foregoing, (b) the configuration its systems in accordance with any instructions provided by Quinyx, as may be necessary for provision of access to the features and functions of the Service, including maintaining its network connections and telecommunications links for its systems to Quinyx’s data centers, and (c) the back up of all relevant existing data, software and programs.

4. **REMEDY**

**41 Credits Against Fees:** In the event Unscheduled Downtime occurs, Customer will be entitled to credits against its subsequent payment obligations (as set forth in the Agreement) (“**Service Credits**”) according to the following table:



<u>Service Availability</u>	<u>Credit as a Percentage of Monthly Billing</u>
97.0-99.5%	20%
95.0-97.0%	25%
90.0-95.0%	35%
<90%	50%

Customer’s rights under this Section 4.1 are Customer’s sole and exclusive remedy with respect to any Unscheduled Downtime or any failure by Quinyx to meet the Service Standard required by Section 2.1. Customer shall not be eligible for any Service Credits if: (i) Customer has any outstanding balances due, or (b) Customer has materially breached the Agreement.

**42 Maximum Service Credits:** The maximum amount of Service Credits that Quinyx will issue to Customer for Unscheduled Downtime in a single calendar month will not exceed fifty percent (50%) of the monthly billing for such month.

**43 Requesting Service Credits:** As a condition to Quinyx’s obligation to provide Service Credits to Customer, Customer must request such Service Credits by sending an e-mail identifying the date and time of the Unscheduled Downtime for which Customer is requesting Service Credits, with sufficient evidence (including description of the incident and duration of the incident) to [support@quinyx.com] within thirty (30) days following such Unscheduled Downtime. If Customer fails to request any Service Credits to which Customer is entitled in accordance with this Section 4.3, Quinyx will have no obligation to issue such Service Credits to Customer.

**5. Response Times**

Quinyx shall use commercially reasonable efforts to respond to (but not fix) incidents depending on the gravity, set out below in the time periods described below, provided that classification of any problem among Priority Levels shall be reasonably in accordance with the definitions specified below which shall be determined by Quinyx in its sole discretion:

<b>Level of Gravity</b>	<b>Description</b>	<b>Manner to Report Incident</b>	<b>Target Response Time</b>
1-Critical	Commercially critical situation which affects all Users including the accessibility of the system without any alternative solution to the problem.	Via support portal or telephone	Within 1 working hour
2- Urgent	Customer critical situation which affects payroll transactions for a significant number of customers’ Users (at minimum 100 Users), without any alternative solution to the problem.	Via support portal or telephone	Within 8 working hours
3- High	Serious situation in which important functions do not operate satisfactorily or problems in the performance which seriously affects the use of the Service. No alternative solution is available	Via support portal or telephone	Within 24 working hours
4- Other	Elementary technical and functional issues where an alternative solution is available.	Via support portal or telephone	Within 48 working hours

Unless otherwise agreed in the Order, the channel of contact is preferably via the Quinyx support portal at <https://support.quinyx.com>. The local telephone number can be found on Quinyx’s website. Service hours are normal local working days 9 am – 5 pm EST. Any exceptions in service hours are notified no less than two (2) weeks in advance in the support portal.

Quinyx and the Customer shall agree on named contact persons from the Customer who is entitled to report issues to Quinyx’s support function. The number of contacts is determined by the Customers’ size. The support contact persons must have undergone relevant training in relation to the Service. In case of changes in contacts, the Customer shall inform Quinyx in writing.