



## QUINYX TERMS OF SERVICE

The Quinyx Terms of Service (“**Terms**”) is a legally binding agreement between the customer entity identified in the Ordering Document (“**Customer**”) and Quinyx AB (“**Quinyx**”) governing Customer’s use of the Services.

### 1. **DEFINITIONS.**

“**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).

“**Agreement**” means these Terms including the SLA, DPA and any other terms or documentation incorporated herein by reference, any executed Ordering Document referencing these Terms, and any applicable SOW.

“**Contract Year**” means a period of twelve (12) months beginning on the effective date of this Agreement, or any anniversary thereof;

“**Customer Data**” means any (a) Data (including Personal Information and Non-identifiable Data) provided to Quinyx by Customer, and (b) any other Data to the extent Quinyx processes such Data solely on Customer’s behalf under this Agreement. Customer Data shall not include (and Customer shall not make available to Quinyx) any Prohibited Data.

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

“**Deliverables**” means any work product, deliverables, programs, interfaces, modifications, configurations, or other material delivered in the performance of Professional Services.

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

“**Feature List**” means the then-current Quinyx feature list found at [app.quinyx.com/feature\\_list.html](http://app.quinyx.com/feature_list.html).

“**Good Industry Practice**” means the degree of skill and care, which would reasonably and ordinarily be expected from an experienced service provider similar to Quinyx engaged in the provision of services similar to the Quinyx Service or the Professional Services.

“**Non-identifiable Data**” means Customer Data that does not relate to any identified or identifiable natural person.

“**Ordering Document**” means an order document signed by the parties that further describes the Services Customer is ordering as well as relevant details in connection therewith (fees to be paid, payment details etc.).

“**Personal Information**” for the purposes of this Agreement, means any information that can be attributed to an identified or identifiable natural person and is protected under applicable privacy laws, rules, and regulations.

“**Professional Services**” means any consulting, implementation, integration, configuration, support, training,

or other professional or supplementary services that may be provided to Customer under an Ordering Document.

“**Prohibited Data**” means (i) credit card numbers or bank account numbers, and (ii) any information that that is regulated by (a) the Gramm–Leach–Bliley Act, also known as the Financial Services Modernization Act of 1999 (together with any regulations promulgated thereunder); or (b) the Health Insurance Portability and Accountability Act of 1996 (as amended, and together with any regulations promulgated thereunder, including without limitation the Health Insurance Reform: Security Standards (Security Rule)); or (c) the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (as amended).

“**Quinyx Service**” means Quinyx’s proprietary subscription-based cloud software solution(s), as identified in the applicable Ordering Document, and as further described in the Feature List.

“**Services**” means the specific Quinyx Service(s), Professional Services, Deliverables, and Quinyx Data provided to Customer under this Agreement, in each case as identified in the applicable Ordering Document.

“**Statement of Work**” or “**SOW**” means a document agreed by the parties further detailing any Professional Services to be provided by Quinyx under the Agreement.

“**Support Portal**” means the Customer support portal available at [support.quinyx.com](http://support.quinyx.com).

“**Units**” means a location owned or operated by Customer where Users are permitted to use the Services.

“**User**” means individuals who are authorized by Customer to use the Services. Users consist of Customer’s (or Customer’s Affiliate’s) employees and contractors acting solely on Customer’s (or its Affiliates’) behalf.

### 2. **SERVICES.**

**2.1 Right to Use.** Subject to this Agreement and the payment of fees set forth on the applicable Ordering Document, Quinyx grants to Customer, solely during the term of the applicable Ordering Document, a non-exclusive, non-transferable (except as set forth in Section 14.6 (Assignment)) license to allow the number of Users and/or Units (each as set forth in the applicable Ordering Document) to access and use the Services solely for Customer’s internal business purposes. This license is restricted to use by Customer and Customer’s Users and does not include the right to use the Services on behalf of any third party. Customer acknowledges and agrees that Quinyx shall only provide Customer with the specific Services specified on the Ordering Document, and not any other products or services that Quinyx may offer.

**2.2 SLA; Support.** The Quinyx Service is provided in accordance with, and is subject to, the service level addendum available at [quinyx.com/sla](http://quinyx.com/sla) (“**SLA**”). Further, Quinyx shall, during the term of the Ordering Document, provide



maintenance and support of the Quinyx Service in accordance with Good Industry Practice, these Terms and the applicable Success Plan (as indicated in the Ordering Document), as further detailed at [quinyx.com/plans](https://quinyx.com/plans). Quinyx may update the aforementioned documents from time to time, provided however that the SLA terms and the level of support shall not be degraded during the term of the Ordering Document.

**2.3 Restrictions.** Unauthorized use, resale, or commercial exploitation of the Services is not permitted, and Customer may not directly or indirectly: (i) modify, alter, adapt, translate or the Services or create derivative works of the Services; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure, underlying ideas, underlying user interface, techniques or algorithms of the Services or any portion thereof; (iii) access the Services in order to build a competitive product or service; (iv) copy, license, sell, transfer, make available, lease, or distribute the Services, or assign access and use the Services to any third party; or (v) use the Services for any timesharing, service bureau, subscription, rental or the provision of other computer based services to third parties.

### **3. PROFESSIONAL SERVICES.**

**3.1 Professional Services.** If Customer has purchased Professional Services, such Professional Services are provided in accordance with the applicable SOW, Quinyx's Professional Services project methodology documentation in its latest form (as amended from time to time) made available at [quinyx.com/policies](https://quinyx.com/policies), Good Industry Practice, as well as these Terms.

**3.2 Collaboration.** Each party shall use commercially reasonable efforts to (i) ensure that all information provided to the other party is accurate and provided in a timely manner, (ii) meet any stipulated timelines and (iii) apply such time, attention, resources, trained personnel, and skills as it deems necessary for the due and proper performance of the relevant obligation. The parties shall notify each other of any circumstances that may have an impact on the performance of its obligations, and otherwise perform their respective obligations in a manner that will enable delivery of the Professional Services. In the event of a delay related to the performance of Professional Services caused by a party (or any person acting on such party's behalf), the other party shall not be liable for such delay and the parties shall agree on any timeline modifications and/or other amendments associated with such delay.

**3.3 Deliverables.** Quinyx hereby grants Customer a non-exclusive, non-transferable license to use any Deliverables developed by Quinyx in the performance of Professional Services and delivered to Customer, upon Customer's payment in full of all amounts due for such Deliverables, solely in conjunction with, and consistent in scope with, Customer's permitted use of the Quinyx Service under this Agreement.

**3.4 Non-Solicitation.** To the extent permitted by applicable law, Customer shall not, without the prior written consent of Quinyx, at any time during the term of this Agreement and for a period of six (6) months after its termination or expiry, attempt to solicit or entice away from Quinyx or its Affiliates any personnel who is actually engaged in the performance of Services under this Agreement, except

where such personnel have responded to a general advertising campaign for the relevant role.

### **4. OBLIGATIONS.**

**4.1 Mutual Obligations.** Quinyx will in its provision of Services, and Customer will in its use of the Services: (a) not knowingly input or upload into the Services any virus or other form of malicious code; and (b) comply with all applicable United States federal and state laws and regulations, including applicable United States bribery laws, export control laws, and privacy laws.

**4.2 Quinyx Obligations.** In addition to the other obligations set forth in this Agreement, Quinyx shall comply with its Code of Conduct, in its latest form made available at [quinyx.com/policies](https://quinyx.com/policies), as amended from time to time.

**4.3 Customer Obligations.** In addition to the other obligations set forth in this Agreement (e.g., the timely payment of applicable fees), Customer agrees to (i) take reasonable precautions to prevent unauthorized or improper use or disclosure of the Services; (ii) not remove, alter or obscure any trademark, proprietary label or notice associated with the Services; and (iii) with regards to compliance with United States export control laws, not disclose any Customer Data or other information requiring an authorization to be exported unless the authorization is required solely for export to countries subject to trade sanctions. Further, Customer shall be responsible for its Users' compliance with this Agreement

**4.4 Limited Right to Suspend.** Without limiting any other remedies, Quinyx may suspend its provision of Services to Customer if Customer violates the restrictions on use, its obligations or responsibilities under this Agreement, or if Quinyx determines in good faith that such suspension is necessary to comply with applicable law or to prevent significant harm to any other customer, provided that Quinyx uses commercially reasonable efforts to suspend only that portion of the Services as is reasonably necessary to prevent the occurrence or continuation of the violation or harm. To the extent feasible and taking into account the impact on the security of the Services, Quinyx will use commercially reasonable efforts to notify Customer in advance of any such suspension.

### **5. DATA.**

**5.1 Customer Data.** Customer retains ownership of all right, title, and interest in and to all Customer Data. Customer grants Quinyx a royalty-free, non-exclusive license to access and use the Customer Data in accordance with this Agreement.

**5.2 Customer Responsibilities.** Customer represents and warrants that it either owns or otherwise possesses all rights, approvals, licenses, consents, and permissions as are necessary to perform its obligations under this Agreement, exercise its rights under this Agreement, and allow Quinyx to use the Customer Data under this Agreement. The aforementioned includes in particular that Customer has (and will have) processed, collected, and disclosed all Customer Data and provided any notice and obtained all consents and rights as required by applicable law. Neither Customer nor Customer's Users shall use the Quinyx Service to: (i) send, upload, or otherwise transmit any Customer Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar,

obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable; or (ii) intentionally interfere with or disrupt the Quinyx Service or networks connected to the Quinyx Service.

**5.3 Usage Data.** Customer acknowledges and agrees that during the term of this Agreement and thereafter, Quinyx may collect, analyze, copy, display and use Usage Data for the purposes of providing, operating, analyzing, and improving the Services and other Quinyx products and services. Quinyx may disclose Usage Data for the purposes of benchmarking and online marketing, provided however Quinyx will not disclose any Usage Data unless it is in an aggregated or anonymized format that would not permit a third party to identify the data as associated with Customer or any individual. **"Usage Data"** means anonymized or aggregated data, statistics, usage analytics and analysis derived from the Services and Customer's use thereof.

## **6. SECURITY.**

**6.1 Information Security.** Quinyx shall implement commercially reasonable measures designed to ensure the integrity and security of Customer Data. During the term of this Agreement, Quinyx shall maintain and comply with a formal information security program that is reasonably designed to: (i) ensure the security and integrity of Customer Data; (ii) protect against threats or hazards to the security or integrity of Customer Data; and (iii) prevent unauthorized access to or disclosure of Customer Data. This security program is further described in the latest version of Quinyx's Information Security Overview-document, as made available from time to time at [quinyx.com/policies](https://quinyx.com/policies) ("**Information Security Overview**"). Quinyx has and will maintain for the duration of the Agreement ISO/IEC 27001 certification or equivalent for the Services. In the event Quinyx experiences a security breach which actually affects Customer Data, Quinyx shall promptly: (i) notify Customer in writing; and (ii) to the extent known by Quinyx, promptly advise Customer of when, how, and why the breach occurred and what portion of Customer Data was affected.

**6.2 DPA.** The terms of the Data Processing Addendum, available at [quinyx.com/dpa](https://quinyx.com/dpa) (the "**DPA**"), is incorporated into this Agreement and shall apply if and as relevant under applicable mandatory law.

**6.3 Modifications.** Quinyx may update the Information Security Overview and DPA from time to time, provided however, that any changes will not degrade the information security policies and procedures in place. Quinyx shall inform Customer of any significant changes to these documents/policies through publication on the Support Portal, and such amended version will become effective one (1) month (at the earliest) thereafter unless Quinyx reasonably considers that such amendment should come into force earlier due to critical security reasons and/or to ensure that Quinyx or the Customer is compliant with applicable law.

**6.4 Data Backups.** In the event of any loss or damage to Customer Data, Quinyx will use reasonable commercial efforts to restore the lost or damaged Customer Data from the latest backup of such Customer Data that is maintained by Quinyx in accordance with the Information Security Overview. If Customer Data is deleted, lost, altered, or damaged by Customer using Customer's own logins or if Customer has

otherwise by its own or its authorized action deleted, lost, altered or damaged Customer Data, Quinyx shall have the right to charge Customer for the work on the recovery of such Customer Data on time and material basis in accordance with its then current price list.

## **7. FEES.**

**7.1 Fees.** Customer agrees to pay Quinyx for Services provided and expenses incurred on the basis and at the rates specified in each Ordering Document. Except as expressly set forth in this Agreement or the applicable Ordering Document, Ordering Documents may not be canceled or refunded.

**7.2 Taxes.** Fees are exclusive of taxes, and all amounts due shall be paid in full without any withholding, deduction, set-off or counterclaim. Customer is 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 Quinyx's net income and any taxes or obligations imposed upon Quinyx under federal, state, and local wage laws. To the extent that the Customer pays, deducts and or withholds any tax, duty, commission or other withholding, then the Customer shall gross up the relevant amount payable under the Agreement so as to ensure that, after making the deduction or withholding, Quinyx receives the full amount as expressed in this Agreement.

## **8. CONFIDENTIALITY.**

**8.1 Confidential Information.** "**Confidential Information**" means information that is: (a) designated in writing as proprietary or confidential, or (b) reasonably considered confidential given the nature of the information or the circumstances under which it was disclosed. The receiving party shall use the other disclosing party's Confidential Information only to exercise its rights and perform its obligations under or in connection with the Agreement.

**8.2 Non-disclosure.** The receiving party must not disclose the disclosing party's Confidential Information to any person or entity *except* to Affiliates and its and their directors, officers, employees, independent contractors, subcontractors, outside consultants, agents, or advisors ("**Representatives**") who (i) have a need to know such Confidential Information in the course of the performance of their duties for the receiving party and (ii) are bound by a duty of confidentiality no less protective of the disclosing party's Confidential Information than this Agreement. Each party accepts responsibility for the actions of its Representatives and will protect the other party's Confidential Information in the same manner as it protects its own, but in no event less than reasonable care.

**8.3 Not Confidential Information.** Information is not Confidential Information if it: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information.

**8.4 Compelled Disclosure.** The receiving party may disclose Confidential Information pursuant to the requirements



of applicable law, legal process, or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

## **9. WARRANTY.**

**9.1** *Quinyx Service Warranty.* Quinyx warrants that during the term of any Ordering Document for the Quinyx Service, the Quinyx Service will conform, in all material respects, (i) as described in applicable parts of the then-current Feature List for the Quinyx Service and (ii) in accordance with the applicable Documentation. For any breach of the above warranty, Quinyx will, at no additional cost to Customer, provide remedial services necessary to enable the Quinyx Service to conform to the warranty. Customer will provide Quinyx with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. If, however, after reasonable efforts, Quinyx is unable to remedy such defect in the Quinyx Service, then Customer may elect to terminate the applicable Ordering Document and Quinyx shall refund to Customer any unused amounts previously paid by Customer for the applicable Quinyx Service. The remedies set out in this section are Customer's sole remedies for breach of this warranty. This warranty will only apply if the Quinyx Service have been utilized by Customer in accordance with the Agreement.

**9.2** *Professional Services Warranty.* Quinyx warrants that any Professional Services provided hereunder shall be provided in accordance with Good Industry Practice and, in all material respects, in accordance with any specifications set forth in the Ordering Document and/or a SOW. Quinyx further warrants that any Deliverables provided pursuant to any Professional Services engagement shall comply, in all material respects, with the specifications set forth in the Ordering Document and/or a SOW. If the Professional Services are not performed as warranted or the Deliverables do not comply, then, upon Customer's written request, Quinyx shall promptly re-perform, or cause to be re-performed, such Professional Services, at no additional charge to Customer. Such warranties and other obligations shall only survive for sixty (60) days following the completion of the Professional Services or the delivery of each applicable Deliverable, as the case may be. If, however, after repeated efforts, Quinyx is unable to remedy such defect in any Deliverable, then Quinyx shall refund to Customer any amounts previously paid by Customer for the particular deficient Professional Services or Deliverables. The remedies set out in this section are Customer's sole remedies for breach of this warranty.

**9.3** *Disclaimers.* EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 9, QUINYX MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND TO CUSTOMER, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR BE UNINTERRUPTED OR ERROR-FREE. QUINYX MAKES NO WARRANTY REGARDING FEATURES OR SERVICES PROVIDED BY THIRD PARTIES. NO ADVICE OR INFORMATION THAT CUSTOMER MAY OBTAIN FROM QUINYX CREATES ANY REPRESENTATION OR WARRANTY. QUINYX DOES NOT ACT AS AN

ATTORNEY. NOTHING PROVIDED BY QUINYX IN CONNECTION WITH THIS AGREEMENT CONSTITUTES LEGAL, TAX, FINANCIAL OR BUSINESS-RELATED ADVICE OR ENSURES CUSTOMER'S COMPLIANCE WITH ANY APPLICABLE LEGISLATION, REGULATIONS OR COLLECTIVE BARGAINING AGREEMENTS. CUSTOMER IS RESPONSIBLE FOR ENSURING THAT IT ENGAGES AN APPROPRIATE NUMBER OF PERSONNEL AT EACH UNIT TO MEET ITS OWN BUSINESS REQUIREMENTS.

## **10. INTELLECTUAL PROPERTY.**

**10.1** *Quinyx Intellectual Property.* As between Quinyx and Customer, all right, title and interest in and to (i) the Services (and all Quinyx's other products and services), (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 Quinyx's or its licensors' sole and exclusive property, and Quinyx in no way conveys any right or interest in the Services or any Modifications other than a limited license to use the Services in accordance herewith. Quinyx also retains ownership of all right, title, and interest in and to all Usage Data. Quinyx may utilize without restriction any and all methods, computer software, know-how or techniques related to programming and processing of data, developed by Quinyx while providing the Services.

**10.2** *Feedback.* Quinyx welcomes ideas, suggestions, and feedback about the Services ("**Feedback**"). Customer provides Feedback voluntarily, and Quinyx may use and incorporate any Feedback into the Services and Quinyx's other products and services without restriction. Feedback is not confidential. Quinyx is under no obligation to pay compensation or provide attribution for any Feedback.

## **11. LIMITATION OF LIABILITY.**

**11.1** *Exclusion of Liability.* NEITHER PARTY WILL BE LIABLE FOR ANY 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 THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES.

**11.2** *Limitation of Liability.* QUINYX'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED 50% OF THE FEES ACTUALLY PAID BY CUSTOMER TO QUINYX FOR THE QUINYX SERVICE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**11.3** *Increased Level of Liability.* NOTWITHSTANDING SECTION 11.2, QUINYX'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH





ITS INDEMNIFICATION OBLIGATIONS OR BREACH BY QUINYX OF ITS OBLIGATIONS UNDER SECTION 6 (INCLUDING THE DPA) OR SECTION 8, SHALL FOR EACH CONTRACT YEAR BE LIMITED TO THE GREATER OF (A) \$500,000 (FIVE HUNDRED THOUSAND DOLLARS) AND (B) FIVE TIMES (5X) THE FEES ACTUALLY PAID BY CUSTOMER TO QUINYX FOR THE QUINYX SERVICE IN THE CONTRACT YEAR OF THE EVENT GIVING RISE TO THE CLAIM.

**11.4 Exclusions.** Nothing in the Agreement limits or excludes a party's liability for: (i) fraud or fraudulent misrepresentation; (ii) any willful misconduct; or (iii) any other liability which cannot be limited or excluded by applicable law. The limitations of liability set forth in this Agreement shall not limit Customer's obligation to pay any fees due and owing under this Agreement.

## **12. TERM & TERMINATION.**

**12.1 Term and Termination.** This Agreement enters into force on the date of execution by both parties of the first Ordering Document and will continue until there are no Ordering Documents in effect, unless otherwise terminated under this section 12. Either party may terminate this Agreement or an Ordering Document (i) immediately in the event of a material breach of this Agreement or any such Ordering Document 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 an Ordering Document will not terminate this Agreement, unless there are no other active Ordering Documents currently in effect. Termination of this Agreement will terminate all outstanding Ordering Documents. 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 this Agreement and each Ordering Document.

**12.2 Effect of Termination.** Upon any termination or expiration of this Agreement, Quinyx will no longer provide the Services to Customer, and Customer will stop using the Services. Customer will promptly pay Quinyx for all fees that have accrued prior to the termination date. Upon termination of this Agreement, each party will promptly return or destroy all Confidential Information of the other party in its possession. Prior to the effective date of termination, Customer may retrieve a copy of Customer Data in accordance with Quinyx's established and reasonable system access procedures. After such period, Quinyx will have no further obligation to store and/or make available Customer Data and shall delete the same within ninety (90) days following termination (or earlier upon Customer's written request) in accordance with Quinyx's standard data deletion policies. For the avoidance of doubt, the foregoing obligation does not apply to backup copies, which shall be deleted in accordance with Quinyx's standard data deletion policies.

## **13. INDEMNIFICATION.**

**13.1 Quinyx Indemnification.** Quinyx will indemnify, defend and hold Customer 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 a third party against Customer alleging that the use of the Services as permitted hereunder infringes any patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above obligations are claims to the extent arising from (i) use of the Services in violation of this Agreement or applicable law, (ii) use of the Services after Quinyx notifies Customer to discontinue use because of an infringement claim, (iii) any claim relating to any third party products or services, (iv) any claim relating to Customer Data, (v) modifications to the Services made by anyone other than Quinyx (where the claim would not have arisen but for such modification), or (vi) the combination, operation, or use of the Services with software, materials, data or equipment which was not provided by Quinyx, to the extent that Customer's liability for such claim would have been avoided in the absence of such combination, operation, or use. If the Services are held to infringe, Quinyx will, in its discretion and at its own expense either (a) to procure a license that will protect Customer against such claim without cost to Customer; (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 this Agreement or the applicable Ordering Document and refund to Customer any prepaid unused fees paid to Quinyx for the infringing Services. The rights and remedies granted to Customer under this section 13.1 state Quinyx's entire liability, and Customer's exclusive remedy, with respect to any third-party claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

**13.2 Customer Indemnification.** Customer shall indemnify, defend, and hold Quinyx harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Quinyx that arises out of or results from a claim alleging that Customer Data, or any use thereof as permitted under this Agreement, infringes the intellectual property rights or proprietary rights of a third party.

**13.3 Procedure.** 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).

## **14. GENERAL PROVISIONS.**

**14.1 Governing Law.** This Agreement 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. The parties irrevocably consent and submit to the exclusive personal jurisdiction of such courts. 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.

**14.2 Force Majeure.** Non-performance 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, power outages, or any other reason where failure to perform is beyond the reasonable control of the non-performing party (“**Force Majeure Event**”), but only during the period that the fulfillment is prevented or delayed and provided that the affected party uses commercially reasonable efforts to mitigate the effect of the Force Majeure Event on the performance of its obligations.

**14.3 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 applicable Ordering Document 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.

**14.4 Modifications.** Quinyx may make modifications to the Quinyx Service or components of the Quinyx Service, including the Feature List, from time to time provided that such modifications do not materially degrade any functionality or features of the Quinyx Service during the term of the applicable Ordering Document, as measured reasonably against the applicable Feature List elements and their specific characteristics at the time of signing of the Agreement. Quinyx shall notify Customer of any substantial changes to the Quinyx Service or components of the Quinyx Service through publication on the Support Portal at least seven days prior to the change becoming effective, unless Quinyx reasonably considers that such amendment should come into force earlier due to critical security reasons and/or to ensure that Quinyx or the Customer is compliant with applicable law.

**14.5 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 this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

**14.6 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 to an Affiliate or in connection with a corporate reorganization, merger, acquisition, or sale of all or substantially all its assets without consent. Any attempted assignment or delegation in violation of this section will be null, void and of no effect. 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.

**14.7 Injunctive Relief.** Both parties acknowledge that any use of a party’s Confidential Information or intellectual property in breach of this Agreement may cause the non-breaching party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that the non-breaching party shall be entitled to an injunction to restrain such use in addition to other appropriate remedies available under applicable law or this Agreement.

**14.8 Insurance.** Quinyx is insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which Quinyx is engaged. Quinyx has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business. Upon request Quinyx shall provide a certificate of insurance evidencing such coverage.

**14.9 Miscellaneous.** 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. Each party is an independent contractor, and nothing in this Agreement shall be construed as a partnership or creating the relationships of employer and employee, or principal and agent, for any purpose whatsoever. Nothing contained in this Agreement 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. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by Customer shall be of no force or effect, even if the purchase order is accepted by Quinyx. This Agreement 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 this Agreement in construing or interpreting the provisions hereof. Unless otherwise expressly provided, the word “including” means “including without limitation” and does not limit the preceding words or terms. All references to “in writing” shall include electronic mail. Except as expressly set forth herein, all remedies and rights contained in this Agreement are cumulative and do not limit any other remedy or right available to such party.