

VERGESENSE, INC.
SERVICE SUBSCRIPTION AGREEMENT

This **VERGESENSE SERVICE SUBSCRIPTION AGREEMENT** (the "**Subscription Agreement**") is a legal agreement made and entered into as of the date of invoice on the Order Form entered into by and between VergeSense, Inc., a Delaware corporation ("**VergeSense**"), and you, the customer accessing the Software whether directly or through a reseller ("**you**" or "**Customer**"). This Subscription Agreement describes the terms on which you may access and use the Software. If you are entering into this Subscription Agreement on behalf of an entity, this Agreement shall be expressly binding on all employees, directors and officers, agents, and assigns who access or use the VergeSense Service. The VergeSense Service provides a Workplace Analytics Platform that provides real-time data, analysis, and insights that drive workplace strategy and applications. Customer desires to obtain access to the VergeSense Service for its internal business purposes.

BY SIGNING THE ORDER FORM ("**FORM**" OR "**ORDER FORM**") YOU AGREE TO THE TERMS AND CONDITIONS IN THIS SUBSCRIPTION AGREEMENT GOVERNING YOUR USE OF THE VERGESENSE SERVICE, WHICH MAY INCLUDE HARDWARE, DATA LICENSES, CLOUD AND API ACCESS, AND ALL CONNECTIVITY AND CONFIGURATION COSTS (GATEWAYS AND COMMISSIONING) AND ASSOCIATED MEDIA, PRINTED MATERIALS, AND ELECTRONIC DOCUMENTATION ("**VERGESENSE SERVICE**").

The terms of this Subscription Agreement take precedence over any inconsistent terms in the Order Form. If you have entered into a separate written agreement with VergeSense regarding the use of the Software, then the terms of that agreement will prevail and will govern your use of the Software. If you have ordered the Software through a VergeSense reseller, the terms of this Agreement shall apply to the exclusion of all other varying terms and conditions other than the terms of the Order Form placed by the reseller for you. The reseller is responsible for the accuracy of any such order.

1. Definitions

The following definitions shall apply to this Agreement:

1.1 "Confidential Information" shall have the meaning established in Section 5.1 of this Agreement.

1.2 "Credential" shall mean any user ID, password, license key or other information that VergeSense or Customer issue to any User in order to administer, identify or secure the User's access to and use of the VergeSense Service.

1.3 "Customer Data" shall mean any data that is (i) entered into, processed by, or generated from Customer's use of, the VergeSense Service or (ii) provided to VergeSense by Customer in the course of VergeSense providing Support to Customer.

1.4 "Deliverable" shall mean any invention, work of authorship, information or other work product, other than the VergeSense Service, that is provided to Customer by VergeSense in the course of performing Support.

1.5 "Documentation" shall mean all textual material, whether printed or electronic, that describes the design, function, operation or use of the VergeSense Service and that is made available by VergeSense in conjunction with the VergeSense Service.

1.6 “Hardware” shall mean any physical products, including VergeSense sensors, that need to be installed in order to deliver the VergeSense Service.

1.7 “Software” shall mean the VergeSense proprietary software described in the introductory paragraph of this Subscription Agreement.

1.8 “Order” shall mean VergeSense’s standard form for ordering Software and Support that is signed by VergeSense and incorporates this Agreement by reference.

1.9 “Support” shall comprise the technical support Support and professional services provided to Customer by VergeSense in connection with the VergeSense Service, as described in the VergeSense Support Policy available at <https://www.vergesense.com/legal>.

1.10 “VergeSense Service” shall comprise the Software and Hardware as well as any Support, Documentation and Updates related to the Software.

1.11 “Update” shall mean any error correction, enhancement, new release or other modification to the Software that VergeSense makes generally available to its customers.

1.12 “User” shall mean any employee or agent of Customer who is authorized to use the VergeSense Service pursuant to this Agreement.

2. The VergeSense Service

2.1 Use of the VergeSense Service. Subject to the terms and conditions of this Agreement, VergeSense hereby grants Customer, for the term of this Agreement, a non-exclusive, non-transferable, non-sublicensable right to access and use the VergeSense Service in accordance with this Section 2, solely for Customer’s internal use.

2.2 Users. Customer shall remain directly liable to VergeSense for any acts or omissions of any User. Customer shall only provide Credentials to Users who are authorized, pursuant to this Agreement, to use the VergeSense Service, and Customer shall be responsible for ensuring the security of all Credentials. In the event of any actual or suspected compromise of any Credential or any other potential unauthorized access to the VergeSense Service, Customer shall immediately notify VergeSense thereof, and shall provide VergeSense with all reasonable cooperation to mitigate such unauthorized access. VergeSense reserves the right to suspend or terminate any User’s access to the VergeSense Service in the event that VergeSense reasonably believes that a User has violated the terms of this Agreement or of any applicable laws or regulations.

2.3 Restrictions. The VergeSense Service shall not be used for any purpose other than as expressly authorized by this Agreement. In particular, but without limitation, Customer agrees that it will not (and will not permit any end users to):

- a. Make the VergeSense Service available to, or use the VergeSense Service on behalf of, any third party (including without limitation, any agent or affiliate of Customer), without the written consent of VergeSense;

- b. Use the VergeSense Service for purposes of benchmarking or reverse-engineering;
- c. Compromise the integrity or performance of the VergeSense Service or of any system, network or data used to provide the VergeSense Service;
- d. Circumvent, disable or disrupt any technical measures that VergeSense uses to administer, protect, or operate the VergeSense Service; or
- e. Use the VergeSense Service for any purpose that is deceptive, fraudulent, obscene, defamatory, threatening, harassing, tortious or unlawful.

2.4 Reservation of Rights. Nothing in this Agreement shall be deemed to grant Customer, either directly or by implication, estoppel, or otherwise, any license or rights other than those expressly granted in Sections 2.1 and 2.2 of this Agreement. By virtue of this Agreement, Customer acquires only the right to use the VergeSense Service and does not acquire any other rights or ownership interests. VergeSense reserves all rights to the VergeSense Service not expressly granted to Customer under this Agreement.

2.5 Use of AI Technology.

- a. Some or all of the VergeSense Service may incorporate the use of artificial intelligence technology, including, without limitation, machine learning, deep learning, and other artificial intelligence technologies, including statistical learning algorithms, models (including large language models), neural networks, and other artificial intelligence tools or methodologies, and all software implementations of any of the foregoing (collectively, “**AI Technology**”). Customer may submit Customer Data (defined below) (including in the form of prompts or queries) to the AI Technology (“**Inputs**”) and receive outputs from the AI Technology (“**Outputs**”). VergeSense may use Inputs and Outputs to train or otherwise improve the AI Technology, but only if the Inputs and Outputs are part of an Anonymized Dataset (as defined below). For such training purposes, VergeSense acknowledges that Customer is providing the Inputs and Outputs to VergeSense strictly on an as-is basis with no representations or warranties of any kind.
- b. Customer is authorized to use Outputs subject to the terms of this Agreement and the relevant Orders. Customer acknowledges that Outputs provided to Customer may be similar or identical to Outputs that VergeSense independently provides to other customers based on that customer’s Inputs. Due to the nature of the AI Technology, VergeSense does not represent or warrant that (a) any Output does not incorporate or reflect third-party content or materials or (b) any Output will not infringe third-party intellectual property rights. Claims of intellectual property infringement or misappropriation by Outputs shall not be considered an indemnifiable claim under Section 8. Outputs are generated using machine learning processes and may contain inaccuracies or omissions. While VergeSense strives to provide reliable information, the Outputs have not been independently verified by VergeSense and VergeSense makes no representation or warranty as to their accuracy, completeness, or timeliness. Customer should independently review and verify all Outputs as to appropriateness for any or all Customer use cases or applications. The warranty disclaimers and limitations of liability set forth in Section 7 and 9 of

this Agreement apply to the AI Technology.

3. License to VergeSense Service and access to Support

3.1 VergeSense Service. VergeSense shall sell to Customer the VergeSense Service as described in the applicable Order and in accordance with the VergeSense Service Level Agreement available at <https://www.vergesense.com/legal>. In addition, VergeSense grants Customer a revocable, non-exclusive, worldwide right to access and use the Software.

3.2 Support. VergeSense shall provide Customer with Support in accordance with the VergeSense Standard Support Policy available at <https://www.vergesense.com/legal>.

4. Payment

4.1 Fees. Unless Customer has ordered the VergeSense Service through a VergeSense reseller, in which case payment and delivery terms shall be addressed in Customer's agreement with the applicable reseller, Customer shall pay to VergeSense all fees set forth in the applicable Order.

4.2 Terms. Unless accessing the VergeSense Service through a reseller, in which case the terms of the agreement with the reseller shall prevail, (i) all payments to VergeSense set forth in the applicable Order Form shall be paid in U.S. dollars transmitted by wire transfer to VergeSense's designated bank account, and (ii) Customer shall pay any amounts owed to VergeSense on the date specified and according to the terms of this Agreement. Unless expressly provided otherwise in the applicable Order Form, all fees are non-refundable and non-cancelable. If no due date is specified for a payment, then that payment shall be due and payable net thirty (30) days after the earlier of (y) the date on which the applicable portion of the VergeSense Service or the Support was delivered by VergeSense, or (z) the date of VergeSense's invoice therefor. If Customer fails to make any payment when due pursuant to an Order Form executed by Customer, VergeSense may suspend the provision of the VergeSense Service or any Service until payment has been made in full.

4.3 Taxes. Unless accessing the VergeSense Service through a reseller, in which case the terms of the agreement with the reseller shall prevail, Customer shall pay all import duties, levies or imposts, and all sales, use, value added, property, or other taxes of any nature, assessed upon or with respect to any products or services provided to Customer by VergeSense, which are imposed by any community of nations or any nation, or any political subdivision of any nation, but excluding United States taxes based on VergeSense's net income. Customer shall pay on or before their due dates all such taxes, fees, duties and charges which arise out of or in connection with this Agreement or any license or sublicense granted herein or any use of the VergeSense Service. In the event that VergeSense is required at any time to pay any such tax, fee, duty or charge, Customer shall promptly reimburse VergeSense therefor. If Customer is required by law to make any deduction or to withhold from any sum payable to VergeSense by Customer hereunder, then the sum payable by Customer upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after all deduction and withholding, VergeSense receives and retains, free from liability for any deduction or withholding, a net amount equal to the amount VergeSense would have received and retained in the absence of such required deduction or withholding.

4.4 Additional Orders. Unless accessing the VergeSense Service through a reseller, in which case the terms of the agreement with the reseller shall prevail, Customer may order additional VergeSense Services subject to the terms and conditions of this Agreement by executing and delivering to VergeSense a completed Order Form. Such Order Form shall only be effective upon VergeSense's written acceptance thereof. Any purchase order or equivalent document generated by Customer (a "PO") shall only be binding upon VergeSense if it explicitly incorporates an Order Form by reference, and then only to the extent that such PO is consistent with such Order Form. Any terms of the PO which are

inconsistent with or in addition to the terms of this Agreement shall not become part of the agreement between the parties unless such terms are expressly accepted by an Order Form which specifically incorporates them. To the extent that an Order Form may constitute an offer, acceptance thereof shall be limited to the terms of this Agreement; to the extent that an Order Form may constitute an acceptance, such acceptance is conditioned upon Customer's assent to any terms of this Agreement which may be inconsistent with or in addition to the terms of the PO.

5. Confidentiality

5.1 Confidential Information. The term "Confidential Information" means any information that (i) is not generally known or available to others in the trade or (ii) the disclosing party designates in writing as confidential. Customer hereby designates the Customer Data as Confidential Information. VergeSense hereby designates the Software, the Deliverables, and any algorithms, mathematical models, business plans, product plans, financial data or other ideas, techniques or information disclosed in the course of providing the VergeSense Service as Confidential Information.

5.2 Non-Disclosure. The party receiving Confidential Information (the "Recipient") shall, by all appropriate means, protect the confidentiality of the Confidential Information of the other party (the "Discloser"); but in no event shall the Recipient use a lesser standard of care with respect to Confidential Information than it does with respect to Recipient's own most sensitive confidential information. Recipient shall hold the Confidential Information of Discloser in trust and confidence and shall not copy Discloser's Confidential Information or disclose such information to third parties. Recipient shall not use the Discloser's Confidential Information for any purpose other than the performance of its duties under this Agreement. Recipient shall cooperate with Discloser in investigating and resolving any suspected breach of confidentiality. Recipient may disclose Discloser's Confidential Information, on a need-to-know basis, to Recipient's auditors, attorneys or governmental authorities exercising a supervisory, examination or regulatory function in relation to Recipient. All Confidential Information shall be returned by the Recipient to the Discloser when it is no longer needed or at the termination of this Agreement, whichever comes first. The parties' obligations under this Section 5.2 shall continue for a period of three (3) years after termination of this Agreement.

5.3 Exceptions. The obligations set forth in Section 5.2 shall not apply to information which (i) is in the possession of the Recipient prior to the disclosure by the Discloser, (ii) becomes known to the general public through no act or omission of the Recipient, (iii) is lawfully disclosed to the Recipient by a third party, or (iv) the Recipient develops independently without use of any Confidential Information. If Recipient is required by a court or governmental agency to disclose Confidential Information of Discloser, Recipient shall immediately inform Discloser in writing of the order or request for such disclosure and shall take commercially reasonable steps to maintain confidentiality of the Confidential Information.

6. Proprietary Rights

6.1 VergeSense Intellectual Property. Except as expressly provided otherwise in this Agreement, VergeSense shall retain all right, title, and interest in and to the Software, the Deliverables, the VergeSense Confidential Information, and any improvements to any of the foregoing (including without limitation any improvements suggested by Customer or by Customer's usage of the VergeSense Service), as well as any other invention, modification, discovery, design, development, improvement, process, algorithm, software, documentation, formula, data, technique, know-how or other invention, innovation or work of authorship, or any interest therein (whether or not patentable or registrable under copyright or similar statutes or subject to analogous protection) discovered, conceived of, reduced to practice, authored or otherwise developed by VergeSense or its agents.

6.2 Customer Intellectual Property. Customer shall retain all right, title and interest in and to the Customer Data and the Customer Confidential Information.

6.3 Deliverables. VergeSense hereby grants Customer a non-exclusive, non-transferable, non-sublicensable right and license to display, perform, reproduce, modify, and otherwise use any Deliverable solely for Customer's internal use.

6.4 Use of Customer Data; Publicity Rights. Customer hereby grants VergeSense a non-exclusive, non-transferable, non-sublicensable right and license to display, perform, reproduce, modify, and otherwise use the Customer Data for the purposes of providing the VergeSense Service. In addition to the foregoing, Customer hereby grants VergeSense the right to use Customer's company or business name and current and future trademarks, service marks and trade names ("**Marks**") on the VergeSense website or in VergeSense marketing and sales materials solely for the purpose of identifying Customer as a VergeSense customer, subject to usage guidelines or pre-approvals or authorizations that Customer may provide to VergeSense in writing. VergeSense shall not use the Marks for any other purpose without first obtaining Customer's written consent, which shall not be unreasonably withheld.

6.5 Provenance of Customer Data. Customer represents, warrants, and covenants that Customer is the owner or licensee of all Customer Data and that VergeSense's use of such Customer Data in accordance with this Agreement will not violate any right of privacy, personal or proprietary right, or other common law or statutory right of any third party.

6.6 Anonymized Data Analytics. Notwithstanding Section 5, VergeSense may prepare and retain an Anonymized Dataset (as hereinafter defined) that may be partially derived from Customer Data, and may use the Anonymized Dataset for research, performance tuning, product development, predictive analytics, or any other lawful purpose that is not competitive with Customer. In order to qualify as an "Anonymized Dataset," the data retained by VergeSense pursuant to this Section 6.6 must:

- a. Exclude all personally identifiable information; and
- b. Be aggregated with data from other customers of VergeSense, or otherwise be stripped of any information that could be used to identify Customer or any Confidential Information of Customer.

6.7 Third Party Products. The VergeSense Service may inter-operate with certain third-party software or hardware products, including AI Technology ("**Third Party Products**"). VergeSense makes no warranty and assumes no liability with respect to any such Third Party Products. Customer's use of Third Party Products shall be subject to the terms and conditions, if any, imposed by the vendors of such Third Party Products.

7. Warranty

7.1 VergeSense Service Warranty. VergeSense warrants to Customer that, during the term of the Agreement, the VergeSense Service will perform substantially in accordance with this Agreement and the applicable Documentation. VergeSense's sole responsibility, and Customer's exclusive remedy, under the warranty set forth in this Section 7.1 shall be, at VergeSense's option in each case, to (i) use commercially reasonable efforts to correct any substantial non-conformity to this Agreement and such Documentation, or (ii) return the subscription fee paid by Customer for the VergeSense Service and terminate Customer's right to use the VergeSense Service.

7.2 Service Warranty. VergeSense warrants to Customer that all Support will be performed in a professional and workmanlike manner consistent with generally accepted industry standards and practices in accordance with the Support Policy. The re-performance of Support shall be VergeSense's sole obligation in the event of a defect. If, after re-performance of the Service by VergeSense, such Service still does not satisfy the foregoing warranty, then Customer shall, as its sole remedy and

VergeSense's sole liability, be entitled to recover the fees paid to VergeSense for the deficient Service.

7.3 Limitations on Warranties. VergeSense's warranty shall not apply to any claim that is not reported to VergeSense in writing within the warranty period, or which results from (i) use of the VergeSense Service other than in accordance with the Documentation and the terms of this Agreement, (ii) acts or omissions of persons other than VergeSense, (iii) hardware, software, firmware or other products not provided by VergeSense, or (iv) any other cause beyond Verge sense's reasonable control.

7.4 Disclaimer. THE EXPRESS WARRANTIES DESCRIBED OR REFERENCED IN THIS SECTION 7 ARE THE ONLY WARRANTIES MADE BY VERGESENSE WITH RESPECT TO THE VERGESENSE SERVICE OR THE SUPPORT, AND ARE IN LIEU OF, AND VERGESENSE HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, CONDITIONS OR REPRESENTATIONS (WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN), INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INFORMATION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT VERGESENSE KNOWS OR HAS REASON TO KNOW OF SUCH PURPOSE), WHETHER ARISING BY LAW, CUSTOM, USAGE IN THE TRADE OR BY COURSE OF DEALING. VERGESENSE SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE VERGESENSE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE. IN ADDITION, VERGESENSE EXPRESSLY DISCLAIMS ANY WARRANTIES TO ANY PERSON OTHER THAN CUSTOMER.

8. Intellectual Property Infringement

8.1 Infringement Indemnity. VergeSense shall defend or, at its option, settle, any claim, action or proceeding brought against Customer to the extent that it is based upon a claim that the VergeSense Service infringes an issued United States patent, copyright or trade secret of a third party, and shall indemnify Customer against all damages and costs finally awarded against Customer by a court of competent jurisdiction in any such action or proceeding. VergeSense shall have no liability under this Section 8.1 unless Customer (i) promptly notifies VergeSense in writing of the claim, (ii) gives VergeSense sole control of the defense of such claim and all negotiations for the compromise or settlement thereof and (iii) provides VergeSense with all reasonable cooperation, information and assistance in connection with the claim. VergeSense shall have no liability hereunder for any costs incurred or settlement entered into without its prior written consent.

8.2 Mitigation. If the VergeSense Service or any part thereof becomes, or in VergeSense's opinion is likely to become, the subject of a valid claim of infringement or the like, VergeSense shall have the right, at its option and expense, either to (i) obtain for Customer a license permitting the continued use of the VergeSense Service, (ii) replace or modify the VergeSense Service so that it becomes non-infringing, or (iii) refund any unearned fees to Customer and terminate Customer's right to use the VergeSense Service.

8.3 Limitations. VergeSense shall have no liability with respect to any infringement claim based upon (i) the combination of the VergeSense Service with other products or services not provided by VergeSense, (ii) any use of the VergeSense Service in the practice of a process not authorized by VergeSense, or (iii) Customer's instructions, advice, assistance or other activity.

8.4 Disclaimer. THE PROVISIONS OF THIS SECTION 8 STATE THE EXCLUSIVE LIABILITY OF VERGESENSE AND THE EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT BY THE VERGESENSE SERVICE, ANY PART THEREOF OR THE USE THEREOF, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF NONINFRINGEMENT, AND INDEMNITIES WITH RESPECT THERETO.

9. Limitation of Liability

9.1 Maximum Liability. In no event shall either party's cumulative liability, whether in contract, tort, or otherwise, arising out of or in connection with the VergeSense Service or this Agreement, exceed the amount of any fees paid or due to VergeSense by Customer during the twelve (12) months preceding such claim.

9.2 Exclusion of Non-Direct Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR TORT DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THE VERGESENSE SERVICE OR THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.3 Third-Party Liability. Portions of the VergeSense Service may be derived from or incorporate third-party software and no such third party warrants the VergeSense Service, assumes any liability in connection with the VergeSense Service or undertakes to furnish any support or information relating to the VergeSense Service. VergeSense shall be responsible for any aspect of the VergeSense Service that is derived from or incorporates third-party software to the same extent as if that aspect had been developed solely by VergeSense.

9.4 General. The limitations contained in this Section 9 shall survive the termination of this Agreement and apply notwithstanding any failure of essential purpose or any invalidity of the limited remedies provided for in this Agreement. The limitations set forth in Sections 9.1 and 9.2 above shall not apply to (i) any breach of Section 5 of this Agreement or (ii) any claims for indemnification pursuant to Section 6.5 or Section 8 of this Agreement.

10. Term and Termination

10.1 General. This Agreement is a master agreement that may be incorporated by multiple Orders. Each Order shall constitute a separate and divisible contract between VergeSense and the entity entering into such Order.

10.2 Term of the Agreement. The term of this Agreement shall be for as long as the VergeSense Service under the applicable Order Form remain outstanding, unless earlier terminated in accordance with Section 10.4.

10.3 Term of Each Order. The initial term of each Order shall be as set forth in the applicable Order (the "**Initial Order Term**"). Each Order shall automatically renew for additional periods of twelve (12) months (each, a "**Renewal Order Term**"), unless either party provides the other with notice of non-renewal at least ninety (90) days prior to the commencement of such Renewal Order Term. The Initial Order Term and any Renewal Order Terms shall be collectively referred to as the "**Order Term**".

10.4 Termination. In the event that either party (the "**Breaching Party**") materially breaches any of its duties or obligations under an Order and does not substantially cure such breach within thirty(30) days after being given written notice specifying the breach, then the other party (the "**Non-Breaching Party**") may terminate the affected Order upon written notice thereof to the Breaching Party. If the breach is such that it necessarily affects all outstanding Orders, or this Agreement itself, then the Non-Breaching Party may elect to terminate this Agreement as well.

10.5 Effect of Termination. Termination of an Order or this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve Customer's obligation to pay all fees that accrued prior to such termination. Neither

party shall be liable to the other party for any costs or damages of any kind, including incidental or consequential damages, or for indemnification, solely on account of the lawful termination of an Order or this Agreement, even if informed of the possibility of such damages.

10.6 Hardware. Subject to the restrictions set forth in Section 2.3, upon termination of this Agreement, Customer may, at its option, recycle or store the Hardware. VergeSense shall have no obligation to remove, retrieve, or dispose of the Hardware on behalf of Customer.

10.7 Survival. The provisions of Sections 4, 5, 6, 7.4, 9, 10.5, 10.6, 10.7, and 11 of this Agreement shall survive any expiration or earlier termination of an Order or this Agreement.

11. General Provisions

11.1 Entire Agreement. This Agreement, including any exhibits or schedules attached hereto, constitutes the entire understanding and agreement of the parties with respect to the subject matter thereof, and supersedes any and all prior or contemporaneous representations, understandings or agreements, whether oral or written, between the parties relating to the subject matter of this Agreement, all of which are merged in this Agreement. The terms and conditions of this Agreement may not be modified or amended other than by a writing signed by both parties.

11.2 Compliance with Laws. Customer shall comply with all applicable laws, regulations, rules, orders and other requirements, now or hereafter in effect, of any applicable governmental authority in connection with this Agreement (including without limitation, any applicable export control regulations). Customer shall, at its sole cost and expense, obtain and maintain in effect all permits, licenses and other consents necessary to the conduct of its activities hereunder.

11.3 Restricted Rights. If Customer is an agency of the U.S. Federal government (the "Government"), or a prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other arrangement with the Government, Customer hereby acknowledges that the Software and any related technical data shall be deemed to be "commercial computer software" pursuant to FAR Section 12.212, DFAR Section 227.7202, or such other acquisition regulations as may be applicable to this procurement. Any use, modification, reproduction, release, performance, display, disclosure or transfer of the Software or technical data shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by this Agreement.

11.4 Independent Contractors. The parties to this Agreement are independent parties and nothing herein shall be construed as creating an employment relationship between the parties. Neither party is an agent or representative of the other party and neither party shall have any right, power or authority to enter into any agreement for or on behalf of, or incur any obligation or liability, or otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon either party.

11.5 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and permitted assigns. Customer may not assign this Agreement without the prior written consent of VergeSense, which consent shall not be unreasonably withheld. VergeSense may assign any of its rights or delegate any of its duties under this Agreement to any person or entity.

11.6 Governing Law. The laws of the State of California shall govern this Agreement, without giving effect to applicable conflict of laws provisions or to the United Nations Convention on Contracts for the International Sale of Goods.

11.7 Jurisdiction. The parties agree that the jurisdiction and venue of any action with respect to this Agreement shall be in a court of competent subject matter jurisdiction located in the State of California, and each of the parties hereby agrees to submit itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action.

11.8 Equitable Relief. The covenants of Customer in Sections 2, 5 and 6 hereof are of a special and unique character, and Customer acknowledges that money damages alone will not reasonably or adequately compensate VergeSense for any breach of such covenants. Therefore, VergeSense and Customer expressly agree that in the event of the breach or threatened breach of any such covenants, in addition to other rights or remedies which VergeSense may have, at law, in equity, or otherwise, VergeSense shall be entitled to injunctive or other equitable relief compelling specific performance of, and other compliance with, the terms of such Sections.

11.9 Self Help. VergeSense reserves the right to withhold access to the VergeSense Service, or utilize other technical means of "self help", in the event that Customer breaches this Agreement.

11.10 Force Majeure. Neither party shall be liable for any delay or failure in performance hereunder caused by reason of any occurrence or contingency beyond its reasonable control, including but not limited to, acts of God, war, riot, civil disturbance, acts of any civil or military authority, judicial action, terrorist act, fire, flood, earthquake, strike, delays in transportation, unavailability or shortages of labor, materials or equipment, failure or delays in delivery of vendors and suppliers, interruption or failure of telecommunication or digital transmission links, Internet disruptions, common carrier interruptions, breakdown in facilities, power failure or other accidents or unforeseen circumstances. The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

11.11 Notices. All notices to be given in connection with this Agreement shall be effective upon receipt, shall be made in writing and shall be sufficiently given if e-mailed to the address on record in the applicable Order or by emailing legal@vergesense.com, or if sent by courier or other express mail service, postage prepaid, addressed to the party entitled or required to receive such notice at the address for such party set forth in the Order (or, if to VergeSense, 2261 Market Street #5058 San Francisco, CA 94114).

11.12 Waiver. No waiver of any provision of this Agreement, or any rights or obligations of either party under this Agreement, shall be effective, except pursuant to a written instrument signed by the party or parties waiving compliance, and any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. The failure of either party to require the performance of any term of this Agreement or the waiver of either party of any breach under this Agreement shall not operate or be construed as a waiver of any other provision hereof, nor shall it be construed as a waiver of any subsequent breach by the other party hereto.

11.13 Remedies. No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to herein or otherwise available at law, in equity or otherwise.

11.14 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provisions of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement.