

## VISTAR TERMS OF SERVICE

**Effective as of September 12, 2023**

Use of VISTAR is governed by the following terms and conditions (the "Agreement").

### DEFINITIONS

**"CapTech"** refers to CapTech Ventures, Inc.

**"CapTech Software"** means any software agent, application or tool that CapTech makes available to Client for download specifically for purposes of facilitating Client access to, operation of, and/or use with, the Services.

**"Client Order"** means the order document that describes the services CapTech will be providing, and the fees associated with such services.

**"Intellectual Property"** means recognized protectable rights and interests such as: patents (whether or not issued), copyrights, trademarks, service marks, applications for any of the foregoing, inventions, Confidential Information, trade secrets, trade dress, domain names, logos, insignia, color combinations, right of publicity, know how, design flows, methodologies, devices business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or hereafter come into existence, and all registrations, renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction. For the avoidance of doubt, Personal Data and Protected Health Information are not included in the definition of Intellectual Property.

**"Program Documentation"** refers to the user manuals, help windows, readme files for the Services and any CapTech Software. Client may access the documentation online as described in each Order for Services.

**"Third Party Content"** means all software, data, text, images, audio, video, photographs and other content and material, in any format, that are obtained or derived from third party sources outside of CapTech that Client may access through, within, or in conjunction with Client use of, the Services. Examples of Third-Party Content include data feeds from social network services, rss feeds from blog posts, AWS marketplaces, Google and libraries, dictionaries, and marketing data. Third Party Content includes third-party sourced materials accessed or obtained by Client use of the Services or any CapTech-provided tools.

**"Users"** means, for Services, those employees, contractors, and end users, as applicable, authorized by Client or on Client behalf to use the Services in accordance with this Agreement and Client Order. For Services that are specifically designed to allow Client clients, agents, customers, suppliers or other third parties to access the Services to interact with Client, such third parties will be considered "Users" subject to the terms of this Agreement and Client Order.

**"Client Content"** means all software, data (including Personal Data), text, images, audio, video, photographs, non-CapTech or third-party applications, and other content and material, in any format, provided by Client or any of Client Users that is stored in, or run on or through, the Services. Services under this Agreement, CapTech Software, other CapTech products and services, and CapTech Intellectual Property, and all derivative works thereof, do not fall within the meaning of the term "Client Content." Client Content includes any Third-Party Content that is brought by Client into the Services by Client use of the Services or any CapTech-provided tools.

### 1. USE OF THE SERVICES

1.1 CapTech will make the services listed in Client Order (the "Services") available to Client pursuant to this Agreement and Client Order. Except as otherwise stated in this Agreement or Client Order, Client shall have the non-exclusive, worldwide, limited right to use the Services during the period defined in Client Order, unless earlier terminated in accordance with this Agreement or Client Order (the "Services Term"), solely for Client internal business operations. Client may allow Client Users (as defined below) to use the Services for this purpose, and Client are responsible for their compliance with this Agreement and Client Order.

1.2 The services description in each Order governs the Services. During the Services Term, we may update the Services (as described below) to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of Third-Party Services and Content (as defined below). CapTech's updates to the Services will not materially reduce the level of performance, functionality, security or availability of the Services during the Services Period of Client Order.

1.3 Client may not, and may not cause or permit others to: (a) use the Services to harass any person; cause damage or injury to any person or property; publish any material that is false, defamatory, harassing or obscene; violate privacy rights; promote bigotry, racism, hatred or harm; send unsolicited bulk e-mail, junk mail, spam or chain letters; infringe Intellectual Property rights; or otherwise violate applicable laws, ordinances or regulations; (b) perform or disclose any benchmarking or availability testing of the Services; or (c) perform or disclose any performance or vulnerability testing of the Services without CapTech's prior written approval, or perform or disclose network discovery, port and service identification, vulnerability scanning, password cracking or remote access testing of the Services; ((a) through (c) collectively, the "Acceptable Use Policy"). In addition to other rights that we have in this Agreement and Client Order, we have the right to take remedial action if the Acceptable Use Policy is violated, and such remedial action may include removing or disabling access to material that violates the policy.

1.4 The Services will be made available using a thirty-party platform provided by Amazon Web Services ("AWS" or the "AWS Platform"). By entering this Agreement, Client acknowledges that in addition to the terms and conditions of this Agreement, its use of the AWS Service Offerings is subject to the AWS Customer Agreement, a separate agreement between Client and Amazon Web Services, Inc., a current version of which is located at AWS Customer Agreement and the AWS Platform is provided under the following terms [AWS Service Terms](#) . [AWS Site Terms](#) , [AWS Acceptable Use Policy](#) and [AWS Privacy Notice](#).

1.5 The Services will utilize Google Play for the purposes of refining data accuracy. By entering this Agreement, Client acknowledges that in addition to the terms and conditions of this Agreement, its use of the Google is subject to the Google Play Terms of Service [Google Play Terms of Service](#) and [Google Play - How We Use Your Data](#).

## **2. FEES AND PAYMENT**

2.1 All fees payable to CapTech are due within thirty (30) days from the invoice date. Once placed, Client Order is non-cancelable and the sums paid nonrefundable, except as provided in this Agreement or Client Order. Client will pay any sales, value-added or other similar taxes imposed by applicable law that CapTech must pay based on the Services Client ordered, except for taxes based on CapTech's income. Fees for Services listed in an Order are exclusive of taxes and expenses.

2.2 If your Order states that your renewal is automatic, Client may terminate the expiring Order term by written request, at least ninety (90) days prior to the expiration date of the term that is set forth in the Order. If CapTech does not receive such termination notice by the expiration date, the expiring term will be automatically renewed for either a one-year term or the same duration as the original term as set forth in the Order.

2.3 If applicable, if Client exceeds the quantity of Services ordered, then Client promptly must purchase and pay fees for the excess quantity.

2.4 Client understands that Client may receive multiple invoices for the Services ordered.

## **3. OWNERSHIP RIGHTS AND RESTRICTIONS**

3.1 Client or Client licensors retain all ownership and Intellectual Property rights in and to Client Content (as defined below). CapTech or its licensors retain all ownership and Intellectual Property rights in and to the Services, derivative works thereof, and anything developed or delivered by or on behalf of us under this Agreement.

3.2 Client may have access to Third Party Content through use of the Services. Unless otherwise stated in Client Order, all ownership and Intellectual Property rights in and to Third Party Content and the use of such content is governed by separate AWS third party terms which are available at [AWS Service Terms](#) . [AWS Site Terms](#) , [AWS Acceptable Use Policy](#). [AWS Privacy Notice](#), [Google Play Terms of Service](#), [Google Privacy Policy](#) and [Google Play - How We Use Your Data](#).

3.3 Client grants CapTech, AWS and Google the right to host, use, process, display and transmit Client Content to provide the Services pursuant to and in accordance with this Agreement and Client Order. Client has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Client Content, and for obtaining all rights related to Client Content required by CapTech to perform the Services.

3.4 Client may not, and may not cause or permit others to: (a) modify, make derivative works of, disassemble, decompile, reverse engineer, reproduce, republish, download, or copy any part of the Services (including data structures or similar materials produced by programs); (b) access or use the Services to build or support, directly or indirectly, products or services competitive to CapTech; or (c) license, sell, transfer, assign, distribute, outsource, permit timesharing or service bureau use of, commercially exploit, or make available the Services to any third party except as permitted by this Agreement or Client Order.

## **4. NONDISCLOSURE**

4.1 By virtue of this Agreement, the parties may disclose to each other information that is confidential (“Confidential Information”). Confidential Information shall be limited to the terms and pricing under this Agreement and Client Order, Client Content residing in the Services, and all information clearly identified as confidential at the time of disclosure.

4.2 A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

4.3 Each party agrees not to disclose the other party's Confidential Information to any third party other than as set forth in the following sentence for a period of five years from the date of the disclosing party's disclosure of the Confidential Information to the receiving party; however, CapTech will protect the confidentiality of Client Content residing in the Services for as long as such information resides in the Services. Each party may disclose Confidential Information only to those employees, agents or subcontractors who are required to protect it against unauthorized disclosure in a manner no less protective than required under this Agreement, and each party may disclose the other party's Confidential Information in any legal proceeding or to a governmental entity as required by law.

## **5. PROTECTION OF CLIENT CONTENT**

5.1 No data including any Client Content will be hosted or maintained by CapTech. In order to protect Client Content provided under this Agreement, AWS and Google have agreed to implement reasonable and appropriate measures designed to help you secure Your Content against accidental or unlawful loss, access or disclosure. CapTech shall not be liable for any failure by AWS or Google to implement such appropriate measures or for any loss, access or disclosure of Your Content, unless caused by CapTech's willful act or omission.

5.2 To the extent Client Content includes Personal Data (as that term is defined in the applicable data privacy policies and the Data Processing Agreement (as that term is defined below)), Client, AWS and Google will furthermore comply with the following:

- a. the relevant AWS privacy policies applicable to the Services, available at [AWS Data Privacy](#), [Data Privacy at AWS](#);
- b. the applicable version of the Data Processing Agreement for the Services (the “Data Processing Agreement”), unless stated otherwise in Client Order. The version of the Data Processing Agreement applicable to Client Order (a) is available at [AWS Data Protection Agreement](#) and is incorporated herein by reference, and (b) will remain in force during the Services Period of Client Order. In the event of any conflict between the terms of the Data Processing Agreement and the terms of the Order (including any applicable CapTech privacy policies), the terms of the Data Processing Agreement shall take precedence;
- c. the relevant Google privacy policies applicable to the Services, available at [Google Privacy Policy](#) and [Google Play - How We Use Your Data](#).
- d. the applicable version of the Data Processing Agreement for the Services (the “Data Processing Agreement”), unless stated otherwise in Client Order. The version of the Data Processing Agreement applicable to Client Order (a) is available at [Google Data Processing Agreement](#) and is incorporated herein by reference, and (b) will remain in force during the Services Period of Client Order. In the event of any conflict between the terms of the Data Processing Agreement and the terms of the Order (including any applicable CapTech privacy policies), the terms of the Data Processing Agreement shall take precedence.

5.3 Without prejudice to Sections 5.1 and 5.2 above, Client is responsible for (a) any required notices, consents and/or authorizations related to Client provision of, and our processing of, Client Content (including any Personal Data) as part of the Services, (b) any security vulnerabilities, and the consequences of such vulnerabilities, arising from Client Content, including any viruses, Trojan horses, worms or other harmful programming routines contained in Client Content, and (c) any use by Client or Client Users of the Services in a manner that is inconsistent with the terms of this Agreement. To the extent Client discloses or transmits Client Content to a third party, CapTech is no longer responsible for the security, integrity or confidentiality of such content outside of CapTech's control.

5.4 Unless otherwise specified in Client Order, Client Content may not include any sensitive or special data that imposes specific data security or data protection obligations on CapTech AWS or Google in addition to or different from those specified in the Order.

## **6. WARRANTIES, DISCLAIMERS AND EXCLUSIVE REMEDIES**

6.1 Each party represents that it has validly entered into this Agreement and that it has the power and authority to do so. CapTech warrants that during the Services Period it will perform the Services using commercially reasonable care and skill in all material respects as described in the Order. If the Services provided to Client were not performed as warranted, Client must promptly provide us with a written notice that describes the deficiency in the Services.

6.2 CAPTECH DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT CAPTECH WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CLIENT REQUIREMENTS OR EXPECTATIONS. CAPTECH IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CLIENT CONTENT OR THIRD -PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES.

6.3 FOR ANY BREACH OF THE SERVICES WARRANTY, CLIENT'S EXCLUSIVE REMEDY AND CAPTECH'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF CAPTECH CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CLIENT MAY END THE DEFICIENT SERVICES AND CAPTECH WILL REFUND TO CLIENT THE FEES FOR THE TERMINATED SERVICES THAT CLIENT PRE-PAID TO CAPTECH FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

6.4 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

## **7. LIMITATION OF LIABILITY**

7.1 IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER THIS AGREEMENT), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION.

7.2 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF CAPTECH ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CLIENT ORDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID UNDER CLIENT ORDER FOR THE SERVICES GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

## **8. INDEMNIFICATION**

8.1 If a third party makes a claim against either Client or CapTech ("Recipient" which may refer to Client or CapTech depending upon which party received the Material), that any information, design, specification, instruction, software, service, hardware, or material (collectively, "Material") furnished by either Client or us ("Provider" which may refer to Client or CapTech depending on which party provided the Material) and used by the Recipient infringes the third party's Intellectual Property rights, the Provider, at the Provider's sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

- a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);
- b. gives the Provider sole control of the defense and any settlement negotiations; and
- c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

8.2 If the Provider believes or it is determined that any of the Material may have violated a third party's Intellectual Property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects CapTech's ability to meet its obligations under the relevant order, then CapTech may, upon thirty (30) days prior written notice, terminate the order. If such Material is third party technology and the terms of the third-party license do not allow CapTech to terminate the license, then CapTech may, upon thirty (30) days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.

8.3 The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider's user or program documentation or Service Specifications, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. CapTech will not indemnify Client to the extent that an infringement claim is based on Third Party Content or any Material from a third-party portal or other external source that is accessible or made available to Client within or by the Services.

8.4 This Section 8 provides the parties' exclusive remedy for any infringement claims or damages.

## **9. TERM AND TERMINATION**

9.1 This Agreement is valid for the Order which this Agreement accompanies. If your Order states that your renewal is automatic, you may terminate the expiring Term by written request, at least ninety (90) days prior to the expiration date of the Term that is set forth in the Order. If CapTech does not receive such termination notice by the expiration date, the expiring term will be automatically renewed for either a one (1) year term or the same duration as the original term as set forth in the Order.

9.2 Services shall be provided for the Services Term defined in Client Order.

9.3 CapTech, AWS or Google may suspend Client or Client Users' access to, or use of, the Services if either believes that (a) there is a significant threat to the functionality, security, integrity, or availability of the Services or any content, data, or applications in the Services; (b) Client or Client Users are accessing or using the Services to commit an illegal act; or (c) there is a violation of CapTech, AWS' or Google's Acceptable Use Policy. When reasonably practicable and lawfully permitted, CapTech will provide Client with advance notice of any such CapTech suspension. CapTech will use reasonable efforts to re-establish the Services promptly after we determine that the issue causing the suspension has been resolved. During any suspension period, CapTech will make Client Content (as it existed on the suspension date) available to Client. Any suspension under this Section shall not excuse Client from Client's obligation to make payments under this Agreement.

9.4 If either party breaches a material term of this Agreement or any order and fails to correct the breach within thirty (30) days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate (a) in the case of breach of any order, the order under which the breach occurred; or (b) in the case of breach of the Agreement, the Agreement and any orders that have been placed under the Agreement. If CapTech terminates any orders as specified in the preceding sentence, Client must pay within thirty (30) days all amounts that have accrued prior to such termination, as well as all sums remaining unpaid for the Services under such order(s) plus related taxes and expenses. Except for nonpayment of fees, the nonbreaching party may agree in its sole discretion to extend the thirty (30) day period for so long as the breaching party continues reasonable efforts to cure the breach. Client agrees that if Client are in default under this Agreement, Client may not use those Services ordered.

9.5 At the end of the Services Term Client Content (as it existed at the end of the Services Term) available for retrieval by Client in accordance with AWS's data deletion practices (see [Data Privacy at AWS](#)) and Google's data deletion practices (see [Google - How We Retain the Data We Collect](#)).

9.6 Provisions that survive termination or expiration of this Agreement are those relating to limitation of liability, indemnification, payment and others which by their nature are intended to survive.

## 10. THIRD-PARTY CONTENT, SERVICES AND WEBSITES

10.1 The Services may enable Client to link to, transfer Client Content or Third-Party Content to, or otherwise access, third parties' websites, platforms, content, products, services, and information ("Third Party Services"). CapTech does not control and is not responsible for Third Party Services. Client is solely responsible for complying with the terms of access and use of Third-Party Services, and if CapTech accesses or uses any Third-Party Services on Client behalf to facilitate performance of the Services, Client is solely responsible for ensuring that such access and use, including through passwords, credentials or tokens issued or otherwise made available to Client, is authorized by the terms of access and use for such services. If Client transfer or cause the transfer of Client Content or Third-Party Content from the Services to a Third-Party Service or other location, that transfer constitutes a distribution by Client and not by CapTech.

10.2 Any Third-Party Content we make accessible is provided on an "as-is" and "as available" basis without any warranty of any kind. Client acknowledges and agree that we are not responsible for, and have no obligation to control, monitor, or correct, Third-Party Content. We disclaim all liabilities arising from or related to Third Party Content.

10.3 Client acknowledges that: (i) the nature, type, quality and availability of Third-Party Content may change at any time during the Services Period, and (ii) features of the Services that interoperate with Third Party Services depend on the continuing availability of such third parties' respective application programming interfaces ("APIs"). CapTech may need to update, change or modify the Services under this Agreement as a result of a change in, or unavailability of, such Third-Party Content, Third Party Services or APIs. If any third-party ceases to make its Third-Party Content or APIs available on reasonable terms for the Services, as determined by us in our sole discretion, CapTech may cease providing access to the affected Third-Party Content or Third-Party Services without any liability to Client. Any changes to Third Party Content, Third Party Services or APIs, including their unavailability, during the Services Period does not affect Client obligations under this Agreement or the applicable order, and Client will not be entitled to any refund, credit or other compensation due to any such changes.

10.4 Terms relating to AWS and Google and their use of Third-Party Content can be found here [AWS Customer Agreement](#) or [Google Play Terms of Service](#).

## 11. SERVICE MONITORING, ANALYSES AND CAPTECH SOFTWARE

11.1 CapTech, AWS and Google may monitor the Services to facilitate operation of the Services; to help resolve Client



service requests; to detect and address threats to the functionality, security, integrity, and availability of the Services as well as any content, data, or applications in the Services; and to detect and address illegal acts or violations of the Acceptable Use Policy. CapTech's monitoring tools do not collect or store any Client Content residing in the Services, except as needed for such purposes. CapTech does not monitor, and does not address issues with, non-CapTech software provided by Client or any of Client Users that is stored in, or run on or through, the Services. Information collected by CapTech monitoring tools (excluding Client Content) may also be used to assist in managing CapTech's product and service portfolio, to help CapTech address deficiencies in its product and service offerings, and for license management purposes.

11.2 CapTech may (i) compile statistical and other information related to the performance, operation and use of the Services, and (ii) use data from the Services in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Service Analyses"). CapTech may make Service Analyses publicly available; however, Service Analyses will not incorporate Client Content, Personal Data or Confidential Information in a form that could serve to identify Client or any individual. CapTech retains all Intellectual Property rights in Service Analyses.

11.3 CapTech may provide Client with the ability to obtain certain CapTech Software (as defined below) for use with the Services. If we provide CapTech Software to Client and do not specify separate terms for such software, then such CapTech Software is provided as part of the Services and Client have the non-exclusive, worldwide, limited right to use such CapTech Software, subject to the terms of this Agreement and Client Order (except for separately licensed elements of the CapTech Software, which separately licensed elements are governed by the applicable separate terms), solely to facilitate Client use of the Services. Client may allow Client Users to use the CapTech Software for this purpose, and Client is responsible for its compliance with the license terms. Client's right to use any CapTech Software will terminate upon the earlier of our notice (by web posting or otherwise) or the end of the Services associated with the CapTech Software. Notwithstanding the foregoing, if CapTech Software is licensed to Client under separate terms, then Client use of such software is governed by the separate terms. Client right to use any part of the CapTech Software that is licensed under the separate terms is not restricted in any way by this Agreement.

## **12. EXPORT**

12.1 Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Services. Such export laws govern use of the Services (including technical data) and any Services deliverables provided under this Agreement, and Client and CapTech each agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Client agrees that no data, information, software programs and/or materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

12.2 Client acknowledges that the Services are designed with capabilities for Client and Client Users to access the Services without regard to geographic location and to transfer or otherwise move Client Content between the Services and other locations such as User workstations. Client is solely responsible for the authorization and management of User accounts across geographic locations, as well as export control and geographic transfer of Client Content.

## **13. FORCE MAJEURE**

Neither Client nor CapTech shall be responsible for failure or delay of performance if caused by an act of war, hostility, or sabotage; act of God; pandemic; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancelation of any export, import or other license); or other event outside the reasonable control of the obligated party. Both Client and CapTech will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than thirty (30) days, either of Client or CapTech may cancel unperformed Services and affected orders upon written notice. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Client's obligation to pay for the Services.

## **14. GOVERNING LAW AND JURISDICTION**

This Agreement is governed by the laws of the Commonwealth of Virginia and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in Virginia in any dispute arising out of or relating to this Agreement. The Uniform Computer Information Transactions Act does not apply to this Agreement or to orders placed under it.

## **15. NOTICE**

15.1 Any notice required under this Agreement shall be provided to the other party in writing. If Client has a legal dispute with CapTech or if Client wishes to provide a notice under the Indemnification Section of this Agreement, or if Client become subject to insolvency or other similar legal proceedings, Client will promptly send written notice to: CapTech Ventures, Inc., 7100 Forest Avenue, Suite 100, Richmond, VA 23226, Attention: Contract Management Team (with a copy to Risk@captechconsulting.com).

15.2 CapTech may give notices applicable to our Services clients by means of a general notice on the CapTech website, and notices specific to Client by electronic mail to Client e-mail address on record in CapTech's account information or by written communication sent by first class mail or pre-paid post to Client address on record in CapTech's account information.

## **16. ASSIGNMENT**

Client may not assign this Agreement or give or transfer the Services, or any interest in the Services, to another individual or entity.

## **17. OTHER**

17.1 CapTech is an independent contractor, and each party agrees that no partnership, joint venture, or agency relationship exists between the parties. CapTech's business partners and other third parties, including any third parties with which the Services have integrations or that are retained by Client to provide consulting services, implementation services or applications that interact with the Services, are independent of CapTech and are not CapTech's agents. CapTech is not liable for, bound by, or responsible for any problems with the Services or Client Content arising due to any acts of any such business partner or third party, unless the business partner or third party is providing Services as our subcontractor on an engagement ordered under this Agreement and, if so, then only to the same extent as we would be responsible for our resources under this Agreement.

17.2 If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with another term consistent with the purpose and intent of this Agreement.

17.3 Except for actions for nonpayment or breach of CapTech's proprietary rights, no action, regardless of form, arising out of or relating to this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

17.4 Prior to entering into an order governed by this Agreement, Client is solely responsible for determining whether the Services meet Client technical, business or regulatory requirements. CapTech will cooperate with Client efforts to determine whether use of the standard Services is consistent with those requirements. Additional fees may apply to any additional work performed by CapTech or changes to the Services. Client remains solely responsible for Client regulatory compliance in connection with Client use of the Services.

17.5 Upon forty-five (45) days written notice and no more than once every twelve (12) months, CapTech may audit Client use of the Services to ensure Client use of the Services is in compliance with the terms of the applicable Order and this Agreement. Any such audit shall not unreasonably interfere with Client normal business operations.

Client agrees to cooperate with CapTech's audit and to provide reasonable assistance and access to information reasonably requested by CapTech.

The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of section 4 (Nondisclosure) of this Agreement.

If the audit identifies non-compliance, Client agrees to remedy (which may include, without limitation, the payment of any fees for additional Cloud Services) such non-compliance within thirty (30) days of written notification of that non-compliance. Client agrees that CapTech shall not be responsible for any of Client costs incurred in cooperating with the audit.

## **18. ENTIRE AGREEMENT**

18.1 Client agrees that this Agreement and the information which is incorporated into this Agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable Order, is the complete agreement for the Services ordered by Client and supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services.

18.2 It is expressly agreed that the terms of this Agreement and any CapTech Order shall supersede the terms in any purchase order, procurement internet portal, or other similar non-CapTech document and no terms included in any such purchase order, portal, or other non-CapTech document shall apply to the Services ordered. In the event of any inconsistencies between the terms of an Order and the Agreement, the Agreement shall take precedence unless the particular provision in the Order expressly and specifically notes the deviation from the Agreement for the purposes of that Order; however, the terms of the Data Processing Agreement shall take precedence over any inconsistent terms in an Order. This Agreement and orders hereunder may not be modified, and the rights and restrictions may not be altered or waived except in a writing signed or accepted online by authorized representatives of Client and of CapTech; however, CapTech may update the Services, including by posting updated documents on CapTech's websites. No third-party beneficiary relationships are created by this Agreement.