SaaS Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

BY USING THE SERVICE OR CLICKING "AGREE" PARTNER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF OR FOR THE BENEFIT OF YOUR EMPLOYER, THEN YOU REPRESENT AND WARRANT THAT YOU HAVE THE NECESSARY AUTHORITY TO AGREE TO THIS AGREEMENT ON YOUR EMPLOYER'S BEHALF.

This agreement is between Liongard, Inc., a Delaware corporation (**Liongard**), and the Partner agreeing to these terms (**Partner**).

1. **SOFTWARE SERVICE**. This agreement provides Partner access to and usage of an Internet based software service as specified on an order (**Service**). Implementation services (**Implementation Services**) may also be provided by Liongard if specified under an order.

2. **USE OF SERVICE**.

   a. **Partner Owned Data.** All data uploaded by Partner remains the property of Partner, as between Liongard and Partner (**Partner Data**). Partner grants Liongard the right to use the Partner Data solely for purposes of performing under this agreement. During the term of this agreement, Partner may export its Partner Data as allowed by functionality within the Service.

   b. **Access and Usage**. Partner may allow its contractors and customers to access the Service in compliance with the terms of this agreement, which access must be for the sole benefit of Partner and its customers. Partner is responsible for the compliance with this agreement by its contractors and customers.

   c. **Partner Responsibilities.** Partner (i) must keep its passwords secure and confidential; (ii) is solely responsible for Partner Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account and notify Liongard promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's user guide and applicable law.

   d. **Onboarding and Support.** Liongard will provide onboarding services and Partner support for the Service under the terms of Liongard's Partner Support Policy (**Support**) which is located at www.liongard.com/policy-support.

3. **SERVICE LEVEL AGREEMENT & WARRANTY**.

   a. **Warranty.** Liongard warrants to Partner: (i) that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance outages, force majeure, third-party integrations, and outages that result from any Partner mis-configuration or technology issues); (ii) the functionality or features of the Service may change but will not materially decrease during any paid term; and (iii) that the Support may change but will not materially degrade during any paid term.

Availability Warranty	Credit
-> 99.50 – 95.00% =	10% of monthly fee.
-> 94.99 – 90.00% =	25% of monthly fee.
-> 80.00% – 89.99% =	50% of monthly fee.
-> Less than 79.99% =	100% of monthly fee.

   b. **LIMITED REMEDY. Partner's exclusive remedy and Liongard's sole obligation for its failure to meet the warranty in a(i) above will be for Liongard to provide a credit for the applicable month, as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Partner notifies Liongard of such breach within 30 days of the end of that month.**

   c. **DISCLAIMER. LIONGARD DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE LIONGARD TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, LIONGARD DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. PARTNER UNDERSTANDS THAT THE SERVICE MAY NOT BE ERROR FREE, AND USE MAY BE INTERRUPTED. LIONGARD HAS NO RESPONSIBILITY OR LIABILITY FOR ANY OF PARTNER'S ACTIONS OR OMISSIONS IN USING THE LIONGARD SERVICE, SOFTWARE, OR API, WHICH ACTIONS OR OMISSIONS NEGATIVELY IMPACT OR IMPAIR PARTNER'S CUSTOMER BUT WHICH ACTIONS OR OMISSIONS ARE NOT RELATED TO THE FUNCTIONALITY OF THE SERVICE, SOFTWARE OR API.**

4. **PAYMENT**. Partner must pay all fees, either by credit card or ACH, monthly in advance, unless otherwise specified on an order. Partner agrees that it will configure its payments to recur on a monthly basis, and if Partner does not do this, it agrees to allow Liongard to configure such recurring payments on its behalf. Partner is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement. Each order will

automatically renew for the term length of the order, unless either party provides written notice of non-renewal at least 30 days prior to the expiration of the then current term.

5. **MUTUAL CONFIDENTIALITY.**

   a. **Definition of Confidential Information**. Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Liongard's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information, and the Software and Documentation (defined below).

   b. **Protection of Confidential Information**. The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

   c. **Exclusions**. Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. **LIONGARD PROPERTY**.

   a. **Reservation of Rights**. The software, workflow processes, user interface, designs and Software and Documentation, and other technologies provided by Liongard as part of the Service are the proprietary property of Liongard and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Liongard. Partner may not remove or modify any proprietary marking or restrictive legends in the Service or Software and Documentation. Liongard reserves all rights not expressly granted in this agreement.

   b. **Restrictions**. Partner *may not* (i) sell, resell, rent or lease the Service in a manner not expressly identified in the order; (ii) use the Service for any unlawful, illegitimate, or wrongful purpose, (iii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iv) interfere with or disrupt the integrity or performance of the Service; (v) attempt to gain unauthorized access to the Service or its related systems or networks; (vi) reverse engineer the Service or the Software and Documentation; or (vii) access the Service or use the Software and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

   c. **Software and Documentation.** All software provided by Liongard as part of the Service, and the Service documentation, sample data, marketing materials, training material and other material provided through the Service or by Liongard (**Software and Documentation**) are licensed to Partner as follows: Liongard grants Partner a non-exclusive, non-transferable license during the term of this agreement, to use and copy such Software in accordance with the Documentation, solely in connection with the Service. Partner is required to install and maintain the Software agents and inspectors in its and its customers' environments in accordance with Liongard's user guide. Partner acknowledges and agrees that: (i) use of the agents and inspectors may cause an increase in its or its customers' third party service providers' fees when the agent and inspectors query such third party services, and (ii) Partner is responsible for any such increase in fees.

   d. **API**. Liongard provides access to its application-programming interface (**API**) as part of the Service for no additional fee. Subject to the other terms of this agreement, Liongard grants Partner a non-exclusive, nontransferable, terminable license to interact with the API only with the Software as allowed by the API.

      (i) Partner may not use the API in a manner--as reasonably determined by Liongard--that exceeds reasonable request volume, constitutes excessive or abusive usage, or fails to comply with the API Policy or with any part of the API. If any of these occur, Liongard can suspend or terminate Partner's access to the API on a temporary or permanent basis.
      (ii) Liongard may change or remove existing endpoints or fields in API results upon at least 30 days notice to Partner, but Liongard will use commercially reasonable efforts to support the previous version of the API for at least 6 months. Liongard may add new endpoints or fields in API results without prior notice to Partner.
      (iii) The API is provided on an AS IS basis. Liongard has no liability to Partner as a result of any change, temporary unavailability, suspension, or termination of access to the API.

   e. **Anonymized Data.** During and after the term of this agreement, Liongard may use and owns all anonymized data within the Service for purposes of enhancing the Service, aggregated statistical analysis, technical support and other business purposes.

7. **DATA SECURITY MEASURES.**

a. **Reasonable Security Measures.** In order to protect Partner's Confidential Information, Liongard will (i) implement and maintain all reasonable security measures appropriate to the nature of the Confidential Information including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such Confidential Information; (ii) implement and maintain industry standard systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures, and regularly test or otherwise monitor the effectiveness of the system's key controls and procedures; (iii) designate an employee or employees to coordinate implementation and maintenance of its Reasonable Security Measures; and (iv) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Partner Confidential Information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any systems in place to control these risks (collectively, **Reasonable Security Measures**).

b. **Notice of Data Breach.** If Liongard becomes aware that Partner Confidential Information has been accessed, disclosed, or acquired without proper authorization and contrary to the terms of this agreement, Liongard will alert Partner of any data breach without undue delay, immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach, and provide available information to Partner regarding the nature and scope of the breach.

8. **TERM AND TERMINATION.**

a. **Term**. This agreement continues until all orders have expired or are terminated for material breach under Section 8(b).

b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.

c. **Return of Partner Data.**

- Within 10 days of the date of termination, upon request, Liongard will make the Service available for Partner to export Partner Data as provided in Section 2(a).

- After such 10-day period, Liongard has no obligation to maintain the Partner Data and may destroy it.

d. **Effect of Termination**. Upon termination of this agreement for any reason, Partner must pay Liongard for any unpaid amounts, and destroy or return all property of Liongard. Upon Liongard's request, Partner will confirm in writing its compliance with this destruction or return requirement.

e. **Suspension for Violations of Law.** Liongard may temporarily suspend the Service or remove the applicable Partner Data, or both, if it in good faith believes that, as part of using the Service, Partner has violated a law. Liongard will attempt to contact Partner in advance.

f. **Suspension for Non-Payment.** Liongard may temporarily suspend the Service if Partner is more than 30 days late on any payment due pursuant to an order.

9. **LIABILITY LIMIT**.

a. **EXCLUSION OF INDIRECT DAMAGES**. **Liongard is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of or unauthorized access to data or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss or if the damage or loss is foreseeable.**

b. **TOTAL LIMIT ON LIABILITY**. **Except for Liongard's indemnity obligations, Liongard's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Partner during the 12 month period prior to the event that gave rise to the liability.**

10. **INDEMNITY**.

a. **Infringement.** Liongard will defend or settle any third party claim against Partner to the extent that such claim alleges that Liongard technology used to provide the Service violates a copyright, patent, trademark or other intellectual property right, if Partner, promptly notifies Liongard of the claim in writing, cooperates with Liongard in the defense, and allows Liongard to solely control the defense or settlement of the claim. *Costs*. Liongard will pay infringement claim defense costs it incurs in defending Partner, and Liongard negotiated settlement amounts, and court awarded damages. *Process*. If such a claim appears likely, then Liongard may modify the Service, procure the necessary rights, or replace it with the functional equivalent. If Liongard determines that none of these are reasonably available, then Liongard may terminate the Service and refund any prepaid and unused fees. *Exclusions.* Liongard has no obligation for any claim arising from: Liongard's compliance with Partner's specifications; a combination of the Service with other technology or aspects where the infringement would not occur but for the combination; use of Partner Data; or technology or aspects not provided by Liongard. THIS SECTION CONTAINS PARTNER'S EXCLUSIVE REMEDIES AND LIONGARD'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

b. **By Partner.** If a third-party makes a claim against Liongard which claims that (i) any part of the Partner Data violates a law or infringes or violates that party's patent, copyright or other right, or (ii) there is an issue with the service that Partner is providing its customer (including installation or patching of the Service's Software agent), then Partner will (i) defend Liongard against that claim at Partner's expense and (ii) pay all other costs, expenses, damages, and attorney's fees, incurred by or awarded against Liongard, provided that Liongard: promptly notifies Partner in writing of the claim; and allows Partner to control, and cooperates with Partner in, the defense and any related settlement.

11. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the State of Texas (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Harris County, Texas, and Partner submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

12. **OTHER TERMS**.

    a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Partner is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, however this agreement may be modified through an online process provided by Liongard. No waiver is effective unless the party waiving the right signs a waiver in writing.

    b. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of all or substantially all the assets of a party.

    c. **Audit.** Liongard may monitor Partner's endpoints to review compliance with this agreement and the order. Partner agrees to pay within 30 days of written notification any fees applicable to Partner's use of the Service in excess of the license.

    d. **Independent Contractors**. The parties are independent contractors with respect to each other. The term "Partner" as used herein refers to Liongard's customers, and not to a legal partnership.

    e. **Enforceability and Force Majeure**. If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.

    f. **Money Damages Insufficient**. Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

    g. **No Additional Terms.** Liongard rejects additional or conflicting terms of any Partner form-purchasing document. Additionally, if Partner's order acknowledgement, invoice, log-in disclaimer or banner or any other communication from or on behalf of Partner contains provisions inconsistent with this agreement, then this agreement prevails, and Liongard hereby notifies Partner of its objection to and rejection of any such terms and conditions stated by Partner, whether or not material.

    h. **Order of Precedence**. If there is an inconsistency between this agreement and an order, the order prevails.

    i. **Survival of Terms**. Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.

    j. **Feedback**. If Partner provides feedback or suggestions about the Service, then Liongard (and those it allows to use its technology) may use such information without obligation to Partner.

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