THANK YOU FOR CONDUCTING A BETA TEST OF THE ACCOMPANYING TIGERLOGIC SOFTWARE PROGRAM (AS DEFINED BELOW, THE "LICENSED PROGRAM"). THIS LICENSE IS THE LEGAL AGREEMENT ("AGREEMENT") BETWEEN YOU, THE CUSTOMER WHO IS USING THE LICENSED PROGRAM ("CUSTOMER" OR "YOU") AND TIGERLOGIC CORPORATION ("TIGERLOGIC"). PLEASE READ THIS AGREEMENT CAREFULLY.

TIGERLOGIC IS ONLY WILLING TO PROVIDE THE LICENSED PROGRAM TO YOU ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS AGREEMENT. YOU ACCEPT THIS AGREEMENT BY INSTALLING OR USING THE LICENSED PROGRAM.

IF YOU ARE UNWILLING TO ACCEPT THIS AGREEMENT, DO NOT USE THE LICENSED PROGRAM. IF YOU HAVE ALREADY OBTAINED A COPY OF THE LICENSED PROGRAM WITHOUT HAVING A PRIOR OPPORTUNITY TO REVIEW THIS AGREEMENT, AND ARE NOW UNWILLING TO AGREE TO THESE TERMS, THEN RETURN THE LICENSED PROGRAM TO TIGERLOGIC.

IF YOU DID NOT ACQUIRE THE LICENSED PROGRAM FROM TIGERLOGIC OR AN AUTHORIZED TIGERLOGIC RESELLER, THEN YOU MAY NOT ENTER INTO THIS AGREEMENT OR USE THE LICENSED PROGRAM. NO OTHER PARTY HAS THE RIGHT TO TRANSFER A COPY OF THE LICENSED PROGRAM TO YOU.

THIS AGREEMENT WILL BE EFFECTIVE AS OF THE EARLIER OF THE DATE ("EFFECTIVE DATE") THAT YOU INDICATE YOUR ACCEPTANCE OR ACQUIRE A COPY OF THE LICENSED PROGRAM.

IF YOU HAVE ANY QUESTIONS OR CONCERNS ABOUT THIS AGREEMENT, PLEASE CONTACT TIGERLOGIC AT LICENSE@RAININGDATA.COM.

1. DEFINITIONS. Capitalized terms used in this Agreement are defined in this Section 1 or in the section where they are first used.

1.1 "Commercial Release" shall have the meaning set forth in Section 2.

1.2 "Confidential Information" means any and all technical and non-technical information provided by TigerLogic to Customer including, without limitation, TigerLogic's information concerning research, experimental work, development, design details and specifications of the Licensed Program; the Feedback; the development status of the Licensed Program; the functionality of the Licensed Program; the appearance, content and flow of the Licensed Program's screens; the method and pattern of user interaction with the Licensed Program; and the Documentation.

1.3 "Feedback" shall have the meaning set forth in Section 4.1.

1.4 "Licensed Program" means an object code pre-release version of the above-identified computer software program and accompanying
Documentation, which are proprietary to TigerLogic and which, as of the Effective Date, are not made commercially available.

1.5 "Documentation" means the documentation provided by TigerLogic to Customer in connection with the Licensed Program.

2. ACKNOWLEDGMENT OF BETA VERSION. TigerLogic has disclosed, and Customer understands and agrees, that: (i) the Licensed Program is a beta test version of unreleased software that may contain bugs, defects and errors, (ii) the Licensed Program is not expected to contain the functionality or functions of the version of such software that TigerLogic may make available for commercial distribution ("Commercial Release"), and (iii) any Feedback with respect to Customer's use of the Licensed Program is subject to the ownership provisions of Section 7, and may be used by TigerLogic in TigerLogic's development of and be incorporated into the Commercial Release.

3. LICENSE.

3.1 Grant. Subject to the terms of this Agreement, TigerLogic grants Customer a nonexclusive, nontransferable license to install, display, and execute the Licensed Program solely for Customer's internal use to test and evaluate the Licensed Program. This license shall terminate immediately upon expiration or earlier termination of this Agreement as set forth in Section 8. All rights not specifically granted to Customer herein are retained by TigerLogic.

3.2 Restrictions on Use. Except as otherwise specifically permitted under this Agreement, Customer shall not use, copy, modify, create derivative works of, distribute, sell, assign, pledge, sublicense, lease, loan, rent, timeshare, deliver or otherwise transfer the Licensed Program, nor permit any third party to do any of the foregoing. Customer may not (i) derive or attempt to derive the source code of all or any portion of the Licensed Program by any means, (ii) permit any third party to derive or attempt to derive such source code, or (iii) reverse engineer, decompile, disassemble, or translate the Licensed Program or any part thereof.

4. TESTING REQUIREMENTS AND DELIVERY OF FEEDBACK.

4.1 Feedback. In exchange for the licenses granted herein, Customer agrees to use good faith efforts to test, use, and evaluate the Licensed Program. TigerLogic requests that Customer report either orally or in writing any errors, problems, defects, or suggestions for changes and improvements to the Licensed Program (collectively, "Feedback") to TigerLogic and work with TigerLogic to resolve any problems with the Licensed Program.

5. CONSIDERATION. Customer acknowledges and agrees that the Licensed Program is being licensed to Customer without charge and solely in exchange for Customer's Feedback concerning the Licensed Program.

6. NO OBLIGATION. TigerLogic has no obligation under this Agreement or otherwise to correct any bugs, defects or errors in the Licensed Program or otherwise to support or maintain the Licensed Program. Moreover, TigerLogic has no obligation to create, distribute or otherwise offer a Commercial Release, and in the event of such
Commercial Release, TigerLogic has no obligation to offer the Commercial Release to Customer or otherwise under any discounted pricing schedules or special terms. Customer understands and agrees that the Commercial Release may contain functions and functionality, and perform in a manner significantly different from the Licensed Program. Accordingly, Customer acknowledges that any research or development performed, or business plans made, by Customer regarding or in reliance upon the Licensed Program are done entirely at Customer's own risk.

7. OWNERSHIP.

7.1 Software and Feedback. Customer agrees that TigerLogic will own and hold all right, title and interest, including but not limited to copyright, patent, trade secret, and all other intellectual and industrial property rights, in and to the Licensed Program, Documentation and any Commercial Release, and any changes, modifications or corrections thereto. Customer understands and agrees that it is being granted use of the Licensed Program and Documentation solely in exchange for its provision of Feedback to TigerLogic, which Feedback Customer agrees will be the sole property of TigerLogic and will be deemed the Confidential Information of TigerLogic. TigerLogic may incorporate Feedback into its products and services and Customer will gain no rights in such products or services by virtue of having disclosed Feedback. Customer will gain no right, title or interest in or to the Licensed Program, Documentation or any Commercial Release (other than the limited license granted in Section 3) by virtue of Customer's provision of Feedback to TigerLogic.

7.2 Assignment. If Customer is ever held or deemed to hold any right, title or interest (including, without limitation, any intellectual property rights or trade secret rights) in or to (i) the Licensed Program or Documentation (including any changes, modifications or corrections thereto), (ii) any Commercial Release, or (iii) the Feedback, whether by virtue of Customer's delivery of Feedback to TigerLogic or otherwise, then Customer hereby irrevocably assigns to TigerLogic all such right, title and interest and agrees to execute all documents necessary to implement and confirm the letter and intent of this Section. Customer will cooperate with TigerLogic and will take all actions, including the execution, verification and delivery of documents, as TigerLogic may reasonably request to evidence, perfect or protect TigerLogic's rights in and to the Licensed Program, Documentation or any Commercial Release.

8. TERM AND TERMINATION.

8.1 Term. This Agreement, unless terminated earlier as set forth herein, shall be effective from and after the Effective Date and shall expire on the later of (a) one (1) year from the Effective Date, or (b) until the date of TigerLogic's first Commercial Release of the Licensed Program.

8.2 Termination. TigerLogic may terminate this Agreement immediately upon written notice to Customer in the event Customer materially breaches any provision hereof and Customer fails to cure such breach within ten (10) days of receipt of notice thereof. In
addition, TigerLogic may terminate this Agreement for convenience upon thirty (30) days written notice to Customer.

8.3 Return of Licensed Program. Upon expiration or earlier termination of this Agreement for any reason, Customer agrees to delete all copies of the Licensed Program from all Customer's computer systems and, at TigerLogic's option either: (i) return to TigerLogic all copies and partial copies of the Licensed Program in Customer's possession or under Customer's control that are stored on tangible media, or (ii) destroy all such copies and partial copies and certify such destruction to TigerLogic in writing.

8.4 Survival. The following provisions will survive the expiration or earlier termination of this Agreement: Sections 3.2, 6, 7, 8.3, 8.4, 9, 10, 11, and 12, and any other provision required for their construction or enforcement that by its terms would survive termination or expiration of this Agreement.

9. NO WARRANTY. THE LICENSED PROGRAM, DOCUMENTATION, AND ANY AND ALL OTHER MATERIAL PROVIDED BY TIGERLOGIC TO CUSTOMER UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER "AS IS" WITHOUT WARRANTY OF ANY KIND. TIGERLOGIC HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE LICENSED PROGRAM, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR USE OR PURPOSE. TIGERLOGIC DOES NOT WARRANT THAT THE LICENSED PROGRAM WILL FUNCTION WITHOUT INTERRUPTION OR THAT IT IS ERROR-FREE. CUSTOMER BEARS THE ENTIRE RISK AS TO THE OPERATION OF THE LICENSED PROGRAM. SOME JURISDICTIONS DO NOT PERMIT WAIVERS OF CERTAIN WARRANTIES SO THE ABOVE WAIVER MAY NOT APPLY TO CUSTOMER.

10. LIMITATION OF LIABILITY. IN NO EVENT WILL TIGERLOGIC BE LIABLE FOR ANY DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR DATA OR THE COST OF SUBSTITUTE GOODS, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), INCLUDING DIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, INCIDENTAL AND INDIRECT DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR CUSTOMER'S USE OF, OR THE RESULTS OBTAINED FROM, THE LICENSED PROGRAM, DOCUMENTATION, OR ANY OTHER MATERIAL PROVIDED BY TIGERLOGIC TO CUSTOMER UNDER THIS AGREEMENT.

Customer acknowledges and agrees that the disclaimer of warranties, limitations on liability and limited remedies contained in this Agreement are fundamental parts of the basis of TigerLogic's bargain hereunder, and TigerLogic would not be able to provide the Licensed Program to Customer absent such limitations.

11. CONFIDENTIAL INFORMATION.

11.1 Use and Nondisclosure. Customer will hold the Confidential Information in strict confidence, and use such care and take all precautions to protect such Confidential Information as Customer employs with respect to its most confidential materials, but in no case less than reasonable precautions. Customer may not use or reproduce the Confidential Information for any purpose except as specifically permitted under this Agreement. Customer may not disclose any of the Confidential Information or any information derived therefrom to third
parties, other than to Customer's employees who have a need to know and are subject to an obligation of confidentiality.

11.2 Exclusions. The term Confidential Information does not include, and the obligation of confidentiality hereunder will no longer attach to, information when Customer can document that such information: (a) was already in Customer's possession, free of any obligation of confidence, as shown by Customer's written records in existence at the time of disclosure; (b) is or becomes generally known to the public at the time TigerLogic communicates such information to Customer, or subsequently, through no breach of this Agreement by Customer; (c) is received independently and without restriction by Customer from a third party not under an obligation to TigerLogic or others to keep such information confidential; (d) is independently developed by Customer's personnel without the benefit of access, directly or indirectly, to Confidential Information of TigerLogic; provided, however, that Customer will bear the burden of proving that such personnel did not benefit from access to the Confidential Information.

11.3 Ownership and Return of Confidential Information. All Confidential Information and materials furnished to Customer by TigerLogic will remain the property of TigerLogic. Upon termination or expiration of this Agreement, or upon written request of TigerLogic, Customer shall promptly return to TigerLogic all documents and other tangible materials representing TigerLogic's Confidential Information and all copies thereof.

11.4 Mandatory Disclosure. The restrictions of Section 11 will not operate to prevent disclosures of Confidential Information required by any law or regulation, or in response to a valid order by a court of competent jurisdiction or other governmental authority; provided, however, that Customer provides TigerLogic with prompt written notice of such pending disclosure and makes a reasonable effort to obtain, or to assist TigerLogic in obtaining, a protective order preventing or limiting the disclosure.

12. GENERAL.

12.1 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California without giving effect to any choice of laws principles that would require the application of the laws of a different country or state. The parties expressly exclude the application of the 1980 United Nations Convention on the International Sale of Goods. The parties hereby consent to the personal jurisdiction and venue of the federal and state courts sitting in the County of Santa Clara, in the Northern District of California.

12.2 Injunctive Relief. Customer acknowledges that its breach of Sections 3 or 11 will cause irreparable harm to TigerLogic for which monetary relief would be insufficient, and hereby agrees that TigerLogic will be entitled to injunctive relief as well as such further relief as may be granted by a court of competent jurisdiction in the event of breach or threatened breach of Sections 3 or 11.
12.3 Attorneys' Fees. In the event any proceedings or lawsuit is brought by TigerLogic or Customer in connection with this Agreement, the prevailing party in such proceeding will be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

12.4 Relationship between the Parties. The parties hereto are independent contractors. Nothing in this Agreement will be deemed to create an agency, employment, partnership, fiduciary or joint venture relationship between the parties. Neither party (nor any agent or employee of that party) is the representative of the other party for any purpose and neither party has the power or authority as agent, employee or in any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

12.5 No Assignment. Neither this Agreement nor any rights or obligations under this Agreement may be assigned or delegated by Customer, by operation of law or otherwise, without the prior written consent of TigerLogic, which consent may be granted or withheld in TigerLogic's discretion. Any attempted or purported assignment or delegation by Customer in violation of the previous sentence will be null and void and without effect. This Agreement shall otherwise be assignable.

12.6 Compliance with Export Laws. Customer will not export, directly or indirectly, any technical data of TigerLogic acquired pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

12.7 Notice. All notices, requests and other communications under this Agreement must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by hand to the party to whom such notice is required or permitted to be given. If mailed, any such notice will be considered to have been given five (5) business days after it was mailed, as evidenced by the postmark. If delivered by hand, any such notice will be considered to have been given when received by the party to whom notice is given, as evidenced by written and dated receipt of the receiving party. The mailing address for notice to either party will be the address shown on the first page of this Agreement. Either party may change its mailing address by notice as provided by this section.

12.8 Severability. If any provision of this Agreement will be held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect, and the provision or portion thereof affected will be construed so as to be enforceable to the maximum extent permissible by law.

12.9 Waiver. All waivers must be in writing. Any waiver of either party to enforce a provision of this Agreement on one occasion will not be deemed a waiver of any other provision or such provision on any other occasion. This Agreement may only be amended by a written document signed by both parties.
12.10 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between them. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged.

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