



## Customer Agreement

The following terms (collectively, the “**Agreement**”) govern your use of Xurrent, Inc.’s cloud-based service management software solution(s) that you have subscribed to (the “**Service**”) provided by **Xurrent, Inc.**, whose headquarters is at 8 W. Victoria Street, Santa Barbara, California 93101, U.S.A. (below referred to as “**Xurrent**” or the “**Company**”). From time to time throughout this Agreement, You and the Company shall be referred to each as a “**party**” or together the “**parties**.”

BY SUBSCRIBING TO THE PRODUCTS OR SERVICES DIRECTLY WITH THE COMPANY, WHETHER BY SUBMITTING AN ACCEPTED PURCHASE ORDER OR EXECUTING AN ORDER FORM, CONTRACTING FOR THE SERVICE THROUGH AN OFFICIAL RESELLER, OR BY USING THE PRODUCTS OR SERVICES OR UNDERLYING SOFTWARE, YOU CONSENT TO BE LEGALLY BOUND BY THESE TERMS FOR EACH PRODUCT OR SERVICE THAT YOU PURCHASE OR SUBSCRIBE TO. IF YOU ORDER THROUGH A RESELLER, YOU CONFIRM THAT YOU HAVE GIVEN AUTHORITY TO THE RESELLER TO AGREE TO THE TERMS OF THIS AGREEMENT ON YOUR BEHALF AS PART OF THE INITIAL SETUP OF YOUR ACCOUNT AND YOU WILL NOT CHALLENGE OR DENY THAT THE RESELLER WAS SO AUTHORIZED.

BY ENTERING INTO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU WARRANT AND REPRESENT THAT YOU (OR YOUR CHOSEN RESELLER) HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS “**YOU**” OR “**YOUR**” OR “**CUSTOMER**” SHALL REFER TO SUCH ENTITY.

### **1. Products and Services Licenses**

1.1. Subject to compliance with the terms of this Agreement, the Company grants you a limited, non-exclusive, non-transferable, non-sub-licensable and revocable right for Users to access and use the Products and Services for your internal business purposes, and install and use the Company Products and Services (each term as defined below), solely in accordance with the terms and conditions of this Agreement and solely for the duration of your subscription to the Service (“**Subscription Term**”) (the “**Authorized Purposes**”). “**Users**” means Customer’s or its Affiliates’ employees, and its and their consultants, contractors and agents: (a) for whom access to the Products and Services during a Subscription Term has been procured by Customer pursuant to an Order Form; (b) who have been specifically designated and authorized by Customer to access and use the Products and Services on behalf of and for the benefit Customer only for Authorized Purposes; and (c) who have been supplied with user identifications and passwords for such purposes by Customer.

### **2. Company Products and Services**

2.1. The Company may also make available to you, for your installation and use solely in connection with the Service, from time to time, a variety of software, data, consulting, support, services, other content and printed and electronic documentation (all such materials are referred to herein as the Company “**Products and Services**”).

2.2. Any Company Products and Services that are utilized in any manner must be maintained with any identifying information indicating that such Products and Services originated with the Company.

### **3. Permitted Uses Generally**

3.1. Company acknowledges that you may write and/or use software or web sites (“**Applications**”) that interface with Company Products and Services. You acknowledge that the Company may modify, deprecate or republish proprietary Application Programming Interfaces (APIs) for the Product and Services including specific feature(s) of the Products and Services from time to time, and that it is your responsibility to

ensure that your use of the Products and Services are compatible with then-current Company APIs for the Products and Services.

- 3.2. You may make what are commonly referred to as “network calls” or “requests”, including API calls, to the Company Products and Services at any time that the Products and Services are available, provided that such calls and requests are not in violation of the Company Acceptable Use Policy (“AUP”) for the Service which is incorporated herein. A link to the AUP can be found published on the Company’s main website and may be updated from time to time.

#### **4. Restricted Uses Generally**

- 4.1. You agree that, except as expressly permitted herein or by applicable law, you will not:
  - 4.1.1. interfere or attempt to interfere in any manner with the functionality or proper working of the Company Products and Services or hack, attempt to hack or break or attempt to breach any security mechanism(s) or to otherwise disrupt the operation of Company Products and Services;
  - 4.1.2. compile or use the Company Products and Services or any other information obtained through the Service for the purpose of direct marketing, spamming, unsolicited contacting of users of the Service, or other impermissible advertising, marketing or other activities, including, without limitation, any activities that violate any anti-spamming laws, regulations or privacy protection acts, regardless of jurisdiction;
  - 4.1.3. remove, obscure, or alter any notice of any copyright, trademark or other intellectual property or proprietary right designation appearing on or contained within the Company Products and Services;
  - 4.1.4. modify, alter, tamper with, repair, or otherwise create derivative works of any Company Products and Services, including all software included in or accessed via the Products and Services;
  - 4.1.5. reverse engineer, disassemble, or decompile the underlying software of the Company Products and Services or apply any other process or procedure to derive the source code of any software included in or accessed via any of the Company Products and Services;
  - 4.1.6. allow access to the Products and Services to third parties. However, you may choose to offer access to and use of the Services and Company Properties to your Affiliates to the extent authorized by the particular license or Order Form, and to independent contractors who are under written contract to you to utilize the Company Products and Services on your behalf solely for your benefit (“**Permitted Access**”) provided that where you wish to offer such Permitted Access: (a) you shall obtain the Company’s permission in advance and ensure that all such use and access complies with this Agreement; (b) the Affiliate(s) or contractor(s) shall enter into an Order Form with the Company referencing this Agreement in the form provided by the Company; (c) you shall remain the contracting party with us and you shall be responsible for the payment of all applicable fees; and (d) you shall retain full unconditional responsibility for all acts and omissions of such persons and entities in relation to such access to and use of the Company Products and Services and you shall be liable for all acts and omissions of your Affiliates as if they were your own acts or omissions. An “**Affiliate**” for this purpose means any entity that controls, is controlled by, or is under common control with an entity, and as it pertains to you, such Affiliate must also form an integral part of your overall operations. All passwords and other access details provided by us to you are confidential and you shall ensure that all those with Permitted Access are aware of the confidential nature of such details;
  - 4.1.7. use or access the Company Products and Services to create any products or services which may or do compete with any Company Products and Services or any related or underlying software;
  - 4.1.8. knowingly upload a virus or other harmful code to the Company Products and Services or use the Company Products and Services in a manner that violates applicable data protection and privacy laws and regulations;
  - 4.1.9. to license, sell, resell (unless you have also entered into a Reseller Partner Agreement with the Company), rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Service or underlying software available to any third party except those with Permitted Access;
  - 4.1.10. disclose the results of any Company Product and Services or software program benchmark tests, reports, dashboards or related data to any third parties without the Company’s prior written consent;
  - 4.1.11. employ any measure intended to circumvent limitations to purchased licenses including user limitations; or use automated means, such as bots or crawlers, to access any Company Products

and Services or extract information therefrom (except such means as are expressly approved in advance in writing by the Company) or from the Company website;

- 4.1.12. use the Company Products and Services and the underlying software in a manner not authorized by this Agreement or which will or may breach any laws, rules, regulations and/or codes which are legally binding and which are applicable to the use of the Service (and underlying software); and
- 4.1.13. use the Company Products and Services in a manner or for a purpose not permitted by applicable export laws, regulations or sanctions; or export or re-export the Service to any country, region, organization or individual that is named as a restricted area or person on any applicable export laws, regulations or sanctions.

## **5. *Company's Review of Customer's Use of the Products and Services***

You agree that the Company may review your use of the Company Products and Services and utilization of your license(s), platform utilization or other ordered products or services from time to time for the purpose of verifying your compliance with this Agreement.

## **6. *Downtime and Service Suspensions***

The Company shall use commercially reasonable efforts to maintain availability of its Products and Services at all times but from time to time your access to and use of the Products and Services may be (i) suspended for the duration of any unanticipated or unscheduled downtime or unavailability of any portion or all of the Products and Services as a result of power outages, system failures or other reasons beyond the Company's reasonable control; and (ii) the Company shall also be entitled to suspend access to any portion or all of its Products and Services at any time: (a) for scheduled downtime to permit the Company to conduct normal or otherwise required maintenance or to make modifications to the Products and Services; (b) in the event of a denial of service attack or other attack on the Products and Services or other event that the Company determines, in the Company's reasonable discretion, may create a risk to the Products and Services, to you or to any of the Company's other customers if the Products and Services were not otherwise suspended; or (c) in the event that the Company determines that its Products and Services are prohibited by law or the Company otherwise determines that it is necessary or prudent to do so for legal or regulatory reasons (collectively, "**Service Suspensions**"). To the extent the Company is able, the Company will endeavor to provide you notice of any Service Suspension in accordance with the notice provisions set forth in Section 17 (Notices) below and to post updates on the applicable Company website regarding resumption of the Service following any such suspension.

## **7. *Pricing and Invoicing***

- 7.1. In order to activate your Products or Services, you must request it on the Company's website or via approved Company order documents and processes such that Company accepts your order, confirming your license. In the case of any Customer account, once you have registered your details and the Company has confirmed your subscription and activated your account, the Company will charge you license fees associated with your designated licensing model.
- 7.2. The Company may change pricing for its licenses at its discretion and in the case of a price increase, the increase would be effective on the next renewal date.
- 7.3. Company prices exclude applicable taxes unless identified as tax inclusive. If any amounts are to be paid to the Company, you will also be billed for, and pay any applicable value added taxes, goods and services taxes, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that the Company is permitted to collect from you.
- 7.4. Non-payment by the invoice due date may result in the Company charging interest on the outstanding balance at the lesser of 1.5% per month or the maximum amount permitted by law and/or suspension of the Products and Services.
- 7.5. Company retains the right to request and require receipt of financial and credit worthiness of its Customers at any time. If you fail to furnish acceptable financial or credit worthiness information, or if the Company determines that any Customer financial or credit profile is at risk, the Company may at its discretion terminate this Agreement and the licenses referred to herein.
- 7.6. License pricing relating to purchased Products and Services will generally be based on an annual license for specified products and Platform Users. Details on pricing licenses will be provided in a pricing proposal (or "quote") and shall be confirmed via the Company's current order process. For the avoidance of doubt, the

Company meters use of and charges for some of its Products and Services licenses based upon the number of Platform Users authorized during the previous month, as further defined in the pricing section associated with the applicable Order Form. A “**Platform User**” means a User with broad rights and capabilities, *for example* to view and access all records, edit requests, tasks, problems, releases and CI’s, and to use Agile boards and access and manage time registration, reports and dashboards.

- 7.7. As part of your contracted license agreement, your purchase documents may include the use of “Implementation Services” or “Consulting Services” associated with the implementation, expansion, or potential customized use of the applicable Company platform and purchased licenses. Any such use of services may include the Company’s contracting of certified third party subcontractors for the delivery of said services or consulting. In all cases Customer shall be furnished with a “Scope of Work” (SOW) which shall define the set of services or consulting associated with the required work. Customer shall approve any SOWs in advance as part of order documentation confirmation. Company shall retain the right to utilize authorized third parties for said work. Invoicing for these “Implementation Services” or “Consulting Services” shall follow the same invoicing procedures and terms stipulated in this Section 7 of this Agreement.
- 7.8. The pricing within proposal quotations Company provides to you shall be valid for the period set forth in the Order Form.

## 8. **Payment**

- 8.1. Unless otherwise agreed in writing, you agree to pay all undisputed invoices (“**undisputed**” herein means invoices that are not disputed in good faith) within thirty (30) days of the date of invoice. All amounts payable under this Agreement must be made without setoff or counterclaim and without deduction or withholding. If any deduction or withholding is required by applicable law, you must notify the Company and provide the Company with documentation that the withholding and deducted amounts have been paid to the relevant taxing authority.
- 8.2. All invoices and corresponding payments hereunder shall be denominated as specified and approved by Company in the applicable Order Form, either in U.S. Dollars (\$) (currency code USD) or Euros (€; currency code EUR) or Pounds Sterling (£, currency code GBP).

## 9. **Data Protection and Confidentiality**

- 9.1. The following definitions are used in this Section 9:
  - 9.1.1. **CCPA** means the California Consumer Privacy Act of 2018, Cal. Civ. Code §§ 1798.100 et. Seq, as amended.
  - 9.1.2. **Data Controller, Data Processor, Data Subject, Personal Data, Data Breach, Processing, Processed and Process and appropriate technical and organizational measures** shall have the meaning as defined in the Data Protection Legislation.
  - 9.1.3. **Data Protection Legislation** means any and all applicable privacy and data protection laws and regulations, including, where applicable, the EU Data Protection Law, Swiss Data Protection Laws, the UK Data Protection Law and the CCPA, as all may be amended or superseded from time to time.
  - 9.1.4. **EU Data Protection Law**” means the (i) EU General Data Protection Regulation (Regulation 2016/679) (“**GDPR**”); (ii) Regulation 2018/1725; (iii) the EU e-Privacy Directive (Directive 2002/58/EC), as amended (**e-Privacy Law**); (iv) any national data protection laws made under, pursuant to, replacing or succeeding (i) – (iii); and (v) any legislation replacing or updating any of the foregoing.
  - 9.1.5. **Swiss Data Protection Laws**” or “**FADP**” means the Swiss Federal Act on Data Protection of June 19, 1992, SR 235.1, and any other applicable data protection or privacy laws of the Swiss Confederation as amended, revised, consolidated, re-enacted or replaced from time to time, to the extent applicable to the processing of Personal Data under this Agreement.
  - 9.1.6. **UK Data Protection Laws**” means the Data Protection Act 2018 (DPA 2018), as amended, and the EU General Data Protection Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and the free movement of such data, as incorporated into UK law as the UK GDPR, and any other applicable UK data protection laws, or regulatory Codes of Conduct or other guidance that may be issued from time to time.
  - 9.1.7. Data protection laws may be modified from time to time and the Company will endeavor to provide written notice (which may include in-application notice) of any applicable updates.

- 9.2. The Company takes privacy extremely seriously and will comply with the terms of its privacy policy, the link for which is set forth on the Company's main website.
- 9.3. Each of the parties agree to comply with all applicable requirements of any relevant Data Protection Legislation and agree to the provisions of the Company's Data Processing Addendum, the link to which is set forth on the Company's main website (the "DPA"), which, to the extent applicable, is incorporated herein by reference and is subject to all of the terms and conditions of this Agreement. This is in addition to, and does not relieve, remove or replace, either party's obligations under the Data Protection Legislation.
- 9.4. You warrant to the Company that you have taken all steps that are required to enable the Company to process your Personal Data in compliance with all Data Protection Laws and any other applicable laws, enactments, regulations, orders, standards and other similar instruments, including without limitation that you have in place the necessary notices and consents from Data Subjects for you to lawfully transfer their Personal Data to the Company, or have another appropriate legal basis in place to enable lawful transfer of the Personal Data to the Company and for the Company to process, use and transfer such personal data in connection with the provision of the Products and Services.
- 9.5. "**Confidential Information**" of a party includes but is not limited to such party's (or its Affiliate's) nonpublic: inventions, discoveries, improvements, and copyrightable material not yet patented, published, or copyrighted; special processes and methods, whether for production purposes or otherwise, and special apparatus and equipment not generally available or known to the public; current engineering research, development, design projects, research and development data, technical specifications, plans, drawings and sketches; business information such as product costs, vendor and customer lists, lists of approved components and sources, price lists, production schedules, business plans, and sales and profit or loss information not yet announced or not disclosed in any other way to the public; and any other information or knowledge not generally available to the public. All business terms of this Agreement, including, but not limited to, pricing and access/login details, details of the Service, Company Properties, Customer Content (defined below in Section 11.2) and your data shall be considered Confidential Information hereunder.
- 9.6. Each party shall keep in confidence all Confidential Information of the other party obtained prior to or during this Agreement and shall protect the confidentiality of such information in a manner consistent with the manner in which such party treats its own confidential material, but in no event with less than reasonable care. Without the prior written consent of the other party, a party shall not disclose or make available any portion of the other party's Confidential Information to any person, firm, association, or corporation, or use such Confidential Information, directly or indirectly, except for the performance of this Agreement. The foregoing restrictions shall not apply to Confidential Information that:
  - 9.6.1. was known to such party (as evidenced by its written record) or was in the public domain prior to the time obtained by such party;
  - 9.6.2. was lawfully disclosed to such party by a third party who did not receive it directly or indirectly from such party and who is under no obligation of secrecy with respect to the Confidential Information;
  - 9.6.3. became generally available to the public, by publication or otherwise, through no fault of such party; or
  - 9.6.4. was developed independently by the receiving party as evidenced by written records without reference to the Confidential Information of the other party.
- 9.7. Company maintains a right to publish the logos of its customers and certified partners on its website and other Company owned properties.
- 9.8. The parties shall take all necessary and appropriate steps in order to ensure that its employees and subcontractors adhere to the provisions of this Section 9. All Confidential Information shall be returned to the disclosing party or destroyed upon receipt by the receiving party of a written request from the disclosing party. The receiving party may disclose the disclosing party's Confidential Information to the extent required by law or legal process, provided, however, the receiving party will (unless prohibited by law or legal process): (a) give the disclosing party prior written notice of such disclosure to afford the disclosing party a reasonable opportunity to appear, object, and obtain a protective order or other appropriate relief regarding such disclosure; (b) use diligent efforts to limit disclosure to that which is legally required; and (c) reasonably cooperate with the disclosing party, at the disclosing party's expense, in its efforts to obtain a protective order or other legally available means of protection.

## 10. Warranties & Disclaimers

- 10.1. The Company shall provide the Service to you with reasonable skill and care in a professional manner. The

Company shall provide technical support to you based on the support level designated in your proposal and confirmed purchase documentation. General descriptions of the various services may be published on the Company's main website.

- 10.2. The availability of the Company Products and Services may be affected (and the Company shall not be liable in such cases unless directly caused by the Company) by: hardware or telecommunications failures; the effects of the failure or interruption of the Service by third parties; delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including without limitation the internet, other factors outside the Company's reasonable control; your actions or omissions (including without limitation, breach of your obligations set out in this Agreement) or those of any third parties (including but not limited to breaks in the continuity of the electricity supply or of the telecommunications linked to the Company's applicable server(s)); and interruptions to the Service resulting from any request by you.
- 10.3. If the Products and Services are unavailable or defective in any way then to the extent that such defect or unavailability is caused by a breach of this Agreement by the Company, the Company will at its expense, use reasonable endeavors to correct any such unavailability or defect promptly. Such correction is your sole and exclusive remedy for (a) the unavailability of the Products and Services, and (b) any breach of Section 10.1 above.
- 10.4. The Company warrants that it possesses all necessary authority and permissions to the Products and Services to grant the licenses to you as set out herein.
- 10.5. Each party warrants that: (a) it is duly organized and validly existing and authorized to do business in the jurisdictions where it operates; (b) it has the requisite power and authority to enter into this Agreement; and (c) entering and complying with its obligations under this Agreement does not violate any legal obligation by which such party is bound.

## **11. Intellectual Property**

- 11.1. All rights in the Company Products and Services not expressly granted under this Agreement are reserved to the Company. You do not, by virtue of this Agreement or otherwise, acquire any ownership interest or rights in the Products and Services, the trademarks, service marks, service or trade names, logos, and other designations of the Company, or other technology and software (including third party technology and software), except for the limited use and access rights described in this Agreement.
- 11.2. Other than the rights and interests expressly set forth in this Agreement, and excluding Company Products and Services and works derived from Company Products and Services, you reserve all right, title and interest (including all intellectual property and proprietary rights) in and to content and data you may send to the Company or the Products and Services ("Customer Content").
- 11.3. You agree to grant the Company a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service or Company Properties any suggestions, enhancement requests, recommendations or other feedback provided by you relating to the operation of the Products and Services, provided such information does not include any Customer Content, your Confidential Information or your personally identifiable data.
- 11.4. During and after the term of the Agreement, with respect to the Products and Services, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against the Company or any of the Company's customers, end users, business partners, licensors, sublicensees or transferees, any patent infringement or other intellectual property infringement claim with respect to the Products and Services.
- 11.5. The Company Products and Services are not bespoke or tailored to you and the Company does not warrant that the Products and Services will meet your requirements. The Company offers no refund in the event you purchase the license and subsequently decide that they are not suitable for your requirements or are not required for any reason. The Company offers a Trial Service which allows potential customers to evaluate the Service on a trial basis prior to purchasing the full Service.
- 11.6. You acknowledge that the Company may change or remove the features or functionality of the Products and Services from time to time in its sole discretion as part of its ongoing mission to improve the Products and Services and the Company's Customers' use of the same, provided that such modifications will not materially decrease their functionality.
- 11.7. In addition to the foregoing, the Company specifically disclaims all liability, and you are solely responsible for the development, operation, maintenance and use of other applications owned or licensed by you that may be utilized by or for you in conjunction with the Service, and for all materials that appear on or within such applications.
- 11.8. The Company websites and/or the Products and Services may contain links to websites that are not under

the Company's control ("Third Party Sites"). The Company provides such links to you as a convenience and the inclusion of any such links does not constitute or imply the Company's endorsement or validation of any Third Party Site, nor is the Company responsible for the contents or functionality of any Third Party Sites or their terms and conditions for use or any website that can be accessed via links on any Third Party Site.

11.9. Company reserves the right to maintain its logo or website or application domain or Company name or logomark or trademark visible within Company Products and Services.

## **12. Limitations of Liability and Disclaimer of Warranties**

12.1. Nothing in this Agreement shall limit or exclude either party's liability for:

- 12.1.1. death or personal injury caused by gross negligence;
- 12.1.2. fraud or willful or fraudulent misrepresentation; or
- 12.1.3. any other liability which cannot be limited or excluded by applicable law.

12.2. Subject to Section 12.1, to the fullest extent permitted by applicable law, neither party shall be liable to the other party, whether in contract, tort (including without limitation negligence), strict liability or other theory for breach of statutory duty, or otherwise, for any indirect, special, consequential, incidental, or exemplary loss or punitive damages arising out of, under or in connection with this Agreement, the Service provided, the use of or inability to use the Company Products and Services, including without limitation for loss of profits; loss of sales or business, business opportunity or goodwill; loss, inaccuracy, corruption or recovery/restoration of data or information; loss of agreements or contracts; loss of anticipated savings; loss of or damage to goodwill; loss of use or corruption of software; cost of procurement of substitute goods, services, or technology, or for any other indirect, special, consequential, incidental, or exemplary loss or punitive damages, whether foreseeable or not and even if advised of the possibility thereof.

12.3. Subject to Sections 12.1 and 12.2 above, each party's maximum liability to the other party per claim or series of connected claims under or in connection with the Company Products and Services, and this Agreement generally whether in contract, tort (including without limitation negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to 100% of the price paid by you for licenses under the term of this Agreement in the twelve (12) months' period preceding the date of the incident(s) giving rise to the relevant claim.

12.4. Each party further agrees that the exclusions and limitations of liability above are cumulative for all claims howsoever arising under all agreements, are fair and reasonable in the circumstances, will survive any termination or expiration of this agreement, and will apply even if any limited remedy specified herein is found to have failed of its essential purpose.

12.5. Except for the representations and limited warranties in Section 10 (Warranties and Disclaimers), the Products and Services and Company Properties are provided "as is" without warranties of any kind, either express or implied, or any warranties arising from a course of dealing or trade usage including but not limited to the implied warranties of merchantability, non-infringement or fitness for a particular purpose. Nor does the Company warrant that the Products and Services or the Company Properties will be uninterrupted or error-free or regarding the security, accuracy, reliability, timeliness or performance of the service. The Company makes no warranty about the suitability of the Company Properties, Products or Services for any purpose. In the case of a breach of warranty by the Company, your sole and exclusive remedy shall be to receive the remedies set forth in Section 10 (Warranties and Disclaimers).

## **13. Indemnification**

13.1. The Company shall defend you against any claim, demand, suit, or proceeding made or brought against you by a third party ("Claim") to the extent of any finding that the use of the Company's Products and Services, when used as permitted hereunder and strictly in accordance with the license and use rights granted hereunder infringes or misappropriates the intellectual property rights of a third party, and shall indemnify you for any damages finally awarded against, and for reasonable attorney's fees incurred by, you in connection with any such Claim; provided, that you (a) promptly give the Company written notice of the Claim; (b) give the Company sole control of the defense and settlement of the Claim (provided that the Company may not settle any Claim if the settlement requires an admission of liability by you, unless approved in writing by you); and (c) provide to the Company all reasonable assistance, at the Company's expense.

13.2. The foregoing indemnification obligations do not apply if (a) the allegation does not state with specificity that the Service or use of the applicable Company Product and/or Service is the basis of the Claim; (b) a Claim against you arises from the use or combination of the Company Product and/or Service or any part

thereof with software, hardware, data, or processes or services not provided by the Company, if the Product and/or Service or use thereof would not infringe without such combination; (c) a Claim against you arises from the use of other than the then-current, unaltered version of the applicable Company Products and/or Services, unless the infringing portion is also in the then-current, unaltered release; or (d) a Claim against you arises from your breach of this Agreement. In the event the use of any Company Products and/or Services is, or the Company believes is likely to be, alleged or held to infringe any third party intellectual property right, the Company may, at its sole option and expense, (i) procure for you the right to continue using the affected Product and/or Service, (ii) replace or modify the affected Product and/or Service with functionally equivalent product or service so that it does not infringe, or, if either (i) or (ii) is not commercially feasible, (iii) terminate the Product and/or Service and refund the fees received by the Company from you for the affected service for the remainder of the applicable term. THE FOREGOING CONSTITUTES THE COMPANY'S ENTIRE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY THIRD PARTY CLAIMS OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND OR NATURE.

- 13.3. You shall defend the Company against any Claim made or brought against the Company alleging that the Customer Content, or your use of the Products and Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify the Company for any costs, losses or damages (including without limitation for reasonable attorneys' fees) claimed against or incurred by the Company in connection with any such Claim; provided, that the Company (a) promptly gives you written notice of the Claim; (b) gives you sole control of the defense and settlement of the Claim (provided that you may not settle any Claim if the settlement requires an admission of liability by the Company, unless approved in writing by the Company); and (c) provides to you all reasonable assistance, at your expense.

#### **14. Duration, Termination and Suspension**

- 14.1. This Agreement shall commence as soon as you (or your appointed reseller) register your account to the Products and Services and shall continue until the expiration of the subscription term in all Order Forms, unless earlier terminated as provided in this Agreement. Subscription Terms will automatically renew for additional periods equal to the expiring term (each a "Renewal Term" and together with the initial term, the "Term"), unless either party gives written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current Term. Any pricing changes will be as set forth in the applicable Order Form or identified by written notice prior to start of the Renewal Term.
- 14.2. You may terminate this Agreement at any time for any reason or no reason at all, at your convenience, by providing the Company thirty (30) days' written notice of termination in accordance with Section 17 (Notices). Company will not provide any refund for any prepaid but unused licenses.
- 14.3. The Company may terminate this Agreement (and, accordingly, cease providing the Service to you), for any reason or for no reason at all upon expiration of the then-current Term. If the Company exercises its right to terminate under this Section 14.3, the remaining balance of any prepaid but unused license(s) as of the effective date of termination will be refunded by the Company; such refund will be calculated based upon the applicable license(s) granted.
- 14.4. Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 14.4.1. the other party is in breach of a material term and, assuming such default is capable of cure, has failed to remedy the breach within thirty (30) days of receipt of a written notice specifying the breach and requiring it to be remedied; or
  - 14.4.2. there is an order or a resolution for the liquidation, administration, dissolution or winding-up of the other party (except where such winding up is for the purpose of solvent amalgamation or reconstruction) or has an administrator or other receiver, manager, trustee, liquidator or similar officer appointed overall or any substantial part of its assets, or enters into or proposes any composition or arrangement with the other party's creditors generally or is subject to any analogous event or proceedings in any applicable jurisdiction.
- 14.5. If you terminate for the Company's unremedied breach under Section 14.4.1, the remaining balance of any prepaid but unused license(s) as of the effective date of termination will be refunded by the Company; such refund will be calculated based upon the applicable license(s) granted. If the Company terminates under Section 14.4.1 for your unremedied breach, the balance of any prepaid but unused license(s) will lapse and not be refunded, and any payments committed by you which have not been paid shall become payable immediately.



- 14.6. Without affecting any other right or remedy available to the Company, the Company may suspend this Agreement and your access to the Service with immediate effect by giving written notice to you if any payment due from you has not been paid by the due date and remains in default for more than 14 days after being notified in writing to make such payment, or if you breach any of the license restrictions in Section 4 (Restricted Uses Generally). If you still do not make payment or remedy the breach of Section 4 within the ten (10) days thereafter, the Company may terminate this Agreement by giving written notice to you. If the Company terminates under this Section 14.6, the balance of any prepaid but unused license(s) will lapse and not be refunded, and any payments committed by you which have not been paid shall become due and payable immediately.
- 14.7. Upon the Company’s suspension of your use of the Products and Services, in whole or in part, for non-payment by you, (i) license(s) will continue to be consumed for those parts of the Products and Services not suspended by the Company if it is still in use by you, notwithstanding the suspension; (ii) you remain liable for all fees, charges and any other obligations you have incurred through the date of suspension with respect to the Products and Services; and (iii) all of your rights with respect to the Products and Services shall be frozen during the period of the suspension.
- 14.8. In the event this Agreement is terminated for any reason, Sections 4 (Restricted Uses Generally), 8 (Payment), 9 (Data Protection and Confidentiality), 11 (Intellectual Property), 12 (Limitations of Liability and Disclaimer of Warranties), 13 (Indemnification), 16 (Governing Law and Dispute Resolution), 17 (Notices) and 18 (Miscellaneous Provisions) will survive any such termination.
- 14.9. Upon termination or expiry of this Agreement, the Company will delete Customer Content and data in line with the details set out in the DPA.

**15. Import and Export Compliance and Restrictions**

- 15.1. Each party shall, in connection with the provision of the Company Products and Services and your use of the same, comply with all applicable import, export and re-export control laws and regulations of any country, including the country-specific economic sanctions programs or embargoes adopted against countries or individuals under any applicable national or international legislation.
- 15.2. Each party subscribes to and agrees to comply with the United States Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78dd-1, et seq.) as amended, (which, among other things, prohibits the payment of bribes to foreign officials to assist in obtaining or retaining business), and all other applicable laws and regulations, in performance of their obligations and the conduct of their activities under and pursuant to this Agreement.

**16. Governing Law and Dispute Resolution**

16.1. This Agreement shall be construed and governed by the laws of the State or country as set out in the table immediately below (the “**Law and Venue Table**”) and the parties agree to the exclusive venues stated therein, without regard to principles of conflicts of laws. The parties waive any right to a trial by jury, if applicable and agree to the Dispute Resolution provision set forth in Subsection 16.2 (Dispute Resolution) below. Each party recognizes that the unauthorized disclosure of Confidential Information, may cause irreparable harm to the other party for which monetary damages may be insufficient, and in the event of such disclosure, such other party shall be entitled to seek an injunction, temporary restraining order, or other provisional remedy as appropriate without being required to post bond or other security.

Customer HQ Location	Applicable Law	Applicable Venue for Qualifying Cases
Americas	Laws of the State of Delaware, USA	Courts in Delaware, USA
Europe	Laws of Ireland	Courts in Dublin, Ireland
UK	Laws of England & Wales	Courts in London, England
Rest of the World	Laws of the State of Delaware, USA	Courts in Delaware, USA

## 16.2. Dispute Resolution.

(i) Except for disputes involving the Company's intellectual property rights, actions seeking injunctive relief, disputes involving nonpayment, or suit to compel compliance with this dispute resolution process, the parties agree to use the dispute resolution procedures set forth in this section with respect to any controversy or claim arising out of or relating to this Agreement or its breach. The parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims related to this Agreement. In the event of a qualifying dispute between the parties under this Agreement, the parties agree to promptly meet and confer with the goal of settling such dispute. If the parties are unable to reach a prompt, amicable agreement concerning such dispute, the parties agree to submit the matter to non-binding mediation through a mediator selected by them and, if the parties cannot agree upon a mediator, one will be selected according to the applicable rules of the entity administering the mediation. Failing the resolution of their dispute by mediation within ten (10) days after the initial mediation meeting, the parties will submit the matter to binding arbitration by an arbitrator selected by the Parties with expertise with similar agreements, or if the parties cannot agree upon an arbitrator, one will be selected according to the applicable rules.

(ii) If the Customer is a US entity or has a US presence, the mediation and arbitration will be conducted under the auspices of and according to the rules of the Judicial Arbitration and Mediation Service, Inc., through its Santa Barbara County or Los Angeles County office ("J.A.M.S.").

(iii) If the Customer is domiciled in any country outside of the US and does not have a US presence, the mediation and arbitration will be conducted under the auspices of and according to the rules of the International Chamber of Commerce through its applicable offices in the countries set forth in the **Law and Venue Table** in Section 16.1 above (the "ICC").

(iv) The mediation and arbitration will be conducted in English, and the mediator and arbitrator shall apply the applicable law set forth in the **Law and Venue Table** without regard to conflict of laws principles. The arbitrator shall not have the right to impose injunctive relief. The mediation fee and arbitration fee, if any, shall be divided equally between the parties. The decision of the arbitrator shall be final and binding upon the parties and may be entered into any court of competent jurisdiction and the Parties agree to the jurisdiction of the applicable court(s) set forth in the **Law and Venue Table**.

## 17. Notices

17.1. Except as otherwise set forth herein, notices given by the Company to you under this Agreement that affect the Company customers generally (e.g., notices of an amended Agreement, AUP, etc.) will be posted on the applicable Company website. Notices made by the Company under this Agreement specific to you (e.g. notices of breach and/or suspension) will be provided to you via the email address you provided to the Company. It is your responsibility to keep the email address current and you will be deemed to have received any email sent to any such email address, upon the Company's sending of the email.

17.2. For notices to the Company under this Agreement and for questions regarding this Agreement or the Service, you may contact the Company as follows:

By submitting a request in the Service and assigning this request to the Company or the reseller that supports you for the Service.

By sending an email to [legal@xurrent.com](mailto:legal@xurrent.com)

By sending a letter to:

**Xurrent, Inc.**

**8 W. Victoria Street**

**Santa Barbara, California 93101**

**United States of America**

**Attn: Legal Department**

17.3. All communications and notices to be made or given pursuant to this Agreement shall be in the English language. If the Company provides a translation of any materials provided hereunder, the English language version of the Agreement will control if there is any conflict.

## 18. Miscellaneous Provisions

18.1. The Company may modify this Agreement, the DPA or any policy or other terms referenced in this Agreement (collectively, "Additional Policies") at any time by posting a revised version of the Agreement, DPA or such Additional Policy on the Company's main website. In addition to this, you will be notified in accordance with Section 17 (Notices). For all licensed accounts the revised terms shall take effect thirty (30) days after notice is provided. By continuing to use or receive the Products and Services after the

effective date of any revisions to this Agreement, the DPA or any Additional Policies, you agree to be bound by the revised Agreement, DPA or any revised Additional Policies.

- 18.2. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect, and any invalid or unenforceable portions shall be construed in a manner that most closely reflects the effect and intent of the original language. If such construction is not possible, the provision will be severed from this Agreement, and the rest of the Agreement shall remain in full force and effect.
- 18.3. The failure by either party to enforce any provision of this Agreement shall in no way be construed to be a present or future waiver of such provision nor in any way affect that party's right to enforce such provision thereafter. All waivers must be in writing to be effective.
- 18.4. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, the Company may assign this Agreement in its entirety, without your consent to Company's Affiliate provided the assignee accepts full responsibility for Company's obligations hereunder, or to a successor in interest pursuant to a merger, acquisition, corporate reorganization, or sale of all or substantially all of Company's assets. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.
- 18.5. This Agreement and the DPA, together with the Order Form and Additional Policies, constitute the entire agreement between you and the Company regarding the subject matter hereof and supersedes any and all prior or contemporaneous representation, understanding, agreement, or communication between you and the Company, whether written or oral, regarding such subject matter. The terms and conditions hereof shall continue to apply notwithstanding any terms and conditions submitted by you, such as on a purchase order, which shall have no validity even if the Company processes the same.
- 18.6. Nothing in this Agreement creates, or is intended to create, any type of joint venture, escrow, partnership or any employer/employee or fiduciary or franchise relationship between you and the Company.
- 18.7. In case of a legislation change which affects the Products and Services, the Company will actively work with you to ensure compliance. If such a change request occurs and can be resolved within reasonable efforts, it will be free of charge.
- 18.8. Neither party will be liable for any delay or failure to perform any obligation under this Agreement where the delay or failure results from any cause beyond its reasonable control, including, but not limited to, acts of God, labor disputes or other industrial disturbances, electrical or power outages, utilities or other telecommunications failures, epidemic, pandemic, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war.

***[Signature page to Follow]***

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Customer Agreement as of the date last written below.

**Company / Xurrent**

**Customer**

Company name: Xurrent, Inc.  
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Tax identifier: 27-2137803  
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Representative:  
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Title:  
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Email:  
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Address: 8 W. Victoria Street  
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City: Santa Barbara, California 93101  
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Country: U.S.A.  
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Billing Contacts:  
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Date:  
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Signatures:  
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