



Functionize Terms of Service Agreement

Last Updated: February 3, 2022

IMPORTANT: PLEASE READ THESE TERMS OF SERVICE CAREFULLY BEFORE USING ANY SERVICES OR PRODUCTS OFFERED BY FUNCTIONIZE, INC. (“**FUNCTIONIZE**”). THESE TERMS OF SERVICE GOVERN ALL ACCESS AND USE OF FUNCTIONIZE’S PROPRIETARY FUNCTIONIZE SOLUTION. BY ACCEPTING THIS AGREEMENT BY SUBMITTING YOUR REGISTRATION INFORMATION TO OPEN AN ACCOUNT, CLICKING TO CONFIRM YOUR ASSENT ONLINE, EXECUTING AN ORDER FORM THAT REFERENCES THESE TERMS AND/OR USING SUCH FUNCTIONIZE SOLUTION, YOU AGREE TO THESE TERMS OF SERVICE AS AN INDIVIDUAL OR ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (“**CUSTOMER**”). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU REPRESENT YOU HAVE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS OF SERVICE. THESE TERMS OF SERVICE ALONG WITH ANY SUBMITTED ORDERS (TOGETHER THE “**AGREEMENT**”) WILL APPLY TO ALL ACCESS AND USE OF FUNCTIONIZE SOLUTION THROUGH CUSTOMER’S ACCOUNT. IF YOU DO NOT AGREE WITH THESE TERMS OF SERVICE, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT ACCESS OR USE THE FUNCTIONIZE SOLUTION.

YOU ONLY HAVE RIGHTS TO AN EVALUATION VERSION OF THE FUNCTIONIZE SOLUTION UNLESS AND UNTIL YOU PLACE AN ORDER WITH FUNCTIONIZE (OR ITS RESELLERS) FOR THE COMMERCIAL VERSION OF THE FUNCTIONIZE SOLUTION. THE APPLICABLE PROVISIONS OF THESE TERMS OF SERVICE (INCLUDING, BUT NOT LIMITED TO SECTION 2.G BELOW) CONSTITUTE THE AGREEMENT AND GOVERN ALL USE OF THE EVALUATION VERSION.

1. DEFINITIONS.

- A. “**Authorized Users**” are those individuals who are Customer employees or contractors and who Customer authorizes to use the Functionize Solution through Customer’s account.
- B. “**Customer Data**” means the data and information which Customer uploads to the Functionize Solution.

- C. **“Documentation”** means the online user instructions and manuals made generally available by Functionize to its customer base for use with the then-current version of the Functionize Solution.
- D. **“Fees”** means the fees owed by Customer to Functionize or its reseller for the Functionize Solution and other associated services set forth in an Order.
- E. **“Functionize Solution”** means Functionize’s proprietary software solution, available as either a cloud-based or on-premise version, including all improvements, modifications, enhancements, analytics or derivative works of or included with the foregoing.
- F. **“Materials”** means information, content, Documentation or demo software relating to the Functionize Solution that may be made available through Customer’s Account or on Functionize’s website.
- G. **“Order”** means the order form or quotation placed directly with Functionize or through Functionize’s authorized reseller that incorporates this Agreement by reference and identifies the Functionize Solution, and specifies the applicable Fees, subscription term, whether the license will be cloud-based or on-premise, and other restrictions or limitations.
- H. **“Evaluation Period”** means a specific timeframe over which Functionize agrees to allow select Authorized Users to access the Functionize Solution as further described in Section 2.G below, plus any extensions that may be expressly authorized by Functionize in writing.
- I. **“Reports”** means the reports generated by the Functionize Solution based on processing the Customer Data.

2. USE OF THE HOSTED SERVICES.

- A. Authorized Use. Subject to the terms set forth in this Agreement, Functionize grants to Customer and its Authorized Users a limited, non-exclusive, non-transferable license during the subscription term of an applicable Order (or the duration of the Evaluation Period, if Customer is using an Evaluation Version) to (i) access and use the Functionize Solution for Customer’s internal business purposes relating to the testing and evaluation of Customer’s products and services as set forth in the applicable Order and subject to any additional restrictions or limitations that may be set forth in the applicable Order; and (ii) use and reproduce a reasonable number of copies of the Documentation in connection with Customer’s authorized use of the Functionize Solution. If Customer has licensed the on-premises version of the Functionize Solution, Functionize also grants Customer a non-exclusive, non-transferable, limited license (without the right to sublicense) to install an executable object code version of the Functionize Solution on servers at premises owned or controlled by Customer during the applicable subscription term. Customer

will implement appropriate safeguards and controls on Customer's systems and premises to protect the security and prevent unauthorized access to the on-premises version of the Functionize Solution. Any use of the Evaluation Version shall be subject to the additional terms set forth in Section 2.G below.

- B. Restrictions. Customer will not, and will not permit or authorize any Authorized User or other party to: (i) modify, disassemble, decompile or reverse engineer or attempt to derive the source code of the software or technology providing the Functionize Solution (except as permitted by law); (ii) interfere with the operation or functionality of the Functionize Solution; (iii) resell, distribute, sublicense, lease, transfer or share the Functionize Solution with or for the benefit of any third party (unless expressly authorized in the applicable Order); (iv) remove, modify or otherwise tamper with notices or legends on the Functionize Solution or Documentation; (v) attempt to probe, scan, penetrate, breach or test the vulnerability of the Functionize Solution or disable or circumvent the Functionize Solution's security or authentication measures; (vi) use or access the Functionize Solution for the purpose of building a competitive product or service; (vii) publicly disseminate performance information or analysis (including benchmarks) relating to the Functionize Solution; or (viii) use the Functionize Solution for any unlawful purpose or in a manner which violates or infringes any laws, rules, regulations, third party intellectual property or privacy rights.
- C. Access to Functionize Solution; Accounts. Customer is responsible for obtaining, maintaining, and supporting all internet access, computer hardware, and other software or services needed to access and use the Functionize Solution. To access and use the cloud-based version of the Functionize Solution, Customer will be required to register for an account ("**Account**") and manage access by Authorized Users. By creating an Account, Customer and its Authorized Users agree to: (i) provide accurate, current and complete Account information; (ii) maintain the security of any passwords and not share passwords with any other person; and (iii) immediately notify Functionize of any unauthorized use of Customer's Account or any other breach of security in relation to the Functionize Solution known to Customer. Customer is solely and entirely liable for all activities conducted through Customer's Account. For both the cloud-based and on-premise versions of the Functionize Solution, Customer is responsible for ensuring that all Authorized Users are aware of and comply with the terms and conditions of this Agreement.
- D. Customer Responsibilities. Customer manages and controls access to the Functionize Solution and use and processing of the Customer Data by the Functionize Solution. Customer agrees to abide by all applicable laws and regulations regarding the collection, disclosure, and use of the Customer Data, including without limitation, all applicable privacy and data security

laws and regulations. For the cloud-based version, Customer agrees to provide only simulation data to the Functionize Solution, and not send Functionize any sensitive, personally identifiable information that is subject to specific regulations or laws that impose increased protections and/or obligations with respect to handling that type of information (including, but not limited to, financial, health, social security numbers or other government identification numbers, ethnicity, sexual orientation and political affiliations or any other information where unauthorized disclosure could cause material or severe harm or impact to Functionize or third parties). Additionally, Customer agrees that the Customer Data will be scanned prior to uploading using up-to-date and industry standard methods to protect it against viruses or programming routines intended to damage the Functionize Solution or underlying technology, or surreptitiously intercept or expropriate any data or information. Customer Data will be retained and stored during the term of the Agreement in accordance with Functionize's data retention policies and Customer will be responsible for maintaining any additional backup of the Customer Data or Reports from Customer's use of the Functionize Solution.

- E. Third Party Services. Customer acknowledges that the Functionize Solution may include features or functionality that interoperate with services operated by third parties ("**Third-Party Services**") and Customer is responsible for ensuring that Customer's use of the Functionize Solution in connection with such Third-Party Services complies with any policies, terms and rules applicable to such Third-Party Services. Customer acknowledges such Third-Party Services may be modified, suspended or discontinued at any time by the third party provider, and that Functionize will not be liable to Customer for any such modification, suspension, or discontinuance.
- F. Maintenance and Support. Functionize will provide support services for the Functionize Solution, as further described in the Functionize Technical Support Policies available at <https://www.functionize.com/support-policies/>. Functionize may modify the features and functionality of the Functionize Solution from time to time to provide technical support and updates. For the cloud-based version of the Functionize Solution, such changes shall be made automatically by Functionize. For the on-premises version of the Functionize Solution, unless otherwise specified in an Order, bug fixes and updates will be made available to Customer to download and install only if Customer also purchases support. The foregoing does not include any add-on products, features, enhancements or services which Functionize may generally make available on a commercial basis to its customer base for an additional license fee.
- G. Evaluation Version. If Customer has not placed an Order with Functionize for the commercial version of the Functionize Solution or an Order

specifies that Customer only has rights to an Evaluation Version, then Customer's use of the Functionize Solution shall be for evaluation purposes only ("**Evaluation Version**"), and Customer acknowledges and agrees that Customer will only access and use the Functionize Solution solely for Customer's internal evaluation purposes to assess the capabilities of the Functionize Solution against their requirements in determining whether to license the commercial version of the Functionize Solution. All use of the Evaluation Version of the Functionize Solution must be in a non-production, non-commercial environment and not for general production use, subject to any additional limitations or restrictions provided by Functionize in writing when providing Customer with access to the Evaluation Version. Customer's right to use such Evaluation Version shall only be for the duration of the Evaluation Period set forth in the applicable Order or if no such period is specified, fourteen (14) days (together with any extension of the Evaluation Period that may be expressly authorized by Functionize in writing). In addition and notwithstanding any other provision of these Terms of Service, Customer acknowledges and agrees that (i) the Evaluation Version of the Functionize Solution is provided to Customer "AS-IS," with no warranties of any kind; (ii) Functionize shall have no indemnification obligations for the Evaluation Version; (iii) Functionize may terminate immediately in the event Functionize has reasonably determined that Customer has committed a breach of Section 2; and (iv) for Evaluation Versions provided to Customer for free, in addition to the termination rights under Section 6, either party may terminate the Evaluation Version license with or without cause effective ten (10) days after giving written notice of termination to the other party. Customer agrees to only provide simulation or historical Customer Data to the Evaluation Version of the Hosted Service, and no data related to current testing activities of Customer's products or business. CUSTOMER ACKNOWLEDGES THAT ALL CUSTOMER DATA UPLOADED TO OR STORED IN THE EVALUATION VERSION OF THE FUNCTIONIZE SOLUTION DURING THE EVALUATION PERIOD WILL BE PERMANENTLY LOST IF CUSTOMER HAS NOT ENTERED INTO AN ORDER FOR THE COMMERCIAL VERSION OF THE FUNCTIONIZE SOLUTION WITH FUNCTIONIZE BEFORE EXPIRATION OF THE EVALUATION PERIOD. FUNCTIONIZE AND ITS LICENSORS AGGREGATE LIABILITY WITH RESPECT TO THE EVALUATION VERSION SHALL NOT EXCEED THE GREATER OF (I) FEES PAID BY CUSTOMER FOR SUCH EVALUATION VERSION UNDER THE APPLICABLE ORDER (IF ANY) OR (II) FIVE THOUSAND DOLLARS (\$5,000).

3. PROPRIETARY RIGHTS.

- A. Functionize Solution. All rights, title and interest (including all intellectual property rights) in and to the Functionize Solution, Documentation and Materials and any improved, updated, modified or additional parts thereof, shall at all times remain the property of Functionize and its licensors. Functionize reserves all rights not expressly granted herein and there are no implied rights or licenses in this Agreement.
- B. Feedback. Customer may provide Functionize or its reseller with feedback, including any flaws, errors, bugs, anomalies, problems with and/or suggestions relating to the Functionize Solution (“**Feedback**”). Customer agrees that Functionize may, in its sole discretion, use the Feedback in any way and Customer hereby grants to Functionize a perpetual, worldwide, fully transferable, sublicensable, fully paid-up, irrevocable, royalty free license to use, reproduce, modify, create derivative works from, distribute, and display the Feedback in any manner any for any purpose, without any obligations or restrictions.
- C. Customer Data. As between the parties, Customer owns and retain all rights to the Customer Data. Customer is solely responsible for the accuracy, quality, integrity and legality of the Customer Data. Customer grants to Functionize, a worldwide, limited term license to access, use, host, reproduce, modify, distribute and display the Customer Data for the purpose of providing the Functionize Solution as set forth herein on behalf of Customer. Functionize may also use Customer Data on an aggregated and anonymous basis to improve and enhance Functionize’s systems, algorithms and service.
- D. Reports. As between the parties, Customer owns and retain all rights to the Reports. Notwithstanding the foregoing, Customer acknowledges that the Reports incorporate Functionize’s proprietary format and templates and Customer agrees to only use, and reproduce the Reports for Customer’s internal business purposes, but not otherwise distribute or publicly display such Reports in whole in their original format.

4. FEES AND PAYMENT.

- A. Fees. Customer agrees to pay all Fees set forth in its Order with Functionize or its reseller. Except as otherwise provided in the applicable Order, all Fees are quoted in the United States currency. Fees are non-cancellable and once paid are non-refundable except as expressly agreed in writing by Functionize. For orders placed by Customer through a reseller, any non-payment by the reseller to Functionize will be deemed a non-payment by Company regardless of whether Customer has paid such reseller.

- B. Payments. For Orders placed directly with Functionize, all Fees are due within thirty (30) days from the invoice date unless otherwise stated in the applicable Order. Late payments on any undisputed amounts may be subject to interest charges of 1.0% per month (or the maximum permitted by law, whichever is lower) and the expenses associated with those collections. If Customer believes that the bill from Functionize is incorrect, Customer must contact Functionize in writing within thirty (30) days from the invoice date to be eligible to receive an adjustment or credit.
- C. Taxes. For Orders placed directly with Functionize, Customer will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Functionize's income), and any related penalties and interest relating to the Fees paid under this Agreement. Customer will make all required payments to Functionize free and clear of, and without reduction for, any withholding taxes. Any such taxes imposed on payments to Functionize will be Customer's sole responsibility, and Customer will, upon Functionize's request, provide Functionize with official receipts issued by appropriate taxing authorities, or such other evidence as Functionize may reasonably request, to establish that such taxes have been paid.

5. CONFIDENTIALITY.

- A. Definition of Confidential Information. **"Confidential Information"** means business or technical information, including product plans, designs, source code, finances, marketing plans, business opportunities, personnel, research, trade secrets, development or know-how of the disclosing party, the financial terms of this Agreement and any third party information that the disclosing party is obligated to keep confidential, that in each case is either marked or designated as "confidential" or "proprietary" or which, under the circumstances taken as a whole, reasonably should be understood to be confidential. The parties acknowledge and agree that the Functionize Solution, and non-public Documentation and Materials are the Confidential Information of Functionize. Confidential Information shall not include information which: (a) is or becomes generally available to the public other than as a result of wrongful disclosure by the receiving party; (b) is or becomes available to the receiving party on a non-confidential basis by a third party that rightfully possesses the Confidential Information and has the legal right to make such disclosure; or (c) is developed independently by the receiving party without use of the disclosing party's Confidential Information and by persons without access to such information.

- B. Nondisclosure Obligations. Neither party will use, disseminate or in any way disclose any Confidential Information of the other party to any person, firm or business. Each party shall treat all Confidential Information with the same degree of care as such party accords to its own confidential information but not less than reasonable care. Each party shall disclose Confidential Information only to its employees or representatives who have a need to know such information. Each party certifies that each such employee or representative will have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to such party under this Agreement. Each party shall immediately give notice to the other party of any unauthorized use or disclosure of the other party's Confidential Information. Each party shall assist the other party in remedying any such unauthorized use or disclosure of the other party's Confidential Information. All Confidential Information shall be the property of the disclosing party and no license or other rights to Confidential Information is granted or implied hereby, except as otherwise expressly set forth in this Agreement.
- C. Exception. A disclosure of any Confidential Information by the receiving party (a) in response to a valid order by a court or other governmental body or (b) as otherwise required by law shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that the receiving party shall provide prompt prior written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent such disclosure.
- D. Remedies. If a party breaches or threatens to breach the obligations of Section 5, the affected party may seek injunctive relief from a court of competent jurisdiction, in addition to its other remedies.

6. Term and Termination.

- A. Term. This Agreement shall continue in full force and effect for the duration of the subscription term set forth in any active Order (or the Evaluation Period, if Customer has no Order), unless earlier terminated in accordance with this Agreement. Unless otherwise specified in an Order, the subscription term specified in an Order for the commercial version of the Functionize Solution will automatically renew for an additional term of twelve (12) months each unless and until either party provides the other (and, if applicable, the reseller) with written notice of termination at least thirty (30) days in advance of the last day of the then-current subscription term.
- B. Suspension. Customer acknowledges and agrees that Functionize may suspend Customer's Account for the Functionize Solution or terminate

Customer's license in the event: (i) any payment is overdue after Functionize has provided at least ten (10) days' written notice to Customer or its reseller that such payment is past due, or (ii) immediately in the event Functionize has reasonably determined that Customer has committed a breach of Section 2 or is otherwise using the Functionize Solution in a manner that threatens the security, integrity or availability of the Functionize Solution.

- C. Breach. Either party may terminate this Agreement upon written notice if the other party has breached a material term of this Agreement and has not cured such breach within thirty (30) days of receipt of notice from the non-breaching party specifying the breach.
- D. Effect of Termination. Upon any termination of this Agreement: (i) Customer shall immediately cease the use of all of the Functionize Solution; (ii) if Customer is using an on-premises version of the Functionize Solution, Customer will deinstall and delete all copies of the Functionize Solution from Customer's systems; (iv) Functionize will delete all Customer Data held by Functionize in accordance with Functionize's data retention policies; and (iv) each party shall return to the other party any other Confidential Information in its possession and/or control within fifteen (15) days after the effective date of such termination and upon request certify in writing that it has complied with its obligations hereunder. The provisions of Sections 3, 4, 5, 6.D, 7, 8, 9 and 10 of this Agreement shall survive any termination or expiration of this Agreement.

7. **DISCLAIMER OF WARRANTIES.** CUSTOMER AGREES THAT FUNCTIONIZE AND ITS LICENSORS PROVIDE THE FUNCTIONIZE SOLUTION ON AN "AS IS" AND "AS AVAILABLE" BASIS. FUNCTIONIZE MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE PERFORMANCE OF THE FUNCTIONIZE SOLUTION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND FUNCTIONIZE AND ITS LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, FUNCTIONIZE AND ITS LICENSORS DO NOT REPRESENT TO CUSTOMERS THAT (A) USE OF THE FUNCTIONIZE SOLUTION WILL MEET CUSTOMER'S REQUIREMENTS, OR (B) USE OF THE FUNCTIONIZE SOLUTION WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR.

8. **LIMITATION OF LIABILITY.** NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES), RESULTING FROM ANY ACT OR OMISSION BY SUCH PARTY UNDER THIS AGREEMENT AND THE APPLICABLE ORDER. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 9, UNDER NO CIRCUMSTANCES WILL THE TOTAL LIABILITY OF FUNCTIONIZE AND ITS LICENSORS ARISING OUT OF OR RELATED TO THIS AGREEMENT AND THE AUTHORIZED USE OF THE FUNCTIONIZE SOLUTION (REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, NEGLIGENCE OR OTHERWISE), EXCEED THE AMOUNTS, IF ANY, THAT ARE PAID OR PAYABLE BY CUSTOMER (OR ITS RESELLER) TO FUNCTIONIZE UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM. NOTWITHSTANDING THE FOREGOING, FUNCTIONIZE'S LIABILITY FOR INDEMNIFICATION OBLIGATIONS UNDER SECTION 9 OF THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, TWO TIMES (2X) THE AMOUNTS THAT ARE PAID OR PAYABLE BY CUSTOMER (OR ITS RESELLER) TO FUNCTIONIZE UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRIOR TO FIRST OCCURRENCE OF THE EVENTS GIVING RISE TO THE INDEMNIFICATION CLAIM. These exclusions are meant to apply to the fullest extent permitted by applicable law and regardless of the failure of any specific remedy.

9. **INDEMNIFICATION.**

A. By Functionize. Functionize will indemnify, defend, and hold harmless Customer, and its respective subsidiaries, affiliates, officers, and Authorized Users from any third party claim or suit against Customer based on a claim that the technology used to provide the Functionize Solution infringes any United States patent, copyright, trademark or trade secret and Functionize shall pay any final judgment entered against such Indemnitees in any such proceeding or agreed to in settlement. If Customer's use of the Functionize Solution is, or is likely, in Functionize's reasonable determination, to be enjoined, Functionize may, without limiting its indemnity obligations hereunder, procure the right for Customer to continue to use the Functionize Solution or modify the Functionize Solution in a manner that has materially equivalent functionality so as to avoid such injunction. If the foregoing options are not available on commercially reasonable terms and conditions, Functionize may terminate

the Agreement upon written notice and refund to Customer on a pro-rata basis all pre-paid Fees attributable to unused portion of the subscription term for the applicable Order. Functionize will not be responsible for any infringement claims to the extent they are based upon (i) the use of Customer Data, Third Party Applications or any other material of software not furnished by Functionize; (ii) Customer's use of the Functionize Solution outside the scope of the applicable Documentation or this Agreement; or (iii) any action or omission of Customer for which Customer is obligated to indemnify Functionize under Section 9.B below. THIS SECTION 9.A STATES FUNCTIONIZE'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INTELLECTUAL PROPERTY INFRINGEMENT AND MISAPPROPRIATION CLAIMS BASED ON THE FUNCTIONIZE SOLUTION.

- B. By Customer. Customer shall indemnify, defend, and hold harmless Functionize and its respective subsidiaries, affiliates, officers, licensors and suppliers from any third party claim or suit against Functionize based on a claim: (i) arising out of Customer's use the Functionize Solution for any unlawful purpose or in a manner in breach of Section 2 of this Agreement or which violates or infringes any laws, rules, regulations, third party intellectual property or privacy rights; or (ii) alleging that the access, use or provision of any Customer Data as permitted violates any applicable law, regulation or the proprietary rights of others when used by Functionize as permitted hereunder.
- C. Indemnification Procedure. The party seeking indemnity ("**Indemnified Party**") will give the party from whom indemnity is sought ("**Indemnifying Party**") timely written notice of the claim for which indemnity is sought and control of the disposition thereof; provided, that failure to give timely notice will not relieve the Indemnifying Party of its obligations except to the extent that such untimely notice materially impairs the Indemnifying Party's ability to defend such claim. The Indemnified Party will cooperate with the Indemnifying Party's reasonable requests (at the Indemnifying Party's expense) in connection with the defense and settlement of such claim. Neither party will settle any claim for which indemnity is sought unless: (i) such settlement includes an unconditional release of the other party from all liability on the claim, or (ii) the other party gives its prior written consent, not to be unreasonably withheld.

- 10. **GENERAL.** This Agreement is not assignable or transferable, in whole or in part, by either party without the other party's prior written consent; provided, however, either party may assign the Agreement to any of its corporate affiliates or to a successor as a result of merger, consolidation, acquisition or sale of all or substantially all of such party's assets so long as the assignee agrees in writing

to assume all obligations and liabilities of the assigning party hereunder. Functionize reserves the right to modify these Terms of Service at any time and in its sole discretion by posting revised Terms of Service at <https://www.functionize.com/terms> and notifying Customer of such modification via email or through presentation of the new Terms of Service upon Customer's next login to the Functionize Solution. Any such changes shall become effective upon provision of such notice, unless Customer objects in writing to such changes within thirty (30) days of such notification. In the event of such objection, Customer may continue using the Functionize Solution under these Terms of Service for the remainder of Customer's then-current subscription term and the updated Terms of Service will apply upon Customer's renewal or placement of a new Order. Notwithstanding the foregoing, any changes to the Terms of Service made to ensure compliance with applicable law shall go into effect immediately. All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, by certified or registered mail, return receipt requested or by electronic email transmission, and shall be deemed given upon personal delivery, five (5) calendar days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. This Agreement is prepared and executed in the English language only and any translations of this Agreement to any other language shall have no effect, and all notices and other communication hereunder shall be provided in English. This Agreement shall be governed by the laws of the State of California, U.S.A. without regard to conflict of laws principles. The parties acknowledge that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. The exclusive jurisdiction and venue for any claims arising out of or related to this Agreement or Customer's use of the Functionize Solution is in the state and federal courts located in the City and County of San Francisco, California, and Customer irrevocably agrees to submit to the jurisdiction of such courts. All proceedings related to this Agreement shall be conducted in English. If Customer elects to use or access the Functionize Solution from a jurisdiction other than one where Customer's address in the Order Form is located, Customer shall remain responsible for compliance with applicable export laws and all other local laws, rules, or regulations. If any provision hereof shall be held illegal, invalid or unenforceable, in whole or in part, such provision shall be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement shall not be affected thereby. The failure of either party to enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. Nothing contained herein shall be construed as creating an agency, partnership, or other form of joint enterprise between the parties. In the event any judicial proceeding, lawsuit or claim is brought by one party against the other party in connection with this Agreement, the prevailing party shall be entitled to recover its reasonable fees and costs, including but not limited to attorneys' fees, expert witness fees, consultant fees, and related costs and expenses. This



Agreement, together with any Orders, constitutes the parties' entire understanding regarding the Functionize Solution, and supersedes any and all other prior or contemporaneous agreements, whether written or oral, and the preprinted terms of any purchase order or similar document shall be void and of no force or effect.