



## SOFTWARE LICENSE AGREEMENT

This Software License Agreement (“**Agreement**”) is entered into between you, the “**Customer**”, and Bigtincan Mobile Pty Ltd, an Australia proprietary limited company (“**Bigtincan**”), with its principal place of business at Level 6, 338 Pitt Street, Sydney, NSW, Australia 2000. Bigtincan and Customer agree that the following terms and conditions will apply to the licenses and services provided under this Agreement and Orders placed thereunder. This Agreement is made effective as of the last date signed below or, where this Agreement is not signed, the date of execution of the initial Order.

### 1. Definitions

- a. “**Affiliate**” is an entity that controls, is controlled by or shares common control with Bigtincan or Customer, where such control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.
- b. “**Documentation**” means the written documentation relating to the Software delivered by Bigtincan to Customer with the Software.
- c. “**Host**” means the computer equipment on which the Software is installed, which is owned and operated by Bigtincan or its subcontractors.
- d. “**Order**” means the document(s) by which Customer shall order SAAS Services and/or Professional Services pursuant to this Agreement. An Order may consist of either (a) a schedule, statement of work, or quotation, that has been signed by both Customer and Bigtincan, and/or (b) if applicable, a purchase order issued by Customer pursuant to this Agreement that has been expressly accepted in writing by Bigtincan. Orders placed with a Customer purchase order only and all Orders placed through a Partner shall be governed solely by the terms of this Agreement.
- e. “**Partner**” means a reseller or distributor that has an agreement with Bigtincan that authorizes them to resell Bigtincan SAAS Services and/or Professional Services.
- f. “**Professional Services**” means all technical and non-technical services performed or delivered by Bigtincan under this Agreement, including, without limitation, implementation services and other professional services, training and education services but excluding the SAAS Services and the Support and Maintenance Services. Professional Services will be provided on a time and materials basis at such times or during such periods as may be specified in an Order or statement of work under this Agreement.
- g. “**SAAS Services**” means the specific Bigtincan internet-accessible services identified in an Order that provides use of Bigtincan’s Software that may be hosted by Bigtincan or its service provider and made available to Customer over a network on a term-use basis.
- h. “**Software**” means the Bigtincan computer software in object code format, and their related materials, which include updates, modifications, new releases, and Documentation as specified in an Order.
- i. “**Subscription Term**” means the period specified in an Order during which Customer will have (i) on-line access and use of the Software through Bigtincan’s SAAS Services; or, (ii) a license to the Software through an on-premises installation.
- j. “**Support and Maintenance Services**” means the support and maintenance services provided by Bigtincan to Customer pursuant to this Agreement and the terms provided in the Order.

### 2. Software License

**2.1** During the Subscription Term, Customer will receive a nonexclusive, non-assignable, royalty free, worldwide right to access and use the Software and SAAS Services solely for Customer’s internal business operations subject to the terms of this Agreement and up to the user limits documented in an Order.

**2.2** Customer acknowledges that under the SAAS Services, Bigtincan will not be delivering copies of the Software to Customer and that Bigtincan’s delivery responsibilities are complete when Customer is given access to the Software via the SAAS Services.

### 3. Title and Restrictions

**3.1 Title and Copyright.** This Agreement confers no ownership rights to Customer and is not a sale of any rights in the SAAS Services, Software, the Documentation, or any deliverables provided as part of the Professional Services. Customer does not acquire any rights, express or implied in the SAAS Services, the Software, the Documentation, or any deliverables provided as part of the Professional Services, other than those rights specified in this Agreement. Subject to the licenses granted herein, Bigtincan shall own all right, title and interest in and to the Software, Documentation, and other deliverables provided under this Agreement, including all modifications, improvements, upgrades, derivative works and

feedback related thereto and intellectual property rights therein. Customer agrees to assign all right, title and interest it may have in the foregoing to Bigtincan.

**3.2 Restrictions.** Customer shall not, and shall not permit anyone to: (i) copy or republish the SAAS Services or Software, (ii) make the SAAS Services or Software available to any person other than authorized users, (iii) use or access the SAAS Services or Software to provide service bureau, time-sharing or other computer hosting services to third parties, (iv) modify or create derivative works based on the Software or Documentation, (v) remove, modify or obscure any copyright, trademark or other proprietary notices contained in the software used to provide the SAAS Services or in the Software or Documentation, (vi) reverse engineer, decompile, disassemble, modify, or otherwise attempt to derive the source code of the Software used to provide the SAAS Services, except and only to the extent such activity is expressly permitted by applicable law, or (vii) access the SAAS Services or Software or use the Documentation in order to build a similar product or competitive product.

### **3.3 Customer Content.**

- a. Certain SAAS Services may allow Customer to create, edit, view, or publish presentations with content provided by Customer such as information, data, text, music, sound, photographs, graphics, video, messages, or other materials (“Customer Content”). Customer is solely responsible for all Customer Content (public or private) that is incorporated into presentations which are posted, emailed, or transmitted via the SAAS Services, including obtaining prior written consent for the use of any third-party materials contained in the Customer Content, and any associated payments.
- b. Customer agrees not to knowingly use the Services to upload, post, email or otherwise transmit any Customer Content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise offensive or objectionable.
- c. Bigtincan does not pre-screen Customer Content, however, Bigtincan may, in its sole discretion, refuse or remove any Customer Content that does not comply with the terms of this Agreement, provided that Bigtincan will not do so without first notifying Customer.
- d. Non-public personal information is prohibited from Customer Content. Violations brought to Bigtincan’s attention will result in suspension of the use of the SAAS Services until Customer has deleted the prohibited Customer Content.
- e. Following the Subscription Term, Bigtincan will continue to store Customer Content for thirty (30) days or until such earlier time as Customer requests.

## **4. Orders and Delivery**

**4.1 Orders.** This Agreement may include an initial Order (which shall be attached hereto and incorporates the terms of this Agreement by reference). Customer may purchase additional SAAS Services and/or Professional Services by executing a follow-on Order or purchase order as mutually accepted by the parties. In the event Customer does not issue a purchase order, a new Order shall be executed by Customer and Bigtincan to evidence such order. A purchase order issued by Customer shall be in writing and identify the SAAS Services or Professional Services being ordered, the shipping and invoicing locations, and shall be subject to acceptance by Bigtincan. Standard or printed terms contained in any purchase order or sales confirmation are deemed rejected and mere commencement of work or payment against such forms shall not be deemed acceptance of the terms.

**4.2 Delivery.** Bigtincan shall fulfill Orders by delivering access to the SAAS Services and Documentation via the internet or electronic download, subject to the receipt of all required documentation, including any required export and import permits. Customer’s Order shall be considered delivered on the date that Bigtincan emails instructions to Customer for accessing the SAAS Services and Documentation or otherwise makes the SAAS Services and Documentation available to Customer.

## **5. Price and Payment**

**5.1 Price.** The fees for SAAS Services, Professional Services, and Support and Maintenance Services shall be set forth in an Order. The fees required to be paid hereunder do not include any amount for taxes, duties or import/export fees. If withheld by a government entity, Customer shall reimburse Bigtincan and hold Bigtincan harmless for all sales, use, VAT, excise, property, or other taxes or levies, duties or import/export fees which Bigtincan is required to collect or remit to applicable tax authorities (including any interest or penalties thereon). Unless Customer provides Bigtincan with a valid exemption certification from the applicable taxing authority, Customer shall pay to Bigtincan or its agents the amount of any such tax.

**5.2 Payment.** Unless otherwise stated in an Order or payment is made through a Partner, Customer agrees to pay Bigtincan all fees due hereunder net thirty (30) days from date of invoice. Customer will be invoiced promptly following commencement of the SAAS Services. All fees are in U.S. currency. Customer obligations to pay all accrued charges shall survive the expiration or termination of this Agreement.

**5.3 Overage.** In the event that Customer exceeds the number of users of the SAAS Services specified in the Order (“User Count”) and does not bring the number of Users into compliance with the User Count within (30) days following notice from Bigtincan (email sufficing), Bigtincan may assess overage charges to Customer which will be calculated using the per-user pricing set forth in the applicable Order and prorated based on the time remaining in the Subscription Term.

## 6. Training, Implementation, Support and Maintenance, and Professional Services

**6.1 Training Services.** Bigtincan will provide training services on a per-quote basis as requested by Customer. Customer shall approve Bigtincan's quote prior to the commencement such training services. Bigtincan will invoice Customer monthly as such services are provided. Unless otherwise stated, the training services shall exclude travel and living expenses.

**6.2 Implementation Services.** Where included in an Order, Bigtincan will provide onboarding, configuration, and training in the use of the SAAS Services to Customer for a specified period of time ("Implementation Services"). Fees for the Implementation Services will consist of a flat amount specified in the Order and payable in accordance with the schedule described therein.

**6.3 Support and Maintenance Services.** Bigtincan shall provide annual Support and Maintenance Services to Customer in accordance with the terms and conditions of this Agreement and at the level selected by Customer in its Order.

**6.4 Professional Services.** The following terms and conditions shall apply to Professional Services supplied by Bigtincan to Customer. Customer may purchase Professional Services from Bigtincan to be performed on a time and material basis.

- a. **Scope of Professional Services.** Professional Services will be documented in a Statement of Work ("SOW"). The Software provided under this Agreement is not custom software but is standard commercial software and the scope of Professional Services provided hereunder may consist of but not be limited to; (i) program planning, (ii) SAAS deployment assistance, (iii) integration efforts, and/or (iv) formal or non-formal software training. Professional Services provided to Customer by Bigtincan shall not constitute works for hire. All right, title and interest in and to all Professional Services shall remain in Bigtincan. Customer is granted a worldwide, royalty-free, non-exclusive license to use the Professional Services as described in the SOW.
- b. **Term of Professional Services.** Professional Services will begin and terminate on the dates or times defined in a SOW which has been mutually agreed to by Customer and Bigtincan in writing, unless earlier terminated in accordance with this Agreement.
- c. **Fees and Expenses.** Fees for Professional Services are defined in a SOW or purchase order. Invoices may be published on a monthly basis for Professional Services actually performed or in accordance to the payment schedule mutually agreed to and documented in the SOW or Order. Professional Services fees exclude reasonable expenses for travel, food and lodging, directly related to the performance of Professional Services. All actual and reasonable expenses for travel, food and lodging, directly related to the performance of Professional Services shall be paid by Customer.
- d. **Termination or delay of Professional Services.** Professional Services may be terminated by Customer by giving ten (10) days prior written notice to Bigtincan; termination shall be effective ten (10) days after Bigtincan's receipt of such notice. If Customer delays the scheduled start of contracted Professional Services, Customer shall reimburse Bigtincan for any actual non-refundable costs incurred due to such delay. If Customer terminates Professional Services before the end of the Term of Professional Services engagement, Customer shall pay Bigtincan for Professional Services completed prior to the effective termination date and reasonable and actual subcontractor costs incurred by Bigtincan as a result of such delay or termination.
- e. **Bigtincan Proprietary Information.** All Bigtincan Proprietary Information and all right, title and interest, including without limitation, all patents, copyrights, and trade secret rights anywhere in the world, and all other intellectual property and rights in connection therewith shall be the sole property of and remain with Bigtincan or its licensors, as applicable. Bigtincan Proprietary Information includes, but is not limited to, Software and related documentation and any modifications thereto developed in whole or in part by Professional Services. Except for the license use rights otherwise expressly provided in this Agreement, no right, title or interest in Bigtincan Software is granted hereunder.
- f. **Independent Contractors.** Bigtincan is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations including, but not limited to Worker's Compensation Insurance. Nothing herein shall form or be construed to form a joint venture or partnership.
- g. **Performance Standards.** Bigtincan's performance of Professional Services under this Agreement will be conducted with standards of practice common in the industry for such services. Bigtincan will comply with all applicable laws and Customer privacy, customer information, network and safety rules, guidelines and policies, in the course of performing Professional Services.
- h. **Consent to Subcontract.** Customer hereby consents for Bigtincan to subcontract Professional Services to persons or companies qualified and certified by Bigtincan to provide services on Bigtincan's behalf.

## 7. Software Warranty and Conditions.

**7.1 Software Warranty.** Bigtincan warrants that the Software will materially conform to the accompanying Documentation. If the Software does not materially conform to the Documentation, then Customer's exclusive remedy under this provision will be to have Bigtincan, at Bigtincan's expense and option, either repair or replace the Software, or refund any pre-paid subscription fees paid by Customer for the portion of the Subscription Term that has not been used by Customer. If refunded, Customer's Subscription Term shall terminate and its access to the Software will cease. Bigtincan does not warrant that the operation of the Software will be uninterrupted or error free, or that all Software defects can be corrected. This warranty shall not apply if: (a) the Software is not used in accordance with Bigtincan's instructions; or, (b) the Software defect has

been caused by any of Customer's malfunctioning equipment or Customer provided software; or (c) Customer has made modifications to the Software not expressly authorized in writing by Bigtincan.

**7.2 Warranty Disclaimer. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND IS THE ONLY WARRANTY GRANTED BY BIGTINCAN WITH RESPECT TO THE SOFTWARE, SAAS SERVICES, DOCUMENTATION, SUPPORT AND MAINTENANCE, OR THE PROFESSIONAL SERVICES. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, ORAL OR WRITTEN, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, REGARDING THIS AGREEMENT OR ANY SOFTWARE LICENSED HEREUNDER. BIGTINCAN DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SOFTWARE.**

**8. Intellectual Property Indemnification.** Bigtincan shall hold Customer harmless from liability to third parties resulting from infringement by the Software of any United States patents issued before delivery of such Software or any copyright or misappropriation of any trade secret, provided Bigtincan is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement. Bigtincan will not be responsible for any settlement it does not approve in writing.

The foregoing obligations do not apply with respect to Software or portions or components thereof (i) not supplied by Bigtincan, (ii) made in whole or in part in accordance to Customer specifications, (iii) that are modified by Customer (iv) combined with other products, processes or materials where the alleged infringement relates to such combination which were unauthorized by Bigtincan, (v) where Customer continues use of the infringing Software following Bigtincan's supplying a modified, amended or replacement version of the Software, or (vi) where Customer's use of such Software is not strictly in accordance with this Agreement. Customer will reimburse Bigtincan for any reasonable out of pocket expenses incurred by Bigtincan if the cause of the infringement is attributable to Customer's actions as stated in this paragraph. In the event of such a claim, action or allegation being brought or threatened or in the event an injunction is issued or threatened, Bigtincan may, at its option and expense, either procure for Customer the right to continue to use the Software, modify or replace the Software so as to avoid infringement, or accept the return of the infringing Software and return the license fee paid for such infringing Software.

THE PROVISIONS OF THIS SECTION SET FORTH BIGTINCAN'S SOLE AND EXCLUSIVE OBLIGATIONS, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND/OR PROPRIETARY RIGHTS OF ANY KIND.

## **9. Limitation of Liability**

**9.1 Liability Limit.** EXCEPT AS STATED BELOW, IN NO EVENT SHALL EITHER PARTY (INCLUDING SUCH PARTY'S SUBCONTRACTORS, AGENTS, SUPPLIERS, DIRECTORS OR EMPLOYEES) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, RELIANCE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) WHETHER ARISING FROM CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS STATED BELOW, IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY PURSUANT TO THIS AGREEMENT EXCEED THE FEES PAID AND/OR PAYABLE BY CUSTOMER TO BIGTINCAN UNDER THIS AGREEMENT FOR THE SERVICES AT ISSUE DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

**9.2 Exceptions.** NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION SHALL NOT APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS PURSUANT TO THIS AGREEMENT OR A BREACH OF THE PROVISIONS OF SECTION 3, OR, (II) CLAIMS FOR DEATH, BODILY INJURY OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY THE NEGLIGENCE OF SUCH PARTY OR ITS EMPLOYEES, SUBCONTRACTORS OR AGENTS.

## **10. Confidentiality**

**10.1 Treatment of Confidential Information.** Each party acknowledges that in the course of this Agreement it may be entrusted with information from the other and agrees that it shall use commercially reasonable efforts to protect the confidentiality thereof. "Confidential Information" means all information disclosed by one party ("disclosing party") to the other party ("receiving party"), before or after the date of this Agreement, and generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by the receiving party to the extent that it contains, reflects, or is derived from Confidential Information. Confidential Information of Bigtincan includes, without limitation, the Software and Documentation. The terms and conditions of this Agreement are Confidential Information; however, the existence of this Agreement is not Confidential Information. The receiving party shall retain the Confidential Information of the disclosing party in confidence and shall use and disclose it solely for the purpose of, and in accordance with, this Agreement. The receiving party shall only disclose Confidential Information of the disclosing party to those of its employees with a need to know such Confidential Information and who have been informed of the obligations of confidence and have agreed in writing to preserve the confidentiality of such information under terms and conditions no less restrictive than those set forth herein. The receiving party shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, including, without limitation, securing all servers, drives or media on which the Confidential Information, Software and Documentation are installed or maintained to prevent the unauthorized use or disclosure of Confidential Information. For avoidance of doubt, the terms of this Agreement and the fees identified in a schedule or Order are Confidential Information.

**10.2 Exclusions.** The receiving party shall not be bound by any obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information, or any part thereof, which: (i) was lawfully known to the receiving party prior to disclosure; (ii) was lawfully in

the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Agreement; (iii) was disclosed to the receiving party by a third-party, provided that such third-party is not in breach of any confidentiality obligation in respect of such information; or (iv) is independently developed by the receiving party.

**10.3 Required Disclosure.** If the receiving party is compelled pursuant to legal, judicial, or administrative proceedings, or otherwise required by law, to disclose Confidential Information, the receiving party shall use reasonable efforts to (i) seek confidential treatment for such Confidential Information, and (ii) provide prior notice to the disclosing party to allow the disclosing party to seek protective or other court orders.

## 11. Term and Termination

**11.1 Term.** This Agreement shall commence on the Effective Date and shall continue in effect unless terminated as set forth herein. Unless otherwise agreed to in an Order, the Subscription Term will renew automatically upon expiration unless Customer provides written notice of termination to Bigtincan at least thirty (30) days prior to the expiration date of the Subscription Term, provided that Bigtincan provides Customer at least sixty (60) days prior written notice of such renewal. Renewal fees shall increase over the fees paid for the prior year of SAAS Services by the greater of five percent (5%), or the Consumer Price Index in effect at the time of the renewal.

**11.2 Termination.** This Agreement, or a license granted hereunder, may be terminated (i) by mutual agreement of Bigtincan and Customer, (ii) by either party if the other party commits a material breach of this Agreement (including Customer's failure to pay an invoice when due) and fails to cure such breach within thirty (30) days following receipt of breach notice, or (iii) by either party if the other party becomes insolvent or is adjudged as bankrupt; makes an assignment for the benefit of creditors; has a receiver appointed; or files a petition of bankruptcy. Termination shall not relieve Customer of its obligation to pay any amounts due upon the date of termination.

**11.3 Effect of Termination.** Upon termination of this Agreement or expiration of a Subscription Term, Bigtincan shall cease providing the SAAS Services and/or any Professional Services to Customer and any on-premises subscriptions to the Software shall cease. Upon termination, Customer shall immediately pay all amounts due to Bigtincan. If the termination is due to an uncured breach of the Agreement by Bigtincan, Bigtincan shall immediately refund to Customer all pre-paid amounts for any unperformed Subscription Term and/or Professional Services.

**11.4 Survival.** Upon termination of this Agreement, all of the parties' respective rights and obligations hereunder shall cease, except that Sections entitled: "Title and Restrictions", "Payment", "Warranty Disclaimer", Intellectual Property Indemnification", "Limitation of Liability", "Confidentiality", "Effect of Termination", and "General" Sections of this Agreement, shall survive such termination.

## 12. General

**12.1 U.S. Government Restriction Rights.** The Software is provided with "RESTRICTED RIGHTS." Use of the Software by the U.S. Government constitutes acknowledgment of Bigtincan's proprietary rights in it. The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted herein.

**12.2 Regulatory/Export Compliance.** Customer acknowledges and agrees that the Software products are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "**Export Controls**"), and agrees not to export or re-export, or allow the export or re-export of the Software products or any copy or portion thereof in violation of the Export Controls. Customer hereby represents that (i) Customer is not an entity or person to which shipment of Software products is prohibited by the Export Controls; and (ii) Customer will not export, re-export or otherwise transfer the Software products to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Software products is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

**12.3 Severability.** Should any provision of this Agreement be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**12.4 Notice.** Notices to either Party shall be in writing to the address indicated in this Agreement or the applicable Order (or as later amended) and deemed effective when received.

**12.5 Assignment.** Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party and any such prohibited assignment shall be null and void. Notwithstanding the foregoing, (a) either party may assign this Agreement to any party that acquires all or substantially all of its related business by merger, sale of stock or assets, or a similar transaction, and (b) Bigtincan may subcontract its obligations hereunder to a third party, provided that Bigtincan shall remain liable for any breach thereof.

**12.6 Entire Agreement.** This Agreement and the schedules or exhibits attached hereto or incorporated by reference, constitute the entire agreement between the parties on the subject matter hereof and supersede all prior agreements, communications and understandings of any nature whatsoever, oral or written including any shrink wrap license included with the Software. This Agreement may not be modified or waived orally and may be modified only in writing signed by duly authorized representatives of each party.

**12.7 Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to conflicts of law principles.

**12.8 Injunctive Relief; Attorneys' Fees.** Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to a breach of the "Title and Restrictions" or "Confidentiality" Sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies. If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, court cost and other collection expenses, in addition to any other relief it may be awarded.

**12.9 Force Majeure.** Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. Nothing in the foregoing shall be deemed to relieve Customer or its Affiliates of its obligation to pay fees owed under this Agreement.

**12.10 Deployment Verification.** Upon reasonable advance notice to Customer and on a non-interference basis with Customer's normal business operations, Bigtincan has the right to verify the proper usage of the SAAS Services Customer has ordered under this Agreement. Such verification shall not be conducted more frequently than once per year unless agreed otherwise in an Order. For the avoidance of doubt, the aforementioned does not restrict Bigtincan's ability to remotely monitor usage of the SAAS Services.

**12.11 Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one Agreement.

**12.12 Privacy and Acceptable Use.** This Agreement shall also include the Bigtincan Privacy Policy and Acceptable Use Policy as amended from time to time and available at [www.Bigtincan.com](http://www.Bigtincan.com).

**12.14 Product-Specific Terms.**

- a. **Brainshark - Salesforce Integration.** The following terms are required by salesforce.com, inc. ("SFDC") and apply in the event that an Order includes either Brainshark CRM Connector for Salesforce or Sales Accelerator (each, an "SFDC Integrated Product"):
  - i. "SFDC Customer Data" means all electronic data or information submitted by Customer to SFDC's systems which is accessible to Customer through the use of the SFDC Integrated Product while resident on SFDC's systems.
  - ii. "Custom Field" means custom fields in the SFDC application which are made available to Customer as part of Customer's use of the SFDC Integrated Product.
  - iii. SFDC has no obligation to retain any SFDC Customer Data that is stored in Custom Fields following termination of Customer's subscription to the SFDC Integrated Product. Customer may request a copy of its SFDC Customer Data from SFDC prior to such termination, in which case SFDC will make the SFDC Customer Data available to Customer in a .csv format.
  - iv. In the course of Customer's use of the SFDC Integrated Product, SFDC Customer Data may be transmitted outside SFDC's systems and into Brainshark's systems. SFDC is not responsible for the privacy, security or integrity of that SFDC Customer Data when transmitted into Brainshark's systems. However, Brainshark will be responsible for the privacy, security and integrity of that SFDC Customer Data while being transmitted or stored within Brainshark's systems.
- b. **Brainshark Machine Analysis.** In the event that an Order includes any product that incorporates Brainshark's machine analysis feature, the analysis of video content is limited to the first thirty (30) minutes of upload for each coaching video submission.