PureInsights SaaS Software Subscription Agreement

1. **DEFINITIONS.** As used in this Agreement:

1.1 "**Additional Fees**" is defined in Section 4.2.

1.2 "**Additional Services**" is defined in Section 2.4.

1.3 "**Confidential Information**" means all information regarding a party's business, including, without limitation, technical, marketing, financial, employee, planning, and other confidential or proprietary information, disclosed under this Agreement, that is clearly identified as confidential or proprietary at the time of disclosure or that the receiving party knew or should have known, under the circumstances, was considered confidential or proprietary. Without limiting the foregoing, Confidential Information of PureInsights includes the Subscribed Software and the existence and terms of this Agreement.

1.4 "**Customer Data**" means any data, content, materials and information provided by Customer to PureInsights in connection with this Agreement or submitted by Customer or any End-User through the Subscribed Software.

1.5 "**End-Users**" means any end-users of the Subscribed Software, including without limitation Customer's web site visitors and any end-users accessing the Subscribed Software at or in connection with web site, email or other places.

1.6 "**Fees**" means the Initial Fees and Additional Fees.

1.7 "**Initial Fees**" is defined in Section 4.1.

1.8 "**Initial Services**" means the professional services to be provided by PureInsights as set forth in the "Professional Services" section of the cover page of this Agreement.

1.9 "**Subscribed Software**" means (a) the PureInsights software set forth in the "Subscribed Software" section of the cover page of this Agreement and (b) any Work Product developed by PureInsights hereunder.

1.10 "**Professional Services**" means the Initial Services and Additional Services.

1.11 "**Term**" is defined in Section 8.1.

1.12 "**Initial Subscription Term**" is the Term of Agreement set forth on the cover page of this Agreement.

1.13 "**Subscription Term**" is defined in Section 8.4.

1.14 "**Renewal Period**" is defined in Section 8.4.

1.15 "**Work Product**" means any work product and deliverables developed or produced by PureInsights in connection with the provision of the Professional Services hereunder, excluding any Customer Data contained therein.

2. **LICENSE; PROFESSIONAL SERVICES.**

2.1 **License Grant**. Subject to the terms of this Agreement, including, without limitation, the payment of the Fees, PureInsights hereby grants to Customer a non-sub licensable, non-transferable, non-exclusive right to access and use the Subscribed Software during the Term solely for the permitted use(s) set forth on the cover page of this Agreement and not for resale or to provide services to third parties. Customer acknowledges and agrees that any access and use of the Subscribed Software in excess of or in addition to such permitted use(s) shall be subject to the payment of additional license fees to PureInsights.

2.2 **Terms of Use; Third Party Approval**. Customer acknowledges and agrees that the use of the Subscribed Software by Customer and End-Users may be subject to acceptance of the PureInsights standard terms of use for such Subscribed Software, as may be amended from time to time.

2.3 **Additional Services.** Any additional professional services requested by Customer ("**Additional Services**") may be performed at extra cost to the Customer, pursuant to a separate written statement of work agreed upon between

the parties which references this Agreement. The parties acknowledge and agree that the terms of this Agreement shall apply with respect to the performance and results of any such Additional Services.

2.4 **Customer Obligations**. Customer shall: (a) provide such Customer Data as is reasonably necessary to enable PureInsights to perform the Professional Services hereunder, and (b) provide all resources as PureInsights may reasonably request as required to perform the Professional Services. Customer will accept any delays in the schedule and be responsible for any incremental costs resulting from any failure or delay caused solely by Customer to perform its obligations hereunder. Customer will at all times comply fully with all laws, including with respect to the performance of this Agreement, and the collection, use and storage of all Customer Data.

3. **CUSTOMER'S USE OF THE SUBSCRIBED SOFTWARE.**

3.1 **Customer Data**. Customer is solely responsible for the creation/capture of Customer Data in Genesys Cloud and will not provide to PureInsights or transmit through the Subscribed Software any Customer Data or any other information, data or material that: (a) knowingly infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; or (b) knowingly contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information. PureInsights may take remedial action if Customer Data violates this Section 3.1, however, PureInsights is under no obligation to review Customer Data for accuracy or potential liability.

3.2 **Use Restrictions.** Customer will not, and will not attempt to: (a) reverse engineer, disassemble or decompile any component of the Subscribed Software; (b) intentionally interfere in any manner with the operation of the Subscribed Software or the hardware and network used to operate the Subscribed Software; (c) sublicense or transfer any of Customer's rights under this Agreement, or otherwise use the Subscribed Software for the benefit of a third party or to operate a service bureau; (d) modify, copy or make derivative works based on any part of the Subscribed Software; or (e) otherwise knowingly use the Subscribed Software in any manner that exceeds the scope of use permitted under Section 2.1 hereof.

3.3 **Authorized Operators**. Customer undertakes that: (a) the maximum number of Authorized Operators that it authorizes to access and use the Subscribed Software shall not knowingly exceed the number of operators it has purchased from time to time; (b) it will not allow or suffer any operator account to be used by more than one individual Authorized Operator unless it has been reassigned in its entirety to another individual Authorized Operator, in which case the prior Authorized Operator shall no longer have any right to access or use the Services and/or Documentation.

4. **FEES, PAYMENT AND SUSPENSION OF SERVICES**.

4.1 **Subscription Fees.** Customer will pay PureInsights subscription fees in accordance with the Genesys subscription agreement.

4.2 **Expenses**. If PureInsights provides advance written notice to Customer of the necessary work and out-of-pocket expenses and Customer approves such request in writing in advance, Customer will reimburse PureInsights for all reasonable out-of-pocket expenses, including travel and lodging expenses, incurred by PureInsights in the performance of its obligations under this Agreement.

5. **CONFIDENTIAL INFORMATION**.

5.1 **Obligation**. Each party agrees (a) to hold the other party's Confidential Information in strict confidence, (b) to limit access to the other party's Confidential Information to those of its employees or agents having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein, and (c) not to use such Confidential Information for any purpose except as expressly permitted hereunder. Notwithstanding the

foregoing, the receiving party will not be in violation of this Section 5.1 with regard to a disclosure that was in response to a valid order or requirement by a court or other governmental body, *provided that* the receiving party gives the other party with prior written notice of such disclosure in order to permit the other party to seek confidential treatment of such information.

5.2 **Exceptions**. The restrictions on use and disclosure of Confidential Information set forth above will not apply to any Confidential Information, or portion thereof, which (a) is or becomes a part of the public domain through no act or omission of the receiving party, (b) was in the receiving party's lawful possession prior to the disclosure, as shown by the receiving party's competent written records, (c) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, as shown by the receiving party's competent written records, or (d) is lawfully disclosed to the receiving party by a third party without restriction on disclosure.

6. **OWNERSHIP**.

6.1 **Subscribed Software and Technology**. Customer acknowledges that PureInsights retains all right, title and interest in and to the Subscribed Software and all software, materials, formats, interfaces, information, data, content and information and technology used by PureInsights or provided to Customer in connection with the Subscribed Software and any modifications to or derivative works of any of the foregoing (the **"PureInsights Technology"**), and that the PureInsights Technology is protected by intellectual property rights owned by or licensed to PureInsights. For avoidance of doubt, PureInsights does not have or retain any right, title, or interest in Customer Data or other data provided to, or accessed by, PureInsights. Other than as expressly set forth in this Agreement, no license or other rights in the PureInsights Technology are granted to the Customer, and all such rights are hereby expressly reserved by PureInsights. PureInsights shall have a royalty-free, worldwide, transferable, sub licensable, irrevocable, perpetual license to use or incorporate into the Subscribed Software any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the Subscribed Software. Without limiting the foregoing in this Section 6.1, Customer may not replicate, improve, modify, or create variations of any PureInsights Technology or PureInsights' Confidential Information. Customer may not make, use, sell, exploit, commercialize or seek patent protection for any compositions or matter relating to the PureInsights Technology or PureInsights' Confidential Information, new applications and uses for the PureInsights Technology and/or PureInsights' Confidential Information, and combinations of the PureInsights Technology with other products or software.

6.2 **Customer Data**. Customer retains all right, title and interest in and to the Customer Data. PureInsights will only use Customer Data in the course of providing the Subscribed Software and Professional Services under this Agreement. Customer will be solely responsible for providing all Customer Data required for the proper operation of the Subscribed Software and the performance of the Professional Services. Customer grants to PureInsights all necessary licenses in and to such Customer Data solely as necessary for PureInsights to provide the Subscribed Software and Professional Services to Customer. PureInsights will not knowingly use or access any Customer Data unless authorized to do so by Customer and, in such circumstances, PureInsights will access and use such Customer Data only as required to perform requested services on behalf of Customer.

6.3 PureInsights shall maintain information security protocols and protections consistent with applicable industry standards for an information technology services provider. In the event PureInsights discovers or receives notice of any breach impacting Customer or Customer Data, PureInsights shall at its sole cost (i) promptly investigate, mitigate, and remediate such breach and (ii) if legally permissible, notify Customer of such breach within 72 hours following confirmation of such breach. All notifications to Customer and any End User and the timing of such notifications shall be in compliance with applicable law. PureInsights will not rent, sell, or use any Customer Data outside of as is expressly permitted under this Agreement in the provision of Professional Services.

7. **SUBSCRIBED SOFTWARE UPGRADES**

For shared hosting, PureInsights may upgrade or change the Subscribed Software from time to time at its own discretion. Email confirmation is considered sufficient for the agreement of the upgrade and change. Should PureInsights change the Subscribed Software enough to materially degrade its performance and or functionality, Customer may terminate this agreement and owe no additional fees.

Upgrades and maintenance shall be scheduled during times intended to minimize business interruption.

Notification of any maintenance or upgrades will be posted on the PureInsights Customer Portal at status.mypureinsights.com. Customer will also have the ability to opt in to receive email notification.

8. **TERM AND TERMINATION**.

8.1 **Term**. The initial term of this Agreement will commence on the Effective Date and continue through December 31, 2022, and also the Renewal Periods, as agreed upon by the parties (the "**Term**").

8.2 **Termination for Breach**. Either party may terminate this Agreement upon written notice if the other party materially breaches the Agreement and does not cure such breach (if curable) within thirty (30) days after written notice of such breach.

8.3 **Effect of Termination.** The effects of termination will be governed by this Agreement.

8.4 **Survival.** Sections 3, 4, 5, 6, 8.3, 8.4, 8.45, 9.2, 10, 11 and 12 and any other sections hereof which ought reasonably to survive will survive the termination or expiration of this Agreement.

9. **REPRESENTATIONS AND WARRANTIES; DISCLAIMER**.

9.1 PureInsights represents and warrants that the Subscribed Software as originally delivered to Customer will function substantially in accordance with the functional description set out in overviews provided by PureInsights to the Customer in writing. Except for intentional or reckless acts by PureInsights representations or Subscribed Software functionality, PureInsights' sole liability and Customer's sole remedy with respect to a breach of the foregoing warranty shall be PureInsights' commercially reasonable efforts to rectify the non-conformity.

9.2 Except for any representations and warranties expressly set forth in this Agreement, PureInsights makes no warranty, representation or condition of any kind concerning the Subscribed Software, Professional Services or PureInsights Technology. ACCORDINGLY, THE SUBSCRIBED SOFTWARE, PROFESSIONAL SERVICES, THE PUREINSIGHTS TECHNOLOGY AND ALL OTHER DATA, EQUIPMENT, MATERIALS, AND DOCUMENTATION PROVIDED IN CONNECTION WITH THIS AGREEMENT BY PUREINSIGHTS AND ITS SUPPLIERS ARE PROVIDED *"AS IS"* AND *"AS AVAILABLE,"* WITHOUT WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND. PUREINSIGHTS AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF NON INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR COURSE OF TRADE. PUREINSIGHTS DOES NOT WARRANT THAT THE SUBSCRIBED SOFTWARE OR PROFESSIONAL SERVICES WILL BE PROVIDED ERROR-FREE, UNINTERRUPTED, COMPLETELY SECURE, OR VIRUS-FREE.

9.3 **Compliance with Laws**. Each party warrants that, during the Term, it shall comply with the applicable laws, rules, and regulations relating to its respective activities under this Agreement. PureInsights further warrants that it shall comply with any request by Customer to delete Customer Data in compliance with and as required by applicable privacy laws.

10. **INDEMNITY**.

By PureInsights. If any action is instituted by a third party against Customer based upon a claim that the Subscribed Software, as provided by PureInsights, infringes a patent or copyright, PureInsights shall defend such action at its own expense on behalf of Customer and shall pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement of such claim. PureInsights may, at its option and expense , (a) procure for Customer the right to continue using the Subscribed Software, (b) replace or modify the Subscribed Software so that it is no longer infringing but continues to provide comparable functionality, or (c) terminate this Agreement and Customer's access to the Subscribed Software and refund any amounts previously paid for the Subscribed Software attributable to the remainder of the then-current term of this Agreement. PureInsights shall have no liability to Customer for any infringement action which arises solely out of a breach of the terms and conditions of this Agreement by Customer, or solely out of the use of the Subscribed Software (i) after it has been modified by Customer or a third party without PureInsights prior written consent, or (ii) in combination with any other service, software or process not provided by PureInsights. This Section sets forth the entire obligation of PureInsights and

the exclusive remedy of Customer against PureInsights or any of its suppliers for any alleged infringement or adjudicated infringement or misappropriation of any patent, copyright or other intellectual property right or proprietary right by the Subscribed Software.

In addition to the foregoing, PureInsights will indemnify, hold harmless and defend Customer from and against all claims, demands, actions, suits, discovery demands, including without limitation, third party subpoenas, government investigations or enforcement actions ("Claims") brought or threatened by a third party against Customer and any damages, liabilities, losses, settlements judgements, costs and expenses, including, without limitation, attorney's fees and costs related thereto (a) arising from PureInsights' alleged violation of any applicable law, or (b) arising from PureInsights' gross negligence or reckless misconduct.

10.1 **By Customer.** If any action is instituted by a third party against PureInsights alleging that the Customer Data, or the use of Customer Data pursuant to this Agreement, infringes the intellectual property, privacy or other right of a third party or otherwise causes harm to a third party, Customer will defend such action at its own expense on behalf of PureInsights and shall pay all damages attributable to such claim which are finally awarded against PureInsights or paid in settlement of such claim.

10.2 **Conditions.** Any party that is seeking to be indemnified under the provision of this Section 10 (an **"Indemnified Party"**) must (a) promptly notify the other party (the **"Indemnifying Party"**) of any third-party claim, suit, or action for which it is seeking an indemnity hereunder (a **"Claim"**), and (b) give the Indemnifying Party the sole control over the defense of such Claim. However, if an Indemnified Party fails to notify the Indemnifying Party promptly, the Indemnifying Party will be relieved of its obligations under this Section 10 only if and to the extent that its ability to defend the Claim is materially prejudiced by such failure. The Indemnifying Party may settle or compromise a Claim without the Indemnified Party's prior approval of any such settlement or compromise *only if* (A) such settlement involves no finding or admission of any breach by an Indemnified Party of any obligation to any third party, (B) such settlement has no effect on any other claim that may be made against an Indemnified Party or any defense that an Indemnified Party may assert in any such claim, and (C) the sole relief provided in connection with such settlement is monetary damages that are paid in full by the Indemnifying Party. Upon the Indemnifying Party's assumption of the defense of such Claim, the Indemnified Party will cooperate with the Indemnifying Party in such defense, at the Indemnifying Party's expense.

11.   LIMITATION OF LIABILITY.

11.1 **Limitation of Liability**.
EACH PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), THE SUBSCRIBED SOFTWARE, PROFESSIONAL SERVICES OR THE PUREINSIGHTS TECHNOLOGY, WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID TO PUREINSIGHTS BY CUSTOMER UNDER THE TERM OF THE AGREEMENT. ALL CLAIMS THAT EITHER PARTY MAY HAVE AGAINST THE OTHER PARTY WILL BE AGGREGATED TO SATISFY THIS LIMIT AND MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (UNDER ANY LEGAL THEORY INCLUDING CLAIMS IN CONTRACT OR TORT), INCLUDING, BUT NOT LIMITED TO, INTERRUPTED COMMUNICATIONS, OR LOST PROFITS, AND DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE SUBSCRIBED SOFTWARE OR PUREINSIGHTS TECHNOLOGY, EVEN IF PUREINSIGHTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

12.   GENERAL PROVISIONS.

12.1 **Assignment**. Neither party may assign any rights or obligations arising under this Agreement, whether by operation or law or otherwise, without the prior written consent of the other; *except* that PureInsights may assign this Agreement without consent of Customer in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or shares. This Agreement shall inure to the benefit of and shall be binding on the successors and assignees of the parties.

12.2 **Governing Law and Venue**. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware and the applicable federal laws of the United States of America therein without giving effect to

principles of conflict of laws. Except for applications for injunctive relief by PureInsights, any action or proceeding arising from or relating to this Agreement must be brought in a court sitting in the state of Delaware USA, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.

12.3   **Notices.** Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth on the cover page of this Agreement (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (a) delivered personally, (b) sent via certified mail (return receipt requested) (c) sent via fax or email (with confirmation of receipt), or (d) sent by recognized air courier service.

12.4   **Entire Agreement**. This Agreement is the entire understanding and agreement of the parties, and supersedes any and all previous and contemporaneous understandings, agreements, proposals or representations, written or oral, between the parties, as to the subject matter hereof. Only a writing signed by both parties may modify this Agreement.

12.5   **Severability and Waiver.** In the event that any provision of this Agreement is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of this Agreement will remain in full force and effect. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. All waivers must be in writing. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

12.6   **Relationship of the Parties**. The parties to this Agreement are independent, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement.

12.7   **Marketing**. PureInsights agrees that it may not refer to Customer as a client on its website and in its public relations, marketing, promotional and other materials unless expressly requested by PureInsights in writing to Customer AND agreed to in writing by Customer to PureInsights

12.8   **Counterparts.** This Agreement may be executed in counterparts and by facsimile or other means of electronic communication producing a printed copy, which taken together shall form one legal instrument.