



## SuccessKPI Software as a Service Agreement

- 1. The Agreement.** These Terms and Conditions (“Agreement”) apply to an order or subscription that incorporates these terms and conditions entered into between an affiliate of SuccessKPI, Incorporated through an application exchange order (such as Genesys App Foundry or Amazon Marketplace) (“SuccessKPI”, “SKPI”, or “Company”) and the entity subscribing to the Hosted Service identified on the order (“you,” “your” the “Customer”) effective with the activation of this order on our platform.
- 2. Access Grant.** During the term of each subscription to the Hosted Service set forth on an order (each, a “Subscription Term”), the Company grants you and your affiliates a non-exclusive, non-transferable right, subject to the terms and conditions of this Agreement and in accordance with applicable law, to grant Named Users located anywhere in the world access to The SuccessKPI Software as a Service platform (“The Software” or the “Hosted Service” (“Hosted Service”) solely in support of your internal business operations, in a manner consistent with the Documentation and license type(s) and terms specified on an order. Your use of the Software as part of a Hosted Service subscription will be under a usage contract, as specified on an order on the applicable application exchange. Customer will have access to whichever package is selected in the applicable marketplace which may include usage charges for named users, agent seat counts for various versions of our Software (e.g. “Real time and Historical Analytics” or “Speech and Text Analytics”), transcription minutes, or other pricing elements which may be selected or used by you and which may change from time to time. New pricing elements will be updated in the portal. Pricing will be provided in \$USD. If pricing is provided under any marketplace in another currency other than \$USD then SuccessKPI reserves the right to alter the exchange rate at any time during this agreement. Customer bears 50% of the currency fluctuation risk and fees may be adjusted in any given calendar quarter based on adjustments to the Prime currency rate at that time. If the currency exchange rate is within 10% of the currency rate at the time of the contract, no adjustment will be made by SuccessKPI. If the amount exceeds 10%, then SuccessKPI may share 50% of the difference between the old rate and the new rate and shall submit a quarterly currency adjustment invoice outside of the applicable marketplace in the event that marketplace rates have not adjusted in a timely manner.
- 3. Certain Obligations and Restrictions.** You are responsible for your Named Users’ compliance with this Agreement. You will promptly notify SuccessKPI of any unauthorized use of any password or account or any other known or suspected breach of security of the Hosted Service. If you become aware of any violation of your obligations by a Named User, you will immediately terminate such Named User’s access to the Hosted Service and Customer Content. SKPI and SKPI affiliates are not responsible for unauthorized access to your Named User accounts, except to the extent caused by SKPI breach of this Agreement. “Customer Content” means software (including machine images), data, text, audio, video, images, or other content that you or any Named User uploads or transfers to the Hosted Service.
- 4. Other Responsibilities.** You and your Named Users will not (a) modify, tamper with, repair, or otherwise create derivative works of the Hosted Service or any software included in the Hosted Service; or (b) reverse engineer or apply any other process or procedure to derive the source code of any software included in the Hosted Service; (c) interfere with or disrupt the integrity or performance of the Hosted Service; or (d) attempt to gain unauthorized access to the Hosted Service or its related systems or networks; or (e) access or use the Hosted Service in a way intended to avoid incurring fees or exceeding usage limits or quotas; or (f) use the Hosted Service to develop a product that is competitive with any of SKPI product offerings; or (g) use the Hosted Service to store or transmit (i) material in violation of third-party privacy rights; or (ii) libelous, or otherwise unlawful or tortious material; or (iii) material that infringes any copyright, trademark, patent, trade secret or other proprietary right of any entity or individual; or (iv) viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs.
- 5. Customer provides content.** Except for SuccessKPI responsibilities as expressly set forth in this Agreement, you are responsible for the development, content, operation, maintenance, and use of Customer Content and compliance with all Hosted Service Policies. “Hosted Service Policy” means any policy established by SuccessKPI or SuccessKPI Third Party Solution provider(s) for the Hosted Service. “Third Party Solution” means any product, service, content or item of a third party.



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6. **Term.** This Agreement begins on the Effective Date and will continue for one (1) year and shall automatically renew unless terminated by either Party in accordance with Section 9 hereof (the "Term").
7. **Fees.** Customer shall pay Company the Fees outlined in the order for Agent Seats, product Minutes and Minutes of Transcription and for access to the any other subscription products ordered or used of the Software or Hosted Service (the "Subscription Fees"). Overage Fees (for use of Agent Seats or Minutes of Transcription beyond those subscribed or ordered will be invoiced quarterly in arrears at the Per Agent Seat/Month, Per User Per Month or per unite per month (e.g. Transcription Minute overage) used by the Customer.
  - a. Call recordings (if applicable) are stored for ninety (90) days.
  - b. Metadata is stored for up to three (3) years provided Customer is not in default of their obligations under this Agreement.
  - c. **Data Connections:** Customer may connect up to two external data connections to the SuccessKPI service using our BI layer third party data connection services. Additional connections can be added for additional fees as provided under a separate Statement of Work.
  - d. Support Services will be pursuant to Section 4.
  - e. All payments due from Customer to the Company shall be due and payable within thirty (30) days of the date of any invoice. Invoices will issued monthly or quarterly.
8. **Support Services.**
  - a. **Support Package I: Basic Support:** \_\_\_\_\_. **For Basic Support,** during the Term and provided the Customer is current on amounts owed to the Company and is not otherwise in default under the terms of this Agreement, the Company will provide internet-based support available by email at [support@successkpi.com](mailto:support@successkpi.com). Such support will be generally available Monday to Friday, 8am EST to 8pm EST.
  - b. **Support Package II: Enterprise Support:** \_\_\_\_\_. Enterprise Support Services are available for 10% of the committed monthly recurring revenue or a minimum of \$4,000/month whichever is greater (the "Enterprise Support MRC Fees"). Enterprise support must be purchased separately and can be obtained via email via [partner@successkpi.com](mailto:partner@successkpi.com).
    - i. For Enterprise Support Services, during the term and provided Customer is current on amounts owed to the Company, SuccessKPI will provide 24x7 phone-based support in addition to the internet-based support above.
    - ii. Enterprise Support Services also may include Service Level Agreements which, if selected, will be attached as Attachment A: to this Agreement.
9. **Consulting Services.** We offer consulting services ("Consulting Services") on an hourly basis as described below:
  - a. **Services.** For packaged Consulting Services the Company will perform the tasks described in a separate Statement of Work ("SOW") attached to this Agreement as Attachment B on an Hourly basis at a single blended consulting hourly rate below as indicated in the SOW:
  - b. **US Based Consultant:** \$250/hour
  - c. **Off-Shore/Remote Consultant:** \$100/hour
  - d. **Expenses.** Customer agrees to reimburse the Company for all reasonable travel expenses incurred when delivering Consulting Services. Travel expenses shall be approved by Customer in advance.
  - e. **Invoices.** Customer will be invoiced for all Consulting Services and related expenses on a monthly basis and payment for those invoices shall be due within thirty (30) days of the date thereof.
10. **Data Privacy and Ownership**
  - a. **Data.** The Company shall own all right, title and interest in and to all of our products and our platform including modifications made to the platform or any subsystems whether made by or with the assistance of Customer or any other person and any know-how, techniques, methodologies, equipment or processes used by the Company to deliver Services or operate the Service. The Customer will be and remain the owner of all rights, title and interest in and to



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customer content and data you place on the platform. Each party will own and retain all rights in its trademarks, logos and other brand elements (collectively, "Trademarks"). To the extent a party grants any rights or licenses to its Trademarks to the other party in connection with this Agreement, the other party's use of such Trademarks will be subject to the reasonable and communicated trademark guidelines provided in writing by the party that owns the Trademarks.

- b. **Data Protection.** Company and Customer shall maintain industry best practices in the safeguarding of data and implement appropriate safeguards to prevent unauthorized access to, use of, or disclosure of any protected information and private data (e.g. PHI, PCI and other PII) exchanged between the Parties in relation to the Company's provision of the Service. SuccessKPI makes various tools available to the customer (e.g Redaction) and sharing of data is possible within the framework (e.g. Subscriptions). Customer owns responsibility for using the SuccessKPI platform appropriately and ensuring Customer users are trained to follow policies with respect to PII and the protection of related data.
- c. **Data Privacy.** Company may collect, use and process Customer's data only in accordance with Company's online Privacy Policy.

### 11. Confidentiality

- a. **Confidentiality Obligations.** Under this Agreement, Confidential Information may be accessed or disclosed between the Parties. "Confidential Information" means any information identified as confidential at the time of disclosure, or that reasonably should be understood to be confidential in view of the information's nature or circumstances around its disclosure, and will in all cases include pricing terms, the terms of this Agreement or any order governed by this Agreement, software, technology, business plans, technical specifications, product development plans, marketing plans, education materials, customer lists, and generic tools and objects related to our products created by us during the provision of Consulting Services. Confidential Information will not include information that (i) is or becomes a part of the public domain through no act or omission of the receiving Party; or (ii) was in the receiving Party's lawful possession prior to the disclosure; or (iii) is lawfully disclosed to the receiving Party by a third-party without restriction on the disclosure; or (iv) is independently developed by the receiving Party. Security is important to the Company and our customers, and we strongly recommend that you share the results of any penetration tests that you conduct on the Software with the Company (which is to be considered solely the Confidential Information of the Company) so that the Company may utilize that information to improve the Software.
- b. **Confidentiality term.** Each Party agrees to hold the other party's Confidential Information in confidence during the term of this Agreement and for a period of five (5) years after the termination of this Agreement (other than with respect to trade secrets, which shall be held in confidence following such period in accordance with this section), and to disclose such Confidential Information only to those employees or agents who have a need to know such Confidential Information and are required to protect it against unauthorized disclosure. Notwithstanding the foregoing, either party may disclose the other party's Confidential Information to a federal or state governmental entity to the extent such disclosure is required by law, so long as the Party receiving any such demand notifies the disclosing Party in advance of the required disclosure as soon as reasonably practicable to allow the disclosing Party to contest the disclosure.
- c. **Return of Information.** Upon termination of this Agreement the receiving Party will destroy or all Confidential Information of the disclosing Party in the receiving Party's possession or control.

- 12. **Customer Restrictions.** Customer will not: distribute, license, loan, or sell the Software or other content that is contained or displayed in it; modify, alter, or create any derivative works of the Software; reverse engineer, decompile, decode, decrypt, disassemble, or derive any source code from the Software; remove, alter, or obscure any copyright, trademark, or other proprietary rights notice on or in the Software; upload, post, reproduce or distribute any information, software, or other material protected by



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copyright, privacy rights, or any other intellectual property right without first obtaining the permission of the owner of such rights.

### 13. Termination

- a. **Termination on Notice.** Customer may terminate this Agreement, for any reason, upon thirty (30) days notice prior to the end of the then current Term to Company in writing or via email to [contracts@successkpi.com](mailto:contracts@successkpi.com) and [legal@successkpi.com](mailto:legal@successkpi.com)
- b. **Termination for Material Breach.** Each Party may terminate this Agreement with immediate effect by delivering notice of the termination to the other Party, if the other Party fails to perform, has made or makes any inaccuracy in, or otherwise materially breaches, any of its obligations, covenants, or representations, and the failure, inaccuracy, or breach continues for a period of thirty (30) days after the non-breaching Party delivers notice to the breaching Party reasonably detailing the breach.
- c. **Termination for Failure to Pay.** Company may terminate this agreement with immediate effect by delivering notice of the termination to Customer if Customer fails to pay the Subscription Fees within 30 days of invoice by Company. In addition, Company may elect to suspend access to the service in lieu of termination while payment is pending and a promise to pay exists between the parties.

### 14. Effect of Termination

- a. **Pay Outstanding Amounts.** Customer shall immediately pay to Company all amounts outstanding as of the date of, and any amounts outstanding as a result of, termination.
- b. **Discontinuance of Use.** Customer shall cease all use of the Service upon the effective date of the termination with the exception of 10.c.
- c. **Revocation and Termination of License.** Customer agrees and acknowledges that immediately upon Termination, for whatever reason, Customer's license granted by Section 2 hereof is immediately revoked by the Company and terminated until such time and if reinstated in writing by the Company.

### 15. Indemnification.

- a. **Indemnification.** The Company will defend Customer, at the Company's expense, against any third-party claim, demand, suit, or proceeding ("Claim") brought against Customer by a non-affiliated third-party alleging that the Software infringes or misappropriates an intellectual property right of the third-party and will indemnify Customer for and hold Customer harmless from any damages finally awarded to the third-party claimant or agreed to by the Company in settlement of the Claim. If your use of the Software is enjoined in connection with the Claim or the Company believes it reasonably could be enjoined, the Company may choose to either modify the Software to be non-infringing (while preserving its utility and functionality) or obtain a license to allow for continued use of the Software or if these alternatives are not commercially reasonable, the Company may terminate Customer's right to access and use the Software and any future commitment under this agreement.
- b. **Misuse and Unapproved Modification or Combination Exclusion:** The Company will have no indemnification obligation, and Customer agrees to indemnify the Company, for any Claim arising from or based upon (a) the misuse or unauthorized use of the Software if the Claim would not have arisen without such use; or (b) any modification of the Software not authorized by us in writing, if the Claim would not have arisen without such modification; or (c) the combination of the Software with any third-party products, services or business processes not provided by us as part of the Software, if the Claim would not have arisen without such combination.
- c. **Notice and Failure to Notify Notice Requirement.** Before bringing a claim for indemnification, the Claiming Party shall notify the Non-claiming Party of the indemnifiable proceeding, and deliver to the Non-claiming Party all legal pleadings and other documents reasonably necessary to indemnify or defend the indemnifiable proceeding and permit the Non-Claiming Party to have reasonable control of the defense and payment/settlement of the claim.



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- d. **Failure to Notify.** If the Customer fails to notify Company of the indemnifiable proceeding or fails to give the Company control of the indemnifiable proceeding, Company will be relieved of its indemnification obligations.
  - e. **Indemnification for Infringement Claims.** The cumulative aggregate liability of the Company to the Customer will not exceed the amount of the fees paid or payable to the Company in the prior twelve (12) month period. The Company shall not be liable for any indirect, special, incidental, punitive, consequential damages whether in contract, tort or otherwise.
  - f. **Exclusive Remedy.** Customer's right to indemnification is the exclusive remedy available with respect to any claim of indemnification.
- 16. Limitation on Liability**
- a. **Mutual Limit on Liability.** In addition to any other limitations herein, neither Party will be liable for breach-of-contract damages suffered by the other Party that are remote or speculative, or that could not have reasonably been foreseen on entry into this Agreement.
  - b. **Maximum Liability.** Neither Party's liability under this Agreement shall exceed the fees paid or due to be paid by the Customer under this Agreement during the twelve (12) months preceding the date upon which the related claim or cause of action arose.
- 17. Entire Agreement.** This Agreement represents the entire understanding between the Parties with respect to its subject matter and this Agreement supersedes all prior discussions, agreements, written or otherwise, unless specifically set forth herein.
- 18. Amendment.** This Agreement can be amended only by a writing signed by both parties.
- 19. Assignment.** Neither Party may assign this Agreement or any of their rights or obligations under this Agreement without the other Party's written consent.
- 20. Marketing.** The Company may list the Customer on a list of customers distributed by the Company publicly for marketing purposes. Both Parties agree to issue a joint press release upon six (6) months of satisfactory SaaS platform performance of the Software by the Company. The content and dissemination of such press release must be mutually agreed by the Parties.
- 21. Notices**
- a. **Method of Notice.** The Parties shall give all notices and communications between the parties in writing by
    - i. a nationally-recognized, next-day courier service, or
    - ii. first-class registered or certified mail, postage prepaid to the party's address specified in this agreement, or to the address that, a party has notified to be that party's address for the purposes of this section, or
    - iii. via email to the Company at [contracts@successkpi.com](mailto:contracts@successkpi.com) with copy to [legal@successkpi.com](mailto:legal@successkpi.com).
    - iv. To the Customer at the email address provided by customer at the time of execution of this Agreement or as specified here.
  - b. **Receipt of Notice.** A notice given under this Agreement will be effective on the other party's receipt of it, if mailed, upon confirmation by certified mail by the sending Party, or if sent by email, effective on the date sent.
- 22. Governing Law.** This Agreement shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws rules.
- 23. Severability.** If any part of this Agreement is declared unenforceable or invalid, the remainder will continue to be valid and enforceable.
- 24. Waiver.** The failure or neglect by a Party to enforce any of rights under this Agreement will not be deemed to be a waiver of that Party's rights.
- 25. Force Majeure.** A Party shall not be liable for any failure of or delay in the performance of this Agreement for the period that such failure or delay is beyond the reasonable control of a Party by reason of acts of God, wars, revolution, civil commotion, acts of public enemy, terrorism, embargo, acts of government in its sovereign capacity, or any other circumstances beyond the reasonable control and not involving any



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fault or negligence of the party affected (“Force Majeure Event”), which materially affects the performance of any of its obligations under this Agreement. The Party affected, upon giving prompt notice to the other Party, shall be excused from such performance. Notwithstanding the foregoing, the occurrence of a Force Majeure Event shall NOT delay or relieve Customer from its obligations to pay any amounts that are due and payable with respect to Software and other services that have been provided by Supplier prior to the occurrence of any such Force Majeure Event.

- 26. Attorney’s Fees.** In the event of a breach of this Agreement, the non-breaching party shall be entitled to reimbursement of attorney’s fees required to enforce this Agreement whether in court or otherwise in the event of such breach and/or or in the event of litigation to the substantially prevailing party.
- 27. Authority.** By clicking on accept to these terms, the Parties hereto expressly represent that they have the appropriate and necessary authority, supported by the applicable corporate resolution, to execute and enter into this Agreement.