PLEASE REVIEW THIS AGREEMENT CAREFULLY AS IT DETAILS IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, CERTAIN RESTRICTIONS AND LIMITATIONS AND EXCLUSIONS TO OUR LIABILITY. IT IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. BY SIGNING THE TORCH.AI NAAS ORDER FORM OR PROCEEDING TO USE TORCH.AI's NEXUS-AS-A-SERVICE, AND/OR RECEIVE SERVICES FROM TORCH.AI, WHETHER DIRECTLY OR THROUGH ANY SERVANT OR AGENT: (1) YOU ACKNOWLEDGE THIS IS A LEGALLY BINDING AGREEMENT, (2) YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS, AND (3) YOU AGREE TO BE BOUND BY ALL SUCH TERMS AND CONDITIONS AS A PARTY TO THIS AGREEMENT AND, IF YOU ARE AN EMPLOYEE OR AGENT, YOU CONFIRM, REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND YOUR EMPLOYER OR PRINCIPAL.

CURRENT AS OF AUGUST 5, 2021.

**TORCH.AI Terms of Service for
NEXUS™-as-a-Service**

This Terms of Service for NEXUS™-as-a-Service ("**NaaS Agreement**") is entered into between **Torch Research LLC** d/b/a Torch.AI ("**TORCH.AI**") and the company identified on the TORCH.AI NaaS Order Form ("**NaaS Order Form**") or otherwise using the TORCH.AI NaaS (as later defined) (the "**Customer**"). The NaaS Agreement is effective on the earlier to occur of the date on which the NaaS Order Form is signed by Customer and the date on which Customer, (or its servants and/or agents) first use the TORCH.AI NaaS (as applicable, "**Effective Date**"). This NaaS Agreement includes (i) the terms and conditions set out herein, (ii) any Schedules hereto; (iii) the terms of any EULA referenced in this NaaS Agreement; and (iv) any signed NaaS Order Form or other enabling agreement that specifically references this NaaS Agreement. TORCH.AI and Customer may each be referred to individually as a "**Party**," and together as the "**Parties**."

1. **Scope of Agreement.** TORCH.AI shall make available to Customer the TORCH.AI NaaS in accordance with this NaaS Agreement and as more particularly set out on the NaaS Order Form. Nothing in this Agreement permits Customer to sub-license, assign, transfer, rent, lease, license or commercialize the TORCH.AI NaaS, in part or in full, save to the extent expressly permitted by TORCH.AI in a signed writing.

2. **Project Plan.** TORCH.AI shall, as more particularly set out in the Project Plan and this NaaS Agreement, complete Implementation prior to Steady State.

3. **Charges and Payment.** In return for the provision by TORCH.AI of the TORCH.AI NaaS and associated Services, Customer shall pay in full the Charges as more particularly detailed in the NaaS Order Form, consisting of (a) Platform Charges, (b) Capacity Charges and (c) Service Charges. Any financial obligations and terms set out on the NaaS Order Form are legally binding, form part of this NaaS Agreement and not subject to cancellation, save in accordance with the terms thereof.

4. **TORCH.AI Modifications.** Customer acknowledges that the TORCH.AI NaaS is enabled by the TORCH.AI Platform and TORCH.AI reserves the right to make such modifications or enhancements to: (i) its network or system components; (ii) its technology and architectures; (iii) its operations; (iv) any existing features and functionalities of the TORCH.AI NaaS or any other part of the TORCH.AI Platform, as TORCH.AI deems appropriate, in its sole and unfettered discretion.

5. **Right to Use.** TORCH.AI hereby grants to Customer, with effect from the Effective Date, a worldwide, non-exclusive, non-transferable, non-sublicensable, revocable and limited right and license to receive, access and use

the TORCH.AI NaaS, through Customer's internet connection or proprietary telecommunications line and solely for Customer's internal business purposes (and not for further commercialization) ("**Agreed Purpose**"). For the avoidance of doubt, this Agreement does not, under any circumstances (i) grant either Party a license to any patents, trade secrets, trademarks or copyrights of the other Party, save to the limited extent set forth in Clauses 5 and 6; or (ii) require either TORCH.AI or Customer to violate the proprietary rights of any third-party in any software or otherwise.

6. **Permitted Use by Others (End User License Agreement).** TORCH.AI hereby authorizes Customer to permit Customer's affiliates, servants and agents ("**Permitted Users**") to access and use the TORCH.AI NaaS, as reasonably required for the Agreed Purpose, on condition that Customer shall procure the compliance of Permitted Users with: (i) the terms of this NaaS Agreement and (ii) the terms of TORCH.AI's then current version of the End User License Agreement, located at https://www.torch.ai/legal/eula ("**EULA**"). Customer shall, correspondingly procure that all Permitted Users execute and comply with the terms of the EULA prior to using the TORCH.AI NaaS, whereupon same shall form part of this Agreement. Customer agrees that any violation of the EULA by a Permitted User shall be considered a breach of this NaaS Agreement by the Customer.

7. **Customer License.** Customer:

    7.1 will obtain and maintain such rights to all Customer and/or third-party software that is not provided by TORCH.AI as part of the TORCH.AI NaaS ("**Customer 3P Software**"), to the extent reasonably necessary: (i) for Customer to use such Customer 3P Software in connection or conjunction with its receipt and use of the TORCH.AI NaaS and Customer's use of related infrastructure, including hardware, applications or systems software furnished or installed by Customer; and (ii) for TORCH.AI to enable the full functionality of the TORCH.AI NaaS.

    7.2 hereby grants TORCH.AI a non-exclusive, worldwide, royalty-free right and license for the relevant Term of this Agreement to access and use: (i) any Intellectual Property Rights, and any software or other works comprising or using such rights (whether owned by Customer or owned by a third-party and licensed to Customer), and (ii) any Customer Data, both to the extent reasonably necessary for TORCH.AI, its servants and agents to implement and provide the full functionality of the TORCH.AI NaaS, which right and license shall specifically allow the TORCH.AI NaaS, or any part or component thereof, to access all relevant Customer systems and data.

8. **Customer Data and Security.**

    8.1 **Customer Responsibilities.** Customer maintains full responsibility for: (i) verifying that the TORCH.AI NaaS satisfies its particular requirements; (ii) the security of its systems, content, Confidential Information, Customer Data and Personal Information; (iii) complying with any terms of use for any third-party software, content, service or website that it loads, creates or accesses during its use of the TORCH.AI NaaS; (iv) securing appropriate rights and authorizations necessary for access and use of Customer Data in conjunction with the TORCH.AI NaaS; and (v) implementing appropriate disaster recovery and/or backup and restore services for the adequate protection of its Customer Data.

    8.2 **Personal Information.** To the extent Customer Data includes any Personal Information, Customer shall be and at all times remain the Data Controller of such Personal Information, in which capacity Customer hereby authorizes TORCH.AI, as Data Processor, to process such Personal Information to the extent reasonably required to provide the TORCH.AI NaaS, including any functionality provided thereby. In the event Customer reasonably anticipates or discovers that its use of the TORCH.AI NaaS involves the receipt, storage, processing, or onward transmission of Personal Information that originated from the European Economic Area ("**EEA**") or Switzerland or pertains to the respective citizens of either location, Customer will inform TORCH.AI without undue delay and provide such information as TORCH.AI may reasonably request related to such activities. To the extent that either Party is required to enter into standard

EU Model Contract(s) or adopt other measures to maintain compliance with GDPR or other data privacy law, each Party shall diligently and without delay, cooperate with the other and reasonably enter into same without undue delay.

8.3 **Customer Data Rights.** Customer is responsible for and shall obtain all necessary rights and applicable consents to use and disclose any Customer Data, Customer Business Information or other information described in this Clause 8, during or in connection with the use of the TORCH.AI NaaS.

8.4 **Customer Data.** It is specifically understood by Customer that any decision to furnish, upload, enter, store, or process any Customer Data in connection with its use of the TORCH.AI NaaS, lies solely with Customer, and further understood by Customer that Customer is permitted to so use its Customer Data on condition that Customer remains solely responsible for: (i) using and managing its Customer Data, and any access it grants to such Customer Data, (ii) the loss and/or destruction of its Customer Data, even where the same results from any failure of the TORCH.AI NaaS or underlying TORCH.AI Platform, (iii) safely and securely providing or transmitting Customer Data for use with the TORCH.AI NaaS. TORCH.AI will have limited access to Customer Data, solely in circumstances where such access is necessary in connection with TORCH.AI's provision of the TORCH.AI NaaS. In such circumstances, TORCH.AI may use or disclose Customer Data only:

8.4.1 as authorized, directed, or permitted by Customer;

8.4.2 in connection with the TORCH.AI NaaS or underlying TORCH.AI Platform;

8.4.3 to comply with applicable Laws, subpoenas, discovery, or similar orders or requests; or

8.4.4 to investigate or help to prevent or mitigate security threats, fraud or other illegal, malicious, or inappropriate activity.

8.5 **Business Use of Service Data.** The TORCH Platform that underpins the TORCH.AI NaaS may have access to certain anonymized business information and other data that Customer furnishes, inputs, stores, or process on TORCH Platform ("**Customer Business Information**"), including Permitted User data. Customer agrees that TORCH may make reasonable use of Customer's Business Information solely in connection with the performance and delivery of the TORCH.AI NaaS and the maintaining and enhancing of the TORCH Platform.

8.6 **Unauthorized Access to Customer Data.** Each Party will promptly notify the other upon learning of any unauthorized access to or use of Customer's Data unless such notification is prohibited by Law. If applicable Laws require that notice is given to public authorities or individuals about a security incident involving Customer Data, Customer shall give such required notices (with the reasonable cooperation of TORCH.AI) at Customer's expense, except to the extent that: (a) Customer can demonstrate that such incident occurred as a consequence of TORCH's failure to perform any of its express obligations under the Agreement; and (b) TORCH.AI reasonably approves arrangements for notice and any related remedial measures.

8.7 **Viruses, Malicious and Disabling Code.** TORCH.AI shall deploy and utilize anti-virus software in connection with the Torch NaaS, updating the same with available patches and virus signatures without undue delay and in accordance with good industry practice ("**Industry Virus Measures**"). Provided TORCH.AI complies with its obligation to employ Industry Virus Measures, TORCH.AI has no responsibility for viruses or other malware that nonetheless enter the TORCH.AI NaaS, the TORCH.AI Platform or the Customer's system, or for restoration of lost or corrupted data or applications.

9. **Intellectual Property.**

9.1 **Background IP and New IP.** The Intellectual Property Rights in each Party's Background IP shall remain vested in such Party and nothing in this Agreement shall operate to transfer any Background IP or New IP from one Party to the other, even in such circumstances where Background IP forms part of, or is otherwise embodied in any materials provided or made available by one Party to the other Party. For the avoidance of doubt, the foregoing shall not preclude either Party from using the ideas, concepts, and know-how which it develops during the performance of its obligations under this Agreement, and which are retained by its employees in intangible form.

9.2 **Trademark Usage.** The Parties agree not to use any trade mark or service mark which would be confusingly similar to a trade mark or service mark of the other, except that each Party can list the name and trademark of the other Party as an agreement partner, vendor, or customer of such Party in a nominative use on the Party's own website or in marketing materials, provided however, that any such use by a Party of the other Party's trademark shall not imply a formal business relationship such as a partnership, joint venture, or affiliation.

9.3 **General.** TORCH.AI may monitor use/license restrictions remotely through the TORCH.AI NaaS. Customer may not copy the TORCH.AI NaaS or underlying TORCH.AI Platform, or any portion thereof, onto, or otherwise use or make it available on, any public external distributed network. Customer must not modify, reverse engineer, disassemble decrypt, decompile, or make derivative works of the TORCH.AI NaaS or underlying TORCH.AI Platform unless permitted by statute, in which case Customer must without undue delay provide TORCH.AI with reasonably detailed information about those activities.

10. **Compliance with Laws.** In performing its obligations and exercising its rights under this Agreement, each Party shall comply with all Laws applicable to it, in furtherance of which, it shall secure and obtain, at its sole expense, any and all permits, licenses and consents, as may be required of it by such Laws. The application of this provision to the Customer shall extend to cover any Permitted Users.

11. **Liability.**

11.1 **Exclusions of Liability.** To the extent permitted by Laws, in no event shall either Party be liable to the other Party or any third-party for any loss of use, revenue or profit or loss of data or diminution in value, or for any consequential, indirect, incidental, special, exemplary, or punitive damages whether arising out of breach of contract, tort (including negligence) or otherwise, regardless of whether such damages were foreseeable and whether or not either Party has been advised of the possibility of such damages, and notwithstanding the failure of any agreed or other remedy of its essential purpose.

11.2 **Limitation of Liability.** To the extent permitted by Laws and subject to the remainder of this Clause 11.2, the maximum liability of each Party to the other Party under or in connection with the Agreement, regardless of the form of action, whether in contract (including under any indemnity), equity, negligence, under statute, tort or otherwise, will be limited to and will not exceed, in the aggregate, the Charges paid or payable by Customer in the previous 12 months under any applicable NaaS Order Form or in connection with the Agreement. The foregoing shall not apply in cases of willful default and fraud.

11.3 **Release.** Customer hereby releases and forever discharges TORCH.AI, its, officers, employees, agents, licensors, licensees, successors, and assigns from, and hereby waives and relinquishes, each and every past, present and future dispute, claim, controversy, demand, right, obligation, liability, action and cause of action of every kind and nature (including personal injuries, death, and property damage), that has arisen or arises directly or indirectly out of, or relates directly or indirectly to, (1) any interactions with, or act or omission of, or User Content provided by, other users of the TORCH.AI NaaS or TORCH.AI Platform or (2) any third-party site, products, services, and links included on or accessed through the TORCH.AI NaaS.

11.4 **Fairness of Liability Provision.** Customer acknowledges and agrees that TORCH.AI has entered into this Agreement and provided Customer with access to the TORCH.AI NaaS for the agreed Charges in reliance upon the exclusions of liability, set forth in Clause 11.1, the limitation of liability, set forth in Clause 11.2, and the Release provided in Clause 11.3 (collectively, "**Agreed Restrictions**"). Customer further acknowledges and agrees that as an essential condition of TORCH.AI entering into this Agreement, such Agreed Restrictions reflect a reasonable and fair allocation of the risk between TORCH.AI and Customer upon which the amount of the Charges has been predicated.

12. Agreement Term.

12.1 **Term.** This NaaS Agreement commences on the Effective Date and, unless terminated earlier pursuant to its terms, will continue for the initial term period set out in the NaaS Order Form, (the "**Initial Term**").

12.2 **Renewal Term.** At the conclusion of the Initial Term, unless terminated earlier pursuant to its terms, this NaaS Agreement shall automatically renew for an additional period of Twelve (12) months, and thereafter on each subsequent anniversary of such renewal the NaaS Agreement shall again automatically renew (each such renewal, a "**Renewal Term**", with the Initial Term or any then current Renewal Term, the "**Term**"). Either Party may terminate this NaaS Agreement by providing written Notice to the other Party no later than thirty (30) days prior to the start of a Renewal Term, whereupon this NaaS Agreement shall terminate at the end of the Initial Term or the then current Renewal Term in effect at the time of such Notice.

13. Termination.

13.1 **Termination for Cause.** Subject to the remainder of this Clause, either Party may terminate this Agreement (and any NaaS Order Form) by notice to the breaching Party if such breaching Party: (a) fails to remedy any material breach (which for the avoidance of doubt shall include non-payment by Customer of Charges Thirty (30) calendar days beyond the due date for payment of same) of this NaaS Agreement within 30 calendar days after written notice from the non-breaching Party to do so and/or (b) is affected by an Insolvency Event. Save where the NaaS Agreement is terminated by Customer pursuant to this Clause 13.1, as a consequence of the non-remedied material breach of TORCH.AI, Customer shall in all other circumstances of termination, pay the Termination Charges to TORCH.AI.

13.2 **Consequences of Termination (including Expiry).** Upon termination or expiration of this Agreement, all rights to use the TORCH.AI NaaS will cease and TORCH.AI will cease to provide same. Customer will, on the expiration date or the effective date of termination, whichever occurs earlier, pay to TORCH.AI any and all amounts due pursuant to this NaaS Agreement. Where the Agreement refers to termination or expiration of this Agreement, this refers to the termination or expiration, with prospective effect, of the Parties' rights and obligations provided pursuant to this Agreement, and all ancillary rights and obligations included in this Agreement in respect of the TORCH.AI NaaS, including the obligation to pay Charges (other than the obligation to pay Termination Charges which survives termination) in respect of such TORCH.AI NaaS. In all other respects, all other rights and obligations of the Parties under this Agreement will, to the fullest extent reasonably practicable, remain unaffected by the termination of this Agreement.

14. Confidentiality.

14.1 **Confidential Information.** Each Party ("**Receiving Party**") agrees to keep the Confidential Information of the other Party ("**Disclosing Party**") confidential and use it only for Purpose and as set forth in this Clause 14. The confidentiality provisions provided under this Clause 14 shall govern any information, including any Customer Data, provided under or in connection with this Agreement or the provision and/or use of the TORCH.AI NaaS.

14.2 **Receiving Party's Servants and Agents.** Confidential Information (or any part thereof) of any Disclosing Party may only be disclosed to such servants and agents of the Receiving Party possessing a genuine need to know, and then only to the extent reasonably necessary for Receiving Party to perform its obligations or exercise its rights under or pursuant to this NaaS Agreement ("**Purpose**"). Each Receiving Party shall keep the Disclosing Party's Confidential Information secret and confidential and shall not disclose the same to any person except in compliance with this Clause 14 and shall procure that such persons to whom Confidential Information may be disclosed pursuant to this Clause 14 are made aware of the confidential nature of the Confidential Information and are bound by and comply with materially similar obligations of confidentiality and non-disclosure as set out in this Agreement.

14.3 **Degree of Care.** In discharging its obligations of confidentiality hereunder, the Receiving Party, its servants and agents will use at least the same degree of care as they use to safeguard their own Confidential Information of like importance and in any event will use no less than a reasonable degree of care. Receiving Party shall be strictly liable for any disclosure or use of the Confidential Information in violation of the Agreement, including any disclosure or use of the Confidential Information made by any employee or advisor of Receiving Party.

14.4 **Required Disclosure.** Confidential Information may be disclosed by the Receiving Party if it is lawfully required to disclose the same pursuant to any law, rule, or regulation or pursuant to a valid order of a court or other governmental body, provided that the Disclosing Party is given reasonable (in the prevailing circumstances) notice by the Receiving Party of such requirement to enable Disclosing Party to seek a protective order with respect to the Confidential Information required to be disclosed.

14.5 **Property and Prohibitions.** As between the Parties, all Confidential Information that is disclosed by the Disclosing Party to the Receiving Party or its Affiliates under this Agreement shall remain the property of the Disclosing Party. Receiving Party and its Affiliates shall not reverse engineer, decompile, disassemble, or use in contravention to this Agreement any software, hardware, or tangible objects which embody in any part the Disclosing Party's Confidential Information.

14.6 **Return or Destruction of Confidential Information.** Upon the Disclosing Party's written request or the termination of the Agreement for any reason, whichever occurs earlier, all copies of Confidential Information in a tangible form, including electronic, optical or magnetic form, that is in the possession or control of the Receiving Party, its servants and agents, shall be immediately returned to the Disclosing Party, or alternatively destroyed, with a written certification by an officer of the Receiving Party confirming such return or destruction and the date on which it occurred (such date, the "**Return Date**" or "**Destruction Date**").

14.7 **Equitable Relief.** The Parties agree that monetary damages may be an insufficient remedy for breach or threatened breach of this Clause 14 and in such circumstances, Parties further agree the Disclosing Party shall be entitled to apply to the court for equitable relief, including without limitation specific performance of the provisions of the Agreement and/or injunctive relief. Any such relief granted by the court will be in addition to and not in lieu of any other remedy available hereunder or at law.

14.8 **Survival of Obligations:** All confidentiality and non-use obligations set out in this Agreement, including without limitation this Clause 14 shall survive for a period of five (5) years from the Return Date or Destruction Date without the retention of any copies by the Receiving Party or its Affiliates.

15. **Warranties and Representations.**

15.1 **Performance.** TORCH.AI warrants that all TORCH.AI Services forming part of the TORCH.AI NaaS will be performed in a professional and workmanlike manner.

15.2 **Authorization.** Each of Customer and TORCH.AI represents and warrants to the other that: (a) it is a company or corporation duly formed or incorporated, validly existing and in good standing under the Laws of its particular jurisdiction; (b) it has the requisite corporate power and authority to execute, deliver and perform its obligations under the Agreement; (c) it has obtained, or will obtain all required licenses, authorizations, approvals, consents or permits required to perform its obligations hereunder and to grant such access to systems and information as required by the other Party under all applicable Laws from all authorities having requisite jurisdiction (together **"Consents"**).

15.3 **No Inducements.** TORCH.AI represents that it has not offered any inducements in connection with this NaaS Agreement.

15.4 **Software and Materials.** TORCH.AI warrants that it has the necessary rights, title, and interest (including Intellectual Property Rights) in and to all software, hardware, products, and systems necessary for TORCH.AI to provide the TORCH.AI NaaS hereunder.

15.5 **Disclaimer of Warranties.** To the maximum extent permitted by applicable Laws, except as otherwise expressly provided in this Clause 15, TORCH.AI makes no representations or warranties, express or implied, regarding any matter, including the merchantability, suitability, originality, fitness for a particular use or purpose, or results to be derived from the use of the TORCH.AI NaaS, or other materials or services provided under this Agreement, or that the operation of the TORCH.AI NaaS, or any component thereof, will be uninterrupted, error free or free from all viruses.

16. **Infringement of Intellectual Property Rights.**

16.1 **TORCH.AI Infringement Indemnity.** Subject to Clause 11, TORCH.AI agrees to indemnify, defend and hold harmless Customer, its servants and agents against any final award of damages or any TORCH.AI approved settlement in respect to third-party claims that TORCH.AI's provision and/or Customer's receipt and/or use of TORCH.AI NaaS, or any part thereof, infringes the Intellectual Property Rights of any unrelated third party. For the avoidance of doubt, this TORCH.AI indemnity shall not extend to any infringement resulting from access to or use of content and materials provided by Customer or any third parties, including other customers of TORCH.AI ("**User Content**").

16.2 **Additional TORCH.AI Remedy.** In the event of any claim under the indemnity set forth in Clause 16.1, or if in TORCH's opinion such a claim is likely, then, in addition to defending the claim and paying any amounts in accordance with Clause 16.1, TORCH.AI may, at its option and in its sole discretion, procure a license for or provide a non-infringing substitute for or modification of the infringing element ("**At Risk Items**"), with all associated costs of such, subject to Clause 11, being for the account of TORCH.AI.

16.3 **Non-Availability of Additional TORCH.AI Remedy.** If TORCH.AI reasonably concludes that it is impractical to take the actions described in Clause 16.2 above, the At Risk Items shall be withdrawn from use in the performance or receipt of TORCH.AI NaaS, and (a) Customer will return (at TORCH.AI's option) such At Risk Items to TORCH.AI or certify their destruction; (b) the Parties will negotiate in good faith to reach a written agreement on any compensation due to Customer, commensurate with the reduction in functionality available to Customer resulting from such At Risk Items being withdrawn ("**Functionality Compensation**"); and (c) payment of any Functionality Compensation will constitute Customer's sole and exclusive remedy in relation to the withdrawal of the At Risk Items.

16.4 **Customer Infringement Indemnity.** Subject to Clause 11, Customer agrees to indemnify, defend and hold harmless TORCH.AI, its servants and agents against any final award of damages or any Customer-approved settlement in respect to third-party claims that Customer's provision, uploading, making available or use of Customer Data, User Content or any other software, data or Intellectual Property Rights in connection with this Agreement, and/or Customer's acts or omissions (or those of Permitted-Users, or

their respective servants or agents) related to access of the TORCH.AI NaaS, any part thereof infringe the Intellectual Property Rights of an unrelated third-party.

16.5 **Exclusions.** The indemnities set out at Clause 16.1 and Clause 16.4 shall not apply to any infringement claim resulting from: (a) any hardware, software, data or Intellectual Property Rights provided by the Indemnifying Party pursuant to this Agreement ("**Anticipated Items**") being used by Indemnified Party in any manner that contravenes or fails to conform to the reasonable instructions of Indemnifying Party (including any written directions forming part of supplied documentation); (b) the use by Indemnified Party of any hardware, or Intellectual Property Rights (including software) not provided or made available by Indemnifying Party under this Agreement, ("**Excluded Items**") OR the use of anything provided by the Indemnifying Party under the Agreement ("**In-Scope Items**") in connection or combination with the Excluded Items where such connection or combination causes the resulting infringement; (c) any modification, adaptation, variation or enhancement made by Indemnified Party, its affiliates, servants or agents, without the approval of the Indemnifying Party (an "**IP Modification**") provided any such infringement would not otherwise have occurred absent such IP Modification OR resulting from any use of Anticipated Items in the practice of a patented process and such infringement would not have occurred in the absence of such practice; (d) in the case of TORCH.AI, as Indemnifying Party, the Customer has mandated use of specific hardware, software, data or Intellectual Property Rights ("**Mandated Components**") and the use of such Mandated Components gives rise to the infringement.

16.6 **Indemnity Procedures.** The Indemnified Party agrees to provide the Indemnifying Party with prompt written notice of any claims covered by this Clause 16 and shall reasonably cooperate in any ensuing investigation and defense, taking all reasonable steps to mitigate any Losses or expenses associated with the claim and defense. The Indemnified Party may, at its sole election and cost, participate in the investigation and defense with its own counsel provided always that such participation does not unreasonably disrupt the defense. Subject to the remainder of this Clause 16.6, if the Indemnifying Party, after receiving proper notice of a claim pursuant hereto, fails to promptly commence the defense of such claim, the Indemnified Party may, upon the expiry of Ten (10) calendar days' written notice to Indemnifying Party of its intent to do so, defend or settle the claim in its discretion and at the Indemnifying Party's expense. It is specifically understood that an Indemnifying Party will not be responsible under the indemnity for any settlement or compromise of a claim made without its consent unless the Indemnified Party has tendered notice of the claim and Indemnifying Party has then refused to assume and defend (or fails to assume or defend) the claim and it is later determined that Indemnifying Party was liable to assume and defend the claim. Subject to the foregoing, settlements by an Indemnifying Party are subject to the Indemnified Party's prior written consent (which may not be unreasonably withheld or delayed if the settlement involves payment of money without any admission of liability or other remedy).

16.7 **Losses of Affiliates.** For the purposes of this Clause 16, Losses incurred by a Party's Affiliates are deemed to be Losses incurred by that Party.

17. **Force Majeure.** Neither Party will be deemed to be in breach of this Agreement, nor liable to the other, for delays or failure to perform any of its non-monetary obligations under this Agreement to the extent that such delay or failure results from a Force Majeure Event. A failure by any subcontractor of TORCH.AI (or any third-party acting under the control of TORCH) will not be treated as a Force Majeure Event unless, and except to the extent that, the failure of any such subcontractor or third-party is itself caused by a Force Majeure Event.

18. **Notices.**

18.1 **Addresses.** Each Party's contact details for notices under the NaaS Agreement are set forth in the NaaS Order Form (or other enabling agreement). Either Party may from time to time change its address or designee for notification purposes by providing the other Party with written notice of such new address or designee.

18.2 **Notices.** All notices must be: (a)in writing and in English; (b) addressed to the recipient at the address, email address or fax number described in Clause 18.1; (c) signed by or on behalf of the Party giving the notice. If the notice is sent by email and does not contain a signature, it is deemed to be signed by the person identified as the sender of the email; (d) sent to the recipient by hand, courier, prepaid post (airmail if to or from a place outside the country where notice was sent), fax or email; and (e) if sent by email, in a form which identifies the sender; and clearly indicates the subject matter of the notice in the subject heading of the email.

18.3 **Receipt.** Without limiting any other means by which a Party may prove that a notice has been received, a notice is deemed to be received: (a) if sent by hand or courier service, when left at the address of the recipient; (b) if sent by prepaid post, five Business Days (if posted to an address in the same country as the place of sending) or seven Business Days (if posted from one country to another) after the date of posting; (c) if sent by fax, at the time that the whole fax was sent as stated in a report generated by the sender's fax machine; or (d) if sent by email, when the recipient's email server generates a message to the sender confirming that the email has been delivered to that server (commonly referred to as a '*delivery receipt*'), unless the sender receives an **"out of office"** reply from the recipient's email address, or at the time that the recipient **"read"** the email as stated in an automated message received by the sender (commonly referred to as a '*read receipt*'), whichever is earlier, but if a notice is left at the recipient's address or is received by fax or email on a day which is not a Business Day, or after 5:00 pm (recipient's local time) on a Business Day, the notice is deemed to be received by the recipient at 9:00 am (recipient's local time) on the first Business Day after that day.

19. General Provisions.

19.1 **Exclusivity and Minimum Commitments.** Each Party reserves the right to supply or obtain any services, resources, deliverables, hardware, or software to or from any other client or source unless otherwise agreed under a separate written agreement signed by both Parties.

19.2 **Right to Engage in Other Activities.** TORCH.AI may provide software, services, products, and subscriptions to third parties at any facility that TORCH.AI may from time to time use for providing or performing, as appropriate, the TORCH.AI NaaS. Nothing will impair TORCH's right to acquire, license, market, distribute, develop for itself or others or to have others develop for TORCH.AI similar technology performing the same or similar functions as the technology underpinning the TORCH.AI NaaS or other services contemplated by this NaaS Agreement.

19.3 **Independent Contractors.** The Parties are independent, and nothing in this Agreement will be construed as constituting either Party as partner, joint venturer, or fiduciary of the other, or as creating any other form of legal association that would impose liability on one Party for the act or omission of the other or as providing either Party with the right, power, or authority (express or implied) to create any duty or obligation of the other. Each Party also has the sole right and obligation to determine, provide for and pay the compensation and employee benefits of its personnel resources.

19.4 **Entire Agreement.** The Agreement constitutes the full and complete statement of the agreement of the Parties with respect to the subject matter of this this NaaS Agreement and supersedes any previous or contemporaneous agreements, understandings, communications, or purchase orders, whether written or oral, relating to such subject matter.

19.5 **Survival.** The expiration or termination of this NaaS Agreement for any reason will not release either Party from any liabilities or obligations set out herein which: (a) the Parties have expressly agreed will survive any such expiration or termination; or (b) by their nature would be intended to be applicable following any such expiration or termination. The Parties agree that Clauses 11 (Limitations of Liability),

14 (Confidentiality), 16 (Indemnities and Infringement of Intellectual Property Rights), 19.11 (Export Restriction), and this Clause 19.5 (Survival) of this NaaS Agreement shall survive expiration or termination hereof.

19.6 **Amendments.** Changes or modifications to this NaaS Agreement, including the addition or modification of Schedules hereto shall be valid only when effected by way of a written variation, signed by both Parties.

19.7 **Waiver.** Waivers must be made in writing to be valid and any waiver so written shall not constitute a continuing waiver unless it so states on its face to be continuing. Unless otherwise expressly provided in this NaaS Agreement and without limiting a Party's rights and remedies for breach hereunder, no failure or delay on the part of a Party to exercise any right, power, or remedy under the Agreement (each, a "**Right**") will operate as a waiver of such Right. Any approval or consent given by a Party under the Agreement will not relieve the other Party from responsibility for complying with its obligations under the Agreement, nor will it be construed as a waiver of any Rights, except as, and to the extent otherwise expressly provided in such approval or consent. A waiver of any breach of this Agreement will not constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provision of the Agreement.

19.8 **Binding Nature.** This Agreement is binding on the Parties, their successors and permitted assigns.

19.9 **No Third-Party Beneficiaries.** Except as expressly stated otherwise, nothing contained in this Agreement is intended to confer upon any party other than TORCH.AI and Customer any rights, benefits or remedies of any kind or character whatsoever. An entity who is not a Party to this Agreement has no right to enforce any term of this Agreement.

19.10 **Assignment.** Subject to the remainder of this Clause 19.10, a Party must not assign, transfer, or otherwise deal in any other way with any or all of its rights and obligations under the Agreement without the prior written consent of the other Party. Any assignment, transfer, or other dealing in breach of this Clause shall be void ab initio. Notwithstanding the foregoing, either Party may assign, transfer, or otherwise deal in any way with any of its rights or obligations under the Agreement without the prior written consent of the other Party: (a) to an Affiliate in the event of a restructure or reorganization of such Party's corporate group, provided that such Party demonstrates to the other Party's reasonable satisfaction that the relevant Affiliate is financially sound and capable of carrying out its obligations under the Agreement; or (b) to the acquirer of all or substantially all of the assets of that Party's business to which the NaaS Agreement specifically relates, subject always in the case of (a) and (b) to the assigning Party providing the other Party with reasonable prior written notice of the assignment, transfer, or other dealing. The non-assigning Party will not unreasonably delay executing any novation agreement or other document necessary to give effect to any assignment, transfer or other dealing of a nature referred to in Clause 19.10.

19.11 **Export Restriction.**

19.11.1 Each Party acknowledges that the TORCH.AI NaaS and certain other aspects forming part of the transaction may be subject to export controls under the Laws of the United States and other countries ("**Export Laws**"). Each Party further acknowledges that this Agreement is entered into on condition of strict compliance by the other Party with such Export Laws.

19.11.2 Notwithstanding anything to the contrary in this NaaS Agreement, neither Party will, in the course of exercising its rights and performing its obligations hereunder, directly or indirectly export (or re-export) any computer hardware, software, technical data or any other item provided to or by it for purposes of this NaaS Agreement, or any derivative of the same, or permit the shipment of the same: (a) into (or to a national or resident of) Cuba, Myanmar, North Korea, Iran, North Sudan (Khartoum), Syria or United States embargoed countries or any other country with respect to which the United States has imposed sanctions; (b) to anyone on the United States Treasury

Department's List of Specially Designated Nationals, List of Specially Designated Terrorists or List of Specially Designated Narcotics Traffickers, or the United States Commerce Department's Table of Denial Orders or Entity List of proliferation concern, or the United States State Department's Debarred Parties List; or (c) to any person, country, or destination for which the United States or another country with jurisdiction, or any agency of the same, requires an export license or other authorization for export, without first having obtained any such license or other authorization required.

19.11.3 Customer, represents and warrants that it is not, and no Permitted User or other party authorized by Customer to receive the benefit of any part of the TORCH.AI NaaS, is: (a) located in, under the control of, or a national or resident of any country; (b) included on any government list; or (c) a person, referred to in Clause 19.11.2 above in violation of Export Laws.

19.11.4 If Customer exports, imports, or otherwise transfers any data used in conjunction with the TORCH.AI Software provided under this Agreement, Customer must be responsible for complying with applicable Laws and regulations and for obtaining any required export or import authorizations. TORCH.AI may suspend its performance under this Agreement to the extent required by Laws applicable to either Party.

19.12 **Good Faith.** Any action, consent or approval of either Party hereunder shall be effected reasonably and in good faith by such Party who may not unreasonably withhold or delay its action, consent, or approval.

19.13 **Further assurances.** Each Party shall, at its own expense, whenever reasonably requested by the other Party, promptly do or arrange for others to do all things reasonably necessary to give full effect to this NaaS Agreement and the transactions contemplated hereunder.

19.14 **Governing Law.** The Agreement will be governed by and construed in accordance with the Laws of the United States and the State of Kansas, without regard to conflicts of laws provisions. The Uniform Commercial Code (UCC), Uniform Computer Information Transaction Act (UCITA) and the United Nations Convention of Controls for International Sales of Goods (CISG) shall not apply to this Agreement. Each Party irrevocably and unconditionally submits to the personal jurisdiction of the state and federal courts located in Wyandotte County, Kansas.

20. **Definitions.** In this NaaS Agreement, the following expressions have the corresponding meanings ascribed to them.

Affiliates means any entity controlled by, controlling, or under common control with a Party.

Agreed Restrictions is defined in Clause 11.4 of the NaaS Agreement.

At Risk Items is defined in Clause 16.2 of the NaaS Agreement.

Background IP means any materials, know-how, methodologies, processes, techniques, tools, forms, templates, software, (whether written or machine-readable), and Intellectual Property Rights (collectively, "**Materials**") that are: (i) owned by a Party or owned by a third-party and licensed to a Party, its subcontractors, or their respective Affiliates before the effective date of this Agreement; (ii) developed by a Party, its subcontractors, or their respective Affiliates independently of the Services; and (iii) modifications, enhancements, and derivative works of the Materials described the preceding Clauses (i) and (ii).

Business Day means any day that is not a weekend or holiday in the United States of America.

Charges means the amounts detailed in the applicable NaaS Order Form, payable by Customer under or in connection with this NaaS Agreement in return for the provision of the TORCH.AI NaaS and include (a) Platform Charges, (b) Capacity Charges, and (c) Service Charges.

Confidential Information means, in relation to a Disclosing Party: (a) any and all information communicated by the Disclosing Party to the Receiving Party and identified as "*confidential*" or which could reasonably be expected to be confidential, whether before or after the Effective Date; (b) any and all information of the Disclosing Party identified as '*confidential*' to which the Receiving Party has access in connection with the TORCH.AI NaaS, whether before or after the Effective Date; (c) the Disclosing Party's confidential and proprietary information that may be disclosed to the Receiving Party under or in connection with the Agreement, the Agreement documents and the Disclosing Party's rights and obligations under the Agreement, but excludes information which: (d) is already known by the Receiving Party without an obligation of confidentiality other than under the Agreement; (e) is publicly known or becomes publicly known without any breach of obligation not to disclose that information by the Receiving Party; (f) is rightfully received by the Receiving Party from a third-party having no obligation not to disclose that information; or (g) is independently developed without use of the Disclosing Party's confidential information.

Consents is defined in Clause 15.2 of the NaaS Agreement.

Customer Data means all information provided by or on behalf of the Customer and each Permitted User, entirely at their sole election, for use in connection with the TORCH.AI NaaS.

Data Controller has the meaning ascribed to such term in GDPR.

Data Processor has the meaning ascribed to such term in GDPR.

Destruction Date is defined in Clause 14.6 of the NaaS Agreement.

Disclosing Party is defined in Clause 14.1 of the NaaS Agreement.

End Users means any individual, agent or other third-party that uses or receives the TORCH.AI NaaS or acts on behalf of the Customer in using or receiving the TORCH.AI NaaS.

EULA is defined in Clause 6 of the NaaS Agreement.

Force Majeure Event means any event or circumstance beyond a Party's reasonable control including acts or omissions of the other Party or third parties, natural disasters, health crises such as epidemics and pandemics, riots, war, terrorism, civil disorder, court orders, acts or regulations of governmental bodies, labor disputes (other than those limited to the affected Party's own workforce) or failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment or lines, or other equipment failure, and which it could not have prevented by reasonable precautions or could not have remedied by the exercise of reasonable efforts, provided that the exercise of such reasonable precautions or reasonable efforts would not require the incurrence of any additional cost or expense.

GDPR means the General Data Protection Regulation (EU) 2016/679 (GDPR), as modified and amended from time to time.

Implementation means the initial activities, more particularly detailed in the Project Plan, performed by TORCH.AI with respect to processing and storage to underpin and enable the full functionality of the TORCH.AI NaaS.

Indemnified Party means any Party indemnified by the other Party pursuant to Clause 16 of the NaaS Agreement.

Indemnifying Party means any Party indemnifying the other Party pursuant to Clause 16 of the NaaS Agreement.

Industry Virus Measures is defined in Clause 8.7 of the NaaS Agreement.

Initial Term has the meaning ascribed thereto in Clause 12.1 of the NaaS Agreement.

Insolvency Event means in respect to either Party, any proceeding instituted against such Party seeking to adjudicate such Party as insolvent or bankrupt or, such Party makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of such Party, or if such Party files a petition seeking to take advantage of any law relating to bankruptcy, insolvency, reorganization, or winding up and, in the case of any such proceeding instituted against such Party such proceeding is not dismissed within forty-five (45) Days of such filing.

Intellectual Property Rights means all registered and unregistered rights in respect of copyright, industrial and other designs, databases, circuit layouts, trademarks, know-how, confidential information and trade secrets, patents, inventions, discoveries and domain names and all other intellectual property.

Laws means any Federal statute, regulation, by-law, ordinance, or subordinate legislation in force from time.

Losses means any claims, actions, damages, liabilities, costs and expenses of every kind and nature, including reasonable legal fees and expenses.

New IP means any Intellectual Property Rights developed during the Agreement Term pursuant to or in connection with this Agreement, and specifically excluding any Background IP.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable: (a) whether the information or opinion is true or not; and (b) whether the information or opinion is recorded in a material form or not.

Personnel means, in respect of either Party, such Party's employees, agents or contractors.

Receiving Party is defined in Clause 14.1 of the NaaS Agreement.

Renewal Term has the meaning ascribed thereto in Clause 12.2 of the NaaS Agreement.

Responsible Party is defined in Clause 16.6 of the NaaS Agreement.

Return Date is defined in Clause 14.6 of the NaaS Agreement.

Steady State means that Implementation has been completed and the TORCH.AI NaaS is functional and has the ability to process Queries.

Term has the meaning ascribed thereto in Clause 12.1 of the NaaS Agreement.

Termination Charges means an amount equal to the number of months remaining within the Initial Terms or Renewal Term, as applicable, multiplied by the monthly Platform Charge. For the avoidance of doubt, any On Demand Capacity billed in arrears would be additional.

TORCH.AI Platform means such aggregation of NEXUS™ software suite modules with such other combination of hardware, software, products, services owned or licensed to TORCH.AI and used by TORCH.AI to provide the functionality of the TORCH.AI NaaS.

TORCH.AI Services means any professional services in support of the configured TORCH.AI NaaS, provided by (i) solution architects; (ii) MESH engineers; or (iii) security and compliance specialists, as specified and priced in the NaaS Order Form.

User Content has the meaning ascribed thereto in Clause 16.1 of the NaaS Agreement.

Willful Misconduct means any act or omission of a Party which is wrongful and willfully intended to harm the interests of the other Party, provided however that negligence (including gross negligence), an error of judgment or mistake of a person, or an exercise of rights by a Party does not of itself amount to Willful Misconduct.