

END USER LICENSE, SOFTWARE AND SUPPORT AGREEMENT

Updated May 10, 2022

This End User License, Software and Support Agreement (this "**Agreement**"), effective as of the Effective Date (as defined below), is by and between Cycle Labs, Inc., a North Carolina corporation ("**Company**") and the Customer named in the applicable Order ("**Customer**"). Company and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

WHEREAS, Company desires to license the Software (as defined below) to Customer; and

WHEREAS, Customer desires to obtain a license to use the Software for its internal business purposes, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Certain Definitions.

- (a) "**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.
- (b) "**Affiliate**" of a Party means any other person or entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, that Party. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities, by contract, or otherwise.
- (c) "**Appliance**" means a Microsoft Azure, web-based environment that Company has configured, customized and pre-loaded with certain proprietary software and Third-Party Products by Company for the specific purpose of operating with Cycle, including any Updates thereof provided to Customer pursuant to this Agreement.
- (d) "**Authorized User**" means an employee or contractor of Customer or any of its Affiliates who Customer permits to access and use the Software and/or Documentation pursuant to Customer's license hereunder.
- (e) "**Cycle**" means the specified version of Company's automated testing software as set forth in the applicable Order, including any Updates thereof provided to Customer pursuant to this Agreement.
- (f) "**Documentation**" means Company's user manuals, handbooks, and installation guides relating to the Software provided by Company to Customer either electronically or in hard copy form, which describe the functionality, components, features, or requirements of the Software, including any aspect of the installation, configuration, integration, operation or use of the Software.
- (g) "**Effective Date**" means the date the first of Customer's Orders is executed.
- (h) "**Feature Bundle**" means the customizable sets of software code which generate tests that run on Cycle, including any Updates thereof provided to Customer pursuant to this Agreement.
- (i) "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, rules or regulations, and all similar or equivalent rights or forms of protection, in any part of the world.
- (j) "**Losses**" means all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

(k) **“Representatives”** means with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors, and advisors.

(l) **“Software”** means the executable, object code version of the software products identified in the Customer’s Order, including any Updates provided to Customer pursuant to this Agreement. For the avoidance of doubt, where and to the extent identified in the Customer’s Order, **“Software”** includes Appliance, Cycle and the Feature Bundle.

(m) **“Order”** means either (i) an Order executed between Company and Customer or between a Reseller and Customer that incorporates this Agreement by reference; or (ii) an Order for Appliance placed by Customer with and accepted by Microsoft Azure. Each Order is incorporated into and forms a part of this Agreement.

(n) **“Reseller”** means Company’s duly authorized reseller of the Software.

(o) **“Third-Party Products”** means any third-party systems, products or materials provided with or incorporated into the Software, including any open source software components available under any license that is approved by the Open Source Initiative.

(p) **“Updates”** means any updates, enhancements, improvements, releases, bug fixes, patches, or other error corrections to the relevant software.

2. **Acceptance.** By executing an Order, Customer also accepts the terms of this Agreement. The individual executing the Order on Customer’s behalf represents and warrants to Company that he or she is fully and duly authorized to agree to be bound by this Agreement on Customer’s behalf.

3. **License.**

(a) **License Grant.** Subject to and conditioned on Customer’s payment of the applicable Fees and Customer’s and its Authorized Users’ compliance with all other terms and conditions of this Agreement, Company hereby grants Customer and its Affiliates a non-exclusive, non-sublicensable, and non-transferable (except in compliance with Section 12(g)) license for the term specified in the Order to: (i) download, install, use and run the Software solely for Customer’s internal business purposes in the ordinary course of such operations; and (ii) use and make a reasonable number of copies of the Documentation solely for Customer’s internal business purposes in connection with Customer’s use of the Software. Customer may make one copy of the Software solely for back-up, disaster recovery, and testing purposes; provided that any such copy of the Software: (x) remains Company’s exclusive property; (y) is subject to the terms and conditions of this Agreement; and (z) must include all copyright or other proprietary rights notices contained in the original.

(b) **Third-Party Products.** The Software may contain or be provided with Third-Party Products as identified in the Documentation. Customer will have the right to license any Third-Party Products that constitute open source software components directly from the owner thereof, and is licensed the right to use any other Third-Party Products hereunder or through a separate agreement between Customer and the owner thereof, subject in each case to any applicable restrictions and other terms and conditions of use set forth in the Documentation, in any “Third-Party Licenses ReadMe” file or similar file located in the installation directory for the Software, or made available at <https://www.cycleautomation.com/third-party-packages-and-terms/>. If Customer does not agree to abide by the applicable terms for such Third-Party Products, then Customer should not install or use such Third-Party Products.

(c) **Security Measures: Usage Data.** The Software may contain technological measures designed to prevent unauthorized or illegal use of the Software. Customer acknowledges and agrees that: (i) Company may use these and other lawful measures to verify Customer’s compliance with the terms of this Agreement and enforce Company’s rights, including all Intellectual Property Rights, in and to the Software; (ii) Company may deny any individual access to and/or use of the Software on written notice to Customer if Company, in its reasonable discretion, believes that person’s use of the Software would violate any provision of this Agreement, regardless of whether Customer designated that person as an Authorized User; and (iii) Company and its Representatives may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Customer’s or its Affiliates’ computers, systems and software, that Company may gather periodically to improve the performance of the Software or develop Updates; provided, that any such information that identifies or is reasonably capable of identifying Customer, its Affiliates or its or their Authorized Users or Representatives directly will be considered to be Customer’s Confidential Information and treated in accordance with the obligations of confidentiality set forth below.

(d) **General Use Restrictions.** Customer shall not use the Software or Documentation for any purposes beyond the scope of the license granted in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth

in this Agreement, Customer shall not at any time, directly or indirectly (and it shall ensure its Affiliates and Authorized Users do not): (i) copy, modify, adapt, translate, enhance, or create derivative works of the Software or the Documentation, in whole or in part; (ii) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software or the Documentation, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Software or the underlying structure, ideas, know-how or algorithms relevant to the Software, in whole or in part; (iv) bypass or breach any security device or protection used for or contained in the Software or Documentation; (v) remove or alter any proprietary notices from the Software or the Documentation; (vi) use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person or entity, or that violates any applicable law, rule or regulation; or (vii) access or use the Software for purposes of benchmarking or competitive analysis, developing, producing, marketing, distributing, licensing or selling any product or service that may compete with the Software, or disclosing to Company's competitors, for any purpose, otherwise non-public information about the Software.

(e) Specific Use Restrictions.

(i) Cycle. When the Software is Cycle, Customer's rights to the Software under the first sentence of Section 3(a) are limited to the right to download, install, use and run one copy of Cycle on Customer's network for concurrent or named use by not more than that number of Authorized Users that is specified in the applicable Order at a time.

(ii) Feature Bundle. When the Software is the Feature Bundle, the following additional terms and conditions apply:

(a) Customer's rights to the Software under the first sentence of Section 3(a) are limited to the right to download, install, use and run the Feature Bundle solely in connection with Customer's authorized use of Cycle.

(b) If Customer or any of its Representatives (other than Company and its Representatives) solely develop or create any new Feature Bundle components or improvements or enhancements to any existing Feature Bundle components (collectively, "Novel Feature Bundle Components"), or if Company has developed or created any Novel Feature Bundle Components specifically and uniquely for Customer under and pursuant to a separate written services agreement or Statement of Work executed by the Parties, then: (1) Customer shall be and remain the owner of all right, title and interest in and to such Novel Feature Bundle Components and all Intellectual Property Rights in and related thereto; (2) such Novel Feature Bundle Components that are developed or created by Company in the manner described above, to the extent possible, shall be considered "work made for hire" for Customer, and to the extent such work is determined not to constitute "work made for hire" as a matter of law, Company hereby irrevocably assigns and transfers to Customer, as of the time of creation of the Novel Feature Bundle Components, any and all right, title, or interest it may have in such Novel Feature Bundle Components, including all Intellectual Property Rights in or related thereto; and (3) Customer hereby grants to Company a non-exclusive, royalty-free, irrevocable, perpetual, fully paid-up, fully transferable, worldwide right and license (with rights to sublicense through multiple tiers of sublicensees) to copy, modify, use, make derivative works of, perform, display, distribute and otherwise exercise any and all present and future Intellectual Property Rights in and related to all Novel Feature Bundle Components (excluding any Customer Confidential Information that may be incorporated in such Novel Feature Bundle Components), including for the benefit of Customer or Company's other customers.

(iii) Appliance. When the Software is Appliance, Customer's rights to the Software under the first sentence of Section 3(a) are limited to the right to deploy a number of execution agents in Appliance at a time that is not more than the number specified in the Customer's applicable Order.

(f) Reservation of Rights. Company reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Software.

(g) Responsibility for Affiliates and Authorized Users. Customer shall be responsible and liable to Company for the acts, omissions and non-compliance with the terms of this Agreement and/or any applicable Order of all Affiliates and Authorized Users to the same extent that as if such performance, acts, omissions and/or non-compliance were by Customer directly.

(h) Delivery. Company shall deliver the Software electronically, on tangible media, or by other means to Customer promptly following execution of the applicable Order.

(i) Free Trial Period. If, as indicated in the applicable Order, Company is offering the Software on a limited free-trial or proof-of-value use basis ("**Free Trial Software**"), then, notwithstanding any contrary provision in this Agreement: (A) Customer is permitted to access and use the Free Trial Software only for internal demonstration, testing or evaluation purposes and only for the limited period not to exceed 30 days or as set forth in the related Order; and (B) ALL FREE TRIAL SOFTWARE IS PROVIDED "AS IS" WITHOUT SUPPORT OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND THE AGGREGATE LIABILITY OF COMPANY, ITS RESELLERS AND ITS AND THEIR LICENSORS, SERVICE PROVIDERS AND SUPPLIERS IN CONNECTION WITH ANY FREE TRIAL SOFTWARE SHALL NOT EXCEED \$500 UNDER ANY CIRCUMSTANCES.

4. Maintenance and Support. Subject to and conditioned on Customer's payment of the applicable Fees and Customer's and its Authorized Users' compliance with all other terms and conditions of this Agreement:

(a) Support Services. Company shall provide to Customer access to Company's e-learning, self-help and FAQ resources made generally available to all customers. In addition, Company shall provide to Customer the following support services with respect to the Software for which Customer has procured a support and maintenance package as specified in the applicable Order (collectively, "**Support Services**"): (i) technical and operational assistance for Customer's use of the Software, responses to questions about the documented features and functionality of the Software and usage thereof, assistance with interpretation and use of the Documentation, and assistance with interpretation of error or warning messages appearing in dashboards or alerts; (ii) commercially reasonable efforts to respond and resolve, in the manner specified in Company's service level agreement attached hereto as **Exhibit A**, any reproducible failure of the Software to perform in accordance with its Documentation; and (iii) case management to help track the status of any Software failures reported to Company. For the avoidance of doubt, if the Customer has not procured a support and maintenance package pursuant to an Order for a particular item of Software, Company shall have no obligation to provide Support Services with respect to that Software. Unless otherwise specified in the applicable Order or **Exhibit A**, Support Services shall be provided via electronic mail, telephone and the customer support portal only, and during Company's normal business hours only (8:30 a.m. to 5:30 p.m., Eastern time, Monday through Friday, excluding federal holidays) and response and resolution times for any questions submitted or Software failures reported to Company shall be as soon as reasonably practicable for Company given its available resources. Customer must provide all information and assistance that Company reasonably requests in connection with providing Support Services. Any Updates to the Software provided as part of the Support Services shall be deemed to be Software and subject to all terms and conditions with respect to Software under this Agreement.

(b) Exclusions from Support Services. Unless otherwise specified in the applicable Order or **Exhibit A**, Support Services do not include: (i) support outside of Company's normal business hours; (ii) support for any software, hardware, networks or systems not provided to Customer by Company pursuant to an Order; (iii) assistance with de-installation or relocation of the Software (which may be provided separately pursuant to a separate services agreement or Statement of Work executed by the Parties); (iv) on-site or virtual training or assistance; (v) support necessitated as a result of Customer's (or its Affiliates', Authorized Users' or Representatives') own negligence; (vi) any modification, alteration or enhancement of the Software by anyone other than Company (or its Representatives); (vii) repetitive user error or repetitive basic operational, installation, configuration and/or training related inquiries; (viii) questions relating to or failures of any Third-Party Products (other than Third-Party Products embedded in and delivered by Company to Customer with the Software); (ix) failures for which Company has developed an Update to resolve which it has made available to Customer directly or made available generally to Company's other customers which have not been implemented by Customer; (x) support for any Software labeled in the applicable Order as a "beta" or "pre-release" version; (xi) support for any Software that is not either the then-current version of the Software or a prior version of the Software that was released within the preceding 12 months; or (xii) performance of any training, professional, implementation, customization or consulting services, including, without limitation, custom test development or feature file authoring related to the Software (which may be provided separately pursuant to a separate services agreement or Statement of Work executed by the Parties).

(c) Updates. During the Term, with respect to the Software for which Customer has procured a support and maintenance package as specified in the applicable Order, Company will provide Customer with all Updates (including updated Documentation) that Company may, in its sole discretion, make generally available to its licensees at no additional charge. For the avoidance of doubt, if the Customer has not procured a support and maintenance package pursuant to an Order for a particular item of Software, Company shall have no obligation to provide any Updates with respect to that Software. Any Updates to the Software provided in this manner shall be deemed to be Software and subject to all terms and conditions with respect to Software under this Agreement. Customer will install all such Updates as soon as practicable after receipt.

(d) Community Slack Channel. Access to and use of the Cycle Labs, Inc. Community Slack Channel is governed by the Terms and Conditions of Community Slack Channel, available online at <https://www.cycleautomation.com/terms/>, and the agreements and policies referenced therein, each of which are incorporated into this Agreement by reference.

5. Fees and Payment.

(a) Fees. Customer shall pay to Company or (if applicable) its Reseller the fees ("**Fees**") in the amounts and in the manner set forth in applicable Order without offset or deduction. If Customer fails to make any payment when due, in addition to all other remedies that may be available: (i) Company may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Company's Reseller may pursue any additional remedy that it and the Customer have agreed to in writing; and (iii) if such failure continues for thirty (30) days following written notice thereof, Company may suspend performance of all Support Services and suspend Customer's license rights under this Agreement and prohibit access to the Software until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other person by reason of such prohibition of access to the Software.

(b) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder (collectively, "**Sales Taxes**"), other than any taxes imposed on Company's income; provided that Company shall calculate the amount of such Sales Taxes and include such amounts on an invoice provided to Customer.

(c) Auditing Rights and Required Records. Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of two years after the termination or expiration of this Agreement with respect to matters necessary for accurately determining amounts due hereunder (including, for the avoidance of doubt, records relating to the number of Authorized Users using the Software). Company may, at its own expense, on reasonable prior notice, periodically inspect and audit such Customer records with respect to matters covered by this Agreement, provided that if such inspection and audit reveals that Customer has underpaid Company with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5(a). Customer shall pay for the costs of the audit if the audit determines that Customer's underpayment equals or exceeds ten percent (10%) for any annual term. Such inspection and auditing rights will extend throughout the Term of this Agreement and continue for a period of two years after the termination or expiration of this Agreement.

6. Confidentiality.

(a) Confidential Information. In connection with this Agreement each Party (as the "**Disclosing Party**") may disclose or make available to the other Party (as the "**Receiving Party**") Confidential Information. Subject to Section 6(b), "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology (including source code), trade secrets, know-how, business operations, plans, strategies, customers, pricing information, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, whether or not marked, designated or otherwise identified as "confidential". Without limiting the foregoing: (i) the Software, all non-public information relating to the Software, and the Documentation are the Confidential Information of Company; and (ii) the terms and existence of each Order are the Confidential Information of both Parties.

(b) Exclusions and Exceptions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with this Agreement; (ii) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iv) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

(c) Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (ii) except as may be permitted under the terms and conditions of Section 6(d), not disclose or permit access to Confidential Information other than to its Representatives who: (A) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (B) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section

6; and (C) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 6; (iii) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its confidential information and in no event less than a reasonable degree of care; (iv) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and (v) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 6.

(d) Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable law or legal process to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 6(c); and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 6(d), the Receiving Party remains required by law or legal process to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose and shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

(e) Return/Destruction; Survival. On the expiration or termination of the Agreement, the Receiving Party shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Each Party's obligations under this Section 6 with regard to Confidential Information are effective as of the Effective Date shall survive the termination or expiration of this Agreement.

7. Intellectual Property Ownership; Feedback.

(a) Customer acknowledges and agrees that: (i) the Software and Documentation are licensed, not sold, to Customer by Company and Customer does not and will not have or acquire under or in connection with this Agreement any ownership interest in the Software or Documentation, or in any related Intellectual Property Rights; (ii) Company (or the respective rights holder in any Third-Party Products) is and will remain the sole and exclusive owner of all right, title and interest in and to the Software and Documentation, including all Intellectual Property Rights relating thereto, subject only to the limited licenses granted to Customer under this Agreement; and (iii) subject to Section 3(e)(ii)(B), above, Customer hereby unconditionally and irrevocably assigns to Company its entire right, title and interest in and to any Intellectual Property Rights that Customer may now or hereafter have in or relating to the Software or Documentation (including any rights in derivative works, enhancements or improvements relating to either of them), whether held or acquired by operation of law, contract, assignment or otherwise.

(b) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Company by mail, email, telephone, or otherwise, suggesting or recommending changes to the Software or Documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Company is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback.

8. Limited Warranties and Warranty Disclaimer.

(a) Support Services Warranty. Company warrants to Customer that all Support Services will be performed in a professional and workmanlike manner by competent and experienced Company personnel. Notwithstanding the foregoing, Customer acknowledges and agrees that Company's ability to successfully perform Support Services hereunder is dependent upon Customer's provision of timely information, access to resources, and participation. COMPANY'S PROMPT RE-PERFORMANCE OF THE SUPPORT SERVICES IN ACCORDANCE WITH THIS AGREEMENT CONSTITUTES CUSTOMER'S SOLE REMEDY AND COMPANY'S AND ITS RESELLERS' ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THE WARRANTY IN THIS SECTION 8(a).

(b) Software Warranty. Subject to the limitations and conditions set forth in Section 8(c) and Section 8(d), Company warrants to Customer that: (i) for a period of one year from the Effective Date (the "**Warranty Period**") the Software will substantially conform in all material respects to the specifications set forth in the Documentation, when installed, operated and used as recommended in the Documentation and in accordance with this Agreement; and (ii) at the time of delivery the Software does not contain any virus or other malicious code. THE FOREGOING WARRANTIES DO NOT APPLY, AND COMPANY STRICTLY DISCLAIMS ALL WARRANTIES, WITH RESPECT TO ANY THIRD-PARTY PRODUCTS.

(c) Customer Requirements. The Software warranties set forth in Section 8(b) apply only if Customer: (i) notifies Company in writing of the warranty breach during the Term and, with respect to any warranty breach with respect to the warranties set forth in Section 8(b)(i) only, before the expiration of the Warranty Period; (ii) has promptly installed all Updates to the Software that Company previously made available to Customer; and (iii) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all Fees then due and owing).

(d) Exceptions. Notwithstanding any provisions to the contrary in this Agreement, the Software warranty set forth in Section 8(b) does not apply to problems arising out of or relating to: (i) the operation of, or access to, Customer's or a third party's equipment, system or network; (ii) Software, or the media on which it is provided, that is modified or damaged by Customer or any of its Affiliates, or its or their Authorized Users or Representatives; (iii) any operation or use of, or other activity relating to, the Software other than as specified in the Documentation, including any incorporation in the Software of, or combination, operation or use of the Software in or with, any technology (including any software, hardware, firmware, system or network) or service not specified for Customer's use in the Documentation, unless otherwise expressly permitted by Company in writing; (iv) Customer's or any third party's negligence, abuse, misapplication or misuse of the Software; (v) failure to promptly install all Updates that Company has previously made available to Customer or failures for which Company has developed an Update to resolve which it has made available to Customer directly or made available generally to Company's other customers which have not been implemented by Customer; (vi) any Third-Party Products; or (vii) Customer's (or any of its Affiliates' or its or their Authorized Users' or Representatives') breach of any material provision of this Agreement.

(e) Remedial Efforts. If Company breaches, or is alleged to have breached, any of the warranties set forth in Section 8(b), Company may, at its sole option and expense, take any of the following steps to remedy such breach:

(i) Repair the Software;

(ii) Replace the Software with functionally equivalent software (which software will, on its replacement of the Software, constitute Software hereunder); and/or

(iii) Terminate the related Order and, provided that Customer fully complies with of its post-termination obligations as set forth in Section 6(e), promptly refund to Customer, on a *pro rata* basis, the share of any Fees prepaid by Customer for the future portion of the license term that would have remained but for such termination.

(f) Sole Remedy. If Company does not cure a warranty breach or terminate this Agreement as permitted by Section 8(e) within a reasonable period of time after Company's receipt of written notice of such breach (which such period shall be not less than thirty (30) days following Company's receipt of written notice of such breach), Customer shall have the right to terminate this Agreement immediately upon written notice to Company and, provided that Customer fully complies with all of its post-termination obligations as set forth in Section 6(e), Company shall promptly refund to Customer, on a *pro rata* basis, the share of any Fees prepaid by Customer for the future portion of the license term that would have remained but for such termination. THE REMEDIES SET FORTH IN SECTION 8(e) AND THIS SECTION 8(f) SET FORTH CUSTOMER'S SOLE REMEDY AND COMPANY'S AND ITS RESELLERS' ENTIRE OBLIGATION AND LIABILITY FOR ANY BREACH OF THE WARRANTY IN SECTION 8(b).

(g) EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN SECTIONS 8(a) AND 8(b), ALL SUPPORT SERVICES, SOFTWARE, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY COMPANY ARE PROVIDED "AS IS." COMPANY HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE SOFTWARE OR DOCUMENTATION, OR ANY OTHER COMPANY OR THIRD- PARTY GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S OR ENTITY'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK). ALL THIRD-PARTY PRODUCTS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH THIRD-PARTY PRODUCTS.

9. Indemnification.

(a) Company Indemnification. Company shall defend Customer, its Affiliates and its and their Authorized Users and Representatives (collectively, the "**Customer Indemnitees**") from and against any Actions brought by a third party, and will indemnify and hold the Customer Indemnitees harmless from any Losses associated with such third-party Actions, in each case to the extent the same are based on allegations that the Software or the use thereof in accordance with the terms of this Agreement and each applicable Order infringe, violate or misappropriate any Intellectual Property Right of such third party (each, an "**Infringement Claim**"). Notwithstanding the foregoing, Company shall have no liability or obligation with respect to any Infringement Claim to the extent based upon or arising out of any of the matters described in clauses (ii) through (vii) of Section 8(d) or any Third-Party Products.

(b) Mitigation. If the Software, or in Company's reasonable opinion is likely to be, the subject of an Infringement Claim, or if any Customer Indemnitee's authorized use of the Software is enjoined or threatened to be enjoined, Company may, at its option and its sole cost and expense: (i) obtain the right for Customer to continue to use the allegedly infringing Software as contemplated by this Agreement, (ii) modify or replace the allegedly infringing Software to make such Software (as so modified or replaced) non-infringing (and such modified or replacement software shall be deemed to be Software hereunder), or (iii) if Company determines in its reasonable discretion that the remedies in clauses (i) and (ii) are not commercially practicable, then Company may terminate the applicable Order upon written notice and without any liability to Customer and shall promptly refund to Customer on a *pro rata* basis the share of any Fees prepaid by you for the future portion of the license term that would have remained but for such termination.

(c) Customer Indemnification. Customer shall defend Company, its Resellers and its and their Representatives (collectively, the "**Company Indemnitees**") from and against any Actions brought by a third party, and Customer shall indemnify and hold the Company Indemnitees harmless from any Losses associated with such third-party Actions, in each case to the extent the same are based on any breach or violation of the terms of this Agreement and/or any Order by Customer, its Affiliates or its or their Authorized Users or Representatives.

(d) Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to this Section 9. The Party seeking indemnification (the "**Indemnitee**") shall cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's request and at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense; provided that the Indemnitor may not settle any Action against the Indemnitee unless such settlement does not contain any admission on the part of the Indemnitee and completely and forever releases the Indemnitee from all liability with respect to such Action or unless the Indemnitee gives prior written consent to such settlement (such consent not to be unreasonably withheld, conditioned or delayed). The Indemnitee's failure to perform any obligations under this Section 9(d) shall not relieve the Indemnitor of its obligations under this Section 9 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

(e) Sole Remedy. THIS SECTION 9 SETS FORTH CUSTOMER'S SOLE REMEDIES AND COMPANY'S AND ITS RESELLERS' SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SOFTWARE OR DOCUMENTATION INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

10. Limitations of Liability. IN NO EVENT WILL COMPANY OR ITS RESELLERS, OR ITS OR THEIR SERVICE PROVIDERS, LICENSORS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, IN EACH CASE REGARDLESS OF WHETHER COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL COMPANY'S OR ITS RESELLERS', OR ITS OR THEIR SERVICE PROVIDERS', LICENSORS' OR SUPPLIERS' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS ACTUALLY PAID TO COMPANY OR (IF APPLICABLE) ITS RESELLER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. AS BETWEEN COMPANY AND ITS RESELLERS, ON THE ONE HAND, AND CUSTOMER, ITS AFFILIATES AND ITS AND THEIR AUTHORIZED USERS, ON THE OTHER HAND, CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER, ITS AFFILIATES AND ITS AND THEIR AUTHORIZED USERS ARE SOLELY RESPONSIBLE FOR ALL USES SUCH PERSONS OR ENTITIES MAY MAKE OF THE SOFTWARE, AND ALL DECISIONS SUCH PERSONS OR ENTITIES MAY MAKE BASED ON THE SOFTWARE OR ANY CONTENT OR MATERIALS AVAILABLE ON OR THROUGH THE FOREGOING, AND COMPANY AND ITS RESELLERS HEREBY DISCLAIM ALL LIABILITY AND RESPONSIBILITY ARISING FROM ANY RELIANCE PLACED ON THE SOFTWARE, OR ANY CONTENT OR MATERIALS AVAILABLE ON OR THROUGH THE SOFTWARE BY CUSTOMER, ITS AFFILIATES OR ITS OR THEIR AUTHORIZED USERS OR ANY OTHER PERSON OR ENTITY WHO MAY BE INFORMED OF ANY OF THE

CONTENTS OF THE FOREGOING. HOWEVER, THE FOREGOING EXCLUSIONS OF DAMAGES AND LIMITATIONS OF LIABILITY SHALL NOT APPLY TO COMPANY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 6 (CONFIDENTIALITY), COMPANY'S INDEMNIFICATION OBLIGATIONS UNDER AND PURSUANT TO SECTION 9 OR COMPANY'S LIABILITY FOR ITS OWN FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

11. Term and Termination.

(a) Term. The term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until a license and service subscriptions under each applicable Order have expired or terminated (the "**Term**"). If in an Order a license or service subscription states that it is subject to auto-renewal, then such license or service subscription shall automatically renew for additional, successive one-year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal prior to the expiration of the then-current term of the license or service subscription. Termination of this Agreement shall cause the termination of all outstanding Orders.

(b) Termination. In addition to any other express termination right set forth in this Agreement:

(i) either Party may terminate this Agreement or a particular Order, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach; and

(ii) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, all licenses granted hereunder will also terminate, and, without limiting Customer's obligations under Section 6(e), Customer shall cease using and delete, destroy, or return all copies of the Software and Documentation and certify in writing to the Company that the Software and Documentation has been deleted or destroyed. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund.

(d) Survival. This Section 11(d) and Sections 1, 3(d), 3(e), 3(f), 3(g), 3(i), 5, 6, 7, 9, 10, 11(c) and 12 shall survive any termination or expiration of this Agreement. No other provisions of this Agreement survive the expiration or earlier termination of this Agreement.

12. Miscellaneous.

(a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference and all related Exhibits, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related Exhibits, and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, an Order executed by Company and Customer, (b) second, this Agreement, excluding its Exhibits; (b) third, the Exhibits to this Agreement as of the Effective Date; and (c) fourth, any other documents incorporated herein by reference.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the most recent Order (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), e-mail (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party, and (ii) if the Party giving the Notice has complied with the requirements of this Section.

(c) Force Majeure. In no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, (except for any obligations to make payments), if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.

(d) Amendment and Modification; Waiver. No amendment to or modification of this Agreement or any Order is effective unless it is in writing and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Delaware, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

(g) Assignment. Neither Party may assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed; provided, however, that either Party may assign this Agreement in its entirety without the other Party's consent to its Affiliates or to an entity that acquires all or substantially all of the business or assets of the assigning Party to which this Agreement pertains, whether by merger, reorganization, acquisition, sale or otherwise. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

(h) Export Regulation. The Software may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software available outside the US.

(i) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Sections 3(d) or 3(e), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party shall be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(j) Counterparts. Any Order may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of an Order delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(k) Privacy. At all times your information will be treated in accordance with Company Solution's Privacy Policy, the terms of which may be updated from time to time and are incorporated by reference as if fully restated herein, and can be viewed at: <https://www.cycleautomation.com/legal/privacy-policy/>

(l) Independent Contractor. The Parties agree that Company will act as an independent contractor in the performance of its duties under this Agreement. The Parties recognize that this Agreement does not create any actual or apparent agency, partnership, franchise, or relationship of employer and employee between the Parties

(m) Marketing. Customer agrees that Company may use Customer's name and logo to identify Customer as a Company customer on Company's official websites and other marketing materials. Customer may provide Company with reviews and evaluations of Company's Software, Support and Services and suggestions for modifying and improving Company's Software, Support and Services, (cumulatively the "Feedback"). Customer agrees that Company will have the unrestricted royalty-free right to copy, display and use Customer's Feedback and that Company will own all of the rights in any new or revised Software, Support or Services that Company creates that include, embody or are based on Customer Feedback.

(Remainder of page intentionally left blank)

EXHIBIT A Service Level Agreement

“Basic” Support

Customers who have purchased “Basic” support (as specified in the applicable Order) shall receive Support Services via access to a community Slack channel, online Knowledge Base & online training, also via electronic mail and access to the customer support portal and during Company’s normal business hours only (8:30 a.m. to 5:30 p.m., Eastern time, Monday through Friday, excluding federal holidays). Company shall use commercially reasonable efforts to respond to and resolve any questions submitted or Software failures reported to Company as soon as reasonably practicable for Company given its available resources.

“Premium” and “Enterprise” Support

Customers who have purchased “Premium” or “Enterprise” support (as specified in the applicable Order) shall receive Support Services on a 24 x 7 basis, via electronic mail and access to the customer support portal from a designated Company technical support representative. Additional hours of live telephone, chat and email support may be purchased for an additional fee. Company shall use commercially reasonable efforts to respond to and resolve any questions submitted or Software failures reported to Company in accordance with the following:

Severity Definitions

- Severity 1 - Application is completely down or a major malfunction resulting in the product being in an inoperative condition. Users are unable to reasonably perform their normal functions.
- Severity 2 - Critical loss of application functionality or performance resulting in a high number of users unable to perform their normal functions. The application is usable but severely limited..
- Severity 3 - Moderate loss of application functionality or performance resulting in multiple users impacted in their normal functions. Minor feature/application failure, a convenient workaround exists/minor performance degradation/not impacting production.
- Severity 4 - Minor loss of application functionality. No significant impact to the customer, or the issue occurs in functionality that is not critical or frequently used.

Initial Response Times – Technical Support

All Customer submitted requests to the Company Customer Care Helpdesk will receive a response based on assigned issue severity level. The following response times are for Customer submitted requests which require technical support.

- Severity 1: The Company Customer Care Agent will make initial contact and begin problem resolution within 60 minutes
- Severity 2: The Company Customer Care Agent will make the initial contact and begin problem resolution within 120 minutes.
- Severity 3: The Company Customer Care Agent will make initial contact within 4 business hours.
- Severity 4: The Company Customer Care Agent will make initial contact within 8 business hours.

Initial Response Times – Non-Technical Support and Operational Assistance

When a customer submits a Helpdesk ticket that is of a non-technical nature or operational assistance, the Company Customer Care Agent will make initial contact within the following guidelines.

- Basic Support: 24 Hours
- Premium Support: 12 Hours
- Enterprise Support: 4 hours

Examples of non-technical or operational assistance tickets include, but are not limited to:

- Technical and operational assistance for Customer’s use of the Software
- Responses to questions about the documented features and functionality of the Software and usage thereof

- Assistance with interpretation and use of the Documentation
- Assistance with interpretation of error or warning messages appearing in dashboards or alerts

“Enterprise” Support

Customers who have purchased “Enterprise” support (as specified in the applicable Order) shall additionally receive the following:

- Office Hours - Regular meetings with Cycle experts.
- Dedicated Slack channel.