**MASTER SUBSCRIPTION AGREEMENT**

1. **SERVICES AND SUPPORT**

This Master Subscription Agreement ("Agreement") is by and between HeadSpin, Inc. with principal place of business at 871 Marlborough Ave, Suite 100, Riverside, CA 92507, USA ("HeadSpin") and customer with principal place of business at ------------ ("Customer") and this Agreement governs the subscription ("Subscription") to the Services offered by HeadSpin as of ------------ ("Effective Date"). HeadSpin and Customer are each sometimes referred to herein as, a "Party" and collectively as, the "Parties". Customer orders Subscriptions by signing an applicable order form ("Order Form"). For convenience purposes only Customer may order Subscriptions using its standard form of purchase order ("Purchase Order"); provided that, except for the description of the Subscription being purchased, and the term of such Subscription, all terms and conditions contained in such Purchase Order shall be void and of no force and effect. For purposes of this Agreement, "Services", "Software as a Service" or "SaaS" shall mean the digital experience platform that is made available to Customer for Subscription. As part of its Subscription, Customer will be provided access to HeadSpin's cloud hosted platform including, without limitation, access to HeadSpin's software-as-a service, data analytics, machine learning modules, performance monitoring applications and devices (whether located remotely or in Customer's premises) for testing digital experiences under real world conditions. The number, type, and geographical location and scope of devices that HeadSpin will provide for Customer's use as part of the Services is based on Customer's testing needs as mutually determined by the Parties and is described in more detail in the applicable Order Form.

1.1 HeadSpin will undertake commercially reasonable efforts to make the Services available in accordance with the applicable Order Form. HeadSpin hereby grants to Customer a limited, non-sublicensable non-transferable, non-exclusive, right to Use, for the term of the Order Form, the Services, including the Documentation. Each subcription license is shall be limited to the number of users licensed under the Order Form. Notwithstanding anything to the contrary contained in this Agreement, HeadSpin reserves the right to suspend Customer's access to the Services: (i) for scheduled or emergency maintenance, (ii) if Customer's access to the Services could create an unreasonable risk of a security breach, (iii) if Customer's use of the Services places an undue burden on the HeadSpin platform, or (iv) in the event Customer is in breach of this Agreement, including failure to pay any amounts due to HeadSpin.

1.2 As part of the Services, HeadSpin provides access to various devices to be used by Customer during testing (the "Devices"). Customer shall use and access the Devices (i) solely for the purpose of using the Services as permitted under this Agreement, and (ii) in accordance with all applicable United States and foreign laws, rules and regulations in the jurisdiction where the Devices are located. The Devices remain the sole property of HeadSpin and are provided for Customer's use solely in connection with Customer's use of its Subscription to the Services. HeadSpin shall retain all right, title and interest in the Devices. Customer shall not rent, lease, loan or otherwise provide access to the Devices to, or allow the use or possession of the Devices by, any third party. Nothing in the Agreement or this Agreement is intended to constitute a sale, transfer or assignment of the Devices by HeadSpin to Customer. All Devices shall (i) remain the sole property of HeadSpin and its affiliates; (iii) be kept free of liens and encumbrances by Customer; and (iii) not be modified in any manner by Customer.Customer shall be responsible for all damage to the Devices, reasonable wear and tear excepted. Upon HeadSpin's request or upon termination or expiration of the Agreement, Customer shall immediately cease all use of the Devices. Customer shall execute all documents, or instruments evidencing HeadSpin's ownership of the Devices as HeadSpin may from time to time request. Customer shall reimburse

HeadSpin for, and indemnify HeadSpin against, any and all claims, losses, damages or costs resulting from Customer's breach of this Section.

1.3 Provision of Services - The Services are made available by HeadSpin for subscription by Customer. The Services are accessed through a web browser, with Customer logging into the system using a username and password. Customer is not required to install or download any software on their internal servers, networks or equipment.

## 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, and will not permit any third party to: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to the Services; modify, translate, or create derivative works based on the Services; use the Services for benchmarking, timesharing or service bureau purposes or for any purpose other than its own use; take any action that imposes, or may impose, at HeadSpin's sole discretion, an unreasonable or disproportionately large load on HeadSpin's infrastructure, or otherwise interfere with the proper working of the Services, or disable, bypass or otherwise attempt to interfere with any measures that HeadSpin may use to prevent or restrict access to the Services; or use the Services other than in accordance with this Agreement and in compliance with all applicable laws and regulations applicable in the jurisdiction(s) in which the Services are used or accesses (including but not limited to any privacy laws, intellectual property, consumer and child protection, obscenity or defamation).

2.2 Customer will cooperate with HeadSpin in connection with the performance of this Agreement and any regulatory or governmental investigation or proceeding relating to Customer's use of the Services by making available such personnel and information as may be reasonably required, and taking such other actions as HeadSpin may reasonably request, including, without limitation, providing Customer's activity logs to HeadSpin as reasonably necessary to perform support and maintenance obligations and respond to regulatory or governmental inquiries. Customer will also cooperate with HeadSpin in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Services.

2.3 Customer will designate an employee who will be responsible for all matters relating to this Agreement ("Primary Contact"). Customer may change the individual designated as Primary Contact at any time by providing written notice to HeadSpin.

2.4 Neither Party shall upload or introduce any computer virus, malware, or similar item (each of the foregoing, a "Virus") into the other Party's computing or network environment. HeadSpin has no obligation or responsibility to monitor the content provided by Customer or in connection with Customer's use of the Services; however at its discretion, HeadSpin may monitor and remove any content or prohibit any use of the Services it believes may be (or alleged to be) harmful, fraudulent, deceptive, threatening, harassing, defamatory, obscene, or otherwise objectionable. .

2.5 Customer shall maintain the security of Customer's account, passwords (including but not limited to administrative and user passwords) and files, and shall be liable to HeadSpin for all use of Customer's account with or without Customer's knowledge or consent.

2.6 Customer acknowledges and agrees that the Services may operate on or with or using application programming interfaces (APIs) and/or other services operated or provided by third parties ("Third Party Services"). HeadSpin is not responsible for the operation of any Third Party Services nor the availability or operation of the Services to the extent such availability and operation is dependent upon Third Party Services. Customer is solely responsible for procuring any and all rights necessary for it to access Third

Party Services and for complying with any applicable terms or conditions thereof. HeadSpin does not make any representations or warranties with respect to Third Party Services or any third party providers. Any exchange of data or other interaction between Customer and a third party provider is solely between Customer and such third party provider and is governed by such third party's terms and conditions. HeadSpin is not responsible for any third party content that Customer accesses in connection with the Services.

2.7 HeadSpin will provide the support services described in Exhibit B.

**3. CONFIDENTIALITY**

3.1 Each Party understands that the other party has disclosed or may disclose confidential information relating to the Disclosing Party's technology or business (hereinafter referred to as "Proprietary Information". The Party disclosing Proprietary Information is referred to as, the "Disclosing Party" and the Party receiving Proprietary Information is referred to as, the "Receiving Party."

3.2 The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (i) to give access to such Proprietary information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary information that the party takes with its own proprietary information, but in no event will the Receiving Party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, (b) was in the Receiving Party's possession or known by it prior to receipt from the Disclosing Party, (c) was rightfully disclosed to the Receiving Party without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that, to the extent permitted by law, the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure in order to permit the Disclosing Party to contest such order. Notwithstanding anything to the contrary, HeadSpin may collect data with respect to and report on the aggregate response rate and other aggregate measures of the SaaS Platform and the Services' performance.

3.3 Customer acknowledges that HeadSpin does not wish to receive any Proprietary Information from Customer that is not necessary for HeadSpin to perform its obligations under this Agreement, and, unless the Parties specifically agree otherwise, HeadSpin may reasonably presume that any unrelated information received from Customer is not confidential or Proprietary Information.

3.4 Both Parties will have the right to disclose the existence but not the terms and conditions of this Agreement, unless such disclosure is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.

**4. INTELLECTUAL PROPERTY RIGHTS**

4.1 HeadSpin (and its licensors, where applicable) owns all intellectual property rights relating to the Service or the SaaS Platform, as well as updates, upgrades, modifications to it. Any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Service and/or the SaaS Platform, which are hereby assigned by Customer to HeadSpin. Customer will not access, copy, distribute, reproduce or otherwise use the Services or the SaaS Platform except as expressly permitted under this Agreement. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the Services or SaaS Platform, or any intellectual property rights. Customer shall only have use and access to the Services and SaaS Platform for a limited, non-exclusive duration and under no circumstance will the Services or SaaS Platform as provided under this Agreement be viewed as a sale or transfer of ownership/assignment of rights in the underlying platform or technology.

4.2 HeadSpin will obtain and process content/data provided by or on behalf of Customer ("Content") only to perform its obligations under this Agreement. Customer and its licensors shall (and Customer hereby represents and warrants that they do) have and retain all right, title and interest (including, without limitation, sole ownership of) all Content and the intellectual property rights with respect to that Content. If HeadSpin receives any notice or claim that any Content, or activities hereunder with respect to any Content, may infringe or violate rights of a third party (a "Claim"), HeadSpin may (but is not required to) suspend activity hereunder with respect to that Content. Notwithstanding anything to the contrary contained in this Section 4.2, HeadSpin shall have the license to use and process Customer data for the purposes of managing and improving the Services, monitoring applicable benchmark data, and to do so on an aggregate and anonymized basis.

## 5. PAYMENT OF FEES

5.1 Customer will pay HeadSpin the applicable fees as set forth on the applicable order form (the "Fees"). Except as otherwise specified in this Agreement, (i) fees are based on the Subscription purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the Subscription may not be amended or modified during the Subscription term except pursuant to a writing executed by each of the parties. All payments will be made in U.S. dollars and in accordance with the applicable order form. HeadSpin invoices on the date of the last signature to this Agreement. All payments are due within thirty (30) days of invoice. HeadSpin shall submit invoices to <insert email address> ; provided that HeadSpin's failure to submit invoices to such address shall not affect Customer's payment obligations. All billing inquiries should be sent to billing@headspin.io.

Commented [1]: Customer to complete.

5.2 Unpaid Fees are subject to a finance charge of one and one-half percent (1.5%) per month, or the maximum amount permitted by law, whichever is lower, plus all expenses of collection.Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on HeadSpin's net income) unless Customer has provided HeadSpin with a valid exemption certificate. In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid on account thereof.

## 6. TERM and TERMINATION

6.1 The initial term of this Agreement shall be 12 months(s) (the "Initial Term"). Following the Initial Term, this Agreement will automatically renew for successive renewal terms of 12 months, at the then current market price of Headspin, unless otherwise mutually agreed by the parties. Either party may give the other party notice of non-renewal at least ninety (90) days prior to the end of the then-current term.

6.2 In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement (including all Order Forms) by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty day period or, if the breach is not susceptible to cure with such thirty day period, the breaching party has undertake steps to cure such breach and is diligently proceeding to resolution. Either party may terminate an individual Order Form in accordance with the previous sentence, provided that if an Order Form is so terminated, the terms of this Agreement shall remain in effect with respect to any other Order Form(s) still in effect. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business without a successor.

6.3 All provisions of this Agreement, which by their nature should survive termination of this Agreement or applicable Order Form, will survive termination, including, without limitation, confidentiality obligations, intellectual property rights, warranty disclaimers, indemnification, and limitations of liability.

**7. NO MALWARE, ETC.**

7.1 HeadSpin represents and warrants that it will not knowingly include, with regards to any on premise software deployment of its Services to Customer's computing or network environment , any computer code or other computer instructions, devices or techniques, including without limitation those known as disabling devices, trojans, or time bombs, that intentionally disrupt, disable, harm, infect, defraud, damage, or otherwise impede in any manner, the operation of a network, computer program or computer system or any component thereof, including its security or user data. If, at any time, HeadSpin fails to comply with the warranty in this Section, Customer may promptly notify HeadSpin in writing of any such noncompliance. HeadSpin will, within thirty (30) days of receipt of such written notification, either correct the noncompliance or provide Customer with a plan for correcting the noncompliance. If the noncompliance is not corrected or if a reasonably acceptable plan for correcting them is not established during such period, Customer may terminate this Agreement as its sole and exclusive remedy for such noncompliance.

**8. WARRANTY DISCLAIMER**

8.1 ALL SERVICES PROVIDED UNDER THE AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND. HEADSPIN (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

**9. LIMITATION OF LIABILITY**

9.1 IN NO EVENT WILL HEADSPIN (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF HEADSPIN HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

9.2 THE TOTAL LIABILITY OF HEADSPIN, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID TO HEADSPIN UNDER AN ORDER FORM IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. **INDEMNIFICATION**

10.1 Each Party shall defend, indemnify, and hold harmless the other Party, its affiliates, and any of its respective directors, officers, employees, agents, successors, and permitted assigns from and against any and all third-party claims (known or unknown), suits, proceedings, costs, and expenses (including, without limitation, attorneys' fees) arising from its breach of third party intellectual property rights.

11. **FORCE MAJEURE**

11.1 Neither Party shall be liable for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, earthquake, fire, flood, war, embargo, strike, riot, pandemic, inability to secure materials and transportation facilities, or the intervention of any governmental authority or agency.

12. **U.S. GOVERNMENT MATTERS**

12.1 Notwithstanding anything else to the contrary contained in the Agreement, Customer may not provide to any person or export or re-export or allow the export or re-export of the Services or any software or anything related thereto or any direct product thereof (collectively "Controlled Subject Matter"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is a representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by HeadSpin may be "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) may be deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

13. **MISCELLANEOUS**

13.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement may not be subcontracted, assigned, transferred or sublicensed by Customer except with HeadSpin's prior written consent. HeadSpin may freely subcontract, transfer and assign any of its rights and obligations under this Agreement without consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all prior or contemporaneous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and/or modifications to this Agreement must be in a writing signed by both parties in order to be legally binding. No amendment or modification to this Agreement or to any applicable Order Form shall be effective unless in a writing signed by both of the Parties. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind HeadSpin in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. Either party may disclose to any third party that Customer is one of HeadSpin's customers without consent. Either party may use the other party's name and logo in connection with product presentations, marketing materials, and on its website, only to indicate that Customer is a customer of HeadSpin, provided that each party complies with all trademark usage guidelines promulgated by the other party. Except as expressly provided in the preceding sentence, neither party will use, register or take any other action with respect to any logo or trademark of the other party anywhere in the world. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, exclusive of its choice of law principles. The state and federal courts located in Delaware have exclusive jurisdiction and venue over any dispute arising out of or relating to this Agreement. Each Party consents to the personal jurisdiction and venue of these courts. Any written evidence originally in a language other than English shall be submitted in English translation accompanied by the original or true copy thereof. The prevailing party will be entitled to receive from the non-prevailing party all costs, damages and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with that action or proceeding, whether or not the controversy is reduced to judgment or award. Customer agrees to participate in press announcements, case studies, trade shows, or other forms reasonably requested by HeadSpin.

14. **ON PREMISES SERVICES (if applicable)**

The following will apply only if On Premise Services are selected by the Customer. In the event that this option is not selected, the SaaS subscription-based model shall apply.

14.1 The Customer server (and related or peripheral equipment and software) on which the HeadSpin software for the Services is to be installed will constitute "Customer Equipment" and will be dedicated exclusively to the Services. Customer will not otherwise use or transfer any such Customer Equipment until all Software has been permanently removed. Customer will maintain this Customer Equipment in good working order (including but not limited to backup, recovery, and reboot services as necessary). Customer will have full responsibility for security of all Customer Equipment (physical, electronic and otherwise) such that (except for use of the Service as expressly and unambiguously authorized in Sections 1 and 2 of this Agreement) no person or entity other than HeadSpin will have any direct or indirect access to any Software.

14.2 Customer acknowledges and agrees that HeadSpin will at all times have access to Customer Equipment (including but not limited to onsite access and electronic access) to engage in any activity or action relating to Services (including but not limited to maintenance and installation of Software) subject to Customer's standard reasonable security procedures.

14.3 HeadSpin will have no obligation to insure or be responsible for any loss or damage to property of any kind owned or leased by Customer or its employees, contractors, and agents.

14.4 Upon any termination, Customer will permit HeadSpin to access the Customer Equipment to remove all HeadSpin property, including but not limited to Software.

14.5 Customer will not allow any lien to attach to any Software, will not remove any notice HeadSpin may apply to the Customer Equipment indicating that the Software is not owned by Customer and will publicly file any documents requested by HeadSpin to such effect.