SUBSCRIPTION AGREEMENT

IMPORTANT—READ CAREFULLY:

By clicking/checking the “I Agree to Subscription Agreement” button, signing an Order Form incorporating these terms by reference, or by otherwise accessing Totango Service you agree to be bound by these terms of service between Company and Totango (the “Agreement”). If you do not agree to the Agreement, you must not use the Service. “You” means you individually or the entity that you represent (the “Company”). If you are entering into the Agreement for an entity, you represent that you have the authority to bind that entity. “Totango”, “we”, or “us” means Totango, Inc., a Delaware corporation.

1. Definitions.


1.2. “App” means the Totango mobile application.

1.3. “Customer Data” means data residing in the Service that is uploaded or transmitted by Customer or an End User.

1.4. “End User” means an employee or contractor given access to the Service by Customer.

1.5. “Initial Term” means the period of time for which Customer subscribes to the Service. The Initial Term is 12 months from the Subscription Date.

1.6. “Intellectual Property Rights” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trademarks, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.7. “Order Form” means means the form through and pursuant to which Customer subscribes for the Service.

1.8. “Platform Data” means any data or statistics, excluding Customer Data, associated or generated in connection with Customer’s use of the Service. Totango may use Platform Data to analyze performance and usage, and may use aggregated, anonymized Platform Data for benchmarking or other internal purposes, including generating reports regarding Service usage and trends.

1.9. “Professional Services” means any service provided by Totango and described in a Statement of Work.

1.10. “Renewal Term” means any and all periods of time after the Initial Term during which Customer and Totango agree to extend Customer’s subscription to the Service.

1.11. “Service” means the Totango customer success platform. Service includes: (a) the Site; (b) the App; (c) any software or API that is made available to Customer by Totango and accessed by Customer in connection with the Service; (d) the products, services, and features made available or provided to Customer by Totango; and (e) the content, text, documents, descriptions, products, graphics, photos, sounds, videos, interactive features, trademarks, service marks and logos, contained in or made available to Customer through the Service. Service does not include Professional Services.

1.12. “Site” means the Totango website, currently at www.totango.com, or other such location as Totango may designate.

1.13. “Statement of Work” means a document executed by Totango and Customer that describes Professional Services purchased by Customer and provided by Totango.
1.14. “Subscription Date” means the date Customer accepts this Agreement or executes an Order Form, as applicable.

1.15. “Subscription Page” means the website where Customer subscribes to the Service and reviews and accepts this Agreement.

1.16. “Term” means, collectively, the Initial Term and any Renewal Terms.

1.17. “Units” means any measuring unit, in addition to End Users and/or storage amounts, for which Customer subscribes through the Order Form or Subscription Page upon which the fees are calculated.

2. Totango Service.

2.1. Subject to Customer’s compliance with this Agreement, and payment of applicable fees, Totango hereby grants Customer a worldwide, non-exclusive, non-transferable, non-sublicensable, and fully revocable right to access and use the Service during the Term for Customer’s internal business purposes. Customer’s subscription to the Service is limited to the number of End Users and/or Units designated by Customer in the Order Form or on the Subscription Page.

2.2. From time to time, Totango and Customer may execute statements of work that describe the specific services to be performed by Totango (as executed by the parties, a “SOW”). Each SOW will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein.

2.3. Totango enables select third-party applications to provide a service or software (“Third-Party Applications”) that integrate with the Service, and which shall be used by Customer solely in conjunction with the Services, and shall not be used for any other purpose without the prior written consent of Totango. TOTANGO MAKES NO WARRANTIES REGARDING ANY THIRD-PARTY APPLICATION, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY THAT ANY THIRD-PARTY APPLICATION WILL (A) REMAIN AVAILABLE THROUGHOUT THE TERM; (B) BE ERROR-FREE OR RUN UNINTERRUPTED; (C) OFFER ANY PARTICULAR FEATURES OR PERFORMANCE; OR (D) MEET CUSTOMER’S NEEDS.

3. Restrictions on Customer’s Use. Customer must not, and shall not allow any End User to: (a) circumvent, disable or otherwise interfere with security-related features of the Service or features that prevent or restrict use or copying of any content or that enforce limitations on use of the Service; (b) allow any third party to use the Service; (c) use the Service to process data on behalf of any third party; (d) give, sell, rent, lease, timeshare, outsource, sublicense, disclose, publish, assign, market, resell, transfer or distribute any portion of the Service to any third party, including, but not limited to Customer’s affiliates, or use the Service in any service bureau arrangement; (e) reverse engineer, decompile or disassemble the Service or any components thereof, except to the extent such acts are required to be permitted by applicable law; (f) disclose or publish the results of any benchmark tests run on the Service; (g) use any robot, spider, scraper, or other automated means to access the Service for any purpose; (h) take any action that imposes or may impose (at Totango’s sole discretion) an unreasonable or disproportionately large load on the Totango infrastructure; (i) interfere or attempt to interfere with the integrity or proper working of the Service, or any related activities; (j) modify, translate, patch, alter, change or create any derivative works of the Service, or any part thereof; (k) disclose Customer’s Account user names or passwords to any third party, or share usernames or passwords; (l) remove, deface, obscure, or alter Totango’s or any third party’s copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the Service, or use or display logos with the Service differing from Totango’s own without Totango’s prior written approval; (m) send spam or phishing messages or any email or other messages to individuals who have not given Company permission to send such messages, or send emails or messages to recipients that are harvested or scraped from websites or acquired through purchased lists or lists otherwise acquired from a third party; and/or (n) use the Service in any unlawful manner, including in violation of applicable privacy and data protection law or in breach of this Agreement.
4. **Account.** Customer must not allow anyone other than an authorized End User to access and use the Account. Customer acknowledges and agrees (a) not to exceed the aggregate number of authorized End Users or Units for which Customer has subscribed unless Customer first notifies Totango in writing and pay Totango the required additional subscription fees; (b) that the login details for each End User may only be used by that End User, and that multiple people may not share the same login details; (c) to provide accurate and complete Account and login information; (d) to keep, and ensure that End Users keep, all Account login details and passwords secure at all times; (e) that Customer remains solely responsible and liable for the activity that occurs in connection with Customer’s Account, and the activities of Customer’s End Users on or relating to the Services, whether or not Customer knows of or authorizes such activity, and (f) to promptly notify Totango in writing if Customer becomes aware of any unauthorized access or use of Customer’s Account or the Service. Totango may suspend or terminate any End User’s access to the Services upon notice to Customer in the event that Totango reasonably determines that such End User has violated this Agreement or any other terms between Totango and such End User pursuant to which such End User is permitted to access and use the Service. Customer will ensure that all End users comply with the terms and conditions of this Agreement. Customer will be liable for any violation of the Terms by any End User.

5. **Customer Data.**

5.1. Customer and Customer’s End Users may choose to provide, post, input, submit, or otherwise make accessible to Totango Customer Data, and Totango may store Customer Data on Customer’s behalf, all in connection with Customer’s use of the Service. Customer hereby provides Totango a limited non-exclusive, non-transferable (except as provided in Section 15) license to use, upload, display, copy, distribute copies of, perform and display publicly, process, and store Customer Data solely in connection with providing the Service. Customer acknowledges and agrees Totango may use Personal Data of Customer’s End Users to analyze Customer’s use of the Services, to allow Totango’s customer success manager and/or support team to engage with Customer and its End Users, and to improve our Services.

5.2. Customer acknowledges and agrees that Customer is solely responsible and liable for Customer Data (including without limitation, for obtaining all necessary approvals, consents and authorizations to provide the Customer Data to Totango as provided herein) and its use thereof in connection with the Service. Customer represents and warrants that (a) Customer owns all Customer Data or has all rights that are necessary to grant Totango the licensed rights in Data under this Agreement; (b) Customer’s collection and use of Customer Data has and will be in compliance with all applicable laws and regulations, including without limitation those concerning data and information protection or privacy; and (c) neither the Customer Data, nor the inclusion or use of Customer Data in connection with the Service, will infringe, misappropriate or violate any Intellectual Property Rights, or violate the privacy rights, of any third party, or result in the violation of any applicable law or regulation, including without limitation those concerning data protection or privacy. As between Customer and Totango, Customer retains exclusive ownership of the Customer Data. Customer may download Customer Data at any time during the Term, or as otherwise set forth herein, provided Customer complies with this Agreement and Totango’s security requirements.

5.3. Totango shall maintain appropriate industry standard administrative, technical, and physical safeguards to protect the security and confidentiality of Customer Data.

5.4. Totango will maintain any personally identifiable information that Totango collects and/or receives in connection with the Service, including personal data of End Users, in accordance with our privacy policy (www.totango.com/privacy).

6. **Title.** The Service (and all parts thereof), all reproductions, corrections, modifications, enhancements and improvements thereto, and all Platform Data, and all Intellectual Property Rights therein or relating thereto, are and will remain the exclusive property of Totango or its licensors. Any rights therein not explicitly granted to Customer hereunder, are reserved to and shall remain solely and exclusively proprietary to Totango (or its third-party licensors).
7. **Term and Termination.**

7.1. Initial Term of this Agreement shall commence on the Subscription Date and will continue for 12 months, unless terminated earlier in accordance with the terms herein. After the Initial Term this Agreement and any associated subscriptions will renew for consecutive 12-month Renewal Terms unless Customer or Totango provides written notice of termination to the other party at least 30 days prior to the end of the then-current Term.

7.2. Either party may terminate this Agreement upon written notice in the event that the other party: (a) materially breaches this Agreement and, to the extent that the breach can be cured, fails to cure that breach within 30 days of said notice; (b) admits in writing its inability to pay its debts generally as they become due; (c) makes a general assignment for the benefit of creditors; (d) institutes proceedings to be adjudicated a voluntary bankrupt, or consent to the filing of a petition of bankruptcy against it, is adjudicated by a court of competent jurisdiction as being bankrupt or insolvent, seeks reorganization under any bankruptcy act; consents to the filing of a petition seeking such reorganization, or has a decree entered against it by a court of competent jurisdiction appointing a receiver, liquidator, trustee or assignee in bankruptcy or in insolvency covering all or substantially all of such party’s property or providing for the liquidation of such party’s property or business affairs.

7.3. Upon expiration or termination of this Agreement, (a) Customer and Customer’s End Users rights to access and use the Service will immediately terminate; (b) Customer and Customer’s End Users will immediately cease all use of the Service; and (c) each party will return and make no further use of any Confidential Information, materials, or other items (and all copies thereof) belonging to the other party. For a period of 45 days from the effective date of expiration or termination of this Agreement Totango will provide Customer, upon Customer’s written request, with a reasonable opportunity to download Customer Data at a time nominated by Totango. Totango reserves the right to permanently delete from its (or its third-party service providers’) servers any Customer Data that may be contained in Customer’s Account at any time following said 45-day period. Totango does not accept any liability for any deactivation of the Service or Customer Data that is deleted in connection thereto.

7.4. Upon expiration or termination of this Agreement, Totango will cease use of Customer’s name and logo (the “Customer Marks”); provided Totango will (a) have a reasonable time to remove the Customer Marks from promotional materials; (b) be entitled to exhaust materials printed during the Term that include the Customer Marks; and (c) not be required to remove any such printed materials from circulation.

7.5. Expiration or termination of this Agreement for any reason shall not relieve Customer from Customer’s obligation to pay Totango any outstanding payments due under this Agreement and Totango has the right to issue an invoice to Customer for any such outstanding payments. If either party terminates this Agreement for cause pursuant to Section 7.2, Customer will remain liable for payment of the entire subscription fee for the Initial Term or then-current Renewal Term, as applicable; provided however, if Customer terminates this Agreement for cause pursuant to Section 7.2 due to Totango’s intentional or willful breach of this Agreement, then Customer will be liable only for a prorated amount of the subscription fee attributable to Customer’s access to the Services prior to the effective date of termination.
8. **Fees.**

8.1. In consideration for Totango providing the Services, Customer will pay to Totango the fees set forth on the Subscription Page, Order Form, and/or the SOW (if applicable). Fees are billed in advance beginning on the Subscription Date. If Customer authorizes the charging of the applicable subscription fees to Customer’s credit card, Totango will charge the credit card account that Customer authorizes and will continue to charge that card (or any replacement card) during each Renewal Term accordingly. If payment is not received from Customer’s card issuer, Customer agrees to promptly pay all amounts due upon demand.

8.2. All fees shall be paid in United States dollars and are exclusive of all taxes, levies, duties, tariffs, and other governmental charges (including without limitation, VAT) (collectively, “Taxes”). Customer will be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Totango’s net income. Overdue payments shall accrue interest at the lesser of 1.5% per month or the maximum rate permitted by applicable law.

8.3. Notwithstanding any other term herein, Customer may upgrade its subscription plan level or increase the number of End Users or Units at any time provided: (a) any such change will not reduce Customer’s payment obligations hereunder that are in effect prior to the change; (b) Customer provides Totango with prior written notice; and (c) Customer first pays any additional applicable fees at Totango’s then-current rates, prorated over the remainder of the then-current Term.

8.4. Without limiting Section 4 or this Section 8, if during the Term Customer’s usage of the Service exceeds its subscription plan level, number of End Users, or storage amount for which Customer subscribes, Customer shall pay applicable fees at the then-current list price for the additional Units that Customer has used. Overage fees will be calculated on a monthly basis and Totango will invoice Customer quarterly in arrears for all such overage fees within 15 days of the invoice date.

9. **Confidentiality.**

9.1. “Confidential Information” means any information disclosed by one party to the other party that is marked “confidential” or “proprietary” at the time of disclosure, is identified as “confidential” or “proprietary” at the time of disclosure, or under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Customer Data is considered Customer’s Confidential Information, the Services are Totango’s Confidential Information, and the terms of this Agreement constitute Confidential Information of both Customer and Totango.

9.2. The use and nondisclosure obligations and restrictions set forth in Section 9 will not apply to any information that: (a) is or becomes generally known to the public through no breach of this Agreement by the receiving party; (b) is rightfully known by the receiving party at the time of disclosure; (c) is independently developed by the receiving party without use of or access to the disclosing party’s Confidential Information; or (d) the receiving party rightfully obtains from a third party who has the right to disclose such information without breach of any confidentiality obligation to the disclosing party.

9.3. A receiving party will not use the disclosing party’s Confidential Information except as necessary for the performance or enforcement of this Agreement and will not disclose such Confidential Information to any third party except to those of its employees and subcontractors who have a bona fide need to know such Confidential Information for the performance or enforcement of this Agreement, provided each such employee and subcontractor is bound by a written agreement that contains use and disclosure restrictions consistent with the terms set forth in this Section. Each receiving party will protect the disclosing party’s Confidential Information from unauthorized use and disclosure using efforts equivalent to the efforts that the receiving Party ordinarily uses with respect to its own confidential information and in no event less than a reasonable standard of care. The provisions of this Section will remain in effect during the term of this Agreement and for a period of 3 years after the expiration or termination of this Agreement.
9.4. The provisions of Section 9 will not restrict either party from disclosing Confidential Information, including Customer Data, pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided that the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement or limit the scope of such request. The party responding to such an order or requirement will only disclose that information that is expressly required.

10. Warranty and Disclaimer.

10.1. Each party represents and warrants that: (a) it has full power to enter into this Agreement and to grant to the other party the rights granted to such other party under this Agreement; (b) it has obtained all necessary corporate approvals to enter into and execute this Agreement; and (c) its entering into this Agreement and performance of obligations under this Agreement will not in any way conflict or violate any duty that it may have to any other person or entity, or under any agreement and/or commitment on its part.

10.2. Except for as expressly provided in this Agreement, the Service is provided on an “as is” and “as available” basis, and without warranties of any kind either express or implied. Customer assumes all responsibility for the selection of the Service to achieve Customer’s intended results. TO THE FULLEST EXTENT ALLOWED BY LAW, TOTANGO HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. TOTANGO DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED. TOTANGO DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY INFORMATION, RESULTS, OR ADVICE CUSTOMER OBTAINS THROUGH THE SERVICE. EACH PARTY EXPRESSLY ACKNOWLEDGES AND AGREES THAT IT HAS NOT ENTERED INTO THIS AGREEMENT ON THE BASIS OF ANY REPRESENTATION OR PROMISE NOT EXPRESSLY SET OUT HEREIN.

11. Limitation of Liability.

11.1. LIABILITY ARISING UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, EXEMPLARY, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR INCIDENTAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST PROFITS OR REVENUE) ARISING OUT OF THIS AGREEMENT OR IN CONNECTION WITH THE SERVICE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY REMEDY OF ITS ESSENTIAL PURPOSE.

11.2. TOTANGO’S ENTIRE LIABILITY FOR ALL CLAIMS RELATED TO OR ARISING OUT OF THIS AGREEMENT OR IN CONNECTION WITH THE SERVICE, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, OR ANOTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED IN THE AGGREGATE THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER IN THE 12 MONTH PERIOD PRECEDING THE DATE OF EVENT GIVING RISE TO THE CLAIM OR CLAIMS. THE FOREGOING LIMITATION SHALL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. MULTIPLE CLAIMS SHALL NOT EXPAND ANY OF THE LIMITATIONS SET FORTH IN THIS SECTION 11.

11.3. Nothing in this Agreement excludes or limits any liability for which the governing law prohibits the exclusions of limitations of liability. This Section 11 in no way limits Customer’s liability for fees owed pursuant to this Agreement.

12. Indemnification.

12.1. Totango will defend any suit or action brought against Customer to the extent that it is based upon a third-party claim that the Service, as provided by Totango to Customer pursuant to this Agreement, infringes any U.S. patent or copyright or misappropriates any trade secret, and will pay costs, damages, and reasonable attorneys’ fees attributable to such claim awarded as a final judgment or paid as a settlement. Totango’s obligations under this Section 12.1 are contingent upon: (a) Customer providing Totango with prompt written notice of such claim; (b) Customer providing reasonable cooperation to Totango, at Totango’s expense, in the defense and settlement of such claim; and (c) Totango having sole authority to defend or settle such claim.
12.2. If Customer’s use of the Service is, or in Totango’s opinion is likely to be, enjoined due to the type of claim specified in Section 12.1, then Totango may at its sole option and expense: (a) replace or modify the Service to make them non-infringing and of equivalent functionality; (b) procure for Customer the right to continue using the Service under the terms of this Agreement; or (c) if Totango is unable to accomplish either (a) or (b) despite using its reasonable efforts, terminate Customer’s rights and Totango’s obligation under this Agreement with respect to such Service and refund to Customer a pro-rata portion of the fees paid for the remaining term during which Customer would have had access to the Service.

12.3. Notwithstanding the terms of Section 12.1, Totango will have no liability for any infringement or misappropriation claim of any kind to the extent that it results from: (a) the combination, operation or use of the Service with equipment, devices, software or data (including without limitation Customer Data) not supplied by Totango, if a claim would not have occurred but for such combination, operation or use; (b) Customer’s or an End User’s use of the Service other than in accordance with this Agreement or applicable law; or (c) alterations or modifications to the Service which are not performed by Totango.

12.4. THE FOREGOING STATES THE ENTIRE OBLIGATION OF TOTANGO AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE.

12.5. Customer agrees to defend, indemnify and hold harmless Totango and its affiliates and their respective officers, directors, agents, consultants and employees from any third-party claims, damages, liabilities, costs, and expenses (including reasonable attorney’s fees) arising from an allegation (a) Customer’s access or use of the Service violates this Agreement or applicable law, including without limitation data protection or privacy laws; (b) Customer Data violates applicable law or the rights of any third party, including Intellectual Property Rights; (c) Customer does not have the right to possess Customer Data or transmit the same to Totango. Customer’s obligations under this Section 12.5 are contingent upon: (x) Totango providing Customer with prompt written notice of such claim; (y) Totango providing reasonable cooperation to Customer, at Customer’s expense, in the defense and settlement of such claim; and (z) Customer having sole authority to defend or settle such claim.

13. Publicity. Customer agrees that Totango may identify Customer as a customer of the Service, and display Customer’s name and/or trademark (the “Customer Marks”) on the Site, in press releases and in Totango’s published marketing materials, solely in connection with the Service. Totango will comply with any reasonable trademark usage guidelines Customer provides to Totango in connection with Customer Marks. Customer retains all title in and to Customer Marks, and all goodwill developed from such use shall be solely for Customer’s benefit.

14. Compliance with laws. Each party shall comply with all applicable laws relating to its performance of its obligations under this Agreement. Without limiting the foregoing, Customer agrees to comply fully with all applicable export laws and regulations in any jurisdiction to ensure that neither the Service nor any technical data related hereto are exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations.

15. Assignment. This Agreement, and any rights granted hereunder, may not be transferred or assigned by Customer but may be assigned by Totango without restriction.


16.1. This Agreement, including any Order Forms, Statements of Work, Data Processing Agreements, Service Level Agreements, and other appendices or exhibits attached hereto or otherwise incorporated herein, represents the complete agreement concerning the subject matter herein and supersedes all prior agreements and representations related to the subject matter hereof. In the event of a conflict between this Agreement and any exhibit, Order Form, or Statement of Work, the order of precedence shall be: (a) the Order Form; (b) a SOW; (c) an exhibit; and (d) the body of the Agreement.
16.2. This Agreement shall be governed by the laws of the State of California, without reference to its conflict of laws rules. The exclusive jurisdiction and venue for all disputes hereunder shall be the state and federal courts located in San Francisco County, California, and each party hereby irrevocably consents to the jurisdiction of such courts. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are excluded from this Agreement. All proceedings shall be conducted in English. Notwithstanding the foregoing, Totango reserves the right to seek injunctive relief against Customer to enforce this Agreement in any venue and court of competent jurisdiction.

16.3. Except for Customer’s obligation to pay Totango, neither party shall be liable for any failure or delay to perform under this Agreement due to causes beyond its reasonable control (a “Force Majeure Event”), including, but not limited to, widespread internet outage, multi-day power outage, denial of service attack, war, insurrection, act of terrorism, acts of God, or acts of civil or military authorities.

16.4. Except for notices about the Service, notices given under this Agreement must be in writing and will be deemed effective 1 day after being sent to either the designated email or postal address provided by Customer to Totango on the Order Form or Subscription Page, or as displayed on the Site. Each party will provide the other with prompt notice of any change of address.

16.5. Nothing herein shall be construed to create any employment relationship, partnership, joint venture or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party.

16.6. If any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the validity and enforceability of the remaining provisions of the Agreement will not be affected and that provision is to be construed wither by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not). The failure by a party to exercise any right hereunder shall not operate as a waiver of such party’s right to exercise such right or any other right in the future.

16.7. The provisions of this Agreement are only for reliance upon and for the benefit of Customer and Totango and its licensors and confer no rights or remedies on any other person or party.

16.8. Any purchase order or other document issued or delivered to Totango in connection with Customer’s subscription to the Service is only for Customer’s administrative purposes and will not apply to, or be binding upon, Totango.

16.9. This Agreement may be executed in any number of counterparts which may be delivered as a pdf attached to email or by digital or electronic signatures and each counterpart so executed and delivered will be deemed an original and all together will constitute one instrument.

16.10. Any provision of this Agreement that by its nature extends beyond the expiration or termination of the Agreement, including accrued rights to payment, use restrictions, indemnity obligations, confidentiality obligations, warranties, disclaimers, and limitations of liability, will remain in effect until all obligations are satisfied in accordance with their terms.

16.11. This Agreement may only be amended in a writing signed by authorized representatives of the parties.

16.12. For purposes of this Agreement, except as otherwise provided: (a) terms defined herein include the plural as well as the singular and vice versa; (b) any restriction of this Agreement that specifies a restriction or states that Customer shall not do something is to be interpreted as an obligation to prevent Customer’s affiliates, End Users, and third parties under Customer’s control from breaching the same; (c) any reference to “exhibit” or “section” refers to an exhibit or section of this Agreement; (d) any exhibits form part of this Agreement; (e) all references to this Agreement and the words “herein,” “hereto,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole; (f) all section and exhibit headings are for convenience only and shall not affect the interpretation or construction of this Agreement; (g) the words “including,” “included,” and “includes” mean inclusion without limitation and do not limit the generality of the statements
they qualify; (h) the word “or” is not exclusive and shall have the meaning commonly ascribed to “and/or;” and (i) this Agreement has been jointly negotiated by the parties hereto and their respective legal counsel, and any legal or equitable principles that might require or permit the construction of this Agreement and any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement.