**WYEBOT, INC.**

**PRODUCT ORDER**

This Product Order is entered into as of the Effective Date set forth below by and between Wyebot, Inc., a Delaware corporation (“**Wyebot**”) and Customer (as both defined below). The terms and conditions of the Wyebot, Inc. Terms of Service (located at https://wyebot.com/terms) are hereby incorporated into this Product Order, and by execution hereof Customer agrees thereto. Unless otherwise defined herein, all capitalized items used in this Product Order shall have the same meaning given to them in Wyebot’s Terms of Service if defined therein. Any conflict between any terms and conditions of this Product Order and any terms and conditions in Wyebot’s Terms of Service will be governed by the Terms of Service (except as set forth in the “Additional Terms” section below).

“**Customer**”: [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_ corporation]

* Customer’s address for notices (see Sec 12.5 of the Wyebot Terms of Service): [\_\_\_\_\_\_\_\_\_\_\_, Attn: \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_]

“**Effective Date**”: [\_\_\_\_\_\_\_\_\_ \_\_], 202[\_]

“**Solution**” (“**Service**” and “**Hardware**”): Wyebot will provide Customer with [\_\_] instances of Wyebot network hardware and [\_\_] subscriptions to Wyebot’s wireless network monitoring platform, subject to the terms and conditions herein. Each hardware instance requires its own subscription.

“**Initial Term**”: [1 year OR 3 years OR 5 years]

“**Subscription Fee**”: $[\_\_\_\_\_\_\_\_\_]

Additional Terms: [none]

By signing below, the parties agree to the terms and conditions of this Product Order (including Wyebot’s Terms of Service).

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| --- | --- |
| **Wyebot, Inc.**  by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **[CUSTOMER]**  by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**WYEBOT, INC.**

**TERMS OF SERVICE (v1)**

These Wyebot, Inc. Terms of Service, together with a Wyebot, Inc. Product Order (the “Initial Order”) to which they are attached or into which they are incorporated, are an agreement by and between Wyebot, Inc., a Delaware corporation with a place of business at 2 Mount Royal Avenue, Suite 310, Marlborough, MA 01752 (“Wyebot”) and the customer specified in such Initial Order (the “Customer”) (collectively, this “Agreement”), as of the effective date specified in such Initial Order (the “Effective Date”). Each of Wyebot and Customer may also be referred to as a “Party” herein and together as the “Parties.” Following such Initial Order, Customer may order additional products under this Agreement by executing with Wyebot an additional Wyebot product order therefor referencing this Agreement or by submitting a purchase order to Wyebot therefor; provided that, (a) Wyebot will have the right, in its sole discretion, to accept or reject any such product order or purchase order, and (b) no terms and conditions in any such purchase order (other than the specified product quantity, pricing, and ship-to address) will have any force or effect as between the Parties. Each such product order or purchase order shall, upon Wyebot’s acceptance thereof, be deemed incorporated into this Agreement. Each such product order or purchase order, or the Initial Order, may also be referenced as an “Order” herein and each reference to an “Order” herein shall refer to the applicable or respective Order.

WHEREAS, Wyebot has developed a proprietary software application which permits a user thereof to monitor its wireless network, including with the use of one or more pieces of Wyebot network hardware; and Customer desires to access and use such application, and Wyebot desires to provide such access, in accordance with the terms and conditions herein;

NOW, THEREFOR, in consideration of the covenants set forth herein, Wyebot and Customer hereby agree as follows:

1. **Provision of the Solution**.
   1. Provision Generally. Wyebot will provide Customer with access to Wyebot’s network monitoring software specified in the Order (the “Service”), for use with the Wyebot network hardware specified in the Order (the “Hardware” and together with the Service, the “Solution”), in accordance with the terms and conditions of this Agreement. In order to access and use the Solution, Customer is responsible at its own expense for obtaining its own Internet access, and any hardware and software required therefor.
   2. Grant of Rights. Subject to the terms and conditions of this Agreement, Wyebot hereby grants to Customer a limited, non-exclusive, non-transferable right for Customer’s Users (as defined below) to access and use the Service (including, for clarity, any output thereof) and Hardware, solely for Customer’s internal business purposes during the applicable Order Term. A “User” shall mean an employee or independent contractor of Customer. Customer is also bound by any further restrictions set forth in the Order. All rights not expressly granted to Customer are reserved by Wyebot and its licensors. There are no implied rights.
   3. Restrictions. Customer shall not (and shall not allow any third party to): (a) use the Solution for the benefit of any third party, or to develop or market any product, software or service that is functionally similar to or derivative of the Solution, in whole or part, or for any other purpose not expressly permitted herein; (b) permit any non-User to access or use the Solution; (c) sell, distribute, rent, lease, service bureau, post, link, disclose or provide access to the Solution, directly or indirectly, to any third party; (d) alter, modify, debug, reverse engineer, decompile, disassemble, or otherwise attempt to derive or gain access to any software (including source code) or other underlying specifications or technology associated with the Solution; or (e) use any robot, spider, scraper or other automated means to access the Solution, or engage in any scraping, data-mining, harvesting, screen-scraping, data aggregating or indexing of the Solution. All acts and omissions of Users shall be deemed to be those of Customer, and Customer shall be responsible therefor. Customer shall keep all passwords safe and secure and shall be responsible for all use of the Solution using passwords issued to Customer and Users and all use of the Hardware. Customer shall notify Wyebot immediately of any actual or suspected unauthorized use of its passwords for the Service or the Hardware. Without limiting any of its other rights or remedies, Wyebot reserves the right to suspend any User’s right to access the Solution if Wyebot reasonably believes that such User has materially violated the restrictions and obligations in this Agreement (in which case, it shall provide Customer prompt written notice of such suspension).
   4. Customer Cooperation. Customer shall: (a) reasonably cooperate with Wyebot in all matters relating to the Solution; (b) respond promptly to any Wyebot request to provide information, approvals, authorizations or decisions that are reasonably necessary for Wyebot to provide the Solution in accordance with this Agreement; and (c) provide such Customer materials or information as Wyebot may reasonably request to provide the Solution and ensure that such materials or information are complete and accurate in all material respects.
   5. Added Hardware Obligations. Notwithstanding anything else in this Agreement to the contrary, Customer acknowledges that Wyebot retains ownership of the Hardware, which is provided to Customer solely for its own use during the applicable Order Term in association with the Service. Customer shall maintain the Hardware in good working condition, normal wear and tear excepted, will insure the Hardware, and will not permit the Hardware to become subject to any liens, security interests or other encumbrances. Upon the expiration or termination of this Agreement or the applicable Order, or Wyebot’s earlier written request, Customer shall return the Hardware to Wyebot. As instructed and requested by Wyebot, Customer may be required to update or replace the Hardware from time-to-time.
2. **Wyebot Technology**. In connection with providing the Solution, Wyebot shall operate and support the hosted environment used by Wyebot to provide the Service, including the Wyebot Technology, the server hardware, disk storage, firewall protection, server operating systems, management programs, web server programs, documentation and all other technology or information so used by Wyebot. As used herein, “Wyebot Technology” means all of Wyebot’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to Customer by Wyebot in providing the Solution.
3. **Downtime**. Wyebot shall use commercially reasonable efforts to provide access to the Service twenty-four (24) hours a day, seven (7) days a week. Customer agrees that from time to time the Service may be inaccessible or inoperable for various reasons, including (a) equipment malfunctions; (b) periodic maintenance procedures or repairs which Wyebot may undertake from time to time; or (c) causes beyond the reasonable control of Wyebot, including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion or other failures (collectively “Downtime”). Wyebot shall use commercially reasonable efforts to provide twenty-four (24) hour advance notice to Customer in the event of any scheduled Downtime. Wyebot shall use commercially reasonable efforts to minimize any disruption, inaccessibility and/or inoperability of the Service in connection with Downtime, whether scheduled or not.
4. **Ownership**. Customer acknowledges and agrees that as between Wyebot and Customer, all right, title and interest in and to the Solution (including the data, information, text, images, designs, sound, music, marks, logos, compilations (meaning the collection, arrangement and assembly of information) and other content on or made available through the Service, other than Customer Data), the Wyebot Technology and all improvements and derivatives of the foregoing (including all intellectual property and proprietary rights embodied therein or associated therewith) are and shall remain owned by Wyebot or its licensors, and this Agreement in no way conveys any right, title or interest in the Solution or the Wyebot Technology other than a limited right to use the Solution in accordance with the terms and conditions herein. No right or license is granted hereunder to Customer under any trademarks, service marks, trade names or logos. Customer shall not remove any Wyebot trademark, service mark or logo, or any proprietary notices or labels (including any copyright or trademark notices) from the Solution. As between Wyebot and Customer, Customer shall retain all its right, title and interest in and to the Customer Data, subject to the rights granted to Wyebot herein.
5. **Fees; Payments; Taxes**.
   1. Fees. In consideration of the provision of the Solution hereunder, Customer shall pay Wyebot a fee (the “Subscription Fee”). The Subscription Fee for the Initial Term (as defined below) of each Order is set forth in the Order. Wyebot may increase the Subscription Fee for any Renewal Term (as defined below) of each Order by providing Customer written notice thereof at least 45 days before the start of such Renewal Term. Unless otherwise set forth in the Order, the Subscription Fee for the Initial Term is due upon execution (or for Orders which are purchase orders, Wyebot’s acceptance) of the Order and the Subscription Fee for each Renewal Term is due on the first day of such Renewal Term.
   2. Taxes. All amounts due hereunder are exclusive of all sales, use, excise, service, value added, or other taxes, duties and charges of any kind (whether foreign, federal, state, local or other) associated with this Agreement, the Solution, or Customer’s and its Users access to the Solution. Customer shall be solely responsible for all such taxes, duties and charges (except for taxes imposed on Wyebot’s income), which may be invoiced by Wyebot from time-to-time.
   3. Payment Method. Unless another method is specified in the Order, Customer shall make all payments hereunder by wire transfer, in US dollars, to the account specified in writing by Wyebot, and without deduction of any charges, taxes or other amounts.
   4. Late Payments. Customer shall pay interest on all late payments at the lesser of (a) 1.5% per month or (b) the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Wyebot for all costs and expenses, including attorneys’ fees, incurred in collecting any unpaid amounts owed by Customer hereunder.
6. **Term; Termination**.
   1. Term. The term of this Agreement shall commence on the Effective Date and, unless earlier terminated as set forth herein, shall continue until the expiration or termination of the last Order outstanding hereunder (the “Term”). The term of each Order shall commence on the effective date set forth therein (or if not specified therein, on the date of Wyebot’s execution or acceptance thereof) and, unless earlier terminated as set forth herein, shall continue for an initial term of one (1), three (3) or five (5) years thereafter as specified in such Order (the “Initial Term”) and shall thereafter automatically renew for successive periods each of equal duration to the Initial Term (each, a “Renewal Term”) unless either Party provides the other Party at least 30 days advance written notice of its desire not to renew. The Initial Term and any Renewal Terms may be collectively referred to as the “Order Term” herein. If the Initial Term is not specified in the Order, it shall be one (1) year.
   2. Termination for Breach. Either Party may terminate an Order or this Agreement by written notice thereof to the other Party if the other Party materially breaches such Order or this Agreement and does not cure such breach within 30 days after written notice thereof.
   3. Termination for Insolvency. Wyebot may terminate any Order or this Agreement immediately if Customer becomes the subject of any voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within 60 days of filing.
   4. Effects of Termination; Survival. Upon any termination of this Agreement, all Orders then outstanding shall automatically terminate. Upon any expiration or termination of an Order or this Agreement: (a) all rights granted to Customer thereunder or hereunder shall terminate and Wyebot shall no longer provide access to the Service to Customer, and (b) Customer shall cease and cause its Users to cease using the Solution. Any obligations that have accrued prior to expiration or termination shall survive expiration or termination of an Order or this Agreement. In addition, the following Sections, as well as any other provisions herein which by their nature should survive, shall survive expiration or termination of an Order or this Agreement: Sections 1.3, 1.5, 4, 5, 6, 8.3, and 9 through 12.
7. **Customer Data**.
   1. Data Generally. All data and information which the Customer inputs or enters into the Service, or which is otherwise collected by Wyebot associated with Customer’s use of the Solution (the “Customer Data”) is stored in a private and secure fashion and will not be used by Wyebot except as permitted herein. Customer hereby grants to Wyebot a limited, non-exclusive, non-transferable, royalty-free right to use, reproduce, manipulate, display, transmit and distribute the Customer Data solely in connection with providing the Service to Customer, and improving and developing the Solution and Wyebot’s other offerings. In addition, Wyebot may analyze Customer Data, and data of other customers, to create aggregated or anonymized statistics or data that do not identify Customer or any individual, and Wyebot may during and after the Term use and disclose such statistics or data in its discretion. Except as specified otherwise in this Agreement (including the Order), Customer shall be solely responsible for providing, updating, uploading and maintaining all Customer Data. The content of Customer Data shall be Customer’s sole responsibility. Wyebot shall operate the Service in a manner that provides reasonable information security for Customer Data, using commercially reasonable data backup, security, and recovery protections.
   2. Additional Customer Responsibilities. Customer is solely responsible for all Customer Data. Wyebot does not guarantee the accuracy, integrity or quality of Customer Data. Customer shall not: (a) upload or otherwise make available to Wyebot any Customer Data that is unlawful or that violates the rights of any third parties; (b) upload or otherwise make available to Wyebot any Customer Data that Customer does not have a right to transmit due to any law, rule, regulation or other obligation; (c) use, upload or otherwise transmit any Customer Data that infringes any intellectual property or other proprietary rights of any third party; (d) upload or otherwise make available to Wyebot any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy, limit the functionality of any computer software or hardware or telecommunications equipment; (e) interfere with or disrupt the Solution or servers or networks connected to the Solution; (f) upload or otherwise make available to Wyebot any Customer Data that constitutes protected health information subject to the Health Insurance Portability and Accountability Act or any regulation, rule or standards issued thereunder; or (g) violate any applicable law, rule or regulation, including those regarding the export of technical data.
8. **Representations and Warranties; Disclaimer.**
   1. General Representations and Warranties. Each Party hereby represents and warrants to the other Party that: (a) it is a corporation, company or other entity (as applicable) duly organized, validly existing and in good standing in its jurisdiction of organization; (b) its execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary organizational action on its part; (c) the provisions set forth in this Agreement constitute legal, valid, and binding obligations of such Party enforceable against such Party in accordance with their terms, subject to bankruptcy, insolvency and other laws affecting creditors’ rights generally; and (d) its execution, delivery and performance of this Agreement do not and will not conflict with, result in a breach of, constitute a default under, or require the consent of any third party under, any agreement or other obligation to which such Party is subject.
   2. Wyebot Limited Warranty. Wyebot warrants that it will provide the Service in a competent and workmanlike manner. In addition, Wyebot warrants that the Hardware will be free of defects in materials and workmanship under normal use, as described in Wyebot’s user documentation, for the applicable Order Term (this warranty excludes damages resulting from normal wear and tear, abuse, accident, modification or other causes that are not defects in materials and workmanship). If a defect arises in the Hardware during the applicable Order Term, Wyebot at its option and sole discretion will use commercially reasonable efforts to (a) repair the Hardware at no charge using new or reasonably equivalent parts or (b) exchange the Hardware with functionally equivalent hardware that is new or refurbished. Unless agreed to by Wyebot through its customer service representative, Customer will be responsible for all costs, and risk of loss, of shipping Hardware to Wyebot in connection with obtaining warranty service. Wyebot does not warrant that it will be able to correct all reported defects or that use of the Solution will be uninterrupted or error free. Wyebot makes no warranty regarding features or services provided by any third parties. Wyebot retains the right to modify its services and products and the Wyebot Technology in its sole discretion, provided that doing so does not have a material adverse impact on the Solution hereunder. Customer’s sole remedy for Wyebot’s breach of the warranty in this paragraph shall be that Wyebot shall remedy the applicable error, or if Wyebot is unable to do so in a timely manner, refund to Customer actual damages up to a limit of the fees paid for the Solution for the period during which the breach of warranty occurred; provided that, Customer must provide Wyebot written notice of any such breach within fifteen days thereof.
   3. Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN SECTIONS 8.1-8.2 ABOVE, VENDOR MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, AND HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WITH RESPECT TO THE SOLUTION (IN EACH CASE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE), INCLUDING ANY WARRANTY (A) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, (B) THAT THE SOLUTION WILL MEET CUSTOMER’S REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE OR OPERATE WITHOUT ERROR, (C) AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SOLUTION, OR (D) AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED FROM THE SOLUTION.
9. **Limitations of Liability**.
   1. Damages Cap. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, VENDOR’S TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THE SOLUTION OR THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO VENDOR UNDER THIS AGREEMENT DURING THE PRIOR 12 MONTHS.
   2. Disclaimer of Indirect Damages. EXCEPT FOR (A) CUSTOMER’S OBLIGATION TO PAY ALL AMOUNTS DUE HEREUNDER, (B) ITS INDEMNIFICATION OBLIGATIONS OR (C) ITS BREACH OF ANY INTELLECTUAL PROPERTY OR CONFIDENTIALITY OBLIGATIONS OR RESTRICTIONS HEREIN (INCLUDING ANY LIMITATIONS OR RESTRICTIONS ON USE OF THE SOLUTION), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING LOSS OF DATA, PROFITS OR REVENUE) ARISING OUT OF OR RELATED TO THE SOLUTION OR THIS AGREEMENT, WHETHER SUCH DAMAGES ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE.
   3. Basis of the Bargain. THE PARTIES AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 9 ARE A FUNDAMENTAL BASIS OF THE BARGAIN, THAT VENDOR HAS SET ITS FEES IN RELIANCE ON THE ENFORCEABILITY OF THESE PROVISIONS, AND THAT THEY SHALL APPLY NOTWITHSTANDING THAT ANY REMEDY SHALL FAIL ITS ESSENTIAL PURPOSE.
10. **Indemnification**.
    1. Wyebot Indemnification. Wyebot shall defend, indemnify and hold harmless Customer and its directors, officers, employees and agents (“Customer Indemnified Parties”) from and against any third party claims, actions, proceedings, demands, lawsuits, damages, liabilities and expenses (including reasonable attorneys’ fees and court costs) (collectively, “Claims”) to the extent based on any claim that the Solution infringes, misappropriates or otherwise violates (collectively, “Infringes”) any third party intellectual property or proprietary right (excluding patents).
    2. Customer Indemnification. Customer shall defend, indemnify and hold harmless Wyebot and its directors, officers, employees, agents and providers (“Wyebot Indemnified Parties”) from and against any Claims to the extent based on any claim that the Customer Data Infringes any third-party intellectual property or proprietary right (excluding patents).
    3. Indemnification Process. As conditions of the indemnification obligations in Sections 10.1-10.2 above: (a) the applicable Customer Indemnified Party or Wyebot Indemnified Party (the “Indemnitee”) will provide the indemnifying Party (the “Indemnitor”) with prompt written notice of any Claim for which indemnification is sought (provided that failure to so notify will not remove the Indemnitor’s indemnification obligations except to the extent it is prejudiced thereby), (b) the Indemnitee will permit the Indemnitor to control the defense and settlement of such Claim, and (c) the Indemnitee will reasonably cooperate with the Indemnitor in connection with the Indemnitor’s evaluation, defense and settlement of such Claim. In defending any Claim, the Indemnitor shall use counsel reasonably satisfactory to the other Party. The Indemnitor shall not settle or compromise any such Claim or consent to the entry of any judgment without the prior written consent of the other Party (not unreasonably withheld).
    4. Exclusions. Wyebot’s obligations in Section 10.1 above shall not apply to any Claim to the extent arising from or relating to (a) misuse of the Solution (including any use not strictly in accordance with the documentation therefor, Wyebot’s instructions, and this Agreement), (b) any modification, alteration or conversion of the Solution not created or approved in writing by Wyebot, (c) any combination of the Solution with any computer, hardware, software or service not provided by Wyebot, (d) Wyebot’s compliance with specifications or other requirements of Customer, or (e) any third party data, third party technology or Customer Data. If the Solution is or may be subject to a Claim of Infringement described in Section 10.1 above, Wyebot may, at its cost and sole discretion: (i) obtain the right for Customer to continue using the Solution as contemplated herein; or (ii) replace or modify the Solution so that it becomes non-Infringing without substantially compromising its principal functions; or (iii) to the extent the foregoing are not commercially reasonable, terminate the affected Order and return to Customer any pre-paid fees for the Solution associated with the then-remaining Order Term. Wyebot’s obligations in this Section 10 shall be Wyebot’s sole obligations, and Customer’s sole remedies, in the event of any Infringement of intellectual property or proprietary rights by or related to the Solution.
11. **Confidentiality**.
    1. Definition. “Confidential Information” means information that is disclosed by either Party (the “Disclosing Party”) to the other Party (the “Receiving Party”) hereunder during the Term that is clearly labeled or identified as confidential or proprietary when disclosed, or that, under the circumstances, should reasonably be treated as confidential, except that “Confidential Information” shall not include any information that (a) is or becomes generally known to the public through no fault of, or breach of this Agreement by, the Receiving Party; (b) is rightfully in the Receiving Party’s possession at the time of disclosure without an obligation of confidentiality; (c) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information; or (d) is rightfully obtained by the Receiving Party from a third party without restriction on use or disclosure. In addition, (i) the terms and conditions of this Agreement shall be deemed to be Confidential Information of both Parties; and (ii) the Solution and Wyebot Technology shall be deemed Confidential Information of Wyebot, regardless of whether or not they are labeled or identified, or would reasonably be considered confidential.
    2. General Obligations. Each Party agrees that it will during the Term and thereafter (a) not disclose the other Party’s Confidential Information to any third party (other than as permitted in the last sentence of this paragraph); (b) use the other Party’s Confidential Information only to the extent reasonably necessary to perform its obligations or exercise its rights under this Agreement; (c) disclose the other Party’s Confidential Information only to those of its employees and independent contractors who reasonably need to know such information for purposes of this Agreement and who are bound by confidentiality obligations offering substantially similar protection to those in this Section 11; and (d) protect all Confidential Information of the other Party from unauthorized use, access, or disclosure in the same manner as it protects its own confidential information of a similar nature, and in no event with less than reasonable care. Notwithstanding the above, this paragraph shall not prohibit: (i) a Party from disclosing Confidential Information of the other Party to the extent required by applicable law, rule or regulation (including a court order or other government order) or the rules and regulations of the SEC or any national securities exchange; provided that such Party provides the other Party prior written notice of such disclosure, to the extent practicable, and reasonably cooperates with efforts of the other Party to seek confidential treatment thereof, to the extent such cooperation is requested by the other Party; or (ii) a Party from disclosing the terms and conditions of this Agreement to its attorneys and financial advisors, or current or potential lenders, other sources of financing, investors or acquirors; provided that such third parties are bound by confidentiality obligations offering substantially similar protection to those in this Section 11 (provided further that such third parties are only permitted to use such information for the purpose of advising, lending or providing financing to, or investing in or acquiring, such Party, as applicable).
    3. Return or Destruction. Except as otherwise expressly provided in this Agreement, the Receiving Party will return to the Disclosing Party, or destroy or erase, the Disclosing Party’s Confidential Information in tangible form, upon the expiration or termination of this Agreement; provided that (a) Receiving Party may retain a copy of Disclosing Party’s Confidential Information solely for the purposes of tracking Receiving Party’s rights and obligations hereunder with respect thereto, (b) Receiving Party may retain copies of Disclosing Party’s Confidential Information solely to the extent required by law or by applicable professional standards which require such Party to retain copies of its working papers, and (c) Receiving Party may retain Disclosing Party’s Confidential Information solely to the extent reasonably necessary for Receiving Party to exercise rights or perform obligations under this Agreement that survive such expiration or termination.
    4. Feedback. Notwithstanding the above or anything to the contrary herein, to the extent that Customer at any time provides Wyebot with any feedback or suggestions regarding the Solution, including potential improvements or changes thereto (collectively, “Feedback”), the Feedback shall not be considered Confidential Information of Customer, and Wyebot shall be free to use, disclose, and otherwise exploit in any manner, the Feedback for any purpose.
12. **Miscellaneous.**
    1. Compliance with Laws. Each Party shall comply with all laws, rules, regulations and ordinances applicable to its activities hereunder.
    2. Hosting Providers. Customer acknowledges that the Service is hosted by third party hosting providers (the “Hosting Contractors”). Wyebot may change its Hosting Contractors at any time. Customer’s use of the Solution is subject to any applicable restrictions imposed by the Hosting Contractors. Notwithstanding any other provision of this Agreement, Wyebot shall not be liable for any problems, failures, defects or errors with the Solution to the extent caused by the Hosting Contractors. Customer acknowledges that the fees payable for the Solution reflect the fact that Wyebot is not responsible for the acts and omissions of the Hosting Contractors.
    3. Assignment. Customer may not assign this Agreement or assign any of its rights or delegate any of its obligations under this Agreement, without the prior written consent of Wyebot. Wyebot may freely assign this Agreement or assign any of its rights or delegate any of its obligations under this Agreement. Any purported assignment or delegation in violation of this paragraph is null and void. This Agreement will bind and inure to the benefit of each Party’s successor and permitted assigns.
    4. Entire Agreement; Amendment. This Agreement (including the Order) contains the complete understanding and agreement of the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, oral or written, with respect thereto. No pre-printed terms on any purchase order, invoice or similar document issued in relation to this Agreement shall have any effect on the Parties or this Agreement. This Agreement may be amended or modified only by an express written agreement signed by duly authorized representatives of both Parties.
    5. Notices. Unless otherwise specifically provided herein, all notices required or permitted by this Agreement shall be in writing and may be delivered personally, or may be sent by facsimile, overnight delivery or certified mail, return receipt requested, to the addresses set forth below, unless the Parties are subsequently notified of any change of address in accordance with this Section. Any notice shall be deemed to have been received as follows: (a) by personal delivery, upon receipt; (b) by facsimile or guaranteed overnight delivery, one business day after transmission or dispatch; or (c) by certified mail, as evidenced by the return receipt. If notice is sent by facsimile, a confirming copy of the same shall be sent by mail to the receiving Party. If to Wyebot, to Wyebot, Inc., Attn: President, 2 Mount Royal Avenue, Suite 310, Marlborough, MA 01752. If to Customer, to the address set forth in the Order.
    6. Force Majeure. Wyebot shall not be liable or responsible to Customer, nor be considered to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any provision of this Agreement to the extent such failure or delay is caused by or results from any act, circumstance or other cause beyond the reasonable control of Wyebot, including acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either Party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable technology or components, telecommunication breakdown, or power outage.
    7. Publicity. Wyebot shall have the right to use Customer’s name and logo on client lists published on Wyebot’s website and in marketing materials. Wyebot may announce the relationship hereunder in a press release provided that Wyebot obtains Customer’s prior approval of the wording of the release (not unreasonably withheld).
    8. Choice of Law. This Agreement is and will be governed by and construed under the laws of the Commonwealth of Massachusetts, without giving effect to any conflicts of laws provision thereof or of any other jurisdiction that would produce a contrary result. The Parties hereby consent to the jurisdiction of any federal or state court located in Massachusetts for any claim or other proceeding related to this Agreement or their activities hereunder, and waive any objections of improper venue or inconvenient forum.
    9. Injunctive Relief. Each Party acknowledges that its breach of any intellectual property or confidentiality obligations or restrictions herein (including any limitations or restrictions on use of the Solution) will cause substantial harm to the other Party that could not be remedied by payment of damages alone. Accordingly, the other Party will be entitled to seek preliminary, temporary and permanent injunctive relief, and other equitable relief, for any such breach, without any requirement to post bond, in any court of competent jurisdiction.
    10. Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise or employment relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.
    11. Waiver. No waiver by either Party of any of the provision of this Agreement is effective unless explicitly set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
    12. Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or invalidate or render unenforceable such provision in any other jurisdiction.
    13. Headings; Interpretation. Headings are provided for convenience only and will not be used to interpret the substance of this Agreement. Unless the intent is expressly otherwise in specific instances, use of the words “include,” “includes,” or “including” in this Agreement shall not be limiting and “or” shall not be exclusive.
    14. Counterparts. The Order may be executed in two counterparts (which may be delivered by .pdf or other facsimile format acceptable to the Parties), each of which shall be an original and both of which taken together shall form one agreement.