

Terms of Service

Last Updated: May 11, 2023

These Terms of Service (“**Terms**”), together with the Acceptable Use Policy at <https://tehama.io/privacy-policy/>, the Privacy Policy at <https://tehama.io/acceptable-use-policy/>, and any other policies or terms incorporated by reference herein (“**Policies**”), (collectively “**Agreement**”) contain the terms and conditions that apply to the Tehama Service, Tehama Content (as defined in subsection 1.2.3 below), Software (as defined in subsection 2.2 below), and Products (as defined in subsection 2.9 below) (collectively “**Service**”) provided by Tehama Technologies Inc. or its Affiliates (“**Tehama**”) to the party entering into this Agreement (“**You**” or “**Organization**”) either as an individual or through an individual authorized to enter into this Agreement on Your behalf. By completing the registration process, submitting an order for the Service, or using the Service, You agree to all the terms of this Agreement. Capitalized terms used in the Terms will have the meanings set forth herein and capitalized terms not otherwise defined herein will have the meaning given to them in the Policies.

1. SERVICE

1.1. Tehama Account Registration and Order Forms. You must register for an account at <https://tehama.io/> or such other site provided by Tehama (“**Site**”), with an email address, payment method information associated with it (where applicable), and any other information requested on the Site (“**Account**”) in order to access and use the applicable Service. Information about You provided in connection with the creation or administration of an Account is the “**Account Information**”, and includes without limitation, names, usernames, phone numbers, email addresses and billing information (where applicable). Services are purchased through an on-line registration page, order form, or other ordering document (each an “**Order Form**”). The information and any additional terms and conditions contained in Your Order Form is incorporated into this Agreement.

1.2. Tehama Service Offering.

1.2.1. Tehama Service Description. The Tehama Service is a cloud-based business-to-business service that enables the creation of secure and audited virtual rooms (“**Rooms**”). A Room can be used on a standalone basis or as a virtual private extension of an IT network through the installation of a Tehama gateway (“**Gateway**”). By way of example, a Room may be used to enable access to a third party service provider to provide IT services remotely. You will find a detailed Tehama Description of Service Model at <https://tehama.io/service-model/>.

1.2.2. Subscription Plan means a plan composed of the Room, desktop, and storage options and the support plan that You select. Tehama offers a variety of options to build a Subscription Plan based on requirements. For more information about Subscription Plans, visit **Pricing Model** at <https://tehama.io/pricing-model/>.

1.2.3. Support Plans. Tehama provides three tiers of support for the Tehama Service – Standard, Professional, and Enterprise. For more information about Support Plans, visit **Support Plans** at <https://tehama.io/support-plans/>.

1.2.4. Service Level Agreement. The Service Level Agreement is offered in connection with the Tehama Service (with the exception of a Trial or a Beta Version) and is located at <https://tehama.io/service-level-agreement/>. Tehama may discontinue or modify the Service Level Agreement offered in its sole discretion in accordance with [section 12.7](#).

1.3. Trial. If You register for a Trial of a Service, Tehama will make the Service available to You under the terms of this Agreement and the applicable Trial Order Form. Notwithstanding any representations, warranties, exclusive remedies and disclaimers made in this Agreement, a Trial of a Service is provided “as-is” without warranties of any kind. Subject to the applicable Trial Order Form, Trial-Specific Terms for the Tehama Service are available at <https://tehama.io/trial-specific-terms/>. You are encouraged to review the **Documentation** at <https://help.tehama.io/hc/en-ca>, and information about Subscription Plan options provided in the documentation under Pricing Model on the Site during the Trial period, so that You become familiar with the features of the Tehama Service options offered.

1.4. Access Enablement and Content. Tehama assumes that You will have existing Internet connectivity and appropriate bandwidth in order for You and Your Users to use the Service. Tehama will not have any obligation to establish any point-to-point connections other than through the Tehama Service. For more information refer to the **Documentation** at <https://help.tehama.io/hc/en-ca>. You and Your Users may submit software (including machine images), data, text, audio, video and images (“**Your Content**”) to the Service. Tehama or any of its Affiliates may make its own content (“**Tehama Content**”) available in connection with the Service. For the purposes of this Agreement, “**Affiliate**” of a party means any corporation, partnership or legal entity that controls, is controlled by, or is under common control with, such party.

1.5. Scope of Application. This Agreement governs Your and Your Users use of and access to the Service only and it does not govern any contractual relationship that You may have with Your Users or other parties who access or use the Service. Tehama will not be responsible for (a) any contract negotiation process required to conclude commercial terms between You and other parties; (b) complying with any obligation acquired by You under any commercial terms You execute with other parties or any breach thereof, and/or (c) adjudicating or otherwise becoming involved in any dispute between You and Your Users or other parties.

1.6. Users. You may invite You and Your Affiliate's employees and contractors ("**Personnel**") as well as third parties and their employees and contractors to use the Service under Your Account (collectively "**Users**").

1.7. Responsibilities for Personnel and Users. You are responsible for (a) all activities performed by Your Personnel under Your Account, and (b) all activities that occur under Your Account by any of Your other Users. You agree to ensure that all such Users are bound by and act in compliance with the Agreement and agree that You are fully responsible and liable for the acts and omissions of Your Users as if they were Your acts and omissions.

1.8. Violations by Personnel or Users. You will notify Tehama immediately if You become aware of any violation of the terms of this Agreement by any of Your Users. In addition, You agree that (i) if You are the Gateway Owner, You will immediately terminate such User's access to the Service or (ii) if You are not the Gateway Owner, to notify the Gateway Owner about the violation.

1.9. Beta Versions. Tehama may, from time to time, offer You access to services or software, including Services, that are identified as "**Beta Versions**". Your access to and use of Beta Versions may be subject to additional or different terms and conditions. Tehama makes no representations that a Beta Version will ever be made generally available and reserves the right to discontinue or modify a Beta Version at any time without notice. Beta Versions are provided "as-is" without warranties of any kind, may contain bugs, errors or other defects, and Your use of a Beta Version is at Your sole risk.

2. PROPRIETARY RIGHTS AND LICENSE GRANT

2.1. Intellectual Property Rights ("IP Rights"). IP Rights are all rights and interests in and to intangible, intellectual or industrial property that may be protected or that may arise under the laws of Canada, the United States or any other jurisdiction in the world, whether registered or not, including rights in and to writings and other copyrightable works of authorship (including software and compilations), databases, moral rights, patents, inventions, designs, trade secrets, formulae, data models, algorithms, methods, processes, know-how, Confidential Information, trademarks, service marks, logos, trade names, domain names, brand elements and other indicia of origin, and any and all goodwill, registrations and applications associated with any of the foregoing.

2.2. Permission to Use the Service ("License"). Tehama, its Affiliates, or third party licensors own and reserve all IP Rights in and to the Service, the Tehama Content, and the Tehama software, including the Gateway, Client, and Agent software, that Tehama makes available ("**Software**"). Subject to the terms of this Agreement, Tehama grants You a limited, revocable, non-exclusive, non-transferrable License to access and use the applicable Service. Such License includes (i) Your access to and use of Tehama Content only as required for Your access and use of such Service and in accordance with this Agreement and (ii) Your installation and use of Software on Your systems only as required for Your access and use of the Service and in accordance with

this Agreement and any license agreement accompanying such Software. In connection with the Tehama Service, (i) desktops are licensed for use by a single individual human user only and are not for shared use or for use for any automation use cases unless expressly authorized by Tehama under an Order Form and (ii) if You are the Subscriber but not the Gateway Owner, the Gateway Owner's authorization is required, in addition to this License, for You and Your proposed Users to access the Room.

2.3. Suggestions. If You provide any suggested improvements to the Service, including any Tehama Content, Software, or Products (as defined in subsection 11 below) ("**Suggestions**") to Tehama or its Affiliates, Tehama and its Affiliates will be entitled to use the Suggestions without restriction. You hereby grant to Tehama and its Affiliates a worldwide, non-exclusive, perpetual, irrevocable, sub-licensable, royalty free right and license to use such Suggestions for their business purposes such as the development of new and/or improved products and services.

2.4. No Other Rights. Except as provided in [section 2.2 herein](#), You do not obtain any rights under this Agreement from Tehama or its Affiliates, or third party licensors, to the Service, including the Tehama Content, Software, or Products (as defined in subsection 11 below), including any IP Rights. This Agreement is not intended to modify in any way the licensing or warranty (or any disclaimer thereof) of commercial software products separately licensed by You from Tehama or its Affiliates or any third party, or any other transaction except as expressly provided herein.

2.5. Restrictions. In accessing and using the Service, You will not attempt to: (a) reverse engineer, decompile, disassemble or otherwise work around limitations in the Service; (b) license, sell, rent, lease, transfer, assign, distribute, display, host, disclose, permit timesharing or service bureau use, or otherwise make the Service or any Tehama Content available to any third party other than in accordance with the terms of this Agreement; (c) access and/or use the Service and the Tehama Content other than in accordance with the terms of this Agreement; (d) remove or modify any Tehama or third party's copyright notices in the Service or the Tehama Content; (e) access or use the Service to build or support the building of products or services that are competitive to the Service provided under this Agreement; and (f) copy, reproduce, distribute, republish, download, post, display or transmit in any form or by any means the Tehama Content or any other information relating to the Service, except as permitted by this Agreement.

2.6. Your Content. As between You and Tehama, You retain all IP Rights in and to Your Content that You or Your Users submit to the Service. Except as provided [herein](#), Tehama does not obtain any rights under this Agreement from You with respect to Your Content, including any IP Rights. You hereby consent to Tehama's and its Affiliates' use of Your Content to provide the Service to You and Your Users. You represent to Tehama that (a) You or Your licensors own all IP Rights in and to Your Content; (b) You have all rights in Your Content necessary to grant Tehama and its Affiliates the rights contemplated by this Agreement; and (c) none of Your Content or Your Users'

use of Your Content, the Service and the Tehama Content will violate the Site Terms of Use or the Policies.

2.7. Recordings. You acknowledge and agree that work and other activities performed in the Room may be monitored and audited and that Service-generated video recordings of work sessions, and records of events and other activities performed in a Room by Users (“**Recordings**”) may be made. The following provisions apply with respect to Recordings:

1. The Gateway Owner and the Subscriber will have the right to (i) view and audit the work and other activities performed in the Room by any Room Users and (ii) download a copy of the Recordings for their internal business purposes only. Where the Gateway Owner wishes to prevent other parties participating in the Room from exercising the rights described above, the Gateway Owner must be also the Subscriber.

2. The Gateway Owner will have the right to opt for storage services with respect to the Recordings, provided it has and maintains a valid Subscription Plan.

3. Tehama will have the right to retain a copy of the Recordings made in any Room and to use the Recordings for business purposes such as observing, analyzing and learning data trends and patterns, and the development of new and/or improved products and services.

4. Nothing in this [section 2.7](#) is intended to waive or alter any confidentiality obligations that any party may have with respect to Your Content, including Your Content captured in the Recordings.

2.8. Aggregated Data. In the provision of the Service, Tehama may collect usage data from the Service in connection with Your and Your Users use of the Service (“**Aggregated Data**”), including by capturing the Aggregated Data in the Recordings. Aggregated Data includes, without limitation, metadata, security and access roles, usage policies, permissions, logs generated by any Tehama software installed on desktops, usage statistics and analytics, but only in aggregate, anonymized form, in such a manner that it can in no way be linked specifically to You and/or Your Users. So long as Tehama does not disclose Your Confidential Information, Tehama will have the right to use any Aggregated Data for the purposes of refining, supplementing, testing or improving the Service, including, without limitation, by performing heuristics, statistical analysis, and cohort analysis; and for developing best practices and for training purposes; and also for the business purposes of developing new and/or improved products and services. Tehama will have the right to retain the Aggregated Data after termination of this Agreement for the purposes identified above.

Tehama’s collection, aggregation and anonymizing operations are performed with appropriate safeguards in place. If the Aggregated Data is information that identifies or could identify an

individual, such individual may opt to have his/her information removed from the Aggregated Data by notifying Tehama at support@tehama.io.

2.9. Product-Specific Terms and Special Dependencies. Certain additional offerings, including other Tehama and third party software and services, (collectively, “Products”) may require an additional Order Form and be subject to additional or different terms specific to that Product as set forth in the applicable Product-Specific Terms. By accessing or using a Product covered by Product-Specific Terms, You agree to such Product-Specific Terms. In addition, the use of the Service may require the use of other software and the Service may not operate, or operate properly, without such software. The known software dependencies are set forth in the **Documentation** at <https://help.tehama.io/hc/en-ca> and/or the applicable Product-Specific Terms.

2.10. Third Party Content. You acknowledge and agree that the Service includes certain third party content (including third party services and software, including open source software) as referenced in the **Documentation** at <https://help.tehama.io/hc/en-ca> and/or the applicable Product-Specific Terms, which is distributed to You solely under the terms set forth in the respective license agreements associated with such third party content and You acknowledge and agree that this Agreement in no way supplements or detracts from any term or condition contained therein. By accepting this Agreement, You are also accepting the terms of the license agreements that apply to such third party content.

2.11. Purchasing Decision. You acknowledge and agree that You have not based Your purchasing decision on (i) the future availability of any new products and/or services, (ii) the future availability of additional features, functionality, components, or versions of any Service, or (iii) any oral or written comments made by Tehama regarding future features, functionality, components or versions.

3. FEES, PAYMENT TERMS AND TAXES

3.1. Fees and Payment Terms. You, to the extent You are a Subscriber, will pay Tehama the fees identified in the Order Form and any referenced pricing document (“**Fees**”) applicable to Your Subscription Plan and/or incurred through Your Usage of any Service in accordance with the payment terms specified in the Order Form. Except as otherwise provided in the applicable Order Form, the Subscription Plan Fees must be paid in advance. Payment obligations are non-cancelable and, except as provided in this Agreement, are not refundable. Detailed information about Service payment terms is found at **TEHAMA – FEES and PAYMENT TERMS** at <https://tehama.io/fees-and-payment-terms/>.

3.2. Taxes. All fees payable under this Agreement are exclusive of, and You are responsible for, all applicable taxes and duties, including sales and use taxes, goods and services taxes, value-added taxes (“**VAT**”), excise, business, service and similar transaction taxes imposed by any jurisdiction and the interest and penalties thereon, excluding taxes based on Tehama’s income (“**Taxes**”). Taxes will not be deducted from the payments to Tehama, except as required by law,

in which case You shall increase the amount payable as necessary so that after making all required deductions and withholdings, Tehama receives and retains (free from any Taxes liability) an amount equal to the amount it would have received had no such deductions or withholdings been made. Your obligation under this [section 3.2](#) will survive the termination or expiration of this Agreement.

3.3. Tehama Reseller. Notwithstanding the foregoing, if You access a Service through a Tehama Reseller, Your Reseller will establish any terms and conditions for pricing, invoicing, and payment. A Tehama Reseller means an entity authorized by Tehama to resell a Service to You. For the avoidance of doubt, a Tehama Reseller is not an authorized Tehama representative.

4. SECURITY AND DATA PRIVACY

4.1. Security. Without limiting [section 6](#) of this Agreement, Tehama will implement reasonable and appropriate technical and organizational measures designed to help You secure Your Content against accidental or unlawful loss, access or disclosure. As of the Effective Date of this Agreement, Tehama uses the hosting provider(s) listed at <https://tehama.io/hosting-providers-and-data-storage/> as platform hosting IT Services Provider(s) (“**Hosting Provider(s)**”) and information about the security provided by such Hosting Provider(s) is set out in that Policy. Tehama will notify You of changes to its Hosting Provider(s) by updating that Policy from time to time. You acknowledge that no data transmission over the Internet or data storage system can be guaranteed to be a 100% secure or reliable.

4.2. Data Privacy. Tehama will store Your Content in accordance with <https://tehama.io/hosting-providers-and-data-storage/> and You hereby consent to the storage of Your Content in, and the transfer of Your Content into, the applicable region. Tehama will not access Your Content except as necessary to maintain or to provide the Service, or as necessary to comply with applicable law. Tehama will not disclose Your Content to any government or third party, except as required to comply with applicable law, and in any such event, if permitted by applicable law, Tehama will notify You of any legal requirement or court order so as to enable You to seek a protective order. Tehama will only use Account Information in accordance with Tehama’s *Privacy Policy* at <https://tehama.io/privacy-policy/>, and You hereby consent to such use on behalf of You and Your Users. For the reasons set out in [section 5.3](#), the Privacy Policy does not apply to Your Content.

5. YOUR RESPONSIBILITIES

5.1. Responsibilities with respect to Your Content. You acknowledge that You are responsible for managing and controlling Your Content and the security requirements for Your Content, including, without limitation, deciding what Service You use and what You choose to store on the Service and the region where it will stored, where applicable, whether Your Content will be encrypted, the format and structure of Your Content and whether it is masked or anonymized, the Users who may have access to Your Content and how such access can be revoked. You will be solely responsible for the development, content, operation, maintenance,

and use of Your Content, including, without limitation, the technical operation of Your Content; compliance of Your Content with the Policies and applicable law; any claims relating to Your Content; and the processing of any notices sent to You by any person claiming that Your Content violates such person's rights.

5.2. Responsibilities with respect to Security and Backup. Tehama provides You with certain features and functionalities that You may elect to use. You are responsible for properly configuring and using the Service and for using and enforcing controls available to You in connection with the Service, and for taking such steps, in accordance with the functionalities offered to You by the Service, that You deem adequate or necessary to maintain appropriate security, protection, and backup of Your Content, which include controlling the management, in accordance with the control features available to You, of Your Users' access to and use of the Service. You are responsible for taking Your own steps to maintain appropriate security, protection and backup of Your Content in Your own internal infrastructure, which may include the use of encryption technology to protect Your Content from unauthorized access and for routine archiving of Your Content.

5.3. Responsibilities with respect to Personal Information. You acknowledge that Tehama has no control over Your Content including the type of information You collect or use with the Service or over the purpose for which You use such information. If Your Content includes personally identifiable information, You are responsible for protecting such information and for complying with applicable law when processing, transferring to another party, or otherwise using such information through Your use of the Service. Tehama will not assume any liability or obligation with respect to personally identifiable information other than Account Information.

5.4. Responsibilities with respect to Third Party Solutions. You acknowledge that Tehama has no control over Your installation and/or use of third party services or software, including open source or commercial software ("**Third Party Solutions**") in connection with Your and Your Users use of the Service including the installation of Third Party Solutions within operating system images hosted by the Service. You are responsible for ensuring that all necessary licenses for the installation and/or use of such Third Party Solutions have been obtained and maintained in current up-to-date status. Tehama will not assume any liability or obligation with respect to such Third Party Solutions.

6. INDEMNIFICATION.

You will, at Your own cost and expense, defend Tehama, its Affiliates, officers, directors, employees, subcontractors, licensors, channel partners, agents, successors, and permitted assignees (collectively the "**Tehama Indemnites**") from and against any third party claims, actions, demands and proceedings ("**Claim(s)**") and will indemnify and hold harmless the Tehama Indemnites from all liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees), directly or indirectly resulting from or arising out of or relating to any Claim(s) concerning:

1.

1. the use of the Service by You and Your Users;
2. a breach of this Agreement, including without limitation a breach of Your obligations under [section 2](#), by You or Your Users;
3. a violation of applicable law by You, Your Users and Your Content including, without limitation, data privacy Claims resulting from such breach or violation;
4. a claim that Your Content or the combination of Your Content with other applications, content, materials or processes, infringes the IP Rights of any third party or misappropriates or in any way violates the rights of a third party;
5. a dispute between You and Your User or other party; and
6. a response by Tehama to a third party subpoena or other compulsory order or process in connection with a Claim described above.

Tehama will promptly notify You of any Claim, provided, however, that Tehama's failure to promptly notify will not affect Your obligations under this [section 6](#), except to the extent such failure materially impacts Your ability to defend the Claim. You may use counsel of Your choosing to assume the defense of any Claim, subject to Tehama Indemnitee(s)' written consent, and You may settle the Claim as You consider appropriate, subject to prior written consent of Tehama Indemnitee(s). Tehama Indemnitee(s) may also undertake the defense and settlement of a Claim at any time.

7. NO WARRANTIES.

The Service is provided "as is". Tehama makes no warranty or representations of any kind, whether express, implied, statutory or otherwise, regarding the Service, including any warranties that the Service will be uninterrupted, error free or free of harmful components, or that any content, including Your Content, will be secure or not lost or damaged. Except to the extent prohibited by law, Tehama and its Affiliates and licensors disclaim all warranties, representations, and conditions, including the implied warranties against infringement and the implied warranties of merchantability, fitness for a particular purpose, satisfactory quality or quiet enjoyment, and any warranties arising out of any course of dealing or usage of trade. Tehama does not make any warranty or accept any liability with respect to any third party content.

8. LIMITATION OF LIABILITY.

8.1. To the extent allowed by applicable law, except for a breach of Your obligations under [section 2](#) and Your indemnification obligations under [section 6](#) of this Agreement, neither party nor its Affiliates and their respective personnel, will be liable for

damages in the nature of expectation losses, indirect, special, reliance, incidental or consequential losses, or any loss of business profits, loss of data or other expected benefit or losses of any kind of any third party. Further, Tehama will not be liable for (a) any compensation, damages or reimbursement in connection with (i) Your inability to use the Service as a result of termination of this Agreement for any reason or suspension of Your access to the Service, (ii) as a result of discontinuation of the Service, or (iii) without limiting any obligations under the Service Level Agreement, any unanticipated or unscheduled downtime of all or portions of the Service for any reason; (b) the cost of procurement of substitute goods or services; (c) any investments, expenditures or commitments made by You in connection with this Agreement or Your use or access of the Service; and (d) any unauthorized access to, alteration of, or deletion, destruction, damage, loss or failure to store any of Your Content or other content or data.

8.2. Notwithstanding any other provision contained herein or elsewhere, except for a breach of Your obligations under [section 2](#) and Your indemnification obligations under [section 6](#) of this Agreement, neither You nor Tehama, its Affiliates and their respective personnel's total aggregate liability for any reason and upon any cause of action, whether in tort (including negligence), contract, or any other legal theory will at all times and in the aggregate be limited to the fees paid to Tehama by You for the use of the applicable Service during the 12 months preceding the incident giving rise to the claim. Multiple claims will not expand this limitation.

8.3. Each party acknowledges that the other has entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties set forth herein, and that the same form an essential basis of the bargain between the parties. This [section 8](#) will be given full effect even if any remedy specified in this Agreement is deemed to have failed in its essential purpose.

9. CONFIDENTIAL INFORMATION

During the term of this Agreement a party to this Agreement ("**Discloser**") may disclose to the other party ("**Recipient**") nonpublic technical, financial or business information in connection with the Service, which is either designated as confidential if disclosed in writing, or identified as confidential at the time of disclosure if disclosed orally, or which, given the nature of the information or the circumstances surrounding its disclosure, should reasonably be understood to be confidential ("**Confidential Information**"). In the case of Tehama, Confidential Information includes, but is not limited to: (a) nonpublic information relating to the Service, Tehama, its Affiliates, business partners, customers, business plans, promotional and marketing activities, finances and other business affairs; (b) third-party information that Tehama is obligated to keep confidential, including information about Hosting Provider's technology, if any is disclosed with authorization of Hosting Provider; and (c) the nature, content and existence of any discussions

between You and Tehama. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Recipient at the time of receipt from Discloser; (iii) received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (iv) can be shown by documentation to have been independently developed by Recipient without reference to Confidential Information of Discloser.

Recipient agrees that it will hold the Discloser's Confidential Information in confidence and that it will exercise reasonable care to protect the Discloser's Confidential Information from unauthorized disclosure, which standard of care will in no event be less than the Recipient takes to protect its own Confidential Information of a like nature. Recipient may use Confidential Information only in connection with the Service and may not disclose it to any third party, except to its employees, contractors, agents ("**Representatives**") and Representatives of its Affiliates who have a need to know in connection with the purpose of this Agreement, and provided such Representatives are bound by obligations of confidentiality at least as restrictive as those contained in this Agreement. Recipient's duty to hold Confidential Information in confidence expires five (5) years following termination of this Agreement. The expiration of the duty of confidentiality will not modify other restrictions on Recipient, including, for example, any restrictions under patent or copyright laws.

10. SUSPENSION

Tehama reserves the right to suspend Your access to and use of the Service (including access and use by any of Your Users) immediately upon notice to You if:

1. Your or any of Your User's use of the Service (i) poses a risk to the Service or any third party; (ii) may adversely impact the Service or the content of any other Tehama customer; (iii) may subject Tehama, its Affiliates or any third party to liability and/or (iv) may be fraudulent.
2. You, or any of Your Users authorized by You, are in breach of this Agreement, including if You are delinquent on Your payment obligations; or
3. You have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Your assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding. If Tehama suspends Your right to access or use the Service:
4. You remain responsible for all Fees and charges You have incurred through the date of suspension;
5. You remain responsible for any applicable data storage Fees and charges for in-process tasks completed after the date of suspension; and

6. Tehama will not erase any of Your Content as a result of Your suspension, except as specified elsewhere in this Agreement.

Tehama's rights under this [section 10](#) are in addition to our right to terminate this Agreement pursuant to [Section 11](#).

11. TERM AND TERMINATION.

11.1. Termination for Convenience. Except as otherwise set out in the applicable Order Form, You may terminate this Agreement for any or no reason, at any time by providing 30 days advance written notice or, if Tehama provides a closing mechanism, by closing Your Account. Tehama may terminate this Agreement for any reason by providing You 30 days advance notice.

11.2. Termination for Cause. Either party may terminate this Agreement for cause upon 10 days advance written notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 10 day notice period.

11.3. Termination by Tehama. Tehama may also terminate this Agreement upon prior written notice to You: (i) for cause, if any act or omission by You or any of Your Users results in a suspension described in [Section 10](#); (ii) if Tehama's relationship with a third party partner who provides software or other technology it uses to provide the Service expires, terminates or requires Tehama to change the way it provides the software or other technology as part of the Service; (iii) if Tehama believes providing the Service could create a substantial economic or technical burden or material security risk for Tehama; (iv) in order to comply with the law or requests of governmental entities; or (v) if Tehama determines use of the Service by You or any of Your Users or Tehama's provision of the Service to You or any of such Users has become impractical or unfeasible for any legal or regulatory reason.

11.4. Automatic Termination. This Agreement, including the License granted under [section 2.2](#), will automatically terminate if You or any of Your Users fail to comply with any term and condition of this Agreement.

11.5. Consequences of Termination.

Upon termination of this Agreement for any reason, all Your rights under this Agreement will terminate, and You remain responsible for the payment of all Fees and charges You have incurred up to and including the date of termination, and for any Fees and charges for additional tasks completed after the date of termination. In addition, You will immediately return or destroy, at Tehama's discretion, any Tehama Content in Your possession. If You terminate the Agreement for convenience, Your Subscription Plan will terminate at the end of the then current billing cycle. No refunds or prorated Fees are offered for terminating the Agreement prior to the end of a billing cycle.

11.6. Post-Termination Assistance. Unless we terminate Your use of the Service pursuant to [sections 11.2](#) or [11.3](#), for 5 days following termination:

11.6.1. Tehama will not erase any of Your Content as a result of the termination;

11.6.2. You may request assistance from the Concierge, as defined in the Description of Service Model document, to retrieve Your Content from the Service only if You have paid any and all other amounts due; and

11.6.3. You, if You are either the Gateway Owner or the Subscriber, may download a copy of the Recordings for Your internal business purposes only, or purchase storage services under the applicable Subscription Plan.

Any additional post-termination assistance from Tehama is subject to mutual agreement by You and Tehama.

12. GENERAL PROVISIONS.

12.1. High Risk Activities. You acknowledge that the Service is not intended for configuring, supporting or otherwise servicing on-line control equipment in hazardous environments requiring fail-safe performance, such as, but not limited to, nuclear facilities, aircraft navigation, aircraft communications systems, air traffic control, direct life support machines or weapons systems, in which failure of the products could lead directly to death, personal injury, or severe physical or environmental damage.

12.2. Force Majeure. If either party will be prevented from performing any portion of this Agreement by causes beyond its control, including denial-of service attacks, a failure by Hosting Provider, governmental regulations or controls, casualty, inability to obtain materials or services, or acts of God, such defaulting party will be excused from performance for the period of the delay and for a reasonable time thereafter.

12.3. Jurisdiction & Dispute Resolution. This Agreement is made in and is governed by the laws of Ontario, Canada. All disputes arising out of or in connection with the Agreement will finally be settled under the laws of Ontario, Canada. The language to be used in any proceedings will be English and the place of trial will be Ottawa, Ontario. The United Nations Convention for the International Sale of Goods does not apply to this Agreement. Prior to the commencement of any litigation, upon receipt of a notice of dispute, the parties will make reasonable efforts to resolve the dispute by good faith negotiations. If such good faith negotiations between the parties' initial representatives do not resolve the dispute after 10 business days, it shall be escalated to senior executives for further good faith negotiations. If the senior executives are unable to resolve the dispute within 10 business days, then either party may initiate

litigation. Notwithstanding the foregoing or any other provision in this Agreement or elsewhere, either party may seek a preliminary injunction, attachment or other judicial relief, if such action is necessary to avoid irreparable harm, preserve the *status quo* or preserve and protect the subject matter of the dispute. Despite such action, the parties will continue to participate in good faith dispute resolution negotiations as set out herein. If either party initiates legal proceedings to enforce a term of the Agreement, the prevailing party will be entitled to recover reasonable lawyers' fees and disbursements and reasonable experts' and other witness costs. **You and Tehama agree that any dispute resolution proceedings will be conducted on an individual basis and not in a class, consolidated or representative action.**

12.4. Survival of Terms. The provisions of this Agreement which by their nature extend beyond the termination of the Agreement will survive, including, but not limited to, [sections 2 \(Proprietary Rights and License Grant, except for the license grant under section 2.2\)](#), [3 \(Fees, Payment Terms and Taxes\)](#), [5 \(Your Responsibilities\)](#), [6 \(Indemnification\)](#), [7 \(No Warranties\)](#), [8 \(Limitation of Liability\)](#), [9 \(Confidential Information\)](#), [11.5 \(Consequences of Termination\)](#), [11.6 \(Post-Termination Assistance\)](#) and [12 \(General Provisions\)](#).

12.5. Waiver. No waiver of any right or remedy on one occasion by either party will be deemed a waiver of such right or remedy on any other occasion.

12.6. Entire Agreement. This Agreement (including the Policies) sets forth the entire agreement and understanding between the parties pertaining to the Service and merges all prior discussions between them on the same subject matter. Neither of the parties will be bound by any conditions, definitions, warranties, understandings or representations with respect to the Service other than as expressly provided in this Agreement. This Agreement will not be supplemented or modified by any course of dealing or trade usage. Tehama will not be bound by any term, condition or other provision that is different from or in addition to the provisions of this Agreement (whether or not it materially alters this Agreement) and which is submitted by You in any order, receipt, acceptance confirmation, correspondence or other document. This Agreement will prevail over any conflicting stipulations contained or referenced in any other document.

12.7. Modification of this Agreement. Tehama may modify this Agreement (including any Policies) at any time by posting a revised version on the Site, by asking You to click-thru the new version of the Agreement, or by otherwise notifying You in accordance with [section 12.9](#). The modified terms will become effective upon posting or, if Tehama notifies You by email, as provided in the email message. By continuing using the Service after the effective date of the modification of the Agreement, You agree to be bound by the modified terms. It is Your responsibility to regularly check for modifications to this Agreement.

12.8. Assignment. You may not assign this Agreement, or delegate any or all of Your rights (other than the right to receive payments) or Your duties or obligations hereunder without the prior written consent of Tehama. If consent is given, this Agreement will bind Your successors and

assigns. Any assignment or transfer in violation of this [section 12.8](#) will be void. Tehama may freely assign its rights, duties and obligations under this Agreement.

12.9. Notice. Unless otherwise agreed to by the parties, all notices required under this Agreement will be deemed effective when received in writing by either:

1. registered mail; or
2. certified mail, return receipt requested

In addition to the methods of notice above, Tehama may provide notice to You by (i) posting a notice on the Tehama Site; or (ii) sending an email to the email address associated with Your Service Account. You are responsible to keep Your email address current. Notice by this method will be deemed effective upon delivery, regardless of whether or not You received it.

12.10. Publicity. You agree to the use of Your company name and logo on the Site and in promotional marketing materials. You will not, without the prior written consent of Tehama, issue any press release or make any other public communication with respect to this Agreement or Your use of the Service. You will not misrepresent or embellish the relationship between Tehama and You (including by expressing or implying that Tehama supports, sponsors, endorses or contributes to You or Your business endeavors), or express or imply any relationship or affiliation between Tehama and any other person or entity, except as expressly permitted under this Agreement.

12.11. Severability. If any portion of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability will attach only to such portion which will be severed from this Agreement and will not affect or render invalid or unenforceable any other portions of this Agreement.

12.12. Import and Export Compliance. In connection with this Agreement, You and Tehama will comply with all applicable import, re-import, export and re-export control laws and regulations, including the Canadian Export and Import Permits Act, the US Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the US Office of Foreign Assets Control. For clarity, You are solely responsible for compliance related to the manner in which You choose to use the Service, including the transfer and processing of Your Content, the provision of Your Content to Your Users and the region in which any of the foregoing occur.

12.13. Independent Contractor. No partnership, joint venture, or agency relationship is created between Tehama and You by virtue of this Agreement.

12.14. No Third Party Rights. This Agreement is made solely for the benefit of the parties to the Agreement and their respective successors and permitted assigns, and no other person or entity will have or acquire any right by virtue of this Agreement unless otherwise agreed to by the parties hereto.

12.15. Audit. Upon forty-five (45) days written notice and no more than once every twelve (12) months, Tehama may, on behalf of itself and/or its licensors, audit Your use of Services to ensure Your use is in compliance with the terms of the Agreement. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to cooperate with Tehama's audit and to provide reasonable assistance and access to information reasonably requested by Tehama. The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of section 9 (Confidential Information) of the Agreement. If the audit identifies non-compliance, You agree to remedy (which may include, without limitation, the payment of any Fees for additional Services) such non-compliance within 30 days of written notification of that non-compliance. You agree that Tehama shall not be responsible for any of Your costs incurred in cooperating with the audit

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