

Meet us at RSAC 2024, where the world talks security→



Terms of Service

Effective date: January 1, 2023

Last review: October 31, 2023

1. USE OF SERVICE

1.1. Service Provision and Access; Client Software. Cerby will make the Service available to Customer for the Subscription Term solely for use by Customer and its Users in accordance with the terms and conditions of this Agreement, the Documentation, and the Order Form. Customer may permit its Contractors and Affiliates to be Users provided that any use of the Service by each such Contractor or Affiliate is solely for the benefit of Customer or such Affiliate. Customer shall be responsible for each User's compliance with this Agreement. To the extent use of a Service requires Customer to install Client Software, Cerby grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during the Subscription Term to use the object code form of the Client Software internally in connection with Customer's and its Affiliates' use of the Service, subject to the terms and conditions of this Agreement and the Documentation.

1.2. Affiliates. Customer Affiliates may purchase services from Cerby by executing an Order Form or SOW which is governed by the terms of this Agreement. This will establish a new and separate agreement between the Customer Affiliate and the Cerby entity signing such Order Form. If the Customer Affiliate resides in a different country than Customer, then the Order Form may include modifications to terms applicable to the transaction(s) (including but not limited to tax terms and governing law).

1.3. Compliance with Applicable Laws. Cerby will provide the Service in accordance with all laws and government regulations applicable to Cerby's business and operations, including, without limitation, those related to data privacy and data transfer, international communications, and the exportation of technical or personal data. Customer will access and use the Service in accordance with all laws and government regulations applicable to Customer's business and operations, including, without limitation, those related to data privacy and data transfer, international communications, and

the exportation of technical or personal data. Neither party assumes a duty of legal compliance on behalf of the other party.

1.4. Shared Accounts. The Service includes single-sign on (SSO), user permissioning, user sharing, activity tracking and reporting features and

Customer-designated Shared Accounts. Customer's use and/or procurement of Shared Accounts are solely at Customer's discretion and subject exclusively to terms and conditions entered into between Customer and the applicable Shared Account provider (including, but not limited to, providers of Shared Accounts ("Shared Account Provider"). Customer is solely responsible for complying with the terms and conditions of the Shared Account Provider pertaining to use of the Shared Account, including but not limited to, any limitations, restrictions or prohibitions on the sharing of account credentials, licenses, or usage for such Shared Accounts.

1.5. User Management. Without limiting Cerby's obligations to provide the Service in accordance with Cerby's security, confidentiality and data processing obligations of this Agreement, Customer understands and agrees that Customer, and not Cerby, shall be responsible for managing and monitoring the assignment, permission level, and other security policies applicable to all Users' access to and use of the Shared Accounts managed via the Service. To the extent that Customer elects to provide account sharing permissions for a Shared Account, Customer shall be responsible for informing Users and enforcing Customer's and the Shared Account Provider's policies and contractual limitations pertaining to the access to and use of the Shared Account.

1.6. General Restrictions. Customer will not (and will not permit any User or other third party within its control to): (1) sell, rent, lease, license, distribute, provide access to, sublicense, or otherwise make available the Service to a third party other than Users, or in a service bureau or outsourcing offering; (2) use the Service to provide, or incorporate any Service into, any general purpose shared account management service for the benefit of a third party; (3) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Service, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Cerby); (4) remove or obscure any proprietary or other notices contained in the Service; (5) use the Service to to store, transmit, or make available: (a) content that is infringing, libelous, unlawful, tortious, or in violation of third-party rights, (b) content or technology that harms, interferes with, or limits the normal operation of the Offerings, including monitoring traffic or data, or (c) viruses, malware, or other malicious code; (6) use the Service for illegal, threatening, or offensive uses, or for similarly objectionable purposes, including to circumvent or violate the Shared Account Provider's terms, conditions, or policies pertaining to use of the

Shared Accounts; (7) attempt to gain unauthorized access to the Service or Cerby's related systems, including those of Cerby's subcontractors and other customers or users; (8) copy the Service, or any part, feature, function or user interface thereof except as expressly allowed for Client

Service to build similar or competitive products or services; (10) provide Barred Data to Cerby or upload the same to the Service.

2. CUSTOMER DATA

2.1. Rights in Customer Data. As between the parties, Customer or its licensors retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data and any modifications made thereto in the course of the operation of the Service as provided by Cerby. Subject to the terms and conditions of this Agreement, Customer hereby grants to Cerby and its Affiliates a non-exclusive, worldwide, royalty-free right to process the Customer Data during a Subscription Term, solely to the extent necessary to provide the Service to Customer or as may be required by law.

2.2. Use Obligations.

(a) **In General.** Customer's use of the Service and all Customer Data will comply with this Agreement, applicable laws and government regulations. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer warrants that Customer has and will have sufficient rights in the Customer Data to grant the rights to Cerby under this Agreement and that the Customer Data will not violate the rights of any third party.

(b) **Business Contact Information.** To the extent that the parties share Business Contact Information under this Agreement with each other, such Business Contact Information shall be used by the recipient party solely in connection with the business relationship established by this Agreement, and as necessary to comply with applicable law. The parties agree to maintain updated and current any Business Contact Information that is necessary for the continuation of the business relationship (for example, the person is the contact to whom invoices are sent) or for Customer's or Users' use of the Service and/or the Shared Account managed via the Service. Business Contact Information is the Confidential Information of the party disclosing it hereunder.

2.3. Data Privacy. The parties shall comply with the [DPA](#).

3. SECURITY. The parties shall comply with the [Security Policy](#).

4. INTELLECTUAL PROPERTY

4.1. Cerby Technology. Customer agrees that Cerby and its licensors retain all right, title and interest (including all patent, copyright, trademark, trade

secret and other intellectual property rights) in and to the Service, all Documentation and Client Software, and any and all related and underlying technology and documentation; and any derivative works, modifications, or improvements of any of the foregoing, including any Feedback that may be

express limited rights in this Agreement, no right, title or interest in any Cerby Technology is granted to Customer. Customer acknowledges that the Service is offered as an online, hosted solution, and that Customer has no right to obtain a copy of the underlying computer code for any Service, except (if applicable) for the Client Software in object code format. Cerby may freely use and incorporate into Cerby's products and services any suggestions, enhancement requests, recommendations, corrections, or other feedback related to the features and functions of the Service that may be provided by Customer or by any Users ("Feedback"). Feedback as used by Cerby will never identify Customer or any User, nor be used in any manner that discloses Customer's Confidential Information, including any Business Contact Information.

4.2. Usage Data. Notwithstanding anything to the contrary in this Agreement, Cerby may collect and use Usage Data to develop, improve, support, and operate its products and services. Cerby may not share any Usage Data that includes Customer's Confidential Information with a third party except (i) in accordance with Section 5 (Confidential Information) of this Agreement, or (ii) to the extent the Usage Data is aggregated and anonymized such that Customer and Customer's Users cannot be identified.

4.3. Marketing. Cerby may use and display Customer's name, logo, trademarks, and service marks on Cerby's website and in Cerby's marketing materials in connection with identifying Customer as a customer of Cerby. Upon Customer's written request, Cerby will promptly remove any such marks from Cerby's website and cease further distribution of Cerby's marketing materials containing Customer's name or logo.

5. CONFIDENTIALITY. Each party ("Receiving Party") will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the other party ("Disclosing Party") for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If Receiving Party is required by law or court order to disclose Confidential

Information, then Receiving Party shall, to the extent legally permitted, provide Disclosing Party with advance written notification and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential

not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

6. FEES AND PAYMENT; TAXES; PAYMENT DISPUTES

6.1. Fees and Payment. All Fees and payment terms are as set forth in the applicable Order Form. If no payment terms are set forth in the Order Form, then the payment term is thirty (30) days from receipt of invoice. Except as expressly set forth in this Agreement, all payment obligations are non-cancelable and Fees are non-refundable. If Customer issues a purchase order upon entering into an Order Form, then: (i) any such purchase order submitted by Customer is for its internal payment processing purposes only, and Cerby rejects, and in the future is deemed to have rejected, any purchase order terms to the extent they add to or conflict with this Agreement or the applicable Order Form and such additional or conflicting terms will have no effect, (ii) such invoice shall be for the Fees owing under the applicable Order Form, and (iii) at Customer's request, Cerby will reference the purchase order number on its invoices (solely for administrative convenience).

6.2. Taxes. Fees do not include Taxes. Customer is responsible for paying all Taxes associated with its purchases hereunder including without limitation all use or access of the Service by its Users. If Cerby has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, Cerby will invoice Customer and Customer will pay that amount unless Customer provides Cerby with a valid tax exemption certificate authorized by the appropriate taxing authority. Taxes will not be deducted from payments to Cerby, except as required by applicable law, in which case Customer will increase the amount payable as necessary so that, after making all required deductions and withholdings, Cerby receives and retains (free from any liability for Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made. Upon Cerby's request, Customer will provide to Cerby its proof of withholding tax remittance to the respective tax authority. Where applicable, Customer will provide its VAT/GST Registration Number(s) on the Order Form to confirm the business use of the ordered services.

6.3. Payment Disputes. Cerby will not exercise its rights under Section 7.2 (Termination for Cause) or Section 7.5(a) (Suspension of Service) with respect to non-payment by Customer if Customer is disputing the

applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. If the parties are unable to resolve such a dispute within thirty (30) days, each party shall have the right to seek any remedies it may have under this Agreement, at law or in equity, irrespective

any undisputed amounts must be paid in full.

7. TERM AND TERMINATION

7.1. Term. This Agreement is effective as of the Effective Date and will remain in effect until terminated in accordance with the termination provisions hereunder. If there is no Order Form or Retrieval Right currently in effect, either party may terminate this Agreement upon written notice to the other party. Each Order Form will terminate upon expiration of the applicable Subscription Term, unless expressly stated otherwise therein or in this Agreement.

7.2. Termination for Cause. Either party may terminate this Agreement (including all related Order Forms) if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay Fees) within thirty (30) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party and is not dismissed within ninety (90) days. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise. For any termination of this Agreement by Customer for cause in accordance with Section 7.2(a), Customer shall be entitled to a refund of any unused Fees that Customer has pre-paid for the Service purchased hereunder.

7.3. Effect of Termination; Customer Data Retrieval. Upon written notice to Cerby, Customer will have up to thirty (30) calendar days from termination or expiration of this Agreement to access the Service solely to the extent necessary to retrieve Customer Data ("Retrieval Right"). If Customer exercises its Retrieval Right, this Agreement and the applicable Order Form shall continue in full force and effect for the duration of the Retrieval Right. Cerby shall have no further obligation to make Customer Data available after termination of this Agreement and shall thereafter promptly delete Customer Data. After the Retrieval Right period, Customer will have no further access to the Service or Customer Data therein, and shall cease use of and access to the Service (including any related Cerby Technology) and delete all copies of Client Software, Documentation, any Service passwords or access codes, and any other of Cerby's Confidential Information in its possession.

7.4. Survival. The following Sections will survive any expiration or termination of this Agreement: 1.5 (General Restrictions), 4 (Intellectual Property), 5 (Confidentiality), 6.1 (Fees and Payment), 6.2 (Taxes), 7 (Term and Termination), 8.2 (Warranty Disclaimer), 11 (Indemnification), 12

(Definitions).

7.5. Suspension of Service. In addition to any of its other rights or remedies (including, without limitation, any termination rights) set forth in this Agreement, Cerby reserves the right to suspend provision of the Service; (a) if Customer is thirty (30) days or more overdue on an undisputed payment, (b) if Cerby deems such suspension necessary as a result of Customer's breach of Section 1.5 (General Restrictions), (c) if Cerby reasonably determines suspension is necessary to avoid material harm to Customer, Cerby or Cerby's other customers, including if the Service is experiencing denial of service attacks, mail flooding, or other attacks or disruptions outside of Cerby's control, or (d) as required by law or at the request of governmental entities. To the extent reasonably feasible given the nature of the issue giving rise to the suspension Cerby will (i) notify Customer in advance of a suspension, (ii) attempt to limit the suspension to the affected Users or Service functionality, and (iii) immediately restore access to the Service as soon as the issue giving rise to the suspension has been resolved.

8. WARRANTY

8.1. Service Warranty. Cerby warrants that: (a) the Service will operate in substantial conformity with the applicable Documentation and (b) Support and Technical Services will be provided in a professional and workmanlike manner and substantially in accordance with the specifications in the applicable Order Form. If Cerby is not able to correct any reported non-conformity with this warranty, either party may terminate the applicable Order Form, and Customer, as its sole remedy, will be entitled to receive a refund of any unused Fees that Customer has pre-paid for the applicable Service or Technical Services purchased thereunder. This warranty will not apply if the error or non-conformance was caused by misuse of the Service or Deliverables, modifications to the Service or Deliverables by Customer or any third-party, or if the issue originates with the Shared Account or Shared Account Provider or any third-party hardware, software, or services not provided by Cerby (or its licensors) that are used in connection with the Service. This warranty will not apply unless Customer provides written notice of a warranty claim within thirty (30) days after first becoming aware of the warranty breach, and unless Customer affords Cerby a reasonable opportunity of no more than thirty (30) days to cure said breach.

8.2. Mutual Warranty. Each party warrants that it has validly entered into

this Agreement and has the legal power to do so.

8.3. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICE, THE CLIENT SOFTWARE, SUPPORT AND ALL TECHNICAL SERVICES AND SUPPORT ARE PROVIDED “AS IS” AND CERBY

OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. CERBY DOES NOT WARRANT THAT THE USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES CERBY WARRANT THAT IT WILL REVIEW THE CUSTOMER DATA FOR ACCURACY.

9. SUPPORT AND AVAILABILITY. During a Subscription Term, Cerby will provide Customer with Support in accordance with the [Support Policy](#).

10. TECHNICAL SERVICES.

10.1. Provision of Technical Services. Cerby will perform the Technical Services for Customer as set forth in each applicable Order Form, subject to the terms and conditions of the Agreement. The Cerby personnel that Cerby assigns to perform the Technical Services will be professional and qualified in the performance of the applicable Technical Services. If Customer, in its reasonable judgement, believes that Cerby personnel assigned to a project does not meet the requirements in this Section, Cerby will in good faith discuss alternatives and will replace Cerby personnel as reasonably necessary.

10.2 Assistance. Customer acknowledges that timely access to applicable Customer Materials (defined below), resources, personnel, equipment or facilities is necessary for the provision of Technical Services. Customer agrees to provide such access and to reasonably cooperate with Cerby during a Technical Services project. Cerby will have no liability for any delay or deficiency to the extent resulting from Customer’s breach of its obligations under this Section 10.

10.3 Customer Materials. Customer hereby grants Cerby a limited right to use any materials provided to Cerby in connection with Technical Services projects (“Customer Materials”) solely for the purpose of providing Technical Services to Customer. Customer will retain any of its rights (including all intellectual property rights) in and to the Customer Materials. Cerby will treat Customer Materials subject to the confidentiality obligations under Section 5 (Confidentiality). Customer warrants that Customer has and will have sufficient rights in the Customer Materials to grant the rights to Cerby under this Agreement and that the Customer Materials will not violate the rights of any third party rights.

10.4 License to Deliverables. The Technical Services that Cerby performs (e.g., providing guidance on configuring the Service), and the resulting Deliverables are generally applicable to Cerby’s business and are part of the

Cerby Technology. Subject to the terms and conditions of the Agreement (including the restrictions in Section 1.6 (General Restrictions)), Cerby hereby grants Customer a limited, non-exclusive, royalty-free, non-transferable worldwide license to use the Deliverables internally solely in

Term. The parties may mutually agree to Order Forms with additional terms and restrictions related to the use of Deliverables provided as part of that project, in which case those terms and restrictions will also apply for purposes of those Deliverables only.

10.5 Change Orders; Other Terms. Customer may submit written requests to Cerby to change the scope of Technical Services under an existing Order Form. Cerby will promptly notify Customer if it believes that the requested change requires an adjustment to the fees, schedule, assumptions or scope for the performance of the Technical Services. Neither party is bound by a change request unless agreed in writing by both parties pursuant to a mutually executed amendment or change order (a "Change Order"). Cerby will continue to perform Technical Services pursuant to the existing Statement of Work unless the parties mutually agree to such amendment or change order. Cerby may use subcontractors to deliver Technical Services but will remain responsible for their performance of those Technical Services under the the applicable terms and conditions of this Agreement.

11. INDEMNIFICATION

11.1. Indemnification by Cerby. Cerby will defend Customer against any claim by a third party alleging that the Cerby Terchnology, when used in accordance with this Agreement, infringes any intellectual property right of such third party and will indemnify and hold harmless Customer from and against any damages and costs awarded against Customer or agreed in settlement by Cerby (including reasonable attorneys' fees) resulting from such claim. If Customer's use of the Cerby Technology results (or in Cerby's opinion is likely to result) in an infringement claim, Cerby may either: (a) substitute functionally similar products or services; (b) procure for Customer the right to continue using the Cerby Technology; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement, or the applicable Order Form and refund to Customer the unused Fees that Customer has pre-paid for the applicable Cerby Technology. The foregoing indemnification obligation of Cerby will not apply to the extent the applicable claim is attributable to: (1) the modification of the Cerby Technology by any party other than Cerby or its representatives, or based on Customer's specifications or requirements; (2) the combination of the Cerby Technology with products or processes not provided by Cerby; (3) any use of the Cerby Technology in non-conformity with this Agreement or the Shared Account Provider's terms for the Shared Accounts; or (4) any

action arising as a result of Customer Data, Barred Data, or any deliverables or components not provided by Cerby. This Section sets forth Customer's sole remedy with respect to any claim of intellectual property infringement.

11.2. Indemnification by Customer. Customer will defend Cerby against any

to the extent the third party claim caused by Cerby's breach of this Agreement), Barred Data, Customer Materials, Customer's activity under a Shared Account, or any Customer-offered product or service marketed by means of the Shared Account, and will indemnify and hold harmless Cerby from and against any damages and costs awarded against Cerby or agreed in settlement by Customer (including reasonable attorneys' fees) resulting from such claim.

11.3. Indemnification Procedures. In the event of a potential indemnity obligation under this Section 11, the indemnified party will: (i) promptly notify the indemnifying party in writing of the claim, (ii) allow the indemnifying party the right to control the investigation, defense and settlement (if applicable) of such claim at the indemnifying party's sole cost and expense, and (iii) upon request of the indemnifying party, provide all necessary cooperation at the indemnifying party's expense. Failure by the indemnified party to notify the indemnifying party of a claim under this Section 11 shall not relieve the indemnifying party of its obligations under this Section 11, however the indemnifying party shall not be liable for any litigation expenses that the indemnified party incurred prior to the time when notice is given or for any damages and/or costs resulting from any material prejudice caused by the delay or failure to provide notice to the indemnifying party in accordance with this Section. The indemnifying party may not settle any claim that would bind the indemnified party to any obligation (other than payment covered by the indemnifying party or ceasing to use infringing materials), or require any admission of fault by the indemnified party, without the indemnified party's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed. Any indemnification obligation under this Section 11 will not apply if the indemnified party settles or makes any admission with respect to a claim without the indemnifying party's prior written consent.

12. LIMITATION OF REMEDIES AND DAMAGES.

EXCEPT AS TO "EXCLUDED CLAIMS," TO THE MAXIMUM EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:

(A) NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, INTERRUPTION OF BUSINESS, COSTS OF DELAY, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, PUNITIVE, EXEMPLARY

OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE;

(B) SUBJECT TO SUBSECTION (C) BELOW, EACH PARTY'S AND ITS AFFILIATES' TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES

ANY TYPE), SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER TO CERBY IN THE PRIOR 12 MONTHS UNDER THE APPLICABLE ORDER FORM(S) OR SOW TO WHICH SUCH LIABILITY RELATES ("**GENERAL LIABILITY CAP**");

(C) IN THE CASE OF "HEIGHTENED LIABILITY CLAIMS," EACH PARTY'S AND ITS AFFILIATES' TOTAL LIABILITY TO THE OTHER PARTY AND ITS AFFILIATES FOR ALL CLAIMS IN THE AGGREGATE (FOR DAMAGES OR LIABILITY OF ANY TYPE) SHALL NOT EXCEED THE GREATER OF ONE MILLION U.S.D. (\$1,000,000.00 U.S.D) OR THREE TIMES (3X) THE "GENERAL LIABILITY CAP";

(D) IN NO EVENT SHALL EITHER PARTY (OR ITS RESPECTIVE AFFILIATES) BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL LIABILITY CAP AND THE HEIGHTENED LIABILITY CLAIMS CAP. SIMILARLY, THOSE CAPS SHALL NOT BE CUMULATIVE; IF A PARTY (AND/OR ITS AFFILIATES) HAS ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE HEIGHTENED LIABILITY CLAIMS CAP;

(E) THE PARTIES AGREE THAT THIS SECTION 12 WILL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

13. GENERAL TERMS

13.1. **Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in its entirety in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of such party's assets or voting securities to such party's successor; or to any Affiliate. Each party shall promptly provide notice of any such assignment. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section will be null and void.

13.2. **Severability; Interpretation.** If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable or invalid, that provision will be limited to the minimum extent necessary so that this Agreement will otherwise remain in effect. Section headings are inserted for convenience only and shall not affect the construction of the agreement.

13.3. Dispute Resolution. Each party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth below) it shall provide written notice to the other party of the specific issue(s) in dispute (and reference the relevant provisions of the contract between the

such notice, knowledgeable executives of the parties shall hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith, to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section shall not apply to claims subject to indemnification under Section 11 (Indemnification) or prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

13.4. Governing Law; Jurisdiction and Venue; Cerby Affiliate. This Agreement will be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods; and (ii) the jurisdiction and venue for actions related to the subject matter hereof will be the state and federal courts located in San Francisco, California and both parties hereby submit to the personal jurisdiction of such courts. While the Cerby entity contracting with Customer or the Customer Affiliate remains fully liable and responsible for all Cerby obligations under this Agreement, the parties acknowledge that certain obligations under this Agreement may be fulfilled by other Cerby's Affiliates, including, but not limited to, Cerby Inc.

13.5. Notice. Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth in this Agreement or at such other address as may be given in writing by either party to the other in accordance with this Section and will be deemed to have been received by the addressee: (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch; (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail; or (iv) if given by email, immediately upon receipt. Notwithstanding the foregoing, except for notices pertaining to non-payment and except as otherwise expressly permitted in this Agreement or in an Order Form, notices related to termination of this Agreement or any claims (including without limitation breach, warranty or indemnity) may not be given via email. Email notifications to Cerby shall be

to legal@cerby.com.

13.6. Amendments; Waivers. No supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement, except as

to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No terms or conditions stated in a purchase order, vendor onboarding process or web portal, or any other Customer order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void, notwithstanding any language to the contrary therein, whether signed before or after this Agreement.

13.7. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Cerby may change and update any Service (in which case Cerby may update the applicable Documentation accordingly), subject to the warranty in Section 8.1 (Service Warranty). **13.8. Third Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.

13.9. Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) if the delay or failure results from any cause beyond such party's reasonable control, including but not limited to acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, public health emergencies (including pandemics and epidemics), acts or orders of government, acts of terrorism, or war.

13.10. Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent and neither party's employees are eligible for any form or type of benefits, including, but not limited to, health, life or disability insurance, offered by the other party to its employees.

13.11. Export Control. Each party agrees to comply with all export and import laws and regulations of the United States and other applicable jurisdictions. Without limiting the foregoing, (i) each party represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to

a U.S. government embargo or that has been designated by the U.S. government as a “terrorist supporting” country, (ii) Customer will not (and will not permit any third parties to) access or use any Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer will

International Traffic in Arms Regulations.

13.12. Federal Government End Use Provisions. Cerby provides the Service, including all related software and, to the extent applicable the Cerby Technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Cerby to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

13.13. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement.

14. DEFINITIONS

“Account” means Customer’s account in the applicable Service in which Customer stores and processes Customer Data.

“Affiliate” means an entity that, directly or indirectly, owns or controls, is owned or is controlled by, or is under common ownership or control with a party. As used herein, “control” means the power to direct the management or affairs of an entity and “ownership” means the beneficial ownership of more than fifty percent (50%) of the voting equity securities or other equivalent voting interests of an entity.

“Barred Data” means personally-identifiable information (other than Business Contact Information) that consists of: (i) government-issued identification number of any kind, (ii) health, genetic, biometric record or data, (iii) personal financial or bank account number, credit or debit card number, with or without any required security code, access code or any personal identification number or password that would permit access to the individual's financial account, (iv) any employee or human resources records, (v) any consumer or household data of any kind.

“Business Contact Information” means either Customer’s or Cerby’s (or

their Affiliates') employee or contractor business contact information that is provided by one party to the other, which may consist of, in the providing party's sole discretion, an employee or contractor's name, business title, business phone number, business email address and business office

"Client Software" means any desktop client software included in the applicable Service that is made available to Customer by Cerby for installation on end user computers.

"Confidential Information" means all information that is identified as confidential at the time of disclosure by the Disclosing Party or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. All Customer Data will be deemed Confidential Information of Customer without any marking or further designation. All Cerby Technology and the terms and conditions of this Agreement will be deemed Confidential Information of Cerby without any marking or further designation. Confidential Information shall not include information that the Receiving Party can demonstrate: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

"Contractor" means the independent contractors and consultants permitted by Customer to serve as Users of the Service.

"Customer Data" means any data or data files of any type that are uploaded by or on behalf of Customer to the Service, excluding Barred Data.

"Heightened Liability Claims" means any claims arising from either party's indemnification obligations under Section 11 (Indemnification), or a party's breach of Section 2.3 (Data Privacy), Section 3 (Security), or Section 5 (Confidentiality), where such breach results in the unauthorized disclosure of Customer Data, or breach of Section 2.2 (Use Obligations).

"Deliverables" means the guides, training materials, or other deliverables that Cerby provides to Customer in connection with Technical Services.

"Deliverables" does not include any separate tools, scripts, templates, SDKs, documentation, APIs, or methodologies used by Cerby to prepare the Deliverables.

"Documentation" means Cerby's technical documentation and usage guides for the applicable Service made available by Cerby.

"DPA" means the Customer Data Processing Addendum located at the URL <https://www.cerby.com/dpa/> and incorporated herein by this reference.

"Excluded Claims" means (a) a party's breach of its obligations in Section 5

(Confidential Information) (but excluding obligations and/or claims relating to Customer Data); (b) liability which, by law, cannot be limited.

"Fees" means the fees payable by Customer for the applicable Service or Technical Services, as set forth in an Order Form.

Customer and Cerby which specifies the Service or Technical Service being provided by Cerby and that is governed by this Agreement.

"Security Policy" means the Cerby Security Policy located at the URL <https://www.cerby.com/security/> and incorporated herein by this reference.

"Service" means the Cerby software-as-a-service offering made generally available and ordered by Customer as set forth in an Order Form.

"Subscription Term" means the set term designated on an Order Form.

"Support Policy" means the Cerby Support Policy located at the URL <https://www.cerby.com/support/> and incorporated herein by this reference.

"Taxes" means taxes, levies, duties or similar governmental assessments of any nature, including, for example, any sales, use, GST, value-added, withholding, or similar taxes, whether domestic or foreign, or assessed by any jurisdiction, but excluding any taxes based on net income, property, or employees of Cerby.

"Technical Services" shall mean the consulting, configuration or other professional services provided by Cerby to Customer under an Order Form.

"Shared Accounts" means third party accounts or subscriptions held by Customer (including, by way of illustration but not limitation, social media accounts on Facebook, Instagram, Twitter, or other applications).

"Usage Data" means query logs, and any data (other than Customer Data) relating to the operation, support and/or about Customer's use of the Service.

"User" means the persons designated and granted access to the Service by or on behalf of Customer, including its and its Affiliates' Contractors.

"VAT/GST Registration Number" means the value added tax/GST registration number of the business location(s) where Customer is legally registered and the ordered services are used for business use.



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