



## Coda Enterprise Subscription Terms and Conditions

These Enterprise Terms and Conditions (the “**Terms**” and, collectively with any and all Order Forms, the “**Agreement**”) by and between and Coda Project, Inc. (“**Coda**”) and the party subscribing for use of the Coda Platform (“**Customer**”) shall be effective when executed in conjunction with one or more order forms, purchase orders, or other ordering documents (an “**Order Form**”). Coda and Customer may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.” Coda is a provider of enterprise productivity and collaboration solutions as described in the applicable Order Form (the “**Coda Platform**” or the “**Services**”).

### 1. Rights and Responsibilities of Coda.

1. **Coda Platform.** Coda will host and maintain the Coda Platform, on servers operated and maintained by or at the direction of Coda.
2. **Deployment.** Coda will electronically host the Coda Platform and provide to Customer’s designated contact a notification by email containing credentials and a key to access the Coda Platform. Subscriptions commence when we make the Services available to you and continue for the term set forth in the Services interface (typically located in your Account page or dashboard) or as set forth in the Order Form, as applicable (the “**Subscription Period**”).
3. **Right to Monitor.** Coda will have the right to review and monitor all use of the Coda Platform to ensure compliance with the terms of this Agreement.

### 2. Responsibilities of Customer.

1. **Set-Up.** Customer will cooperate in setting up the Coda Platform as reasonably requested by Coda. Customer shall maintain accurate and up-to-date account credentials and contact and notice information.
2. **Access.** Customer will be responsible for obtaining and maintaining, at Customer’s expense, all the necessary computer hardware, software, modems, connections to the internet and other items required to access the Coda Platform.

### 3. Access to the Coda Platform.

1. **Grant.** Subject to the terms and conditions of this Agreement, during the applicable Subscription Period, Coda grants to Customer and its designated users (“**Users**”), on a limited, non-exclusive, non-transferable, worldwide basis, a license to access to and use of the Coda Platform for its internal business purposes, for the quantity and type of Users subscribed to on the Order Form (“**User Seats**”). Each User must have its own unique user account and may not share its user account with any other person. Upon written notice to Coda, Customer may permit its Affiliates to use the Coda Platform, in which case the Affiliate will be considered “Customer” hereunder for purposes of such Affiliate’s use. Customer is responsible for all of the acts or omissions of its Users (including employees and contractors of Customer), and any Affiliates and its and their respective Users. For purposes of this Agreement, “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with Customer, where “**control**” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise, to use the Coda Platform.
2. **Use Restrictions.** Except to the extent expressly permitted in this Agreement, Customer and its Affiliate(s) will not, and will not permit any third party to: (i) use the Coda Platform; (ii) modify or create any derivative work of any part of the Coda Platform; (iii) market, sublicense, publish, distribute, reproduce,



assign, transfer, rent, lease or loan the Coda Platform; (iv) decompile, reverse engineer, disassemble or otherwise determine or attempt to determine source code (or the underlying ideas, algorithms, structure or organization) of any object code contained in the Coda Platform; or (v) use the Coda Platform for commercial time-sharing or service bureau use.

3. **Reservation of Rights.** Coda reserves all rights to the Coda Platform not otherwise expressly granted in this Section 3.

#### 4. **User Content.**

1. **License to User Content.** In connection with Customer's use of the Coda Platform, Customer may upload and/or create certain content to and through the Coda Platform (the "**User Content**"). As between Coda and Customer, Customer owns and retains any and all rights to User Content and no ownership rights are transferred to Coda under this Agreement. Customer hereby grants to Coda, and represents and warrants that Customer has all rights necessary to grant, a non-exclusive, royalty-free, sublicensable right to host, process, store, display, perform, analyze, use, reproduce, transmit, archive, and make derivative works of User Content in order to operate the Coda Platform and provide the Services to Customer.
2. **Customer's Responsibilities for User Content.** Customer represents and warrants that: (i) it has obtained and/or created the User Content lawfully, and the User Content does not and will not violate any applicable laws or any person's or entity's proprietary or intellectual property rights; (ii) the User Content is free of all viruses, Trojan horses, and other elements that could interrupt or harm the Coda Platform; (iii) Customer is solely responsible for ensuring compliance with all privacy laws in all jurisdictions that may apply to User Content provided hereunder; (iv) Coda may host, use, process, transmit, and otherwise exercise any license and rights to User Content granted hereunder without liability or cost to any third party; and (v) the User Content complies with the terms of Coda's publishing and acceptable use policies.
3. **Account and Usage Data.** User Content does not include log-in credentials, billing information and other User account information processed in connection with providing the Coda Platform and Services ("**Account Data**"), nor does User Content include usage data, analytics, error resolution data, or any other data relating to the operation, use and/or performance of the Coda Platform ("**Usage Data**"). Account Data, which may include information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular natural person (such information, "**Personal Data**") and Usage Data is processed by Coda in accordance with its Privacy Policy which is currently located at <https://coda.io/trust/privacy>.
4. **Publishing.** From time to time, Customer may, in its sole discretion, elect to make certain User Content publicly available on the Coda Platform, including in the form of published documents, templates, websites, forms, and surveys (collectively, "**Published Content**"). Any Published Content must comply with Coda's Publishing Policies (currently available at <https://coda.io/publishing-policies>). With respect to Published Content, Customer hereby grants to Coda a perpetual, irrevocable, fully transferable and sublicensable (through multiple tiers), worldwide, non-exclusive, royalty-free license: (i) to reproduce, electronically distribute, transmit, have transmitted, perform, display, store, and archive any Published Content; and (ii) to make, have made, copy, modify, make derivative works of, use, sell, import, and otherwise distribute any such Published Content under all applicable laws and to permit others to do the same.
5. **Security.** Coda will maintain appropriate technical, organizational, and administrative safeguards for protecting the confidentiality and integrity of User Content in accordance with the Coda Security Annex made available at <http://coda.io/trust/securityannex> ("**Coda Security Annex**").



6. **Data Processing Addendum.** To the extent that: (i) User Content contains any Personal Data that is subject to Applicable Data Protection Laws (including the GDPR, UK Data Protection Laws, or the CCPA) and (ii) Coda Processes such Personal Data on behalf of Customer, the provisions of the [Data Processing Addendum](#) (“DPA”) shall apply to the Processing of such Personal Data. For the purposes of this Section 4.6, the terms "Personal Data", "Process", "Applicable Data Protection Laws", "GDPR", "UK Data Protection Laws" and "CCPA" have the meanings given to them in the DPA.

## 5. Payment; Taxes.

1. **Payment Terms.** If Customer purchases a subscription to use the Services, fees are specified through the Services interface or in the Order Form(s) and must be paid in advance. Upon execution or acceptance of any applicable Order Form, Coda will invoice Customer for Subscription Fees on an upfront basis for the relevant Subscription Period. Coda will also invoice Customer for any applicable True-Up Fees for the remainder of the Subscription Period, as may be further described in an applicable Order Form. Payment obligations are non-cancelable, and fees paid are non-refundable. For clarity, in the event Customer downgrades any subscriptions from a paid plan to a free plan, Customer will remain responsible for any unpaid fees under the paid plan, and Services under the paid plan will be deemed fully performed and delivered upon expiration of the initial paid plan subscription term. If Customer pays for the Services via invoice, full payment must be received within thirty (30) days from the invoice date. Overdue payments will be subject to interest at the rate of 1.5% per month, or the maximum allowable under applicable law, whichever is less.
2. **Taxes.** Fees are stated exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, “Taxes”). Customer will be responsible for paying all Taxes associated with Customer’s purchases, except for those taxes based on Coda’s net income.
3. **Billing Policies.** Customer agrees to the pricing communicated by Coda in the Order Form(s) or otherwise as part of the Services. If pricing is communicated to Customer through the Services interface, Coda may add new services for additional fees and charges, or add or amend fees and charges for existing services, at any time in Coda’s sole discretion, by giving Customer at least 30 days’ written notice (to the extent applicable), such increase to take effect at the beginning of the next billing cycle. In certain circumstances, Coda may be required to modify fees based on direction from a third party, in which case, Coda will use commercially reasonable efforts to notify Customer within such period. If Customer does not wish to accept the price increase, Customer may give notice to terminate the Agreement, by giving at least 30 days’ written notice to Coda, such notice to expire no later than the end of the then-current billing cycle. The fees will not increase during the notice period; otherwise, any change to such pricing shall become effective in the billing cycle following notice of such change as provided under the Agreement. If pricing is communicated to you through an Order Form, Subscription Fees are subject to change upon the first day of any Renewal Period. The access granted in this Agreement will not extend to the use of the Coda Platform beyond the specific programs or modules, or number of User Seats, authorized and paid for in accordance with the Services interface, Order Form or added in connection with True Ups. Coda reserves the right to limit, suspend, disable access to, or terminate, in part or in whole, your Account or your documents, or bill you for additional fees, in the event that you are (or are reasonably suspected of) abusing, misusing, exploiting, or otherwise circumventing any billing or pricing policy mechanics or features or functionality of the Coda Platform (including with respect to free or unpaid accounts,





evaluations, trials, betas, account credits, or Maker billing). Notwithstanding the foregoing, billing of Packs purchased through the Services are governed by the [Packs Ecosystem Terms](#).

4. **Payment Information.** Customer represents and warrants that: (a) any account, order, and payment method information Customer supplies to Coda or our service provider(s), as applicable, is true, correct, and complete; (b) Customer is duly authorized to use such payment method; (c) Customer will pay any charges that it incurs in connection with the Services, including any applicable taxes; (d) charges incurred by Customer will be honored by Customer's payment method company; (e) Customer will pay all charges incurred by it at the posted prices, including all applicable taxes, if any; (f) Customer will not allow anyone else to use its subscription; (g) Customer will not transfer its subscription or password to anyone else; and (h) Customer will report to Coda any unauthorized or prohibited access or use of its subscription or password.

If any of Customer's account, order, or payment method information changes, Customer agrees to promptly update this information, so that Coda or our service provider(s) may complete Customer's transactions and contact Customer as needed. Coda is not liable for any unauthorized use of Customer's credit card, debit card, or other payment method by a third-party in connection with Customer's use of the Services.

6. **Intellectual Property Rights; Ownership.** For purposes of this Agreement, "**Intellectual Property Rights**" means all rights in, to, or arising out of: (i) any U.S., international or foreign patent and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof; (ii) inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data; (iii) copyrights, copyright registrations, mask works, mask works registrations, software, moral rights, trademarks, and rights of personality, privacy and likeness, whether arising by operation of law, contract, license or otherwise; and (iv) any other similar or equivalent proprietary rights anywhere in the world. As between Customer and Coda, Customer will retain all right, title and interest in and to the User Content and all Intellectual Property Rights therein. As between Customer and Coda, Coda will retain all right, title and interest in and to the Coda Platform, the Services, Usage Data, and any derived analytics, statistics and other data derived from User Content in aggregate or de-identified form, and any changes, corrections, bug fixes, enhancements, updates and other modifications thereto, and all Intellectual Property Rights therein, and as between the Parties, all such rights will vest in and be assigned to Coda.

## 7. **Developers; Packs Ecosystem.**

1. **Developer Platform.** As part of the Coda Platform, Customer may have access to Coda's developer tools and platform, including Coda's application programming interface(s) ("**API**"), API keys, command line tools, sample code, access tokens, software development kits, and other related tools as may be made available by Coda from time to time (collectively, the "**Developer Platform**"). The Developer Platform is part of the Coda Platform and Customer's use of the Developer Platform is subject to the additional terms set forth in the Developer Terms, which are available at [coda.io/trust/developer](https://coda.io/trust/developer), as may be modified by Coda from time to time, and are incorporated by reference into this Agreement.
2. **Packs Ecosystem.** As part of Customer's use of the Coda Platform, Customer may have access to third-party platforms, apps, services, applications, integrations, code, plugins, content, or extensions ("**Third-Party Products**"), including Coda packs ("**Packs**"). Third-Party Products may be made available to Customer via a marketplace, Coda's Gallery, or such other methods or venues as Coda may designate from time to time. Customer acknowledges and agrees that its download, installation, enablement, or use of any such Third-Party Products is at its own discretion and by doing so, Customer authorizes Coda to





provide, process, and transmit User Content, which may include Personal Data and Account Data and credentials, as requested by the developer or provider of the Third-Party Products, including, for purposes of enabling the developer or provider thereof to support, troubleshoot, and/or debug any issues with the applicable Third-Party Products. From time to time, Packs may be offered on a free or discounted basis to enable users to trial the Pack. Coda reserves the right to suspend or disable any such trials or discounts in the event that Coda reasonably suspects or confirms any abuse or exploitation of the benefits of such trials.

3. **Third-Party Products Disclaimer.** EXCEPT WITH RESPECT TO PACKS DEVELOPED BY CODA, THIRD-PARTY PRODUCTS ARE DEVELOPED BY THIRD PARTIES AND CUSTOMER'S USE OF ANY SUCH THIRD-PARTY PRODUCTS IS GOVERNED BY CUSTOMER'S SEPARATE AGREEMENT WITH THE DEVELOPER OR PROVIDER THEREOF. IN THE CASE OF PACKS, IN THE EVENT THAT DEVELOPER DOES NOT CHOOSE TO PROVIDE A SEPARATE AGREEMENT, THE DEFAULT EULA WITH THE DEVELOPER WILL CONTROL. CODA DOES NOT ENDORSE, WARRANTY, GUARANTEE, OR ASSUME RESPONSIBILITY FOR SUCH THIRD-PARTY PRODUCTS, INCLUDING THAT SUCH THIRD-PARTY PRODUCTS WILL FUNCTION PROPERLY WITH THE CODA PLATFORM OR THAT SUCH THIRD-PARTY PRODUCTS WILL REMAIN AVAILABLE OR SUPPORTED BY THE DEVELOPER OR PROVIDER. CODA SHALL HAVE NO LIABILITY WITH RESPECT TO CUSTOMER'S USE OF ANY SUCH THIRD-PARTY PRODUCTS AND CUSTOMER SHALL LOOK SOLELY TO THE DEVELOPER OR PROVIDER THEREOF WITH RESPECT TO ANY DAMAGES, CLAIMS, OR SUPPORT THEREFOR. THIRD-PARTY PRODUCTS MAY ALSO CONTAIN, TRANSMIT, PULL, EXTRACT, CONSUME OR OTHERWISE TAKE ACTIONS THAT INTERACT WITH THIRD PARTY CONTENT OR THIRD PARTY SERVICES. CODA DOES NOT TAKE RESPONSIBILITY FOR NOR DOES CODA ENDORSE ANY SUCH THIRD PARTY CONTENT OR SERVICES.

8. **Warranty Disclaimer.** CODA MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE CODA PLATFORM OR ANY OTHER MATERIAL PROVIDED HEREUNDER. CODA SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, THOSE ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE, AND OF UNINTERRUPTED OR ERROR-FREE SERVICE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE CODA PLATFORM IS PROVIDED ON AN AS-IS, AS AVAILABLE BASIS.

## 9. **Term; Termination.**

1. **Term.** Unless earlier terminated as provided in this Section, this Agreement will become effective upon the Effective Date of this Agreement and will terminate on the expiration of the last Order Form under this Agreement (the "**Term**"). Either Party may provide written notice of its intention to terminate an Order Form to the other Party at least thirty (30) days prior to expiration of the then-current Subscription Period.

### 2. **Termination.**

1. **By Either Party.** This Agreement may be terminated by either Party upon delivery of written notice of termination to the other Party, as follows:

- a. if the other Party fails to perform or observe any material term or condition in this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of such breach from the non-breaching Party;



- b. if the other Party (i) makes a general assignment for the benefit of creditors, (ii) admits in writing its inability to pay debts as they come due, (iii) voluntarily files a petition or similar document initiating any bankruptcy or reorganization proceeding, or (iv) involuntarily becomes the subject of a petition in bankruptcy or reorganization proceeding and such proceeding will not have been dismissed or stayed within sixty (60) days after such filing; or
- c. if no Order Forms are in effect.

2. **Effect of Termination.** Upon termination of this Agreement, each Party will promptly return, make available or at the other Party's request, destroy all Confidential Information of the other Party (including the User Content). Customer acknowledges and agrees that this Agreement governs Customer's subscription to the Enterprise package of the Coda Platform. Customer's continued use of the Coda Platform upon the expiration or termination of applicable Order Form or this Agreement shall be governed by Coda's standard terms of service available online.

3. **Survival.** Sections 3.2, 3.3, 4, 5.1 (until all payments are made), 5.2, 6, 7.3, 8, 9.2.2, 9.3, and 10-13 will survive termination of this Agreement for any reason. All other rights and obligations of the Parties under this Agreement will expire upon termination of this Agreement, except that all payment obligations accrued hereunder prior to termination or expiration will survive such termination.

## 10. Confidentiality.

1. **Confidential Information.** From time to time during the Term, either Party may disclose information to the other, which, (i) if in written, graphic, machine readable or other tangible form is marked "Confidential" or "Proprietary" or which, if disclosed orally or by demonstration, is identified at the time of disclosure as confidential and reduced to a writing marked "Confidential" and delivered to the receiving party within thirty (30) days of such disclosure; or (ii) by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as confidential (collectively, the "**Confidential Information**"). Notwithstanding any failure to so identify them, all technology or proprietary information underlying the Coda Platform will be deemed Confidential Information of Coda, and the User Content will be deemed Confidential Information of Customer.
2. **Nondisclosure.** Each Party (each a "**Receiving Party**") agrees that it will use and reproduce the Confidential Information of the other Party (the "**Disclosing Party**") only for purposes of exercising its rights and performing its obligations under this Agreement and only to the extent necessary for such purposes; will restrict disclosure of such Confidential Information to the Receiving Party's employees, consultants, or advisors who have a need to know; and will not disclose such Confidential Information to any third party without the prior written approval of the Disclosing Party. The foregoing obligations will be satisfied by the Receiving Party through the exercise of at least the same degree of care used to restrict disclosure and use of its own information of like importance, but not less than reasonable care. All third parties to whom the Receiving Party discloses Confidential Information must be bound in writing by obligations of confidentiality and non-use at least as protective of such information as this Agreement. Notwithstanding the foregoing, it will not be a breach of this Agreement for the Receiving Party to disclose Confidential Information if compelled to do so under law, in a judicial or other governmental investigation or proceeding; provided that, to the extent permitted by law, the Receiving Party has given the Disclosing Party prior notice and reasonable assistance to permit the Disclosing Party a reasonable opportunity to object to and/or limit the judicial or governmental requirement to disclosure.
3. **Exceptions.** Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party; (ii) was known



to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of the Confidential Information, as demonstrated by files created at the time of such independent development; (v) becomes known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement by the Receiving Party and otherwise not in violation of the Disclosing Party's rights; or (vi) is disclosed generally to third parties by the Disclosing Party without restrictions similar to those contained in this Agreement.

4. **Remedies.** The Receiving Party agrees that a breach of this Section may result in immediate and irreparable harm to the Disclosing Party that money damages alone may be inadequate to compensate. Therefore, in the event of such a breach, the Disclosing Party may seek equitable relief, including a temporary restraining order, temporary injunction or permanent injunction without the posting of a bond or other security.

## 11. Limitation of Liability.

1. **EXCLUSION OF CERTAIN DAMAGES.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH LIABILITY IS BASED UPON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, WARRANTY, OR OTHERWISE.
2. **MAXIMUM AGGREGATE LIABILITY.** THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNT OF PAYMENTS MADE UNDER THIS AGREEMENT DURING THE APPLICABLE ONE-YEAR TERM DURING WHICH THE EVENT GIVING RISE TO LIABILITY TOOK PLACE.
3. **EXCLUSIONS.** THE LIMITATIONS ON LIABILITY SET FORTH IN SECTION 11.2 SHALL NOT APPLY TO LIABILITY RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER OR EACH PARTY'S INDEMNIFICATION OBLIGATIONS. THE FOREGOING STATES THE ENTIRE LIABILITY OF EACH PARTY WITH REGARD TO THIS AGREEMENT. THE DISCLAIMERS CONTAINED IN SECTIONS 7 AND 8 ABOVE AND THE LIMITATIONS CONTAINED IN THIS SECTION 11 ARE A FUNDAMENTAL PART OF THE BASIS OF EACH PARTY'S BARGAIN HEREUNDER, AND NEITHER PARTY WOULD ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS. THE PARTIES AGREE THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

## 12. Indemnification.

1. **Mutual Indemnification.** Each Party will indemnify, defend and hold the other Party and its officers, directors, employees, agents, successors and assigns harmless from and against all third party claims, suits, actions, damages, settlements, losses, liabilities, costs (including reasonable attorneys' fees) and expenses arising from a claim that the Coda Platform (as to Coda), or the User Content (as to Customer) violates any applicable statute, regulation, or law, or infringes any Intellectual Property Right or other proprietary or legal right of any third party (a "**Claim**"). This indemnity does not apply to, and Coda will have no obligation to Customer for, any infringement or misappropriation claim that arises from (i) modifications to the Coda Platform by anyone other than Coda, (ii) modifications to the Coda Platform based upon specifications furnished by Customer, (iii) Customer's use of the Coda Platform other than as





specified in this Agreement, or (iv) use of the Coda Platform in conjunction with third party software, hardware or data other than that approved by Coda.

2. **Procedure.** The indemnified Party will promptly notify the indemnifying Party in writing of any Claim; provided that the failure to provide such notice will not relieve the indemnifying Party of its indemnification obligations except to the extent of any material prejudice directly resulting from such failure. The indemnifying Party will bear full responsibility for, and will have the right to solely control, the defense (including any settlements) of any Claim; provided, however, that (i) the indemnifying Party will keep the indemnified Party informed of, and consult with the indemnified Party in connection with, the progress of such litigation or settlement and (ii) the indemnifying Party will not settle any Claim in a manner that does not unconditionally release the indemnified Party without the indemnified Party's written consent, not to be unreasonably withheld or delayed.
3. **Infringement Remedy.** In the event any portion of the Coda Platform is held or believed by Coda, or any portion of the User Content is held or believed by Customer, to infringe or misappropriate Intellectual Property Rights of any third party (such portion to be deemed the "**Infringing Materials**") in any place where the Coda Platform is used or accessed, then in addition to any other rights in this Section 12, Coda (where the Infringing Materials are the Coda Platform) or Customer (where the Infringing Materials are the User Content) will, at its sole expense and at its option: (i) obtain from such third party the right for the other Party to continue to use the Infringing Materials; or (ii) modify the Infringing Materials to avoid and eliminate such infringement or misappropriation, as the case may be; or (iii) upon mutual agreement with the other Party, remove and disable the Infringing Materials; or (iv) if none of the foregoing remedies is commercially feasible, terminate this Agreement.
4. THIS SECTION 12 SETS FORTH EACH PARTY'S ENTIRE LIABILITY AND OBLIGATION, AND EACH PARTY'S SOLE REMEDY FOR ANY CLAIM OF INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS.

### 13. Miscellaneous.

1. **Relationship of the Parties.** The Parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other Party. Neither Party will hold itself out as an agent of the other Party. This Agreement will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind.
2. **Assignment.** Customer may not assign, sublicense, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Coda; provided that Customer may assign this Agreement to an entity merging with, consolidating with, or purchasing substantially all its assets or stock; provided, further, that the assignee will assume all rights and obligations under this Agreement. Coda may delegate or subcontract its obligations hereunder to a third party; provided that in such event, Coda shall at all times remain responsible for the performance of such obligations by any such third party. Any permitted assignment of this Agreement will be binding upon and enforceable by and against the Parties' successors and assigns; provided that any unauthorized assignment will be null and void and constitute a breach of this Agreement.
3. **Notices.** All notices and other communications hereunder will be in writing and will be deemed to have been duly given when delivered in person (including by overnight courier) or three days after being mailed by registered or certified mail (postage prepaid, return receipt requested), and on the date the notice is sent when sent by email unless the sender receives an automated message that the email has not been delivered, in each case to the respective Parties at the address first set forth on the Order Form.



Either Party may change its contact information by providing the other Party with notice of the change in accordance with this Section.

4. **Force Majeure.** Except for payment obligations, if either Party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of the Party invoking this provision, including acts of God, pandemics, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes (each, a “**Force Majeure Event**”), such Party’s performance will be excused and the time for performance will be extended accordingly provided that the Party immediately takes all reasonably necessary steps to resume full performance.
5. **Restricted Rights.** If Customer is an agency, department or entity of the United States Government (“**Government**”), Customer agrees, that (i) use, reproduction, release, modification or disclosure of the Coda Platform, or any part thereof, including technical data, is restricted in accordance with Federal Acquisition Regulation (“**FAR**”) 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement (“**DFARS**”) 227.7202 for military agencies, (ii) the Coda Platform is a commercial product, which was developed at private expense, and (iii) use of the Coda Platform by any Government agency, department or other agency of the Government is further restricted as set forth in this Agreement.
6. **Import and Export Requirements.** Customer acknowledges and agrees that the Coda Platform is subject to export control laws and regulations. Customer may not download or otherwise export or re-export the Coda Platform or any underlying information or technology except in full compliance with all applicable laws and regulations, in particular, but without limitation, United States export control laws. None of the Coda Platform or any underlying information or technology may be downloaded or otherwise exported or re-exported: (a) into, or to a national or resident of, any country to which the United States has embargoed goods; or (b) to anyone on the U.S. Treasury Department’s list of specially designated nationals or the U.S. Commerce Department’s list of prohibited countries or debarred or denied persons or entities. Customer hereby agrees to the foregoing and warrants that Customer is not located in, or under the control of, or a national or resident of any such country or on any such list.
7. **Entire Agreement.** This Agreement, and any exhibits and amendments thereto, constitutes the entire agreement between the Parties and supersedes all previous agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may be amended by Coda, from time to time, in Coda’s sole discretion. In the event of a contradiction or ambiguity between this Agreement and any Order Form or exhibit, the terms of the Order Form or exhibit shall control. Any terms and conditions set forth on a Customer purchase order or other ordering document, or any electronic portals, onboarding platforms or other websites of Customer or Customer’s third parties which Coda may be required to accept shall not be binding on Coda to the extent that they relate to Coda’s provisioning of the Coda Platform or Coda’s obligations under this Agreement.
8. **Publicity.** Customer hereby grants to Coda the license and right to use Customer’s name, logo, and other trademarks for marketing, reference, or promotional purposes on Coda’s website and in other communications with Coda’s existing or prospective customers and otherwise to promote the Services, subject to any standard trademark or brand usage guidelines that Customer may provide to Coda from time to time. In the event that Customer does not wish to have any of the foregoing used by Coda in such manner, Customer may contact [ip@coda.io](mailto:ip@coda.io) stating that Customer does not wish to be used as a reference customer.
9. **Channel Partners.** Customer may acquire licenses through Coda channel partners. Such channel partners are independent from Coda and unilaterally determine their prices and terms. Coda is not



responsible for their actions, omissions, statements or offerings.

10. **Professional Services.** From time to time, Customer may request that Coda provide professional services, including integration and/or customization services in connection with the Coda Platform (“**Professional Services**”). If the Parties agree to proceed with requested Professional Services, the Parties shall set forth the specific terms and fees for such Professional Services in a statement of work (“**SOW**”). Upon Customer’s payment of fees due under the applicable SOW and/or applicable Order Form, Coda hereby grants to Customer, during the Subscription Period, a worldwide, non-exclusive, non-transferable, royalty-free license to copy, maintain, use, and run (as applicable) any deliverables prepared by Coda and delivered to Customer under the applicable SOW solely for Customer’s internal business purposes associated with its use of the Coda Platform. Neither Party shall have any obligation to engage in or perform any Professional Services contemplated in a SOW until such SOW is executed by an authorized representative of each Party.
11. **Case Study.** In the event that Coda and Customer mutually agree for Customer to participate in a Coda case study, Customer agrees to meet with Coda to provide Customer’s reviews, feedback, survey results, testimonials, soundbites, and other reasonably requested content to enable Coda to produce a case study that details Customer’s experience with Coda and the Coda Platform (a “**Case Study**”). Customer shall use commercially reasonable efforts and provide all requested information to allow Coda to publish the case study no later than sixty (60 days) following entry into the Agreement, or as may be otherwise agreed between the Parties. Customer will have the opportunity to review the final Case Study prior to Coda’s publication thereof. Notwithstanding Section 13.8 above, Customer grants to Coda permission to use the Case Study and authorizes Coda to use Customer’s logo and trademarks in connection with the Case Study and agrees that the Case Study may be published by Coda on Coda’s website and publicly shared by Coda in other formats. Unless otherwise agreed by Coda, if Customer does not ultimately participate in a Case Study, Coda shall not be required to honor any benefits or discounts associated therewith.
12. **Developmental Offerings.** From time to time, Coda may look for testers to help it test and trial its developmental products, services, updates, or features. Any of the foregoing will be identified as “beta” or “pre-release,” or words or phrases with similar meanings (each, a “**Developmental Offering**”). Developmental Offerings are made available on an “as is,” and “as available” basis and, to the extent permitted under applicable law, without any warranties or contractual commitments. Customer is not required to participate in testing or trialing any Developmental Offerings, and Customer does so at its own discretion and risk.
13. **Governing Law.** This Agreement and the rights of the Parties hereunder shall be governed by and construed and interpreted in accordance with the laws of the State of New York, exclusive of conflict or choice-of-law rules, and the parties hereby consent to the personal and exclusive jurisdiction and venue of the state and federal courts in the New York County, New York State. IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES, WHETHER IT RESULTS IN PROCEEDINGS IN ANY COURT IN ANY JURISDICTION OR IN ARBITRATION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE OR ARBITRATOR WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. To the extent applicable, in the event of any lawsuit between the Parties arising out of or related to this Agreement, the Parties agree to prepare and to timely file in the applicable court a mutual consent to waive any statutory





or other requirements for a trial by jury. The rights and obligations of the Parties under this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

- 14. Arbitration of Disputes.** Notwithstanding anything herein to the contrary, except with respect to enforcing claims for injunctive or equitable relief, any dispute, claim, or controversy arising out of or relating in any way to this Agreement or the interpretation, application, enforcement, breach, termination, or validity thereof (including any claim of inducement of this Agreement by fraud and including determination of the scope or applicability of this agreement to arbitrate) or its subject matter (collectively, “**Disputes**”) shall be determined by binding arbitration before one arbitrator. NEITHER PARTY MAY PURSUE ANY CLAIM AGAINST THE OTHER PARTY AS A CLASS ACTION, CLASS ARBITRATION, PRIVATE ATTORNEY GENERAL ACTION OR OTHER REPRESENTATIVE ACTION. CLAIMS REGARDING ANY DISPUTE AND REMEDIES SOUGHT AS PART OF A CLASS ACTION, CLASS ARBITRATION, PRIVATE ATTORNEY GENERAL OR OTHER REPRESENTATIVE ACTION MUST BE BROUGHT ON AN INDIVIDUAL (NON-CLASS, NONREPRESENTATIVE) BASIS. The arbitration shall be administered by JAMS conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the date Customer first creates its account or accesses and/or uses the Services, including Rules 16.1 and 16.2 of those Rules. The arbitration shall be held in New York, New York, and it shall be conducted in the English language. The Parties shall maintain the confidential nature of the arbitration proceeding and any award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. The arbitrator shall have authority to award compensatory damages only and is not empowered to award any punitive, exemplary, or multiple damages, and the parties waive any right to recover any such damages. The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding anything to the contrary in this Agreement, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16). Each Party shall be responsible for its respective fees, including attorney’s and expert’s fees, in pursuing or defending a claim hereunder. Judgment on any award in arbitration may be entered in any court having jurisdiction. Notwithstanding the above, each Party shall have recourse to any court of competent jurisdiction to enforce claims for injunctive and other equitable relief. Nothing herein shall preclude either Party from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.
- 15. Severability.** If any provision of this Agreement is held invalid or unenforceable, it will be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect.
- 16. Waiver.** No delay or failure by either Party to exercise any right or remedy under this Agreement will constitute a waiver of such right or remedy. All waivers must be in writing and signed by an authorized representative of the Party waiving its rights. A waiver by any Party of any breach or covenant will not be construed as a waiver of any succeeding breach of any other covenant.
- 17. Interpretation.** The headings of the sections and paragraphs contained in this Agreement are inserted for convenience and are not intended to be part of or to affect the interpretation of this Agreement. The term “including” will be deemed to mean “including, without limitation.”
- 18. Construction; Advice of Counsel.** Both Parties acknowledge and agree that the Agreement has been jointly prepared and its provisions will not be construed more strictly against either Party as a result of its



participation in such preparation. Each Party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement.