

**HTCD, INC.**  
**SUBSCRIPTION AGREEMENT**

THIS SUBSCRIPTION AGREEMENT (the “**Agreement**”) sets forth the terms and conditions of your purchase and use of the hosted services (the “**Services**”) that are made available by HTCD, Inc., a Delaware corporation (“**HTCD**”), and is a contract between HTCD and you or the entity or organization that you represent. If you are using the Services for your own purposes: (a) all references to “**Customer**” are to you in your individual capacity, and (b) you represent that you are legally permitted and competent to enter into this Agreement. If you are using the Services on behalf of an entity or organization: (y) all references to “**Customer**” are to that entity or organization, and (z) you represent that you have the authority to enter into this Agreement on behalf of Customer. This Agreement becomes effective when you enter into an Order and are accepted by HTCD in its sole discretion to use the Services (the “**Effective Date**”). Customer and HTCD are referred to herein collectively as the “**Parties**” and each as a “**Party**.”

Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in **Appendix A**, attached hereto at the end of this Agreement and incorporated herein.

**1. Provision of the Services.**

1.1 **License Grants.** In consideration of Customer’s continued performance of its obligations under this Agreement, and subject to the terms of this Agreement, HTCD grants to Customer during the Term the non-transferable, non-exclusive worldwide right to permit Users to (a) access and use the Services in accordance with the Materials; and (b) use the Materials solely in connection with the Services, all solely for Customer’s own internal business operations; *provided*, that such internal business operations shall not include commercial time-sharing, rental, outsourcing, service bureau, or similar use. Customer acknowledges that HTCD cannot guarantee that all Services can be provided in all geographic regions.

1.2 **Customer Restrictions.** Customer acknowledges and agrees that the rights granted to Customer in this Agreement are subject to the following agreements and restrictions: (a) Customer shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Services or Materials available to any third party other than an authorized User; (b) Customer shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer (or attempt any of the foregoing) any part of the Services, or access the Services or Materials in order to build (or permit a third party to build) a similar or competitive product or service; (c) Customer shall not create Internet “links” to the Services or “frame” or “mirror” any part of the Services, including any content contained in the Services, on any other server or device; (d) except as expressly stated herein, no part of the Services or Materials may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; (e) Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services; (f) Customer acknowledges and agrees that HTCD owns all right, title and interest in and to all intellectual property rights in the Services and the Materials, including, but not limited to, all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, software, methods, techniques, algorithms, and all other intellectual property rights, derivatives or improvements thereof (“**HTCD Intellectual Property**”), and, Customer agrees to and does hereby assign to HTCD automatically upon creation (and without any requirement for any notification or additional consideration) any suggestions, enhancement requests, feedback, or

recommendations provided by Customer or its Users relating to the Services, HTCD Intellectual Property, or the Materials; (g) unauthorized use, resale or commercial exploitation of any part of the Services or Materials in any way is expressly prohibited; and (h) this Agreement is not a sale and does not convey any rights of ownership in or related to the Services or Materials to Customer. For the avoidance of doubt, Customer has no right to and shall not attempt to access the software code (including object code, intermediate code and source code) of HTCD, either during or after the Term.

## 2. Customer Environment and Customer Cloud/Infrastructure Data.

2.1 Customer Environment. Customer acknowledges that (a) it controls the Customer Environment and the related individual components (each, a “**Customer Component**”); and (b) it is responsible for selecting, implementing, activating, deactivating, and configuring the connections between Customer Components and the Services (each, a “**Connection**”) and configuring the Services. HTCD shall have no responsibility for the Customer Environment or any Customer Component. By connecting a Customer Component with the Services, Customer grants to HTCD the right, and authorizes HTCD, to access and interoperate with that Customer Component to provide and support the Services during this Agreement. Customer is responsible for ensuring that the access, use, and interoperation of Customer Components with the Services complies with all legal restrictions applicable to the Customer Components and associated data and the Connections.

2.2 Customer Cloud/Infrastructure Data. Subject to the terms and conditions of this Agreement, Customer grants to HTCD the non-exclusive, non-transferable worldwide right to use Customer Cloud/Infrastructure Data to the extent necessary to provide and improve the Services and Materials to Customer. For the avoidance of doubt, Customer Cloud/Infrastructure Data does not include Customer’s proprietary or business functional data. Customer authorizes HTCD to use Usage Data, Customer Cloud/Infrastructure Data and Account Information during and after the Term to: (a) manage Customer’s account; (b) provide and improve its services and products; and (c) provide insights, service and feature announcements, and other reporting. In addition, if a Premium Customer elects to have HTCD do so, HTCD will periodically review Customer Cloud/Infrastructure Data to provide additional insights to Customer. For an Essentials Customer, HTCD will regularly retrieve Customer Cloud/Infrastructure Data for the purpose of enriching or augmenting such data to provide better insights, and HTCD will gather anonymized Threat Data. Customer acknowledges and agrees that Customer Cloud/Infrastructure Data and Account Information that is provided to HTCD in connection with this Agreement may be transferred outside of the country or any other jurisdiction where Customer and Customer’s Users are located. Customer acknowledges that it is Customer’s obligation to inform Customer’s Users of the processing of Customer Cloud/Infrastructure Data and Account Information pursuant to this Agreement and to ensure that such Users have given any necessary consent to such processing as required by all applicable data protection legislation, and Customer shall indemnify, defend, and hold HTCD harmless from all Losses due to Customer’s failure to comply with such obligations in this sentence. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Cloud/Infrastructure Data and Account Information. Customer acknowledges that, through Customer’s configuration and use of the Services, Customer has control over the types and amounts of Customer Cloud/Infrastructure Data that is supplied to the Services and that Customer is solely responsible for all Customer Cloud/Infrastructure Data.

## 3. Proprietary Rights.

3.1 The Services. Customer acknowledges and agrees that the Services and any proprietary

software of HTCD used in connection with the Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws.

3.2 **HTCD Marks**. Customer acknowledges and agrees that the content or information presented to Customer through the Services may be protected by copyright, trademark, service mark, patent, and/or other proprietary rights and laws. Except where expressly provided otherwise by HTCD, nothing in the Services, the Materials, or this Agreement shall be construed to confer any license to any of HTCD's (or its third party manufacturers', authors', developers', and service providers' (collectively, "***Third Party Vendors***"), intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the Services and other HTCD service marks, logos and product service names are trademarks of HTCD (collectively, the "***HTCD Marks***"). Customer agrees not to display or use the HTCD Marks, or the trademarks of any Third Party Vendor (other than in use of the Services), in any manner without the owner's express prior written permission.

3.3 **Reservation of Rights**. The Parties acknowledge that (a) as between Customer and HTCD, Customer owns all right, title and interest in and to the Customer Environment and Customer Cloud/Infrastructure Data, including in each case all associated intellectual property rights, and (b) HTCD owns all right, title and interest in and to the Services, Materials, Services Use Data, including in each case all associated intellectual property rights. Each Party has the right to use Threat Data for the purpose of neutralizing the applicable threat. Except for the rights expressly granted by one Party to the other Party in this Agreement, all rights are reserved by the granting Party.

3.4 **Compilation of Aggregated Data and Other Data**. Customer acknowledges and agrees that HTCD may compile Aggregated Data. Customer hereby grants HTCD a royalty-free, nonexclusive, irrevocable, right and license (with the right to sublicense) to use, modify, reproduce, have reproduced, make and have made, create derivative works of, import, export, market, sell, distribute and otherwise exploit anonymous Aggregated Data from the use of the Services. HTCD shall be the exclusive owner of any derivative works of Aggregated Data prepared under the license granted in this Section. Essentials Customers agree that HTCD may collect Insights derived from analysis of Customer's cloud or on-premise infrastructure, network, security, and consumption patterns. This may include metadata and insights corresponding to analysis of Customer's existing infrastructure or operating system vulnerabilities, cloud misconfigurations, and overall levels of resource consumption (e.g. how many servers, how many databases, which types of AWS or Azure services used, etc.).

3.5 **Derivative Data and Usage Data**. HTCD shall irrevocably own all Derivative Data and Usage Data and may use or disclose it in any way it chooses. This Section shall survive any expiration or termination of this Agreement.

#### 4. **Term and Termination**.

4.1 **Term**. The initial term ("***Initial Term***") of this Agreement will commence on the Effective Date and will expire on the first anniversary of the Effective Date. Following the expiration of the Initial Term, this Agreement shall automatically renew for additional one-year periods (each, a "***Renewal Term***" and collectively with the Initial Term, the "***Term***") until such time as either Party provides written notice to the other Party at least 15 days prior to expiration of the then-current Term of its intent to terminate this Agreement. Except as set forth in Section 4.5 and Section 14.3, Premium Customers shall have no right to terminate during the Term and shall be obligated for all Fees payable during the Term.

4.2 **Renewal Term Price Increase.** In connection with any auto-renewal pursuant to Section 4.1, HTCD may increase the price for the Services by indicating the revised price on its invoice.

4.3 **Suspension for Delinquent Account.** HTCD reserves the right to suspend Customer's access and/or use of the Services for any account for which any payment is due but remains unpaid after 10-days' written notice of such delinquency. Customer agrees that (a) HTCD shall not be liable to Customer, or to any third party, for any suspension of the Services resulting from Customer's non-payment of the fees as described in this Section; and (b) Customer may be charged a fee for reinstating the Services after suspension pursuant to this Section.

4.4 **Suspension for Ongoing Harm.** Customer agrees that HTCD may, with reasonably contemporaneous electronic notice to Customer, suspend Customer's access to the Services if (a) HTCD reasonably believes that Customer has violated any applicable law which may have a potentially adverse effect on HTCD or its other customers; (b) HTCD believes that providing access to the Service may violate any applicable law or regulation; (c) HTCD reasonably believes that it is necessary to protect the servers, systems, infrastructure, data, or information of HTCD or its respective third-party providers or other customers or users, from a denial of service attack, security breach, introduction of a virus or other malware, ransomware attack, or similar event; (d) requested or ordered by a law enforcement agency, government agency, or similar authority; or, (e) Customer fails to cooperate with HTCD to investigate suspected violations of this Agreement. HTCD will use commercially reasonable efforts to resolve the issues causing the suspension of Services. Upon removal, cessation or mitigation of the underlying cause for any of the above that occurs, HTCD will resume providing access to the affected Service unless Customer's account has been terminated. Customer agrees that HTCD will not be liable to Customer or to any third party for any suspension of the Services under such circumstances as described in this Section.

4.5 **Termination for Breach.** Either Party may terminate this Agreement upon 30 days' written notice to the other Party in the event of a breach of any material obligation under this Agreement; *provided*, that the alleged breach is not cured during the 30-day notice period, *provided however*, that Customer's failure to timely pay amounts due is not subject to this right to cure.

4.6 **Termination of EssentialsCustomer.** HTCD reserves the right to terminate the Services for any EssentialsCustomer at any time with or without cause.

4.7 **Termination of Premium Customer.** HTCD reserves the right to terminate the Services for any Premium Customer at any time with or without cause; *provided*, that HTCD shall refund a pro-rated portion of any pre-paid Fees for the remainder of the then-current Initial Term or Renewal Term. A Premium Customer may terminate the Services at any time; *provided*, that Customer shall remain obligated for all Fees throughout the Term.

4.8 **Effect of Termination.** Customer acknowledges and agrees that following termination of this Agreement, HTCD may immediately deactivate Customer's account. Customer agrees that HTCD shall not be liable to Customer or to any third party for any termination of Customer access to the Services or deletion of Customer Cloud/Infrastructure Data. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Services. Upon Customer's request within 30 days after the expiration or termination of this Agreement, HTCD will provide Customer with a copy of Customer Cloud/Infrastructure Data held by HTCD. Upon expiration of such 30-day period, HTCD shall convert Customer's account to an inactive status. HTCD may, but shall not be obligated to, delete all Customer Cloud/Infrastructure Data after Customer's account converts to inactive status.

## 5. Modification/Discontinuation/Maintenance.

5.1 **Modification to or Discontinuation of the Services.** HTCD reserves the right at any time and from time to time to modify, temporarily or permanently, the Services (or any part thereof), *provided* such modification does not diminish the functionality of the Services on which Customer materially relies. Customer acknowledges that HTCD reserves the right to discontinue offering the Services at the conclusion of Customer's then-current Term (i.e., HTCD has no obligation to enter into a Renewal Term). Customer agrees that HTCD will not be liable to Customer or any third party for any modification or discontinuance of the Services as described in this Section.

5.2 **Maintenance.** In order to perform maintenance, there will be routinely scheduled down time, and there may also be unscheduled downtime in the event of an emergency. HTCD further reserves the right to issue new releases in which HTCD adds functionality to the Services. Customer acknowledges that these periodic releases may take several hours to complete.

## 6. Fees and Payment.

6.1 **Fees.** During the Term, Customer shall pay the fees ("**Fees**") for the Order specified in APPENDIX B – PRICING SCHEDULE in accordance with the payment terms set forth in the Pricing Schedule. All Fees are payable in U.S. dollars. All Fees are exclusive of taxes, levies, duties or charges imposed by government authorities (collectively, "**Taxes**"). Except for Taxes on HTCD's income, revenues, gross receipts, personnel or assets, Customer shall be solely responsible for all sales, service, value-added, use, excise, consumption and any other Taxes on amounts payable by Customer under this Agreement. Without limiting the foregoing, if Customer is required to deduct or withhold any Taxes under applicable laws outside the U.S., Customer is responsible for remitting such Taxes in a timely manner and in accordance with applicable laws, and Customer may not offset any Fees payable to HTCD for any such remittances.

6.2 **Non-Payment.** If HTCD incurs any costs (including reasonable attorney's fees) from efforts collecting overdue fees from Customer, Customer agrees to pay such costs. If any invoiced Fees are not received by the due date, then such outstanding amount may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date on which such payment is received in cleared funds.

6.3 **Digital Payments.** If Customer is paying Fees using a credit card or any digital payment method supported by HTCD (such as cloud provider marketplaces), Customer authorizes HTCD to charge Customer's account for the Services using that payment method. Customer must keep all information in its billing account current to ensure that all Fees are charged to the appropriate account and are timely paid. If Customer notifies HTCD to stop using a previously designated payment method and fails to designate an alternative, HTCD may immediately suspend use and access to the Services. Any notice from Customer changing its billing account will not affect charges HTCD submits to Customer's billing account before HTCD can reasonably act on Customer's request. HTCD uses a third-party intermediary to manage credit card processing, and this intermediary is not permitted to use Customer's credit card information except in connection with Customer's authorized purchases. Notice (including email) from HTCD's third-party credit card processor declining Customer's credit card or otherwise relating to Customer's account will be deemed valid notice from HTCD.

## 7. Terms of Service.

7.1 **Service Extensions or Updates.** Customer agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Services, and any new service subsequently purchased by Customer pursuant to an amendment or new Order accepted by HTCD referencing this Agreement, will be subject to the terms of this Agreement. Notwithstanding the foregoing, HTCD shall not be obligated to provide any additional features or functionality to Customer without an additional charge.

7.2 **Email and Notices.** Customer agrees to provide HTCD with Customer's e-mail address, and to accept emails (or other Electronic Communications) from HTCD at the e-mail address Customer specifies. Customer further agrees HTCD may provide any and all required notices, including legal notices, to Customer through either e-mail (or other Electronic Communications), or by mail or express delivery service in accordance with Section 13.

7.3 **Passwords, Access, and Notification.** Customer may designate a reasonable number of Users of the Services. Customer will provide and assign unique password and usernames to each authorized User. Customer acknowledges and agrees that Customer is prohibited from sharing passwords and or usernames with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its employees') passwords and usernames. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Cloud/Infrastructure Data, and all other data of any kind contained within emails or otherwise entered electronically through the Services or under Customer's account. HTCD may act as though any Electronic Communications it receives under Customer's passwords, username, and/or account number have been sent by Customer. Customer agrees to notify HTCD if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords, usernames, and/or account number.

7.4 **Customer Obligations.** Customer agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Services, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer will use commercially reasonable efforts to ensure that any use of the Services by Customer's Users is in accordance with the terms of this Agreement. Customer agrees to notify HTCD immediately of any unauthorized use of any password or account used to access the Service or any other known or suspected breach of security. Customer certifies that it is not on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Customer shall not resell the Services directly or indirectly to third parties. Customer acknowledges that HTCD is not responsible for informing Customer of applicable laws or changes thereto, and HTCD will not be liable to Customer or any third party for any alleged or actual failure of Customer to comply with such applicable laws and regulations. Customer shall comply with the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, the sanctions regulations administered by the Office of Foreign Assets Control, and any other applicable export laws, restrictions, and regulations (collectively, "***Export Controls***") to ensure that no software, Services or technology or technical data related thereto in its custody or control are (a) exported, re-exported, or transferred in-country directly or indirectly in violation of Export Controls or (b) used by any person and/or for any purposes prohibited by Export Controls. Customer agrees not to include any technology or technical data (with the exception of technology designated EAR99 on the Commerce Control List of the Export Administration Regulations) subject to Export Control restrictions in Customer Cloud/Infrastructure Data. Compliance with the preceding may require Customer to obtain one or more

export licenses or other required approvals depending on factors such as the destination, end-users, and end-uses.

7.5 **Transmission of Data.** Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Services. Customer expressly consents to HTCD's access and storage of Electronic Communications and/or Customer Cloud/Infrastructure Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by HTCD. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Customer agrees that HTCD is not responsible for any Electronic Communications or Customer Cloud/Infrastructure Data which are lost or altered.

7.6 **HTCD Support.** HTCD will use commercially reasonable efforts to provide support services solely to Premium Customers via in-app or email support.

7.7 **Security.** HTCD will implement and maintain appropriate technical and organizational measures to protect Customer Cloud/Infrastructure Data and Account Information from accidental loss and from unauthorized access, use, alteration, or disclosure, as described in its Security Policies. A copy of this policy may be found in APPENDIX E – Security Policy.

7.8 **Privacy.** Each Party will comply with the Data Processing Addendum available through APPENDIX C – DATA PROCESSING ADDENDUM, and which may be updated from time to time in HTCD's discretion and effective on the date posted, which is hereby incorporated by reference. Customer agrees that it will only provide Personal Data to the extent necessary for Customer to use the Services and as permitted by Data Protection Laws. Except as agreed by the Parties in writing, Customer shall not use the Services to process any Sensitive Information. HTCD will comply with its Privacy Policy available through APPENDIX D – WEBSITE PRIVACY POLICY which may be updated from time to time in HTCD's discretion and effective on the date posted, which is hereby incorporated by reference.

## 8. **Confidential Information.**

8.1 **Definition.** Each Party may have access to information that is confidential to the other Party ("***Confidential Information***"). For purposes of this Agreement, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. A Party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other Party; (b) was in the other Party's lawful possession prior to the disclosure without any obligation of confidentiality and had not been obtained by the other Party either directly or indirectly from the disclosing Party; (c) is lawfully disclosed to the other Party by a third party without restriction on disclosure; (d) is independently developed by the other Party without use of or reference to the other Party's Confidential Information, as established by written records.

8.2 **Treatment of Confidential Information.** The Parties agree to use commercially reasonable efforts not to make each other's Confidential Information available in any form to any third

party. Notwithstanding the foregoing, Customer acknowledges and agrees that HTCD may disclose Customer's Confidential Information to its Third Party Vendors solely to the extent necessary to provide the Services. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; *provided, however*, that a Party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the "**Responding Party**") shall first have given sufficient and prompt written notice to the other Party of the receipt of any subpoena or other request for such disclosure, so as to permit such Party an opportunity to obtain a protective order or take other appropriate action. The Responding Party will cooperate in the other Party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If the Responding Party is compelled as a matter of law to disclose the Confidential Information, it may disclose to the Party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

**8.3 Treatment of Customer Cloud/Infrastructure Data.** Notwithstanding anything to the contrary in this Agreement, Customer Cloud/Infrastructure Data is not included in Confidential Information as defined in Section 8.1. To the extent HTCD has any access to Customer Cloud/Infrastructure Data in the course of providing the Services, HTCD's entire obligation to keep Customer Cloud/Infrastructure Data confidential is stated in this Section below. HTCD shall not, intentionally (i) access Customer Cloud/Infrastructure Data or (ii) disclose Customer Cloud/Infrastructure Data to any third party, except to the extent: (a) Customer makes its Customer Cloud/Infrastructure Data publicly available, (b) as necessary for HTCD to provide, or obtain third-party supplier support for, the Services or to provide information requested by Customer, or (c) as specifically authorized by Customer in this Agreement or otherwise in writing.

## **9. Limited Warranty.**

**9.1 Limited Warranty of Functionality.** HTCD warrants solely to Premium Customers during the Term that the Services will comply with the material functionality described in the Materials and that such functionality will be maintained in all material respects in subsequent upgrades to the Services. Premium Customer's sole and exclusive remedy for HTCD's breach of this limited warranty shall be that HTCD shall use commercially reasonable efforts to correct such errors or modify the Services to achieve the material functionality described in the Materials within a reasonable period of time. However, HTCD shall have no obligation with respect to this warranty claim unless notified of such claim 30 days of the first material functionality problem. Further, HTCD shall have no obligation with respect to this warranty claim, and Premium Customer may not terminate this Agreement, where any alleged nonconformity is due to User error, as reasonably determined by HTCD.

**9.2 Non-Infringement Limited Warranty.** HTCD warrants that it has full power and authority to grant the license and use of the Services and other rights granted by this Agreement to Premium Customer with respect to the Services and that neither the performance by Premium Customer in its utilization of the Services, nor the license of and authorized use by Premium Customer of the Services, will in any way constitute an infringement or other violation of any U.S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

**10. Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, HTCD DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICES WILL MEET CUSTOMER REQUIREMENTS OR THAT ALL ERRORS IN



THE SERVICES AND/OR MATERIALS WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICES AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE SERVICES WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY HTCD OR THE OPERATION OF THE SERVICES WILL BE SECURE OR THAT HTCD AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CUSTOMER CLOUD/INFRASTRUCTURE DATA OR CUSTOMER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CUSTOMER CLOUD/INFRASTRUCTURE DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN SECTION 9 ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY HTCD. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AND HTCD EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. EXCEPT AS STATED IN SECTION 9, THE SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS AND IS FOR COMMERCIAL USE ONLY. HTCD DOES NOT GUARANTY THE UP-TIME OF THE SERVICES. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSE.

#### 11. Limitations of Liability

11.1 **NO CONSEQUENTIAL DAMAGES.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION, INTERRUPTION OF BUSINESS, LOST PROFITS, COST OF SUBSTITUTE SERVICES OR GOODS, LOST OR CORRUPTED DATA OR CONTENT, LOST REVENUE ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE SERVICES, THE USE OF THE SERVICES OR THE INABILITY TO USE THE SERVICE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 11.2 **DIRECT DAMAGE LIMITATIONS.**

(a) IN NO EVENT SHALL THE AGGREGATE LIABILITY OF HTCD OR ANY THIRD PARTY VENDOR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY LICENSE, USE, OR OTHER EMPLOYMENT OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER DURING THE THEN-CURRENT TERM (THE "***LIABILITY CAP***"). THERE SHALL BE ONLY ONE AGGREGATE LIABILITY CAP UNDER THIS AGREEMENT EVEN IF THERE ARE MULTIPLE CLAIMS; EACH CLAIM SHALL REDUCE THE AMOUNT AVAILABLE IN THE AGGREGATE LIABILITY CAP; PROVIDED, THAT DAMAGES INCURRED AS A RESULT OF A BREACH BY A PARTY OF ITS OBLIGATIONS UNDER SECTION 8 (CONFIDENTIALITY) SHALL NOT EXCEED TWO TIMES THE LIABILITY CAP.

(b) IN NO EVENT SHALL HTCD, ITS AFFILIATES OR THEIR EMPLOYEES, AGENTS, CONTRACTORS, OFFICERS OR DIRECTORS BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH CUSTOMER'S INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY PERMITTED TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICES; OR THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES.

(c) HTCD SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OR CORRUPTION OF ANY DATA OR CONTENT WHETHER RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS OR OTHERWISE.

(d) THE PROVISIONS OF THIS SECTION 11.2 ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THE EXCLUSIONS IN DETERMINING TO ENTER INTO THIS AGREEMENT AND THE PRICING FOR THE SERVICES.

11.3 **EXCLUSIONS.** THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 11.1 AND 11.2 SHALL NOT APPLY WITH RESPECT TO: (A) DAMAGES TO PERSONS AND/OR TANGIBLE PROPERTY OCCASIONED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY, (B) CUSTOMER'S UNAUTHORIZED USE OF HTCD'S OR ITS THIRD PARTY VENDOR'S INTELLECTUAL PROPERTY, MATERIALS OR ASSETS; (III) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION PURSUANT TO SECTION 12; OR (IV) CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

## 12. **Indemnification.**

12.1 **HTCD Indemnity.** HTCD will indemnify, defend and hold harmless Premium Customer for Losses Premium Customer incurs as a direct result of any unaffiliated third party claim based on any claim that the Services infringe any U.S. patent, copyright, trademark or trade secret, except to the extent resulting from (a) Premium Customer's modification of the Services or combination by Premium Customer of the Services with other products or services if the Services would not have been infringing but for such combination or modification, (b) Premium Customer's use of the Services in a manner not authorized herein or for which it was not designed, (c) Premium Customer's failure to use an updated non-infringing version of the applicable intellectual property after Customer was notified by HTCD that the update cured an infringement, or (d) Customer Cloud/Infrastructure Data, Account Information or the Customer Environment. If any item for which HTCD has an indemnification obligation under this Section becomes, or in HTCD's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, HTCD may take the following actions: (y) secure the right to continue using the item or (z) replace or modify the item to make it non-infringing. If neither of such actions can be accomplished by HTCD using commercially reasonable efforts, and only in such event, HTCD will remove the item from the Services and the applicable Fee will be equitably adjusted to reflect such removal. This Section states Premium Customer's sole and exclusive remedy for HTCD's infringement or misappropriation of intellectual property of a third party.

12.2 **Customer Indemnity.** Customer shall defend, indemnify and hold harmless HTCD and its Third Party Vendors against any and all Losses incurred by HTCD and its Third Party Vendors arising out of or in connection with a claim by a third party (i) alleging that Customer Cloud/Infrastructure Data, Account Information or the Customer Environment, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Customer's breach of Sections 7.4 and 8. Customer will indemnify, defend and hold harmless HTCD, its affiliates, successors, and assigns, including the applicable officers, directors, employees, and agents thereof for Losses HTCD incurs from any third-party claim arising from Customer Cloud/Infrastructure Data or Customer's use of the Services.

12.3 **Indemnification Procedures.** The indemnified Party ("**Indemnified Party**") shall give prompt notice of the claim and will tender the defense; *provided, however*, that the Indemnified Party's failure to provide notification shall not affect the indemnifying Party's ("**Indemnifying Party**") indemnification obligations except to the extent that the failure to notify delays or prejudices the Indemnifying Party's ability to defend the applicable claim. The Indemnifying Party shall conduct the defense and shall have control of the litigation, and the Indemnified Party shall cooperate in defending against the claim. The Indemnified Party shall have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The Indemnifying Party shall not

make any settlement of the claim that results in any liability or imposes any obligation on the Indemnified Party without the prior written consent of the Indemnified Party. If the Indemnifying Party fails to (a) respond to the notice of a claim, or (b) assume the defense of a claim, the Indemnified Party shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost, expense, and risk of the Indemnifying Party, and the Indemnifying Party shall promptly reimburse the Indemnified Party for all such costs and expenses.

13. **Notices.** Except as otherwise provided in Section 7.3, any notice required or permitted under this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, or (d) sent by email to the address as a Party may provide by written notice to the other Party from time to time. Notices shall be considered to have been given at the time of actual delivery in person, five business days after posting if by mail, one business day if by overnight courier service, or upon receipt by email as described herein.

14. **General Provisions.**

14.1 **Headings; Interpretation.** The section headings throughout this Agreement are for reference purposes only, and such headings and words shall in no way be held to explain or aid in the interpretation, construction or meaning of the provisions of this Agreement. For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refers to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders.

14.2 **Governing Law; Venue; Attorneys’ Fees.** This Agreement shall be governed by and construed in accordance with the substantive laws of the state of Delaware, without regard to conflicts of laws principles. The Parties hereby consent to personal jurisdiction of the courts of the State of Delaware with respect to any legal action to enforce the terms and conditions of this Agreement or otherwise arising under or with respect to this Agreement, and agree that the Superior Court of Delaware, County of New Castle, or, if applicable, federal District Court sitting in the County of New Castle, State of Delaware, shall be the sole and exclusive venue, and the State of Delaware shall be the sole forum, for the bringing of such action. The prevailing party shall be entitled to recover all of its reasonable attorneys’ fees, expenses and costs.

14.3 **Entire Agreement.** This Agreement, including the documents expressly incorporated herein by reference, represents the Parties’ entire understanding relating to the Services and supersedes any prior or contemporaneous, conflicting or additional, communications. No text or information set forth on any Purchase Order Form, preprinted form or document shall add to or vary the terms and conditions of this Agreement. This Agreement may not be modified, changed or discharged, in whole or in part, except by an agreement in writing signed by duly authorized representative of the Parties; *provided*, that HTCD may modify this Agreement at any time by posting a revised version at <https://app.htcd.com/terms/subscription>, which modifications will become effective as of the first day of the calendar month following the month in which they were first posted. If Customer objects to the updated Agreement, as its sole and exclusive remedy, Customer may elect to terminate this Agreement by providing written notice to HTCD; *provided*, that Customer provides such notice within 30 days after such modifications become effective.

14.4 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provisions, with all other provisions remaining in full force and effect.

14.5 **Waiver.** The failure of HTCD to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by HTCD in writing. HTCD reserves the right to assign its right to receive and collect payments hereunder.

14.6 **Successors and Assigns.** This Agreement shall be binding upon the Parties, their agents, servants, employees, successors, and assigns, and shall inure to the benefit of the Parties and their respective successors and assigns.

14.7 **No Assignment.** Customer may not assign, transfer, or convey (whether by contract, merger, or operation of law) (collectively, "assign" and its cognates) this Agreement without the prior written approval of HTCD. Any purported assignment in violation of this Section shall be void.

14.8 **Force Majeure.** Neither Party will be liable to the other for any failure or delay in the performance of such Party's non-monetary obligations due to causes beyond its control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics or other widespread health emergency, communications line or power failures, or governmental laws, court orders, executive orders, and regulations imposed after the fact, or acts of computer, system, or network sabotage or file lockup (e.g., ransomware attack), DDOS or other network attacks, intrusion, or other failures not arising out of a breach of HTCD's data security obligations set forth in this Agreement (each a "**Force Majeure Event**").

14.9 **U.S. Government Customers.** The Services and Materials are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services and Materials. If Customer or any User is using Services and Materials on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer and Customer's Users must immediately discontinue use of the Services and Materials. The terms listed above are defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement.

14.10 **Relationship of the Parties.** The Parties agree that their relationship is that of independent contractors. Nothing in this Agreement shall constitute one Party as an employee, agent, joint venture partner or servant of the other Party. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

14.11 **Survival.** The following provisions shall survive any termination of this Agreement: Sections 3, 4, 6, 8, 10, 11, 12, 13, 14, and Appendix A and any other provision which by its nature is intended to survive termination of this Agreement.

14.12 **Customer Logo License.** If Customer is an Essential Customer, Customer grants to HTCD the non-exclusive, non-transferable worldwide right to display Customer's logo on HTCD's website and associated properties. If Customer is a Premium Customer, unless Customer expressly opts out by

notifying HTCD in writing, Customer grants to HTCD the non-exclusive, non-transferable worldwide right to display Customer's logo on HTCD's website and associated properties.

\* \* \* \*

## APPENDIX A – DEFINITIONS

**“Account Information”** means identification and other information provided by Customer relative to Customer Users (i.e., information related to the creation and administration of User accounts).

**“Aggregated Data”** means any non-personally identifiable, technical, statistical or analytical data gathered or generated directly by use of the Services, and which HTCD collects, gathers and aggregates periodically as part of the Services. HTCD and its affiliates, licensors, partners and designated agents may use this information to monitor and improve its products, services or to provide customized services or technologies to their customers. HTCD collects and uses this information in accordance with its Privacy Policy (APPENDIX D) and in accordance with applicable data protection laws.

**“Customer Cloud/Infrastructure Data”** means data related to the Customer Environment that is supplied to the Services in any manner by Customer. For the avoidance of doubt, Customer Cloud/Infrastructure Data does not include Account Information. Customer Cloud/Infrastructure Data only includes cloud or on-premise infrastructure, network, security, and consumption patterns. This may include metadata and insights corresponding to analysis of Customer’s existing infrastructure or operating system vulnerabilities, cloud misconfigurations, and overall levels of resource consumption (e.g. how many servers, how many databases, which types of AWS or Azure services used, etc.).

**“Customer Environment”** means the platforms, services, devices, websites and networks that Customer uses for its operations. For the avoidance of doubt, the Customer Environment does not include the Services.

**“Data Protection Laws”** means applicable laws concerning the privacy and protection of Personal Data.

**“Derivative Data”** means collectively, (i) information derived or generated from or based on Customer Cloud/Infrastructure Data, but not containing Customer Cloud/Infrastructure Data, (ii) Customer Cloud/Infrastructure Data which has been de-identified or anonymized so that it no longer identifies a specific individual; and, (iii) Customer Cloud/Infrastructure Data which has been aggregated with other data but which no longer identifies a specific individual or Customer.

**“Electronic Communications”** shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Services.

**“Essentials Customer”** means a Customer subscribing to the Essentials plan.

**“Losses”** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, assessments, costs, or expenses of whatever kind, including reasonable attorneys’ fees, and the costs of enforcing any right under this Agreement and the cost of investigation and the cost of pursuing any insurance providers.

**“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including viruses, worms, time bombs, and Trojan horses.

**“Materials”** means the written materials relating to the operation and use of the Services including, but not limited to, user manuals, user guides, technical manuals, release notes, and online help files regarding use of the Services, and any other materials prepared in connection with any Services modification,

correction, upgrade, or enhancement, and shall include any updated versions of Materials as may be provided by HTCD or made accessible to Customer from time to time in the course of providing the Services.

**“Services Use Data”** means data pertaining to, or used in, the operations, use and testing of the Services including data arising from HTCD’s customers’ use of the Services, aggregated data on third party components, aggregated and/or anonymized data, and other data and information that informs the Services.

**“Order”** means the subscription to the Services completed and submitted by Customer to HTCD online via HTCD’s website.

**“Personal Data”** means any information relating to an identified or identifiable natural person.

**“Premium Customer”** means a Customer other than an Essentials Customer.

**“HTCD Platform”** means HTCD’s proprietary online hosted software platform, website, operating systems, hardware, and other technical resources used by HTCD to provide the Services.

**“Purchase Order Form”** refers to a Customer document, in either electronic or written form, issued by Customer to confirm Customer’s purchase of the Services. The Parties acknowledge and agree that the terms and conditions of any such Purchase Order Form shall not be binding upon the Parties or in any way modify, amend, or supersede the terms and conditions of this Agreement.

**“Threat Data”** means any data related to unauthorized third party actors and associated Malicious Code or other information or data relating to the third party or their actions that is collected or discovered through or during the use of the Services by HTCD customers, excluding any such information or data that identifies Users or Customer.

**“Sensitive Information”** means, if and to the extent applicable to HTCD’s performance under this Agreement: (1) government-issued identification numbers, including Social Security numbers; (2) financial information; (3) special categories of personal data subject to Article 9 of the General Data Protection Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 (the **“GDPR”**) (only if EU data is involved); (4) personal data relating to criminal convictions and offenses subject to Article 10 of the GDPR; (5) protected health information subject to the Health Insurance Portability and Accountability Act of 1996, as amended; and (6) any other information that is subject to specific or heightened requirements under applicable law.

**“Usage Data”** means information about Customer’s configuration and use of the Services and data derived from it, that is used by Provider, including to compile statistical and performance information related to the provision of the Services and operation of the HTCD Platform.

**“User(s)”** means Customer’s employees, representatives, consultants, contractors or agents who are authorized to use the Services and have been supplied user identifications and passwords by Customer or on Customer’s behalf.