

EON MASTER SUBSCRIPTION AGREEMENT

Last Updated: March 17, 2025

IMPORTANT – IF YOU ARE ENTERING INTO THIS AGREEMENT ELECTRONICALLY AND YOU HAVE ALREADY ENTERED INTO A SUBSCRIPTION AGREEMENT DIRECTLY WITH EON IO, INC. OR ITS AFFILIATES WITH REGARD TO THE SERVICE (AS DEFINED BELOW), THEN THIS MASTER SUBSCRIPTION AGREEMENT, INCLUDING ANY OF ITS EXHIBITS, ANNEXES AND APPENDICES, (COLLECTIVELY THE “**AGREEMENT**”) SHALL NOT APPLY, EVEN IF YOU ARE REQUIRED TO CLICK “I AGREE”, “ACCEPT” OR OTHER SIMILAR BUTTON(S). OTHERWISE, PLEASE CAREFULLY READ THE TERMS OF THIS AGREEMENT.

If you are entering into this Agreement electronically and have agreed in writing to a proof of concept (“**POC**”) during a specific term (“**POC Term**”), Company grants you a limited, non-exclusive, non-transferable right to access and use the Service (including any beta features, if applicable) solely for internal evaluation and non-production purposes, subject to the terms of this Agreement. Unless otherwise agreed between the Parties in writing, the POC is provided at no cost, may be terminated by either Party upon written notice. During the POC, you will decide which of Customer Data to utilize, provided however, that You shall not process, store, or transmit any Personal Data or other sensitive or regulated data during the POC. Unless the Parties enter into a separate Order or subscription agreement directly following the POC Term, the use of the Service by the Customer shall be governed exclusively by this Agreement. Customer acknowledges that NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, DURING THE POC TERM, THE SERVICE AND ANY RELATED SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTY WHATSOEVER. COMPANY WILL HAVE NO WARRANTY, INDEMNITY OR OTHER OBLIGATIONS OR LIABILITIES WITH RESPECT TO THE POC TERM AND THE WARRANTIES IN SECTION 12 SHALL NOT APPLY DURING THE POC TERM. FOR GREATER CLARITY, COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR ANY LOST PROFITS OR GOODWILL, LOST OR DAMAGED DATA OR DOCUMENTATION OR LOST SAVINGS ARISING IN ANY WAY OUT OF THE USE OF, OR INABILITY TO USE, THE SERVICE. In the event of any conflict between this paragraph and other terms of this Agreement, this paragraph shall prevail during the POC Term.

BY SIGNING THIS AGREEMENT, OR CLICKING “I AGREE”, “ACCEPT” OR OTHER SIMILAR BUTTON(S), OR BY ACCESSING AND/OR USING THE COMPANY SOFTWARE AS A SERVICE, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU, ON BEHALF OF YOURSELF OR YOUR ORGANIZATION, (“**CUSTOMER**”, OR “**YOU**”) ARE ENTERING INTO A LEGAL AGREEMENT WITH EON IO, INC., HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 61 W PALISADE AVE, ENGLEWOOD, NJ 07631, USA (“**COMPANY**”) (CUSTOMER AND COMPANY EACH, A “**PARTY**” AND COLLECTIVELY, THE “**PARTIES**”), AND HAVE UNDERSTOOD AND AGREE TO COMPLY WITH, AND BE LEGALLY BOUND BY, THE TERMS AND CONDITIONS OF THIS AGREEMENT (THE DATE OF SUCH OCCURRENCE BEING THE “**EFFECTIVE DATE**”). THIS AGREEMENT GOVERNS CUSTOMER'S USE OF THE SERVICE. TO THE EXTENT THAT CUSTOMER AGREES TO THIS AGREEMENT BY CLICKING “I AGREE”, “ACCEPT” OR OTHER SIMILAR BUTTON(S), CUSTOMER HEREBY WAIVES ANY APPLICABLE RIGHTS TO REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS, TO THE EXTENT NOT PROHIBITED UNDER APPLICABLE LAW.

1. Ordering.

- 1.1. The Service shall be made available to Customer via an online marketplace (“**Marketplace**”) and may also be made available by Company's authorized partner, reseller or distributor (a Marketplace and each partner, reseller or distributor shall be each referred to herein as a “**Partner**”). In order to purchase a Subscription (as defined below) Customer shall be required to approve the Marketplace terms, and enter into an agreement with Partner or otherwise approve or execute a Partner purchase order (each a “**Partner Order**”). Customer acknowledges that (a) to the extent there is any conflict between this Agreement and the Partner Order this Agreement shall prevail; and (b) any rights granted to Customer in a Partner Order which are not contained in this Agreement, apply only in connection with such Partner.
- 1.2. Additionally, Customer may purchase a subscription to use the Service directly from Company via an order form executed with Company (a “**Direct Order**”). Each Direct Order is hereby incorporated into this Agreement by reference and shall be deemed to be a stand-alone agreement that incorporates by reference the terms of this Agreement. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and a Direct Order, this Agreement shall prevail (unless a Direct Order specifically states otherwise). A Partner Order and a Direct Order shall be referred to collectively herein as an “**Order**”.

2. Subscription.

- 2.1. Access Right. Subject to the terms and conditions of this Agreement, Company hereby grants Customer a limited, worldwide, non-exclusive, non-sublicensable, non-transferable and revocable right to remotely access (i.e. on a SaaS basis) the Company's software-as-a-service for the purpose of data backup and recovery (the “**Service**”) during the corresponding subscription term defined in the Order (“**Subscription Term**”), solely for Customer's internal business purposes (collectively, the “**Subscription**”). Unless otherwise indicated, the term “Service” also includes any downloadable software or appliance; any manual or documentation (“**Documentation**”) and any related services, each to the extent provided or

made available to Customer in connection with the operation of the Service. Customer may use the Service subject to the use limitations specified in this Agreement and the respective Order, and subject to applicable laws and regulations. Customer shall maintain and operate a supported web browser as specified in the Documentation and all information technology infrastructure, equipment, systems, assets, access, internet connection and ancillary goods and services needed to access and use the Service, and shall ensure their compatibility with the Service. For clarity, Customer shall be responsible to determine whether the Service meets Customer's regulatory, technical or business requirements.

- 2.2. Permitted Users. The Service may be accessed solely by Customer, its affiliates and their employees or service providers who are explicitly authorized by Customer to use the Service for the benefit of Customer or its affiliates (each, a **"Permitted User"**). Customer will ensure that the Permitted Users comply with the terms of this Agreement at all times and maintain the confidentiality and security of their account credentials. Customer will be fully responsible for any acts or omissions by a Permitted User, and shall promptly notify Company upon becoming aware of any unauthorized access to or use of the Service.
- 2.3. Account Setup. In order to access the Service, Customer is required to set up an account with Company, by submitting the information requested in the applicable Service interface (**"Account"**), and each Permitted User may need to set up a user account (each, a **"User Account"**), and references herein to the **"Account"** shall be deemed to include all such User Accounts if applicable). Customer warrants that all information submitted during the registration process is, and will thereafter remain, complete and accurate.

3. Support Services and Professional Services.

- 3.1. Support Services. Company shall provide support and maintenance services in accordance with the Company's then current Service Level Agreement, which shall be made available to Customer upon request (the **"SLA"**). The support and maintenance services shall be performed by Company, a Partner and/or Company's certified third party providers. Company shall be responsible for such service providers' performance of the support and maintenance services. The term **"Subscription"** shall include the services provided under the SLA.
- 3.2. Professional Services. If Customer wishes to receive any additional services from Company that are not included in the SLA, such as installation, deployment, configuration, customization, integration, training, or other professional services (**"Professional Services"**), Customer shall request same from Company in writing, and, if Company, at its sole discretion, agrees to perform such Professional Services, they shall be set out in sequential Statements of Work to this Agreement, which shall be negotiated and executed by both Parties (each, a **"SOW"**). Company will charge for Professional Services in accordance with the fees and payment terms specified in the applicable SOW. Each SOW is hereby deemed incorporated into this Agreement by reference. To the extent of any conflict between the main body of this Agreement and a SOW, the former shall prevail, unless and to the extent that the SOW expressly states otherwise.

4. Subscription Fees.

- 4.1. Fees. The Service is conditioned on Customer's payment of the applicable fees at the rates made available by the Company or Partner (**"Fees"**) subject to an applicable invoice. Customer's selection of a functionalities within the Service shall be deemed as Customer's approval to be charged for such usage. Except as set forth in an Order, all Fees are non-refundable and without right of set off or cancellation, shall be due in U.S. Dollars currency.
- 4.2. Payment Processing for Subscriptions Purchased via Partner. If Customer purchased the Subscription via a Partner, then (a) Customer shall pay all Fees, directly to Partner, in accordance with the terms of the Partner Order, unless otherwise specified therein. The Fees are calculated monthly on a consumption basis dependent on Customer's actual use of the Service; (b) unless otherwise instructed by Company, if Customer is entitled to a refund, customer shall request such refund from Partner; and (c) Company may change the Fees and billing cycle at any time, and will notify Customer thereof by email, or other reasonable manner. The price change shall enter in effect no less than thirty (30) days following such notice. If Customer does not agree to the change, Customer must cancel and stop using the Service before the price change takes effect.
- 4.3. Payment Processing for Subscriptions Purchased Directly from Company. Unless otherwise specified within the Direct Order, the Subscription shall be offered on a capacity basis wherein the Customer shall purchase, in advance, and in accordance with the rates provided by the Company, credits to use the Service (**"Credits"**). The Credits may be used by Customer during the period specified in the applicable Direct Order. If Customer's usage of the Service exceeds Customer's available Credits, Company shall notify Customer thereof and will detail the additional fees due which shall be due and payable within thirty (30) days following Customer's receipt of such notice. The Customer may, at any time during the Term (as specified below), purchase additional Credits. The Customer acknowledges and agrees that no refunds or credits will be provided for any portion of the Credits that remains unused at the end of the applicable usage period, except as may be expressly approved in writing by Company. Company may change the Fees and any billing cycle at any time, Company will notify Customer thereof by email, or other reasonable manner, at least thirty (30) days before the price change, and the price change will apply with respect to Customer's next purchase of Credits. If Customer does not agree to the price change, Customer must refrain from purchasing additional Credits.
- 4.4. Chargebacks and Late Payments. If, at any time, Company's or Partner's records a decline, chargeback, or other rejection or non-payment of a charge of any due and payable Fees on Customer's Account (**"Chargeback"**), this will be considered a material breach of Customer's payment obligations hereunder, and Company reserves the right to suspend Customer's access to the Service until Customer pays the entire Fees which are due. Additionally, Company reserves the right to charge any fees and expenses for each Chargeback received (including interest calculated on a daily basis until the due Fees are paid in full, at the lesser of the rate of one and a half percent (1.5%) per month and the highest amount permitted by applicable law, handling and processing charges and fees incurred by the Company and/or the payment processor), without derogating from any other remedy that may be applicable to Company under this Agreement or applicable law.
- 4.5. Taxes. Each Party shall be responsible for any taxes, duties, levies, and other similar charges imposed on it under applicable law in connection with this Agreement. The Company may charge any applicable national, state, or local sales or use taxes or value added taxes that the Company is legally obligated to charge (the **"Taxes"**). If applicable, the Customer may provide

Company with an exemption certificate or equivalent information acceptable to the relevant taxing authority, in which case the Company will not charge or collect the Taxes covered by such certificate. In the event that any amount payable by the Customer hereunder is subject to deduction or withholding for taxes, the amount payable by Customer hereunder shall be increased such that the amount received by the Company equals the amount stated on the applicable invoice. Upon written request, the Company will provide the Customer with any forms, documents, or certifications as may be required for Customer to satisfy any information reporting or withholding tax obligations with respect to any payments under this Agreement. If Customer is entitled to an exemption from, or reduction of, Withholding Taxes, Customer may deliver to Company a valid tax certificate or other appropriate documentation evidencing such exemption or reduction, in which case Customer shall apply such exemption or reduction as permitted under applicable law.

5. Subscription Restrictions, Suspension.

5.1. Subscription Restrictions. As a condition to the Subscription, and except as expressly permitted otherwise under this Agreement, Customer shall not do (or permit or encourage to be done) any of the following subscription restrictions (in whole or in part): (a) copy, "frame" or "mirror" the Service; (b) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available the Service to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (c) publicly perform, display or communicate the Service; (d) modify, alter, adapt, arrange, or translate the Service; (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of, the Service; (f) remove, alter, or conceal any copyright labels or proprietary rights notices displayed on or in the Service; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Service; (h) make a derivative work of the Service, or use it or the Documentation to develop any service or product that is competing or the same as (or substantially similar to) the Service; (i) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Service; or (j) use the Service in an abusive manner or otherwise take any action that imposes or may impose (as determined in Company's reasonable discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support the Service, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure.

5.2. Suspension. Company reserves the right to temporarily suspend Customer's access to the Service: (a) if Company deems such suspension necessary as a result of Customer's breach under Section 5.1 (*Subscription Restrictions*); (b) following a Chargeback; (c) if Customer's account is no longer active and no data is backed-up during a period of at least ninety (90) days; (d) if Company reasonably determines suspension is necessary to avoid material harm to Company or its other customers, including if the Service's cloud infrastructure is experiencing denial of service attacks or other attacks or disruptions outside of the Company's control, or (e) as required by law or at the request of governmental entities. Company will use reasonable efforts to reestablish Customer's access to the Service promptly after Company determines that the issue causing the suspension has been resolved. Any suspension under this Section shall not excuse Customer's payment obligations.

6. **Personal Data.** To the extent that Customer needs a data processing agreement, Customer shall reach out to privacy@eon.io to receive the Company's data processing agreement ("DPA") and provide the Company with a signed copy as described therein. The executed DPA shall be deemed as an integral part of this Agreement. For the avoidance of doubt, the information subject to the Company's privacy policy (e.g., log-in details) available at www.eon.io/privacy-policy shall not be subject to the terms of the DPA.

7. **Mutual Warranties.** Each Party represents and warrants that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; and that the execution and performance of this Agreement will not conflict with other agreements to which it is bound or violate applicable law.

8. Intellectual Property Rights.

8.1. Service. As between the Parties, Company is, and shall be, the sole and exclusive owner of all intellectual property rights in and to: (a) the Service and all related software and intellectual property; (b) any other products, deliverables or services provided by Company; and (c) any and all improvements, derivative works, and/or modifications of/to the foregoing, regardless of inventorship or authorship. Customer shall make, and hereby irrevocably makes, all assignments necessary or reasonably requested by Company to ensure and/or provide Company the ownership rights set forth in this paragraph. Company shall be entitled, from time to time, to modify the Service (but not material functionalities therein, unless such modifications improve the material functionalities of the Service) and user interface of the Service. Use of and access to the Service is licensed, not sold, and nothing herein constitutes a waiver of Company's intellectual property rights under any law.

8.2. Feedback. If Company receives any Feedback (as defined below), all rights, including intellectual property rights in and to such Feedback shall belong exclusively to Company and such shall be considered Company's Confidential Information (as defined below). Customer hereby irrevocably and unconditionally transfers and assigns to Company all intellectual property rights it has in such Feedback and waives any and all moral rights that Customer may have in respect thereto. Company may, but is not obliged to make use of the Feedback. "Feedback" means any feedback (e.g., questions, comments, suggestions or the like), whether orally or in writing, regarding any of the Service.

9. Data.

9.1. Customer Data. As between the parties, Customer owns and retains all right, title and interest (including all intellectual property rights) in and to any data, materials or information that Customer or its Permitted Users upload to, store on or access with the Services, or otherwise originates, resides on, or is otherwise processed through Customer's systems and processed by Company in the provision of Service (the "Customer Data"). Customer hereby grants Company and its Affiliates a worldwide and non-exclusive license, to access and use the Customer Data, during the Term, for Company's provision of

the Service and obligations hereunder. As the exclusive owner of the Customer Data, Customer represents, warrants and covenants that it has received and/or obtained any and all required consents or permits and has acted in compliance with any and all applicable laws, including, without limitation privacy laws, as to allow Company to receive, transfer and use the Customer Data solely as necessary in order to perform the Service. Company may use or disclose the Customer Data: (a) for legally required disclosures to law enforcement authorities (of which Customer will be notified except where prohibited by law); and/or (b) to collect, store, transfer, and/or process the Customer Data through Company's Affiliates, third party service providers, as reasonably necessary to provide the Service, including, without limitations, for the purpose of providing support services. Company will maintain commercially reasonable administrative, technical, and physical safeguards designed to protect the security, confidentiality, and integrity of Customer Data.

- 9.2. **Account Data and Analytics Information.** Customer acknowledges and agrees that Company may monitor Customer's use of the Service and collect and process information regarding Customer's access to and use of the Services, including the number of users and devices, and information regarding storage usage and storage locations, configuration, performance and security ("**Account Data**"). The Account Data may be used by Company for billing and support purposes, in order to ensure compliance with this Agreement, to develop and operate the Services and to fulfill legal obligations. Any anonymous information, which is derived from the use of the Service (i.e., metadata, aggregated and/or analytics information and/or intelligence relating to the operation, support, and/or Customer's use, of the Service) which is not personally identifiable information and which does not identify Customer ("**Analytics Information**") may be used by Company in any manner, including for providing the Service, for development, and/or for statistical purposes. Such Analytics Information is Company's exclusive property.
10. **Third Party Components.** The Service may use or include third party open source software files, libraries or components or other third party software that may be distributed to Customer and are subject to third party license terms. A list of any third party open source software and related open source licenses will be provided by Company upon request and may be updated from time to time by the Company. If there is a conflict between any third party license and the terms of this Agreement, then the third party license terms shall prevail but solely in connection with the related third party software. Company makes no warranty or indemnity hereunder with respect to any third party software.
11. **Confidentiality. "Confidential Information"** means any information disclosed by or on behalf of one Party ("**Discloser**") to the other Party ("**Recipient**") pursuant to this Agreement that is marked as "confidential," or in some other manner to indicate its confidential nature. Without limiting the foregoing, the Service is Company's Confidential Information. Confidential Information does not include any information which: (i) is or becomes generally known and available to the public through no act of the Recipient; (ii) was already in the Recipient's possession without a duty of confidentiality owed to the Discloser at the time of the Discloser's disclosure; (iii) is lawfully obtained by the Recipient from a third party who has the express right to make such disclosure; or (iv) is independently developed by the Recipient without breach of an obligation owed to the Discloser. The Recipient may use the Discloser's Confidential Information solely to perform its obligations under this Agreement. Except as set forth in the immediately following sentence, the Recipient will not disclose the Discloser's Confidential Information to any third party except to its employees, consultants, affiliates, agents, and subcontractors having a need to know such information to perform its obligations under this Agreement who have signed a non-disclosure agreement with the Recipient containing terms at least as protective of the Discloser's Confidential Information as those contained herein. The Recipient may disclose the Discloser's Confidential Information to the extent that such disclosure is required by law, or by the order of a court of similar judicial or administrative body, provided that it notifies the Discloser's of such required disclosure to enable Discloser's to seek a protective order or otherwise seek to prevent or restrict such disclosure. All right, title, and interest in and to Confidential Information are and will remain the sole and exclusive property of the Discloser. The Recipient will use no less than reasonable efforts to protect the Discloser's Confidential Information from unauthorized access, use, or disclosure. Notwithstanding anything to the contrary in this Agreement, Company's obligations with respect to the protection of Customer Data are solely as set forth in Section 9.1 (*Customer Data*).
12. **DISCLAIMER OF WARRANTIES.** Company represents and warrants that, under normal authorized use, the Service shall substantially perform in conformance with its Documentation. As Customer's sole and exclusive remedy and Company's sole liability for breach of this warranty, Company shall use commercially reasonable efforts to repair the Service in accordance with the SLA. The warranty set forth herein shall not apply if the failure of Service results from or is otherwise attributable to: (i) repair, maintenance or modification of the Service by persons other than Company or its authorized representatives; (ii) accident, negligence, abuse or misuse of the Service; (iii) use of the Service other than in accordance with the Documentation; (iv) the combination of the Service with equipment or software not authorized or provided by Company; (v) any unavailability, suspension or termination of third-party software or cloud services or any other cloud service provider performance issues or (vi) any inaccuracy in the Customer Data or other information Customer provided or made available to Company. OTHER THAN AS EXPLICITLY STATED IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE AND THE RESULTS OR OUTPUTS THEREOF ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND ANY USE THEREOF IS ENTIRELY AT CUSTOMER'S RISK. COMPANY DOES NOT WARRANT THAT: (I) THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS, OR (II) THE SERVICE, OR ANY PART THEREOF WILL OPERATE ERROR-FREE. EXCEPT AS SET FORTH IN SECTION 7 (*MUTUAL WARRANTIES*) AND THIS SECTION 12, THE COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, SATISFACTORY QUALITY TITLE, NON-INFRINGEMENT, NON-INTERFERENCE AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES THAT THE SERVICE IS ONE TOOL IN CUSTOMER DATA PROTECTION STRATEGY, AND THAT CUSTOMER IS AND SHALL REMAIN RESPONSIBLE TO ENSURE CUSTOMER'S COMPLIANCE WITH APPLICABLE LAWS, AND THAT CUSTOMER HAS THE REQUIRED DATA PROTECTION, BACKUP AND RECOVERY MEASURES IN

PLACE. COMPANY WILL NOT BE LIABLE FOR ANY DAMAGES BASED ON USE OR ACCESS OF THE SERVICE, OR ANY DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO PUBLIC NETWORKS OR CUSTOMER'S HOSTING SERVICES. COMPANY SHALL NOT BE RESPONSIBLE FOR ANY WARRANTIES AND REPRESENTATIONS MADE BY ANY PARTNER TO CUSTOMER.

13. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY LAW:

- 13.1. EXCEPT FOR ANY DAMAGES RESULTING FROM WILLFUL MISCONDUCT, AND/OR CUSTOMER'S MISAPPROPRIATION OR OTHERWISE VIOLATION OF COMPANY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING VIOLATION OF THE SUBSCRIPTION RESTRICTIONS BY CUSTOMER) NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE, REPUTATION, PROFITS, DATA, OR DATA USE, OR THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES;
- 13.2. EXCEPT FOR COMPANY'S INDEMNIFICATION OBLIGATION UNDER SECTION 14 AND/OR DAMAGES RESULTING FROM WILLFUL MISCONDUCT, AND/OR CUSTOMER'S MISAPPROPRIATION OR OTHERWISE VIOLATION OF COMPANY'S INTELLECTUAL PROPERTY RIGHTS (INCLUDING VIOLATION OF THE SUBSCRIPTION RESTRICTIONS BY CUSTOMER): EITHER PARTY'S INCLUDING ITS AFFILIATES' MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER TO COMPANY OR TO THE APPLICABLE PARTNER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. FOR CLARITY, THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO PAYMENTS DUE TO COMPANY UNDER THIS AGREEMENT (INCLUDING ITS EXHIBITS).

14. Indemnification.

- 14.1. Company agrees to defend, at its expense, any third party action or suit brought against Customer alleging that the Service, when used as permitted under this Agreement, infringes the intellectual property rights of a third party ("**IP Infringement Claim**"); and Company will pay any damages finally awarded by court against Customer that are attributable to any such IP Infringement Claim, provided that (i) Customer promptly notifies Company in writing of such claim; and (ii) Customer grants Company the sole authority to handle the defense or settlement of any such claim and provides Company with all reasonable information and assistance in connection therewith, at Company's expense. Company will not be bound by any settlement that Customer enters into without Company's prior written consent.
- 14.2. If the Service becomes, or in Company's opinion is likely to become, the subject of an IP Infringement Claim, then Company may, at its sole discretion: (a) procure for Customer the right to continue using the Service; (b) replace or modify the Service to avoid the IP Infringement Claim; or (c) if options (a) and (b) cannot be accomplished despite Company's reasonable efforts, then Company may terminate the affected Order(s) upon written notice to Customer, and Customer shall be entitled to receive from either Company or Partner (as the case may be) a pro-rated refund of any prepaid Subscription Fees under such Order(s) based on the remaining period of the corresponding Subscription Term(s).
- 14.3. Notwithstanding the foregoing, Company shall have no responsibility for IP Infringement Claims resulting from or based on: (i) Company's compliance with Customer's instructions or specification; or (ii) combination or use of the Service with equipment, devices or software not supplied by Company.
- 14.4. This Section 14 states Company's entire liability, and Customer's exclusive remedy, for any IP Infringement Claim.

15. Term and Termination.

- 15.1. Term. This Agreement commences on the Effective Date and, shall continue in full force and effect until all Orders are terminated (the "**Term**").
- 15.2. Termination. Unless otherwise specified within an Order, Customer may terminate this Agreement and its Subscription, at any point, by providing Company (or Partner, as applicable) with a thirty (30) days' prior written termination notice. Company may, upon written notice, terminate this Agreement (and cease to provide the Service to Customer): (a) if Customer materially breaches this Agreement and such breach remains uncured fifteen (15) days after having received written notice thereof; and (b) if the Service, or a portion thereof, will be discontinued or end-of-lifed by Company. For clarity, if following termination by Company per discontinuation or end-of-life of the Service Customer obtains any purchased unused Credits, Company shall grant Customer with a prorated refund. Additionally, each Partner Order may be terminated in accordance with the termination rights specified therein.
- 15.3. Effect of Termination; Survival. Upon termination of this Agreement or an Order for any reason, including non-renewal of Subscription: (a) the Subscription shall automatically terminate and Customer shall cease all access and use of the Service, (b) Customer shall permanently erase and/or return all Confidential Information of Company in Customer's possession or control; (c) Customer shall be responsible for preserving its Customer Data, and acknowledges that following termination of this Agreement, Company shall delete all Customer Data and (d) all outstanding Fees and other charges that accrued as of termination, will become immediately due and payable, and if necessary Company shall issue a final invoice therefor. The provisions of this Agreement that, by their nature and content, must survive the termination of this Agreement in order to achieve the fundamental purposes of this Agreement (including "*Intellectual Property Rights*", "*Disclaimer of Warranties*", "*Limitation of Liability*", and "*Miscellaneous*") shall so survive.
- 16. Miscellaneous.** This Agreement, including the DPA (if applicable), and any exhibits attached or referred hereto, represents the entire agreement between the Parties concerning the subject matter hereof, replaces all prior and contemporaneous oral or written understandings and statements. Company may revise this Agreement and will post the updated or revised Agreement on its website, within the Marketplace or by any other manner chosen by Company in its commercially reasonable

discretion. Unless otherwise specified herein, such change will be effective within ten (10) days following the foregoing notification thereof, and Customer's continued use of the Service thereafter means that Customer accepts those changes to this Agreement as updated or revised. Customer can view the most current version of the Agreement on Company's website. Any terms and conditions (whether printed, linked to or otherwise), within any purchase order or related correspondence that purport to modify this Agreement (or the corresponding Order), shall be void and of no effect. The failure of either Party to enforce any rights granted hereunder or to take action against the other Party in the event of any breach shall not be deemed a waiver by that Party as to subsequent enforcement or actions in the event of future breaches. Any waiver granted hereunder must be in writing. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and such provision shall be reformed only to the extent necessary to make it enforceable. Any use of the Service by an agency, department, or other entity of the United States government shall be governed solely by the terms of this Agreement. Customer hereby agrees that Company may use Customer's name and logo to identify Customer as a customer of Company or user of the Service, on Company's website and within presentations and marketing materials, provided that Customer may ask Company to remove its name and logo at any time, in which case Company shall remove any such reference to Customer. Following the termination of this Agreement Customer may request Company to remove such customer references. Except as stated otherwise herein, this Agreement is for the sole benefit of the Parties hereto and nothing herein, express or implied, shall give, or be construed to give, any rights hereunder to any other person. Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party, whose consent may not be unreasonably withheld or delayed. Notwithstanding the foregoing, this Agreement may be assigned by either Party in connection with a merger, consolidation, sale of all of the equity interests of such Party, or a sale of all or substantially all of the assets of the Party to which this Agreement relates. Without derogating from and subject to the abovementioned, this Agreement will bind and benefit each Party and its respective successors and assigns. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to principles of conflicts of law. The competent courts of the city of New York shall have the exclusive jurisdiction with respect to all disputes arising out of or in connection with this Agreement. Notwithstanding the foregoing, each Party may seek equitable relief in any court of competent jurisdiction in order to protect its proprietary rights. Each Party irrevocably waives its right to trial of any issue by jury. No claim against Company can be brought more than one (1) year after the event giving rise to the claim. This Agreement does not, and shall not be construed to create any relationship, partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between the Parties. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party. Company will not be liable for any delay or failure to provide the Service resulting from circumstances or causes beyond the reasonable control of Company including, but not limited to on account of strikes, shortages, riots, insurrection, fires, flood, storms, explosions, acts of God, war, government or quasi-governmental authorities actions, riot, acts of terrorism, earthquakes, explosions, power outages, pandemic or epidemic (or similar regional health crisis), or any other cause that is beyond the reasonable control of Company. Notices to either Party shall be deemed given (a) four (4) business days after being mailed by airmail, postage prepaid, (b) the same business day, if dispatched by facsimile or electronic mail before 13:00 hour (EST time) and sender receives acknowledgment of receipt, or (c) the next business day, if dispatched by facsimile or electronic mail after the hour 13:00 (EST time) and sender receives acknowledgment of receipt.