

FOVUS TERMS OF SERVICE

Last updated: August 27th, 2024

THIS CLOUD SERVICES AGREEMENT (THIS “**AGREEMENT**”), TOGETHER WITH ANY ORDER ON WHICH THEY ARE REFERENCED, GOVERNS CUSTOMER’S USE OF THE FOVUS SOLUTIONS. BY ACCESSING OR USE THE FOVUS SOLUTIONS: (A) YOU ARE INDICATING THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT, AND AGREE TO BE LEGALLY BOUND BY IT ON BEHALF OF THE COMPANY, OR OTHER ENTITY FOR WHICH YOU ARE ACTING OR, IF THERE IS NO COMPANY, OR OTHER ENTITY FOR WHICH YOU ARE ACTING, ON BEHALF OF YOURSELF AS AN INDIVIDUAL; AND (B) YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ACT ON BEHALF OF AND BIND SUCH COMPANY, OR OTHER ENTITY (IF ANY).

WITHOUT LIMITING THE FOREGOING, YOU (AND YOUR COMPANY OR ENTITY, IF ANY) ACKNOWLEDGE THAT BY SUBMITTING, PAYING FOR, OR AGREEING TO ANY AN ORDER (OR OTHER ORDERING OR PURCHASING DOCUMENT, SUCH AN INVOICE) FOR THE FOVUS SOLUTIONS, YOU (AND YOUR ENTITY (IF ANY)) HAVE AGREED TO BE BOUND BY THIS AGREEMENT.

IF YOU DO NOT AGREE WITH ANY OF THE TERMS OR CONDITIONS OF THIS AGREEMENT, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE ANY PORTION OF THE FOVUS SOLUTIONS.

This Agreement is entered into by and between **Fovus Corporation**, a Delaware corporation (the “**Company**”), and **Company Name** (“**Customer**”), and is effective as of the Effective Date.

1. **Definitions.** Capitalized terms used but not otherwise defined in this Agreement have the meanings as follows:

(a) “**Affiliate**” of a party means an entity that controls, is controlled by, or is under common control with such party.

(b) “**Authorized User**” means employees or agents of Customer or its Affiliates selected by Customer to access and use the Fovus Solutions.

(c) “**Benchmarking Data**” means the data and metadata related to benchmarking generated through the creation of benchmarking profiles or comparative tests or evaluations within the Fovus Solutions.

(d) “**Cloud Environment**” means a cloud or other compute or storage infrastructure

controlled by a party according to context and utilized under the Agreement.

(e) “**Customer Content**” means all data input into or made available by Customer for processing within the Fovus Solutions or generated from the Fovus Solutions by Customer; provided that Customer Content shall explicitly exclude any Benchmarking Data.

(f) “**Customer Data**” means the data, other than Customer Instructional Input, made available by Customer and its Authorized Users for processing within the Fovus Solutions. For the avoidance of doubt, Customer Data does not include any Benchmarking Data.

(g) “**Customer Instructional Input**” means information other than Customer Data that Customer inputs into the Fovus Solutions to direct how the Fovus Solutions process Customer Data, including without limitation the code and any libraries (including third party libraries) Customer utilizes within the Fovus Solutions.

(h) “**Customer Results**” means any output Customer or its Authorized Users generate from their use of the Fovus Solutions; provided that Customer Results shall explicitly exclude any Benchmarking Data.

(i) “**Disabled Materials**” means certain materials (including programs, modules or components, functionality, features, documentation, content or other materials) that may be contained in or provided with the Fovus Solutions as part of the delivery mechanism used by the Company, but that are disabled or hidden in Customer’s setting, because Customer either: (a) does not have the relevant license or license key, or (b) has not paid the applicable Subscription Fees, for those materials.

(j) “**Documentation**” means the written and/or electronic release notes, implementation guides, or other published technical documentation in connection with the Fovus Solutions provided by the Company to Customer together with access to the Fovus Solutions, including without limitation, the User Guide available at [[Fovus Serverless HPC Platform User Guide](#)].

(k) “**Effective Date**” means the earliest of (i) the effective date of the initial Order that references this Agreement, (ii) the date of last signature of this Agreement, or (iii) the date Customer first accesses or uses the Fovus Solutions.

(l) “**Feedback**” means all suggestions for improvement or enhancement, recommendations, comments, opinions, code, input, ideas, reports, information, know-how or other feedback provided by Customer (whether in oral, electronic or written form) to the Company in connection with the Fovus Solutions. Feedback does not include any data, results or output created or generated by Customer using the Fovus Solutions, unless specifically submitted or communicated by Customer to the Company as part of the Feedback.

(m) “**Fovus Solutions**” means the Fovus products and services made available by access to and use of software hosted by the Company, including any Software-as-a-Service (SaaS) or command line interface (CLI), as more fully described in the Fovus subscription plans available at [[Fovus Subscription Plan](#)] (each, a “**Subscription Plan**”).

(n) “**Government**” means an agency, department, or instrumentality of the United States government.

(o) “**Intellectual Property Rights**” means all patent, copyright, trademark, and trade secret rights and other intellectual property and proprietary rights, whether registered or unregistered.

(p) “**Internal Business Purpose**” means Customer’s and its Affiliates’ use for its own business operations on Customer’s and its Affiliates’ systems, networks and devices with Customer’s data.

(q) “**Licensed Capacity**” means the maximum number of the Subscribed Fovus Credits being purchased by Customer under the applicable Subscription Plan and other maximum usage of the Fovus Solutions that is permitted under such Subscription Plan.

(r) “**Order**” means an order form, online order, confirming invoice, or similar agreement for the subscription of the Fovus Solutions, entered into by the parties or any of their Affiliates, incorporated by reference into, and governed by, this Agreement.

(s) “**Pilot Term**” means the period of time identified on an Order during which unused Fovus Credits are refundable or usable during the remainder of the Subscription Term. The Pilot Term commences upon the Effective Date and shall continue for the time period stated on an Order agreed by the Company and the Customer.

(t) “**Shared Data**” means (i) Customer Content that Customer elects to share with third parties or (ii) data Customer elects to receive from third parties, under an applicable configuration of the Fovus Solutions.

(u) “**Subscription Term**” means a one-year period or a quarterly period, or a longer period, in each case as set forth in the applicable Order. The initial Subscription Term commences upon the Effective Date and shall continue for a year unless otherwise stated on an Order agreed by the Company and the Customer.

(v) “**Usage Data**” means usage data and telemetry collected by the Company relating to Customer’s use of the Fovus Solutions, which may include embedded Customer Content, Customer Data, Customer Results, and Shared Data, or a combination of the foregoing. Usage Data may contain queries entered by an Authorized User but not the results of those queries.

(w) “**Workspace**” means a Fovus Solutions environment.

2. Subscription.

(a) General. Customer may subscribe any Subscription Plan for any Subscription Term by submitting an Order to the Company or agreeing to or paying an Order furnished by the Company. Each Order shall include: (i) the specific Subscription Plan to be subscribed, (ii) the specific Pilot Term, if any, and Subscription Term, if not a one-year period, (iii) the total number of Fovus credits (the “**Fovus Credits**”) to be purchased under such Subscription Plan during the Subscription Term (the “**Subscribed Fovus Credits**”), which shall equal a positive integer, determined by Customer in such Customer’s sole discretion (“**N**”), multiplied by the applicable minimum credit amount required to be subscribed under such Subscription Plan, (iv) the subscription fee to be paid (the “**Subscription Fee**”), determined by the per Fovus Credit price under such Subscription Plan, multiplied by the Subscribed Fovus Credits, and (v) such other terms and conditions as mutually agreed by the Company and Customer.

(b) Fees. Customer shall pay the applicable Subscription Fees set forth in each Order at the commencement of the Subscription Term, whether pursuant to an initial Order or a renewal. Without limitation of the Company’s other termination rights, if Customer fails to pay the Subscription Fees when due, then the Company may terminate this Agreement and all licenses granted hereunder by notice to Customer. All Subscription Fees are non-refundable at the expiration of the Pilot Term, if any, once paid. All Subscription Fees for used or consumed Focus Credits are non-refundable during all periods, including the Pilot Term.

(c) License. Subject to Customer’s timely payment of the Subscription Fee and full compliance with the terms and conditions of this Agreement, the Company hereby grants Customer a limited, non-exclusive, non-transferable, non-sublicensable (other than to Customer’s Affiliates with notice to the Company) license to use or access the Fovus Solutions purchased by such Customer under the applicable Subscription Plan within the Licensed Capacity, solely for the Customer’s Internal Business Purposes during the applicable Subscription Term, subject to the applicable subscription terms (as specified in applicable Order(s)).

(d) Calculation of Fovus Credit Usage. The Company will apply Customer’s Subscribed Fovus Credits to Customer’s use of the Fovus Solutions in accordance with the Fovus Credit consumption calculation available at [\[Fovus Pricing Model\]](#) (the “**Calculation**”), and Customer hereby expressly consents to such Calculation. Further, the Company may supplement, update or otherwise revise the Calculation, in its reasonable discretion, from time to time without Customer’s prior consent and/or prior notice to Customer, with such Calculation to take effect with respect to Customer upon the immediately succeeding billing cycle.

(e) Cancellation. At any time during the Subscription Term, Customer may cancel its subscription to the applicable Subscription Plan by delivering a written notice to the Company

(the “**Cancellation Notice**”) prior to the expiration of the Pilot Term, if any, at any time, and following expiration of the Pilot Term, if any, at least thirty (30) days prior to the expiration of the then-current Subscription Term (or at least fifteen (15) days prior to the expiration of the then-current Subscription Term, if the then-current Subscription Term is a quarterly period). Upon and from such cancellation, Customer may still be able to use the Fovus Solutions on an “as available” and “as is” basis for the remainder of the Subscription Term. If such Cancellation Notice is received by the Company during the Pilot Term, Customer may elect to receive a refund for the unused Focus Credits in lieu of continuing to be able to use the Fovus Solutions on an “as available” and “as is” basis for the remainder of the Subscription Term. Any unused Subscribed Fovus Credits not refunded pursuant to a Cancellation Notice made during the Pilot Term shall automatically expire at the end of the Subscription Term. In no event shall the Company be obligated to return or cash any used or unused Fovus Credits except as described in this Section. In no event shall a Cancellation Notice relieve Customer of payment for any Subscribed Fovus Credits agreed to be purchased pursuant to an Order, even if the Cancellation Notice is received prior to the payment date for Subscribed Fovus Credits to be purchased during the Subscription Term but paid for after the date of the Cancellation Notice. For the avoidance of doubt, upon and from such cancellation, the Company shall not be obligated to update or provide new releases of the Fovus Solutions to Customer.

(f) **Rollover.** For so long as Customer maintains an active subscription to any Subscription Plan, any unused Subscribed Fovus Credits in respect of a Subscription Term by the end of such Subscription Term will be carried forward to one (and only one) next consecutive subscription immediately following such Subscription Term.

(g) **Upgrade of Subscription Plans.** Customer may upgrade its Subscription Plan at any time by submitting a new Order to the Company during the current Subscription Term. Once upgraded, the new Subscription Plan will take effect immediately and apply to the remainder of the current Subscription Term, with pricing prorated to account for the upgrade for the time periods before and after such upgrade. Any unused Subscribed Fovus Credits in respect of the current Subscription Term will be carried forward to the upgraded subscription thereafter, with Customer to be charged for the difference in cost between the cost of the Subscribed Fovus Credits under the existing Subscription Plan and the upgrade Subscription Plan.

(h) **Downgrade of Subscription Plans.** Customer may inform the Company of its intention to downgrade its Subscription Plan for next Subscription Term by submitting a new Order to the Company at least fifteen (15) days prior to the expiration of the current Subscription Term. Such downgraded Subscription Plan will take effect upon the expiration of the current Subscription Term and will not be subject to proration. Any unused Subscribed Fovus Credits in respect of the current Subscription Term will be carried forward to the downgraded subscription thereafter, with no adjustment to the cost of the Subscribed Fovus Credits.

(i) **Automatic Renewal.** Customer acknowledges and agrees that subject to Section 11 below, the current Subscription Term for the applicable Subscription Plan being purchased by

such Customer shall be automatically renewed and extended for consecutive renewal terms, each of which shall be the same as the then current Subscription Term, unless Customer provides to the Company (1) the Cancellation Notice during the Pilot Term, if any, or at least thirty (30) days prior to the expiration of the then-current Subscription Term (or at least fifteen (15) days prior to the expiration of the then-current Subscription Term, if the then-current Subscription Term is a quarterly period), or (2) a new Order to upgrade or downgrade the Subscription Plan pursuant to Section 2(g) and/or Section 2(h), respectively.

(j) Additional Storage Space. In addition to the free cloud storage space included in a Subscription Plan, Customer may also subscribe for additional cloud storage space by applying the Subscribed Fovus Credits in accordance with the Calculation.

3. Customer Responsibilities.

(a) General. Customer hereby agrees and covenants that Customer shall be responsible for:

(i) ensuring that each Authorized User has its/his/her own credentials, protecting those credentials, and not permitting any sharing of credentials;

(ii) securing any Customer Cloud Environment, and any Customer system;

(iii) backing up Customer Content;

(iv) configuring the Fovus Solutions in an appropriate way, taking into account the sensitivity of the Customer Content that Customer chooses to process using the Fovus Solutions, including Shared Data;

(v) providing such information, and/or access to Customer's resources and personnel as the Company may reasonably require for providing services under the Fovus Solutions, including without limitation, providing remote system access (upon mutual agreement) for the Company to replicate potential errors and provide embedded diagnostic information;

(vi) using commercially reasonable efforts to ensure that its Authorized Users review the portions of Documentation relevant to its/his/her use of the Fovus Solutions and any security information published by the Company and referenced therein that is designed to assist Customer in securing Customer Content; and

(vii) all risks associated with all use of the Fovus Solutions by an Authorized User under such Authorized User's account, whether such action was taken by an Authorized User or by another party, and whether or not such action was authorized by an Authorized User, provided that such action was not taken by the Company or by a party

acting under the direction of the Company.

(b) Use Restrictions. Customer shall not, and shall not permit its Authorized Users to:

(i) copy, modify, disassemble, decompile, reverse engineer, or attempt to view or discover the source code of the Fovus Solutions, in whole or in part, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by the Agreement or by law notwithstanding this prohibition;

(ii) sell, resell, license, sublicense, distribute, rent, lease, or otherwise provide access to the Fovus Solutions to any third party except that Customer may sublicense or otherwise provide access to the Fovus Solutions to its Affiliates or to the extent explicitly authorized in writing by the Company;

(iii) use the Fovus Solutions to develop or offer a service made available to any third party that could reasonably be seen to serve as a substitute for such third party's possible purchase of any product or service of the Company;

(iv) transfer or assign any of Customer's rights hereunder except as permitted under Section 14(c);

(v) access or use any Disabled Materials;

(vi) provide to any third party any Benchmarking Data or the results of any evaluation of the Fovus Solutions without the Company's prior written consent;

(vii) attempt to disable or circumvent any license key or other technological mechanisms or measures intended to prevent, limit, or control the use or copying of, or access to, the Fovus Solutions (including in order to gain access to any Disabled Materials);

(viii) remove or obscure any copyright, trademark, patent, or other proprietary notices, legends, or symbols from the Fovus Solutions;

(ix) exceed the Licensed Capacity or violate other license limitations identified in this Agreement;

(x) separately use any of the applicable features and functionalities of the Fovus Solutions with external applications or code not furnished by the Company;

(xi) use the Fovus Solutions to violate the security or integrity of, or otherwise abuse, any system of any party, including but not limited to gaining unauthorized access

to any system (including attempting to probe, scan, monitor, or test the vulnerability of a system), forging any headers or other parts of any message describing its origin or routing, interfering with the proper functioning of any system (including any deliberate attempt by any means to overload a system), implementing denial-of-service attacks, operating non-permissioned network services (including open proxies, mail relays or recursive domain name servers), using any means to bypass system usage limitations, or storing, transmitting or installing malicious code;

(xii) use the Fovus Solutions to distribute or facilitate the sending of unsolicited or unlawful emails or other messages, or promotions of any kind;

(xiii) use the Fovus Solutions to engage in or promote any other fraudulent, deceptive, or illegal activities;

(xiv) use the Fovus Solutions to process, store or transmit material, including any Customer Data, in violation of any applicable laws or any third-party rights, including without limitation privacy rights;

(xv) otherwise access or use the Fovus Solutions except as expressly authorized in this Agreement; or

(xvi) encourage or assist any third party in doing any of the foregoing.

Customer acknowledges that the Fovus Solutions may be configured to display warnings, reduce available functionality, and/or cease functioning if unauthorized or improper use is detected, including if the Subscription Term expires or the Licensed Capacity is reached or exceeded.

(c) Customer Content.

(i) Customer agrees that Customer shall not include in Customer Content, or generate any Customer Results or any Benchmarking Data that include, any data for which Customer does not have all rights, power and authority necessary for its collection, use and processing as contemplated by this Agreement.

(ii) Customer shall not include in Customer Content any personal information unless Customer has entered into a data processing addendum or similar data processing agreement with the Company (the “DPA”). Such DPA, if any, shall be incorporated by reference herein in its entirety. If Customer has not entered into any DPA with the Company or if Customer provides personal information to the Company in violation of the relevant DPA, the Company shall have no liability hereunder relating to such personal information notwithstanding anything in this Agreement or in any applicable laws to the contrary.

(iii) To the extent that Customer uses any internal software of its own, commercial software and/or other third-party licenses (collectively, “**Customer’s Licenses**”) in connection with its use of the Fovus Services, Customer hereby irrevocably grants to the Company the right to use and access such Customer’s Licenses for the Purpose (as defined below). In the event that any of the Customer’s Licenses provided by a third party other than Customer does not allow the Company’s use or access in accordance with the foregoing sentence, Customer shall promptly notify the Company in writing and use its best efforts to negotiate with such third party for the Company’s use or access in accordance with the foregoing sentence.

(d) Services Updates. The Company provides the Fovus Solutions according to different architectural models, depending on the specific features being used by Customer, as further described in the Documentation. Therefore, Customer hereby acknowledges and agrees that different portions of the Fovus Solutions are and may in the future be subject to changes reflected in the Documentation or terms and conditions that provide for different rights and responsibilities of the parties for their use.

4. Ownership.

(a) General. The Company, its suppliers, and/or licensors own all worldwide right, title and interest in and to the Fovus Solutions, including all related Intellectual Property Rights. Except for the licenses expressly granted to Customer in Section 2(c), Customer will not acquire or claim any right, title, or interest in or to the Fovus Solutions or related Intellectual Property Rights, whether by implication, operation of law, or otherwise. Notwithstanding anything to the contrary, the Fovus Solutions are licensed, not sold, to Customer pursuant to the terms hereof.

(b) Ownership of Customer Content. As between the Company and Customer, Customer retains all ownership or license rights in Customer Content.

(c) Usage Data and Benchmarking Data. Notwithstanding anything contained in this Agreement to the contrary, the Company may collect and use Usage Data and/or Benchmarking Data to develop, improve, operate, and support its products, services, and Benchmarking Data (the “**Purpose**”). As between the Company and Customer, the Company retains all ownership or license rights in the Usage Data (other than the embedded Customer Content, Customer Data, Customer Results within such Usage Data, which shall remain the property of Customer) and Benchmarking Data. To the extent that Customer retains any of the rights, title and interest in and to any Usage Data and Benchmarking Data that cannot be assigned by Customer to the Company, Customer hereby grants to the Company an exclusive, royalty-free, transferable, irrevocable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) to practice such non-assignable rights, title and interest solely for the Purpose. The Company agrees not to share any Usage Data and/or Benchmarking Data that includes the Confidential Information of Customer except either (i) to the extent that such Usage Data and/or

Benchmarking Data is anonymized and aggregated such that it does not identify Customer or the Confidential Information of Customer; or (ii) in accordance with Section 9 of this Agreement. Such Usage Data and Benchmarking Data will be subject to the Company's Privacy Policy available at [[Privacy Policy](#)], which policy is hereby incorporated by reference and made a part of this Agreement.

(d) Feedback; Publicity. Customer agrees that the Company may publish a description of Customer's deployment of the Fovus Solutions and any Feedback or combination of the two, and, in connection with the same, identify Customer as a Company customer on any of the Company's websites, client lists, press releases, and/or other marketing materials (collectively, "**Marketing Materials**"). Customer grants to the Company a perpetual, irrevocable, worldwide, nonexclusive, transferable, sublicensable, royalty-free, fully paid-up right and license to use and commercially exploit Customer's name, logo, and all Feedback or other testimonial or descriptions thereof in any manner the Company deems fit, including but not limited to publication on the Company's public website.

5. Warranties; Warranty Disclaimer; Remedies.

(a) Warranties. Each party represents and warrants that it has the requisite corporate power and authority to enter into this Agreement and the applicable Order and to consummate the transactions contemplated by this Agreement or by any such Order. The Company further warrants that, during any Subscription Term, the Company will employ commercially reasonable efforts in accordance with industry standards to prevent the transmission of malware or malicious code via the Fovus Solutions.

(b) DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6(A) ABOVE, THE FOVUS SOLUTIONS, OPEN SOURCE SOFTWARE, THIRD PARTY CONTENT, SUPPORT SERVICES AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6(A) ABOVE, TO THE FULL EXTENT PERMITTED BY LAW, THE COMPANY AND ITS SUPPLIERS AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR TRADE USAGE. WITHOUT LIMITATION OF THE GENERALITY OF THE FOREGOING, THE COMPANY DOES NOT WARRANT THAT USE OF THE FOVUS SOLUTIONS WILL BE UNINTERRUPTED, ERROR FREE OR SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED.

(c) SOLE REMEDY. FOR ANY BREACH OF THE WARRANTIES RELATED TO THE FOVUS SOLUTIONS PROVIDED BY THE COMPANY IN SECTION 6(A), CUSTOMER'S EXCLUSIVE REMEDY AND THE COMPANY'S ENTIRE LIABILITY WILL BE THE MATERIAL CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE

BREACH OF WARRANTY, OR, IF THE COMPANY CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, THE COMPANY WILL END THE DEFICIENT SERVICES AND REFUND TO CUSTOMER THE PORTION OF ANY PREPAID SUBSCRIPTION FEE PAID BY CUSTOMER TO THE COMPANY APPLICABLE TO THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

6. LIMITATION OF LIABILITY. TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OR LIMITATION OF LIABILITY: (A) THE COMPANY AND ITS AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS AND LICENSORS (THE “**COMPANY ENTITIES**”) WILL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ARISING FROM LOSS OF USE, LOSS OF DATA, LOST PROFITS, LOST REVENUE, BUSINESS INTERRUPTION, OR COSTS OF PROCURING SUBSTITUTE SOFTWARE OR SERVICES) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF; AND (B) THE COMPANY ENTITIES’ TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF WILL NOT EXCEED THE AMOUNTS PAID BY CUSTOMER TO THE COMPANY FOR THE FOCUS SOLUTIONS IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY, IN EACH OF THE FOREGOING CASES (A) AND (B), REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, INDEMNIFICATION, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN ADDITION, CUSTOMER, AND NOT THE COMPANY, IS SOLELY RESPONSIBLE FOR THE ACCURACY, QUALITY AND SECURITY OF CUSTOMER’S DATA AND FOR MAINTAINING A BACKUP OF ALL SUCH DATA, AND FOR ENSURING THE SECURITY AND INTEGRITY OF CUSTOMER’S (AND ITS SERVICE PROVIDER’S) DATA, COMPUTERS, NETWORKS AND SYSTEMS (INCLUDING WITH RESPECT TO PROTECTING AGAINST VIRUSES AND MALWARE).

7. Indemnification. Customer shall defend the Company and any other Company Entities against any claim, demand, suit or proceeding made or brought against such Company Entity by a third party (a “**Claim**”) (a) arising from or related to Customer’s or its Authorized User’s use of the Fovus Solutions in violation of any applicable laws, the rights of a third party, this Agreement, any Order, or the Documentation, (b) arising from or related to Customer Content, (c) alleging that any information and/or materials Customer provides to the Company for the Company to perform the services contemplated hereunder or under any Order (the “**Customer Materials**”) or the use of the Customer Materials in connection with the Fovus Solutions infringes or misappropriates such party’s Intellectual Property Rights, (d) arising from any instructions provided by Customer or its Authorized Users to the Company in connection with

such person's use of the Fovus Solutions, (e) any breach of this Agreement, any Order or the Documentation by Customer or its Authorized Users, or (f) any willful misconducts, negligence, bad faith and fraud of Customer or its Authorized Users. Customer shall indemnify each such Company Entity from and against any damages, attorney fees, and costs finally awarded against such Company Entity as a result of a Claim, or for amounts paid by such Company Entity under a settlement for such Claim.

8. Confidential Information.

(a) Confidential Information. “**Confidential Information**” means any technical or business information, ideas, materials, know-how or other subject matter that is disclosed by one party to the other party that: (a) if disclosed in writing, is marked “confidential” or “proprietary” at the time of such disclosure; (b) if disclosed orally, is identified as “confidential” or “proprietary” at the time of such disclosure; or (c) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary. Confidential Information of the Company shall include the non-public elements of the Fovus Solutions.

(b) Use and Disclosure Restrictions. The party receiving Confidential Information (“**Recipient**”) agrees: (a) to maintain the Confidential Information of the party disclosing such information (the “**Discloser**”) in strict confidence; (b) not to disclose such Confidential Information to any third parties; and (c) not to use any such Confidential Information for any purpose other than to exercise its rights or perform its obligations under this Agreement. Recipient will treat Confidential Information of the Discloser with the same degree of care as it accords to its own Confidential Information, but in no event with less than reasonable care. Recipient may disclose the Confidential Information of Discloser to its directors, officers, employees, subcontractors, representatives, and agents (collectively, “**Representatives**”), who have a bona fide need to know such Confidential Information, provided that each such Representative is bound by a legal obligation as protective of the other party's Confidential Information as those set forth herein. Recipient's obligations under this Section 9 will continue in effect for a period of three (3) years from the date of the last disclosure of Confidential Information by Discloser, except that Customer's obligations under this Section 9 will continue in effect in perpetuity with respect to trade secrets of the Company.

(c) Exclusions. The obligations of Recipient under Section 9(a) will not apply to any Confidential Information that: (i) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of Recipient (or any of its Representatives, Affiliates, or agents) or any third party subject to any use or disclosure restrictions with respect to such Confidential Information; (ii) was known by or lawfully in possession of Recipient, prior to receiving such information from Discloser, without restriction as to use or disclosure; (iii) is rightfully acquired by Recipient from a third party who has the right to disclose it and who provides it without restriction as to use or disclosure; or (iv) is independently developed by Recipient without access, use or reference to any Confidential Information of Discloser.

(d) Required Disclosures. The provisions of Section 9(a) will not restrict Recipient from disclosing Discloser's Confidential Information to the extent required by any law or regulation or compelled by a court or administrative agency of competent jurisdiction, provided that, to the extent permissible under law, Recipient uses reasonable efforts to give Discloser advance notice of such required disclosure in order to enable Discloser to prevent or limit disclosure.

(e) Return or Destruction of Confidential Information. Upon the expiration or termination of this Agreement, Recipient will promptly return to Discloser or, at Discloser's option, destroy all tangible items and embodiments containing or consisting of Discloser's Confidential Information and all copies thereof and provide written certification of such destruction or return by an authorized person.

(f) Injunctive Relief. Recipient agrees that, due to the unique nature of the Confidential Information, the unauthorized disclosure or use of the Confidential Information will cause irreparable harm and significant injury to Discloser, the extent of which will be difficult to ascertain and for which there will be no adequate remedy at law. Accordingly, Recipient agrees that Discloser, in addition to any other available remedies, will have the right to an immediate injunction and other equitable relief enjoining any breach or threatened breach of this Section 9, without the necessity of posting any bond or other security. Recipient will notify Discloser in writing immediately upon Recipient's becoming aware of any such breach or threatened breach.

9. Government End User Rights. Customer acknowledges that the Fovus Solutions were developed entirely at private expense and that no part of the Fovus Solutions was first produced in the performance of a government contract. Customer agrees that the Fovus Solutions and any derivatives thereof are "Commercial Items" as defined in 48 C.F.R. § 2.101, and if Customer is the Government, then such use, duplication, reproduction, release, modification, disclosure or transfer of this commercial product and data, is restricted in accordance with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-2, and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. § 12.211, 48 C.F.R. § 12.212, 48 C.F.R. § 227.7102-1 through 48 C.F.R. § 227.7102-3, and 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable, the Fovus Solutions are licensed to Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other users pursuant to this Agreement and any related agreement(s), as applicable. Accordingly, Customer will have no rights in the Fovus Solutions except as expressly agreed to in writing by Customer and the Company.

10. Term and Termination; Suspension.

(a) Term. Unless otherwise terminated in accordance with this Section 11, this Agreement will remain in effect for the Subscription Term (including following the Company's receipt of a Cancellation Notice pursuant to Section 2(e) on the terms described therein).

(b) Suspension. The Company may temporarily suspend any or all Workspaces at

any time (i) immediately without notice if the Company reasonably suspects that Customer or any of its Authorized Users has breached their obligations under this Agreement in a manner that may cause material harm or material risk of harm to the Company or to any other party, (ii) or if Customer fails to pay the applicable Subscription Fees when due.

(c) Termination. The Company may terminate this Agreement, and/or terminate Customer's use of the Fovus Solutions and any Workspaces and any applicable Order if Customer breaches this Agreement and fails to cure such breach (if curable) within ten (10) days of receiving written notice thereof.

(d) Effect on Expiration or Termination. Unless otherwise agreed by the parties, upon the expiration or termination of this Agreement, all licenses granted herein or therein will automatically terminate, and Customer will discontinue all use of the Fovus Solutions, return to the Company any materials provided by the Company to Customer, and delete all stored elements of the Fovus Solutions from Customer's systems. Upon termination of this Agreement, the Company will have no obligation to refund any Subscription Fees or other amounts received from Customer during the Subscription Term, and any unused Subscribed Fovus Credits will expire worthless and not be refunded or transferred. Further, the Company will automatically delete all Customer Content contained within a Workspace within thirty (30) days following the expiration or termination of this Agreement.

(e) Survival. Section 1, Section 2(e), Section 3(b), Section 3(c), Section 3(d), Section 4, Section 5, Section 6, Section 7, Section 8, Section 9, Section 10(d), this Section 10(e), Section 11, Section 12, and Section 13 will survive any expiration or termination of this Agreement.

11. Compliance with Laws.

(a) Generally. Customer represents and covenants to the Company that Customer's use of the Fovus Solutions will comply with all applicable laws and government regulations, including without limitation those related to data protection and data privacy.

(b) Export Controls Laws. The Fovus Solutions may be subject to export controls and trade sanctions laws of the United States and other jurisdictions. Customer acknowledges and agrees that it shall comply fully with all relevant export laws and regulations of the United States and any other country ("**Export Laws**") where Customer uses the Fovus Solutions. Customer certifies that Customer is not on any of the relevant U.S. government lists of prohibited persons, including the Treasury Department's List of Specially Designated Nationals and the Commerce Department's List of Denied Persons or Entity List. Customer further certifies that Customer will not export, re-export, ship, transfer, or otherwise use the Fovus Solutions in any country subject to an embargo or other sanction by the United States, and that Customer will not use the Fovus Solutions for any purpose prohibited by the Export Laws, including, but not limited to, nuclear, chemical, missile or biological weapons-related end uses.

12. Choice of Law and Disputes. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, as if performed wholly within the state and without giving effect to the conflicts of law principles of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Maricopa County, Arizona, and the parties hereby consent to personal jurisdiction and venue therein (except that the Company may seek injunctive relief to prevent improper or unauthorized use or disclosure of the non-public elements of the Fovus Solutions in any court of competent jurisdiction).

13. General.

(a) Purchase Order. Customer's submission or payment of an Order constitutes acceptance of this Agreement notwithstanding anything to the contrary in such Order. If any Order contains any terms or conditions that conflict with the terms and conditions set forth in this Agreement, unless such Order expressly overrides a term of this Agreement and is accepted by the Company, then the Company expressly rejects such different or additional terms and conditions, and such different or additional terms and conditions will not become a part of the agreement between the parties absent the Company's express written consent.

(b) Notices. All notices required or permitted under this Agreement will be in writing and delivered in person, by confirmed email transmission, by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested, and, in each instance, will be deemed given upon receipt. All communications will be sent to the addresses set forth in the applicable Order or to such other address as may be specified by either party to the other party in accordance with this Section.

(c) Assignment. Customer may not assign, delegate or transfer this Agreement, in whole or in part, by agreement, operation of law or otherwise without the prior written consent of the Company. The Company may assign this Agreement in whole or in part to an Affiliate or in connection with an internal reorganization or a merger, acquisition, or sale of all or substantially all of the Company's assets to which this Agreement relates. The Company may also assign its rights to receive payment due as a result of the performance of this Agreement to a bank, trust company, or other financing institution. Any attempt to assign this Agreement other than as permitted herein will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

(d) Rights and Remedies. Except as otherwise expressly set forth in this Agreement, the rights and remedies of either party as set forth in this Agreement are not exclusive and are in addition to any other rights and remedies now or hereafter provided by law or at equity.

(e) Waiver; Severability. The waiver by either party of a breach of or a default under this Agreement will not be effective unless in writing. The failure by either party to enforce any

provisions of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent enforcement of that or any other provisions. If a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

(f) Interpretation. For purposes of interpreting this Agreement, (i) unless the context otherwise requires, the singular includes the plural, and the plural includes the singular; (ii) unless otherwise specifically stated, the words “herein,” “hereof,” and “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section or paragraph; (iii) the words “include” and “including” will not be construed as terms of limitation, and will therefore mean “including but not limited to” and “including without limitation”; (iv) unless otherwise specifically stated, the words “writing” or “written” mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy; (v) the captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement; and (vi) the references herein to the parties will refer to their permitted successors and assigns.

(g) Integration; Entire Agreement. This Agreement, along with any additional terms incorporated herein by reference, including any Order(s) or Exhibit(s), constitutes the complete and exclusive understanding and agreement between the parties and supersedes any and all prior or contemporaneous agreements, communications, and understandings, written or oral, relating to their subject matter. Any waiver, modification, or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of both parties. Any terms and conditions contained or referenced by either party in a quote, purchase order, acceptance, invoice, or any similar document purporting to modify the terms and conditions contained in this Agreement will be disregarded and have no effect unless otherwise expressly agreed to by the parties in accordance with the preceding sentence.