

## PagerDuty Terms of Service

*Effective: December 21, 2023*

THESE ONLINE TERMS OF SERVICE (“AGREEMENT”) ARE A LEGAL AGREEMENT BETWEEN CUSTOMER (AS DEFINED BELOW) AND PAGERDUTY, INC. (“PAGERDUTY”) WHICH GOVERNS CUSTOMER’S ACCESS TO OR USE OF PAGERDUTY SERVICES (EACH, A “PARTY” AND COLLECTIVELY THE “PARTIES”).

IF AN INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY (“COMPANY”), SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND THE COMPANY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO THE APPLICABLE COMPANY.

### 1. Definitions

1.1. “**Affiliate**” means any entity which directly or indirectly Controls, is Controlled by, or is under common Control with the Party. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the Party.

1.2. “**PagerDuty Intellectual Property**” means PagerDuty’s proprietary technology, including but not limited to the Service(s), Documentation, websites, software tools, hardware designs, algorithms, software, user interface designs, architecture, network designs, know-how, trade secrets, and all intellectual property rights therein and thereto throughout the world whether owned by PagerDuty or licensed to PagerDuty by a third party.

1.3. “**Confidential Information**” means all non-public information disclosed by one Party to the other Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

1.4. “**Contact Information**” means the names, email addresses, telephone numbers, and other required information of the Contact Persons that Customer or Users submit to Hosted Services to alert in the event of an Incident, along with any ancillary information, such as Customer information, submitted to the Hosted Services.

1.5. “**Contact Person**” means a Customer employee, consultant, or other agent designated by Customer, who will receive notifications from the Hosted Services and who has provided Customer consent to receive such notifications from the Hosted Services.

1.6. “**Customer**” means, as applicable: (a) the individual accepting or signing this Agreement on the behalf of such individual; or (b) the company or other legal entity accepting or signing the terms of this Agreement, and well as any then-current Affiliates of such company or legal entity who use or purchase Service(s) under an Order Form with PagerDuty.

1.7. “**Documentation**” means the then current online version of PagerDuty’s product and usage guides made available at <https://www.pagerduty.com/support/> for the Hosted Services and at <https://docs.rundeck.com/docs> for the On Prem Services.

1.8. “**Hosted Services**” means PagerDuty’s cloud-based products and services purchased by Customer under an applicable Order Form or online ordering portal, as described in the Documentation. Hosted Services does not include third party applications.

1.9. “**Incident**” means an event that triggers the Hosted Services to alert Contact Persons using the Contact Information.

1.10. “**Instance**” means one running copy of the On Prem Services installed on a server (physical or virtual) within the Customer-controlled computing infrastructure, available for use only by one or more Users

according to the terms and conditions of this Agreement. An Instance may run separately, or multiple Instances may form a “**Cluster**” around common resources such as a database.

1.11. “**On Prem Services**” means PagerDuty’s software applications, including but not limited to updates, libraries, plugins, and any software components provided by PagerDuty for Customer’s on-site installation and use that are made generally available to licensed users of the software without additional fees. On Prem Services may include code licensed under third-party terms, including but not limited to open-source software.

1.12. “**Order Form**” means an ordering document or online order specifying the Services to be provided hereunder and is entered into between PagerDuty and Customer or any of its Affiliates. By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if an original party hereto. PagerDuty may refuse to enter into an Order Form with any Affiliate that fails to pass, in PagerDuty’s reasonable business judgment, a background check or financial history audit.

1.13. “**Professional Services**” means any consulting, advisory, training, and similar ancillary services that are set forth in an Order Form and/or statement of work, as applicable.

1.14. “**Service(s)**” include one or more of the following as set forth in the applicable Order Form(s): (i) Hosted Services, (ii) On Prem Services, and/or (iii) Professional Services.

1.15. “**SLA**” means the service level agreement describing the Hosted Services performance and availability metrics and the remedies if the Hosted Services fail to meet those metrics set forth on PagerDuty’s website at <https://www.pagerduty.com/standard-service-level-agreement/>.

1.16. “**Subscription Term**” means the term of Customer’s subscription for a Service as specified in an Order Form.

1.17. “**User**” means an authorized individual that Customer designates to use the Service(s) under an Order Form and applicable Documentation.

## 2. Use of the Services.

2.1. *Use of the Service(s).* In consideration of payment of the Fees, subject to the terms and conditions of this Agreement, PagerDuty grants to Customer a world-wide, non-exclusive, royalty-free, non-transferable, non-sublicensable right to use the Service(s) in accordance with the Documentation and applicable Order Form(s), and solely for Customer’s internal purposes.

2.2. *Customer License Restrictions.* Customer shall not, and agrees that it shall not permit any third-party, including without limitation any Users, to: (i) alter, modify or create any derivative works of the Service(s), the underlying source code, or the Documentation in any way, including without limitation customization, translation, or localization; (ii) rent, lease, license, sublicense, encumber, sell, offer for sale, or otherwise transfer rights to the Service(s) or Documentation, including without limitation for timesharing or as a service bureau; (iii) port, reverse compile, reverse assemble, reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the Service(s); (iv) copy, distribute, link, frame, mirror, or otherwise make available any portion of the Service(s) to any third party; (v) remove or alter any logos, trademarks, links, copyright, or other notices, legends, or markings from the Service(s) or Documentation; (vi) attempt to bypass or tamper with the security or operation of the Service(s); (vii) attempt to access the accounts or data of any other customer or user; (viii) use the Service(s) for benchmarking purposes or otherwise to analyze its workings and features for any competitive purposes or in a manner that imposes unusual demands on the Service(s) outside of normal functions and operations; (ix) use, or allow the use of, the Service(s) by anyone located in, under the control of, or a national or resident of a U.S. embargoed country or territory or by a prohibited end user under export control laws (as described in Section 13.7); (x) use the Service(s) in a manner that interferes with the use or enjoyment of it by others, including but not limited to using the Service(s) to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumventing or disclosing the user authentication or security of the Service(s) or any host, network, or account related thereto; (xi) use the Service(s) or Documentation in a way that violates applicable law or infringes upon the rights of a third party, including but not limited to those pertaining to contract, intellectual property, privacy, or publicity; (xii) use the Service(s) or Documentation in a way that violates the PagerDuty Acceptable Use Policy, which is incorporated herein, and available at <https://www.pagerduty.com/acceptable-use-policy/> (the “AUP”); or (xiii) use the Service(s)

or Documentation in a way that effects or facilitates the storage or transmission of libelous, tortious, or otherwise unlawful material, including but not limited to material that is harassing, threatening, or obscene. Notwithstanding any other provision of this Agreement, in the event of Customer's breach of any restrictions in this Section 2.2, PagerDuty has the right upon notice to immediately suspend Service(s) until such breach is corrected.

2.3. *Order Forms and Additional User Subscriptions.* Unless otherwise specified in an Order Form, the Service(s) may be accessed by no more than the specified number of Users and each User must be identified by a unique email address and username. User subscriptions may only be purchased as set forth in the applicable Order Form and may not be shared or used by more than one User without PagerDuty's prior consent but may be reassigned to new Users replacing persons who no longer require User access to the Service(s). The Parties may agree to add additional User subscriptions during the Subscription Term, either via execution of an additional Order Form or through the Hosted Services interface self-service option. Unless otherwise specified in the Order Form, such added User subscriptions will be coterminous and prorated to the end of the Subscription Term in the Order Form. Use of the Service(s) is permitted only if the User is under confidentiality obligations with Customer at least as restrictive as those in this Agreement and is accessing or using the Service(s) solely to support Customer's and/or Customer Affiliates' internal business purposes.

2.4. *Usage Limits for On Prem Services.* Customer's use of the Service(s) may be subject to limitations, including but not limited to number and types of Users, email alerts, phone call alerts, SMS alerts, and Instances of the installed On Prem Services as specified on the PagerDuty website or in the Order Form. The Service(s) may be subject to other limitations as set forth in the applicable Order Form or Documentation, including but not limited to limits on disk storage space, the rate of incoming email requests, the number of calls permitted to the API within a specified period of time, the number of alerts the Service(s) will send to a Contact Person within a specified period of time, and the number of Instances of installed On Prem Services. Customer acknowledges that failure to comply with such limits may cause the Service(s) to malfunction, may accrue additional usage fees, or may result in suspension of the Service(s) until compliance has occurred.

2.5. *Additional Customer Responsibilities.* Customer is solely responsible for selecting secure User passwords, changing passwords frequently, and maintaining the confidentiality of usernames and passwords. PagerDuty shall not be liable for any losses arising from unauthorized access to the Service(s) or Customer's account that is due to Customer's or any User's failure to protect its account through proper maintenance of User logons and passwords. Customer shall only use and configure the Services in accordance with the terms of this Agreement, the Documentation and any applicable Order Forms.

2.6. *Product-Specific Terms.* Some Services may be subject to additional product specific terms or pricing terms specific to that Service, available at <https://www.pagerduty.com/product-specific-terms/> ("**Product-Specific Terms**"), which PagerDuty may update from time to time in its sole discretion.

**3. Trial Period and Free Plan.** If Customer ordered a “trial” or other limited period no-charge plan, Customer may use the Service for a fourteen (14) day trial period, or as otherwise expressly set forth in the order (the “**Trial Period**”), solely for evaluation purposes, starting on the date that Customer registered with Our Service and accepted this Agreement, without charge or further commitment. The Hosted Services will automatically cease functioning at the end of the Trial Period unless (i) Customer supplies payment card or other payment information and purchase a subscription to the Service; (ii) Customer elects to use the Service under the Free Plan (defined below); or (iii) PagerDuty extends Customer’s Trial Period in its sole discretion. After the end of the Trial Period, unless Customer purchases, prior to the end of the Trial Period, a subscription to the Service or elect to use the Service under the Free Plan, all hosted Contact Information and other data Customer provides to the Services (“**Customer Information**”) will no longer be available to Customer. During the Trial Period, Customer may add and remove Users as needed for the evaluation. However, any Users included in a paid subscription to the Services or otherwise under the Free Plan, can only be added or removed in accordance with the terms of the specific plan or term Customer elects. If Customer elects to use the Hosted Services under the limited free to use option, and PagerDuty agrees (the “**Free Plan**”), Customer acknowledges and accepts that PagerDuty may terminate Customer’s use of the Services under the Free Plan for any reason or no reason at all and without any required prior notice. DURING THE TRIAL PERIOD AND USE UNDER THE FREE PLAN, PAGERDUTY WILL HAVE NO OBLIGATION WHATSOEVER TO CONTINUE PROVIDING THE SERVICES, AND CUSTOMER WILL HAVE NO CLAIM OR REMEDY FOR THE FAILURE OF THE SERVICES. THESE LIMITATIONS ARE IN ADDITION TO THE WARRANTY DISCLAIMERS AND LIABILITY LIMITS IN THIS AGREEMENT.

**4. Pre-Release Technology.** From time to time, PagerDuty may, in its sole discretion, make beta or otherwise pre-general release versions of PagerDuty Services (“**Pre-Release Technology**”) available to Customer at no additional charge. If Customer uses any Pre-Release Technology, the terms of this Section will govern that use, and control over any conflicting provisions of this Agreement. Pre-Release Technology is PagerDuty’s Confidential Information, and notwithstanding anything to the contrary in this Agreement, Customer may not provide access to or disclose the existence of Pre-Release Technology to any third party. Customer may use the Pre-Release Technology only for internal testing and evaluation. PagerDuty provides the Pre-Release Technology: (a) free of charge; (b) without support; (c) “AS IS”; and (d) WITHOUT INDEMNIFICATION, WARRANTY, OR OBLIGATION TO CUSTOMER OF ANY KIND. No service level commitment will apply to the Pre-Release Technology. Certain features or functionality of the Services may not be available in Pre-Release Technology. PagerDuty’s provision of any Pre-Release Technology does not constitute a commitment to offer the Pre-Release Technology on a generally available basis or to continue to provide Customer with access to the Pre-Release Technology. PagerDuty may modify Pre-Release Technology or terminate Customer’s access to it at any time in PagerDuty’s sole discretion, and any such modification or termination will not be deemed a material, detrimental change under this Agreement. The aggregate liability (excluding indirect, special, and consequential damages, for which PagerDuty expressly disclaim all liability) of PagerDuty, its Affiliates and suppliers, for any claim arising from Customer’s use of Pre-Release Technology will not exceed one-thousand U.S. dollars (\$1,000 USD). Any Feedback Customer provides with regards to Pre-Release Technology is subject to Section 6.3 (*Feedback*) below.

## **5. Support, Security and Privacy.**

5.1. *Support.* PagerDuty shall provide basic support as set forth in the applicable Order Form and in accordance with the Support Policy found at <https://www.pagerduty.com/support-policy/> for Hosted Services and at <https://www.rundeck.com/support-policy> for On Prem Services (or such other location as PagerDuty may designate in the future).

5.2. Customer will be entitled to Service Credits for the Hosted Services pursuant to the Service Level Agreement (“SLA”) located at <https://www.pagerduty.com/standard-service-level-agreement/>, if the applicable Service(s) fail to meet the availability and response targets set forth in the SLA.

5.3. *Protection of Contact Information.* PagerDuty shall maintain industry-standard administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Contact Information. These shall include, but may not be limited to, the protections set forth in the Data Security Policy, available at <https://www.pagerduty.com/data-security-policy>. Each party agrees to comply with the applicable terms of the PagerDuty Data Processing Addendum, available at <https://www.pagerduty.com/data-processing-addendum> (“DPA”), which is incorporated by reference and which PagerDuty may update from time to time.

5.4. *Customer Responsibilities for Contact Persons.* Customer shall (i) obtain and maintain consents from each Contact Person to receive messages from the Hosted Services, including without limitation SMS messages (“**Messaging**”), (ii) maintain procedures for each Contact Person to opt out of participating in Messaging, and once opted-out, Customer will not re-subscribe a Contact Person to Messaging until Customer has obtained renewed consent from such Contact Person to receive Messaging through the Hosted Services, and (iii) comply with all applicable law relating to Messaging in its use of the Hosted Services. Customer shall be responsible for compliance with Messaging laws.

5.5. *Statistical Data.* Customer acknowledges and permits PagerDuty to compile and use statistical or aggregate, non-personally-identifiable information about Customer’s Users, and Contact Persons’ use of the Services, including without limitation the types and number of Incidents, number of alerts, and other metadata, for industry analysis, benchmarking, analytics, marketing, promotional purposes, and to improve or enhance the Services; provided, however, that such use will not in any manner include Contact Information or otherwise identify Customer or any Users. PagerDuty owns all right, title, and interest in and to such derived anonymous data; provided, that Customer retains all right, title, and interest in and to any underlying customer data.

## 6. Proprietary Rights.

6.1. *Customer Intellectual Property.* Customer will retain all right, title, and interest in and to the Contact Information and all intellectual property rights therein. Nothing in this Agreement will confer to PagerDuty any right of ownership or interest in the Contact Information other than the limited license set forth herein. Customer agrees to provide PagerDuty with reasonable access to Customer materials, systems, and personnel as reasonably necessary for PagerDuty’s provision of Professional Services.

6.2. *PagerDuty Intellectual Property.* As between Customer and PagerDuty, PagerDuty shall retain all right, title, and interest in and to the PagerDuty Intellectual Property, and any changes, derivatives, corrections, developments, bug fixes, enhancements, updates, and other modifications and improvements thereto (each, a “**Work**”), and as between the Parties all such rights shall vest in and be assigned to PagerDuty, whether as part of PagerDuty’s performance of the Professional Services or otherwise. Nothing in this Agreement will confer on Customer any right of ownership or interest in any PagerDuty Intellectual Property, other than the limited license set forth in Section 2.1. For the avoidance of doubt, any Work(s) that may result from Professional Services shall remain PagerDuty Intellectual Property, and PagerDuty shall have the sole right to: (i) all applications, registrations, and rights to make applications and registrations of the Work; (ii) all renewals, extensions, reversions, or restorations of any Work(s); (iii) all goodwill associated with the Work; (iv) all rights corresponding to each of the foregoing throughout the world, including but not limited to the right to duplicate, reproduce, copy, distribute, publicly perform, display, license, adapt, or prepare derivative works from the Work; (v) all causes of action for infringement based on the Work or for other violations of any of the foregoing; and (vi) all income, royalties, damages, claims, and payments now or hereafter due or payable with respect to any Work(s).

6.3. *Feedback.* PagerDuty encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to the Service(s) and related resources (“**Feedback**”). To the extent Customer provides Feedback, Customer grants PagerDuty a non-exclusive, royalty-free, fully paid, sub-licensable, transferable, irrevocable, perpetual, worldwide right and license to use and incorporate into the Service(s) any Feedback.

## 7. Fees, Payment Terms and Renewals.

7.1. *Fees and Payment Terms.* Customer will pay PagerDuty the fees as set forth in the applicable Order Form (the “**Fees**”). Except as set forth in the applicable Order Form, Customer will pay all Fees in accordance with the following: (a) Service(s) Fees are invoiced annually in advance; (b) the first invoice will coincide with the Order Form start date; (c) payment will be due within thirty (30) days from the date of the invoice, and (d) all amounts will be denominated and paid in the currency set forth in the applicable Order Form. Upon execution by Customer and PagerDuty, each Order Form is non-cancellable and non-refundable except as otherwise provided in this Agreement or in an applicable Order Form.

7.2. *Renewals.*

(i) *Hosted Services.* At the end of each Hosted Services Subscription Term, the associated order shall automatically renew for the same Subscription Term as the immediately preceding term, at the prices



communicated to Customer at least sixty (60) days prior to the end of that Hosted Services Subscription Term. In the event no notice of a price increase is provided, the associated order will renew at the same pricing for the applicable Services for the applicable renewal term. All automatic renewals will be for a minimum twelve (12) month Subscription Term, excluding month-to-month customers who have purchased via PagerDuty's online self-serve portal. Customer must provide ten (10) days notice prior to an auto-renewal date of intent to downgrade or not renew Services by sending a notice to [renewals@pagerduty.com](mailto:renewals@pagerduty.com). PagerDuty will send the Hosted Services renewal notice to the contact email listed on the account unless Customer notifies PagerDuty to use another email contact with Customer's account.

(ii) *On Prem Services.* On Prem Services orders will not automatically renew upon the expiration of an On Prem Services Subscription Term. Upon the expiration of orders for On Prem Services hereunder, such On Prem Services orders will automatically terminate unless renewed by mutual agreement of the Parties. In the event of such expiration, Customer's access to and use of the On Prem Services will terminate.

7.3. *Taxes.* Except for those taxes based on PagerDuty's net income, real property, or payroll, Customer will be responsible for all applicable taxes in connection with this Agreement, including but not limited to sales, use, excise, value-added, goods and services, consumption, and other similar taxes or duties ("**Taxes**"). Should any payment for the Service(s) or Professional Service(s) be subject to withholding tax by any government, Customer will reimburse PagerDuty for such withholding tax. If Customer is exempt from any such Taxes for any reason, PagerDuty will exempt Customer from such Taxes on a going-forward basis once Customer delivers a duly executed and dated valid exemption certificate to PagerDuty's tax department and PagerDuty's tax department has approved such exemption certificate. Such exemptions should be sent directly to PagerDuty at [accountsreceivable@pagerduty.com](mailto:accountsreceivable@pagerduty.com). If for any reason a taxing jurisdiction determines that Customer is not exempt from any such exempted Taxes and then assesses PagerDuty such Taxes, Customer agrees to promptly pay to PagerDuty such Taxes plus any applicable interest or penalties assessed. Customer hereby confirms that PagerDuty can rely on the ship-to name and address set forth in the Order Form(s) as being the place of supply for Tax purposes.

7.4. *Invoice Disputes.* Customer will notify PagerDuty in writing in the event Customer disputes any fees or Taxes paid or payable by Customer under this Agreement prior to the due date of the applicable invoice. Customer agrees to work in good faith and cooperate with PagerDuty to resolve the applicable dispute promptly. Any dispute by Customer must be based on a reasonable belief that the applicable Fees were improperly assessed. Customer will pay all amounts determined to be payable by resolution of the dispute within ten (10) days following such resolution.

7.5. *Purchase Orders.* Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order, vendor onboarding process or web portal, or any other Customer order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void. If Customer issues a purchase order, then it shall be for the full amount set forth in the applicable Order Form. Upon request, PagerDuty shall reference the purchase order number on its invoices, provided, however, that Customer agrees that a failure to issue a purchase order or provide PagerDuty with the corresponding purchase order shall not relieve Customer of its obligations to provide payment to PagerDuty pursuant to Section 7.1 above.

7.6. *Failure to Pay.* Unpaid invoices are subject to a finance charge of 1% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection including reasonable attorneys' fees and costs. If any charge owing by Customer (excluding amounts subject to Section 7.4) is overdue, then without limitation of any of its other rights or remedies, PagerDuty may suspend performance of those Service(s) until PagerDuty receives all past due amounts from Customer.

## 8. Confidentiality

8.1. *Definition of Confidential Information.* As used herein, "**Confidential Information**" means all confidential information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer shall include Contact Information. Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was or becomes known to the

Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party as evidenced by written records, or (iii) is independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information.

8.2. *Protection of Confidential Information.* Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but no less than reasonable care to: (i) not use any Confidential Information of the Disclosing Party for purposes outside the scope of the Agreement; and (ii) limit access of Confidential Information to employees, agents and Affiliates who reasonably need to know such Confidential Information for purposes of exercising Receiving Party's rights or fulfilling Receiving Party's obligations under this Agreement, provided that Receiving Party shall ensure that such employees, agents and Affiliates are bound by obligations of confidentiality substantially the same as the obligations set forth in this Confidentiality section. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel or accountants, without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such third party's compliance with this "Confidentiality" section. Notwithstanding the foregoing, PagerDuty may disclose the terms of this Agreement and any applicable Order Form to a contractor or third party to the extent necessary to perform PagerDuty's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

8.3. *Compelled Disclosure.* The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law or governmental authority to do so, provided the Receiving Party gives the Disclosing Party prior written notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure or otherwise seek protection for its Confidential Information. The Receiving Party shall limit any disclosure of Confidential Information pursuant to this Section 8.3 to the extent necessary to strictly comply with the applicable request. Any disclosure of Confidential Information pursuant to this Section 8.3 shall not affect the confidential treatment of such disclosed Confidential Information.

8.4. *Remedies.* Receiving Party agrees that a breach of this Section 8 may result in immediate and irreparable harm to the Disclosing Party that money damages alone may be inadequate to compensate. Therefore, in the event of such a breach, the Disclosing Party will be entitled to seek injunctive and any other equitable relief, including but not limited to a temporary restraining order, preliminary injunction, or permanent injunction without the posting of a bond or other security.

## 9. Indemnification

9.1. *By PagerDuty.* PagerDuty shall defend, indemnify, and hold harmless Customer and its officers, directors, employees and agents from and against all third-party claims, suits, actions, damages, settlements, losses, liabilities, costs (including without limitation reasonable attorney's fees) and expenses arising from any infringement, misappropriation or violation of any third-party patent, trademark, copyright or other intellectual property right by the Service(s) ("**Infringement Claims**"). If PagerDuty receives information or otherwise believes that any portion of the Service(s) may be subject to such an Infringement Claim, then PagerDuty may, at its sole option and expense: (A) procure for Customer the right to continue using the Service; (B) modify or replace the allegedly infringing portions of the Service(s) to allow for continued use, or (C) if these alternatives are not commercially reasonable, refund any unused, prepaid Fees and terminate this Agreement. Notwithstanding the foregoing, PagerDuty's indemnification obligations set forth herein, do not apply to, and PagerDuty will have no obligation to Customer for, any claim that arises from (i) modifications to the Service(s) by anyone other than PagerDuty, (ii) modifications to the Service(s) based upon specifications furnished by Customer, (iii) Customer's and/or any of its Users' use of the Service(s) other than as specified in this Agreement, the Order Form or in the applicable Documentation, (iv) use of the Service(s) in conjunction with third-party software, hardware or data other than that approved by PagerDuty, or (v) any combination of the foregoing.

9.2. *By Customer.* Customer shall defend, indemnify and hold harmless PagerDuty and its officers, directors, employees and agents from and against all third-party claims (including any Contact Persons), suits, government investigations, fines, actions, damages, settlements, losses, liabilities, costs (including without limitation reasonable attorney's fees) and expenses arising from related to Customer's failure to comply with its obligations under Section 5.4 of this Agreement or its failure to secure required consents or otherwise protect the privacy of Contact Information under this Agreement.

9.3. *Indemnification Procedures.* As a condition to being indemnified under this Section, the Party seeking indemnification shall: (i) promptly notify the indemnifying Party of the Claim; (ii) allow the indemnifying Party sole control of the defense and settlement of the Claim; and (iii) provide reasonable assistance, at the indemnifying Party's expense, in defending or settling the Claim. The indemnifying Party shall (a) keep the indemnified Party informed of and consult with the indemnified Party in connection with the progress of such litigation or settlement and (b) not settle any such Claim in a manner that does not unconditionally release the indemnified Party without the indemnified Party's written consent, not to be unreasonably withheld or delayed.

9.4. *THIS SECTION 9 STATES THE INDEMNIFYING PARTY'S ENTIRE LIABILITY TO THE INDEMNIFIED PARTY FOR THE INDEMNIFIABLE CLAIMS SET FORTH HEREIN.*

## **10. Warranties; Disclaimers.**

10.1. *Hosted Services.* PagerDuty warrants that during an applicable Subscription Term (i) the Agreement, the Order Form and the Documentation will accurately describe the applicable administrative, physical and technical safeguards of the security and confidentiality of the Hosted Services ; (ii) the Hosted Service(s) will operate in accordance with the SLA, provided that the sole remedy for breach of this warranty or failure of the Hosted Services to perform shall be the remedies set forth in the SLA; and (iii) PagerDuty shall not materially decrease the overall security of the Hosted Services during an applicable Subscription Term and the Hosted Services shall perform materially in accordance with the applicable Documentation. For any breach of warranty in subsection (i) and (iii), Customer's exclusive remedies are those described in the "Termination" section below.

10.2. *On Prem Services.* PagerDuty warrants for the first ninety (90) days following download or other delivery that the On Prem Services will operate in all material respects in substantial conformance with the Documentation when used in normal operating conditions in accordance with the terms and conditions of the Agreement. Customer's exclusive remedy for breach of this warranty is to notify PagerDuty in writing in reasonable detail of the non-conforming aspect of the On Prem Services, and upon receipt of such notice, PagerDuty, at its option, will either use commercially reasonable efforts to modify and provide an update to the On Prem Services so that it is in conformance with this warranty requirement, or provide a commercially reasonable work-around within a reasonable period of time. Notwithstanding any other provision of the Agreement, this Section 10.2 sets forth Customer's exclusive rights and remedies and PagerDuty's sole liability in connection with the warranty related to the performance of the On Prem Services.

10.3. *Professional Services.* PagerDuty warrants to Customer that any Professional Services purchased will be performed in a competent and workmanlike manner in accordance with accepted industry standard practice and the terms and conditions herein. Customer's exclusive remedy for breach of this warranty is to notify PagerDuty in writing within thirty (30) days of the non-conforming Professional Services. Upon receipt of such notice, PagerDuty, at its option, will either use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements or will terminate the affected Professional Services and will refund Customer the prorated amount of fees for the unperformed and non-conforming Professional Services. This Section 10.3 sets forth Customer's exclusive rights and remedies and PagerDuty's sole liability in connection with the warranty related to the performance of the Professional Services.

10.4. Customer represents and warrants that Customer shall comply with the obligations of Section 5.4 (*Customer Responsibilities for Contact Persons*) and not violate any Messaging laws in Customer's use of the Service(s).

10.5. EXCEPT FOR THE FOREGOING, PAGERDUTY PROVIDES THE SERVICE "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. PAGERDUTY HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SERVICE, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, RELIABILITY, ACCURACY OR ACHIEVEMENT OF RESULTS.

## **11. Limitation of Liability.**

11.1. *General Limitation of Liability.* NEITHER PARTY'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL EXCEED THE AMOUNTS PAID TO PAGERDUTY BY CUSTOMER HEREUNDER IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY ("CAP"). WITHOUT LIMITING THE FOREGOING, PAGERDUTY



SHALL HAVE NO LIABILITY FOR ANY FAILURE OF THE SERVICE ARISING FROM OR RELATED TO (i) CUSTOMER'S OR ITS USERS' FAILURE TO CONFIGURE THE SERVICE IN CONFORMANCE WITH THE DOCUMENTATION, (ii) CUSTOMER'S OR ITS USERS' FAILURE TO PROVIDE ACCURATE CONTACT INFORMATION TO THE SERVICE, OR (iii) ANY MESSAGING LAWS.

11.2. *Disclaimer of Consequential and Other Damages.* NEITHER PARTY SHALL BE LIABLE HEREUNDER TO THE OTHER UNDER ANY THEORY, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST DATA OR PROFITS, WHETHER OR NOT FORESEEABLE.

## **12. Term and Termination.**

12.1. *Term of Agreement.* This Agreement commences on the Effective Date shown in the applicable Order Form and continues for the Term indicated in the Order Form, or until all User subscriptions have expired or been terminated, whichever is longer (the "**Term**").

12.2. *Termination for Cause.* A Party may terminate this Agreement for cause: (i) 30 days following written notice to the other Party of a material breach if such material breach remains uncured at the expiration of such 30-day period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by PagerDuty, Customer shall pay any unpaid Fees for the remainder of the then current Term. Upon any termination for cause by Customer, PagerDuty will refund any prepaid fees covering the remainder of the applicable Subscription Term(s) after the effective date of termination.

12.3. *Events on Termination.* Upon termination of this Agreement for any reason: (i) each Party will promptly cease all use of and return or destroy the other's Confidential Information (at the disclosing Party's discretion) and promptly provide written confirmation of such return or destruction upon request of the other Party, (ii) PagerDuty will terminate access of Customer and its Users to the Service, and (iii) Customer will promptly, but in no event later than 15 days after termination, pay in full all Fees due prior to termination. The Sections titled "Definitions", "Fees and Payment Terms", "Proprietary Rights", "Confidentiality", "Support, Security and Privacy", "Indemnification", "Limitation of Liability", "Events on Termination", "Reseller Transactions", "General" and any disclaimers contained in the Agreement shall survive termination.

12.4. *Reseller Transactions.* If any of Customer's purchases of the Service(s) are made through an authorized reseller of PagerDuty ("Reseller"):

(i) Customer will pay any owed amounts to the Reseller, as agreed between Customer and the Reseller. Customer agrees that PagerDuty may suspend or terminate Customer's use of the Service(s) if PagerDuty does not receive its payment of Fees from the Reseller.

(ii) Customer may place an order through the Reseller or via the self-service function in the Hosted Service(s). The Reseller will be invoiced for any orders placed via self-service and will, in turn, invoice Customer. The Reseller and Customer are responsible for the accuracy of all orders placed.

(iii) Reseller may not modify this Agreement or make any commitments on PagerDuty's behalf. Only this Agreement governs PagerDuty's obligations to Customer.

(iv) The amounts paid by the Reseller to PagerDuty for Customer's use of the Service(s) under this Agreement will be deemed the amount actually paid under this Agreement for purposes of calculating PagerDuty's liability under Section 11.1 (General Limitation of Liability).

(v) Purchases made through Resellers will not automatically renew. Customer's renewal pricing will be communicated to Customer by the Reseller prior to the expiration of Customer's Subscription Term. Should Customer elect to continue purchasing Service(s) through the Reseller, Customer will place a new order as set forth in Section 12.4(ii).

### 13. General

13.1. *Governing Law.* This Agreement shall be governed by and interpreted in accordance with the laws of the state of California without giving effect to its conflicts of law rules. Each of the Parties to this Agreement consents to the exclusive jurisdiction and venue of the state and federal courts of the City and County of San Francisco, California.

13.2. *Arbitration.* Any controversy or claim arising out of or relating to this Agreement, or the breach hereof, shall be settled by arbitration in the city of San Francisco, California, by binding arbitration by JAMS, Inc. (“JAMS”), under the Optional Expedited Arbitration Procedures then in effect for JAMS. JAMS may be contacted at [www.jamsadr.com](http://www.jamsadr.com). Any award shall be final, binding, and conclusive upon the parties. A judgment upon the award rendered may be entered in any court having jurisdiction thereof. Nothing in this Section shall be deemed as preventing PagerDuty from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of PagerDuty’s data security, intellectual property rights or other proprietary or confidentiality rights.

13.3. *Dispute Resolution.* In the event of a dispute under this Agreement, the parties shall first attempt in good faith to resolve such dispute informally, and except for applications of urgent relief, shall refrain from initiating formal legal proceedings until the dispute has been addressed through internal channels for at least thirty (30) days.

13.4. *Assignment.* Neither Party may assign, sublicense, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign this Agreement to an Affiliate, or entity merging with, consolidating with, or purchasing substantially all its assets or stock, provided that the assignee shall assume all rights and obligations under this Agreement. Any permitted assignment of this Agreement shall be binding upon and enforceable by and against the Parties’ successors and assigns, provided that any unauthorized assignment shall be null and void and constitute a breach of this Agreement.

13.5. *Professional Services.* Professional Service(s) will be provided as specified in an Order Form or statement of work, as applicable, and will be governed by the Agreement. If Customer purchases Professional Services, Customer will be responsible for certain obligations, and acknowledge that failure to fulfill such obligations may result in a delay in performance hereunder. Any such delay caused by Customer may result in additional charges. If PagerDuty terminates the Professional Services component of the Order Form for breach of this Section 13.5, no refunds of Professional Services fees will be provided. Customer will: (i) provide access as needed for PagerDuty to fulfill the Professional Services; (ii) provide PagerDuty with reasonable support, including, for example, access to facilities (as applicable), resources and employees, and timely decisions or approvals as necessary for PagerDuty to complete the tasks agreed to between the parties within ninety (90) days of the Order Form Effective Date; and (iii) assign a project sponsor who will serve as PagerDuty’s executive-level contact and who have full authority to act on behalf of Customer with respect to: (a) making material decisions related to the Professional Services; (b) identifying and securing timely resources to perform responsibilities outlined in the order, subsequent project resource plans, or roles and responsibilities document; (d) being responsible for configuration of Customer’s management systems to send Customer materials to PagerDuty; (e) providing access to Customer’s directory service or a list of Users for use in provisioning Users in PagerDuty’s Services; (f) providing a list of Services and teams that Customer wishes to provision; and (g) working with PagerDuty to create and provide escalation policies including associated schedules.

13.6. *U.S. Government End Users.* If Customer is a branch or agency of the United States Government, the following provision applies. The On Prem Services contain “commercial computer software” as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations and its successors. If acquired by or on behalf of any agency within the Department of Defense, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

13.7. *Compliance with Export Control and Economic Sanctions Laws.* Customer shall only use the Service in compliance with local laws and regulations and will not export or re-export the Service in violation of any United States or other applicable export laws and regulations. Customer represents and warrants that Customer: (i)

understands that the On Prem Services and their components may be subject to export controls under the U.S. Commerce Department's Export Administration Regulations ("EAR") and economic sanctions under the regulations administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC"); (ii) is not located in a prohibited destination country under the EAR or OFAC regulations, or an individual or entity on the U.S. Consolidated Screening List maintained by the U.S. International Trade Administration; (iii) will not export, re-export, or transfer the Software to any prohibited destination or persons or entities on the U.S. Consolidated Screening List, or any similar lists maintained by other countries, without the necessary export license(s) or authorization(s); (iv) will not use or transfer the On Prem Services in connection with any nuclear, chemical or biological weapons, missile technology, or military end-users or end-uses unless authorized by the relevant government agency by regulation or specific license; (v) understands and agrees that if Customer is in the United States and exports or transfers the On Prem Services to eligible end users, Customer will satisfy any applicable reporting requirements under the EAR and OFAC regulations; (vi) understands that countries including the United States may restrict the import, use, or export of encryption products (which may include the On Prem Services and the components) and agrees that Customer shall be solely responsible for compliance with any such import, use, or export restrictions; and (vii) that Customer shall comply with all applicable export, import, and trade laws with respect to this Agreement. CUSTOMER WILL DEFEND, INDEMNIFY AND HOLD HARMLESS PAGERDUTY FROM AND AGAINST ANY THIRD-PARTY CLAIMS RESULTING FROM A VIOLATION OF THIS SECTION 13.7 BY CUSTOMER OR ANY OF ITS USERS, AGENTS, OFFICERS, DIRECTORS, OR EMPLOYEES.

13.8. *Certification of Compliance for On Prem Services.* PagerDuty may request and Customer shall promptly provide, Customer's certification in writing of compliance with applicable use restrictions, including but not limited to any usage report generated by the On Prem Services. If any such report discloses an underpayment of fees for the period under review based on actual usage, then, without limiting PagerDuty's remedies, Customer agrees to promptly pay PagerDuty the amount of the underpayment. This Section 13.8 (*Certification of Compliance*) will survive termination or expiration of the Agreement for two (2) years.

13.9. *Force Majeure.* Except for payment obligations, if either Party is prevented from performing or is unable to perform any of its obligations under this Agreement due to causes beyond the reasonable control of the Party invoking this provision, including but not limited to acts of God, acts of civil or military authorities, riots or civil disobedience, wars, strikes or labor disputes (a "Force Majeure Event"), such Party's performance shall be excused and the time for performance shall be extended accordingly provided that the Party immediately takes all reasonably necessary steps to resume full performance.

13.10. *Future Functionality.* Customer agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public or private comments made by PagerDuty regarding future functionality or features. Customer acknowledges that no representative of PagerDuty has authority to bind PagerDuty to any terms or conditions not expressly stated in this Agreement, or the same as amended from time to time by a mutually executed written amendment to the foregoing.

13.11. *No Third-Party Beneficiaries.* This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

13.12. *Severability.* If any provision of this Agreement shall be found invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect and the affected provision shall be amended to make it legal and enforceable while preserving its intent.

13.13. *Entire Agreement; Order of Precedence.* This Agreement, including the Order Form, SLA and any exhibits hereto, constitutes the entire understanding and agreement of the Parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings between the Parties, as well as terms in a pre-printed document such as a purchase order, invoice, statement of work or the like; any such terms shall be considered as proposed additions and are hereby expressly rejected unless agreed to in a writing signed by authorized representatives of both parties. Capitalized terms used herein but not defined shall have the meaning set forth in the Order Form. In the event of a conflict between an Order Form and this Agreement, the terms of the Order Form shall supersede the terms of this Agreement.

13.14. *Modification.* PagerDuty reserves the right, in its sole discretion, to modify or replace any part of this Agreement by (i) posting a revised Agreement on PagerDuty's website or (ii) providing notice to Customer of the

change. Modifications will take effect at the start of the month following notice for self-service month-to-month plans, and at the end of the then-current prepaid Subscription Term for all other plans.

13.15. *Waiver.* The failure of either Party to enforce any of the provisions of this Agreement shall not be construed to be a waiver of the right of such Party thereafter to enforce such provisions.

13.16. *Export Control.* Customer shall only use the Service in compliance with local laws and regulations, and will not export or re-export the Service in violation of any United States or other applicable export laws and regulations.

13.17. *Relationship of Parties.* The Parties to this Agreement are independent contractors and no agency, partnership, joint venture, employment or similar relationship exists between them. Neither Party has the authority to bind the other or to incur any obligation on its behalf.

13.18. *Headings.* The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

13.19. *Construction.* Any reference to any federal, state, local, or non-U.S. statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word *including* shall mean including without limitation. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

13.20. *Notices.* All notices related to this Agreement shall be in writing and will be effective upon: (a) personal delivery; (b) the second business day after mailing; or (c) the date of sending by email, except for notices of termination of an indemnifiable claim (“**Legal Notice**”). Legal Notices to PagerDuty shall be addressed to General Counsel, PagerDuty, Inc., 600 Townsend Street #200, San Francisco, California 94103 and clearly identified as Legal Notice. Legal Notices to Customer shall be sent to the address set forth in the preamble above and clearly identified as a Legal Notice. Billing related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be sent to the relevant Services system administrator designated by Customer.