



## **MASTER SUBSCRIPTION AGREEMENT**

Effective February 3, 2025

This Master Subscription Agreement (this "Agreement") is made between Fivetran Inc., a Delaware corporation ("Fivetran"), and the party that subscribes for the Fivetran Products (as defined below) ("Customer"). Except where Customer has previously signed a Master Subscription Agreement with Fivetran, this Agreement supersedes any previously agreed upon terms. Customer's use of the Fivetran Products is also governed by Fivetran's [Service Consumption Table](#).

**Effective Date:** The "Effective Date" of this Agreement is the date that is the earlier of (a) Customer's initial access to any Fivetran Product through any online provisioning, registration or order process or (b) the effective date of the first Order Form referencing this Agreement.

**Modifications to this Agreement:** From time to time, Fivetran may modify this Agreement. Unless otherwise specified by Fivetran, changes become effective for Customer upon renewal of the then-current subscription term set forth in an Order Form or upon the effective date of a new Order Form after the updated version of this Agreement goes into effect. Fivetran will use reasonable efforts to notify Customer of the changes through communications via Customer's Account, email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a subscription term or upon the effective date of a new Order Form and, in any event, continued use of any Fivetran Product or the Professional Services after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version.

## **TERMS AND CONDITIONS**

### **1 DEFINITIONS**

The following terms, when used in this Agreement, will have the following meanings:

"Acceptable Use Policy" means Fivetran's acceptable use policy for the Fivetran Products and Professional Services located at <https://www.fivetran.com/legal/acceptable-use-policy>.

"Affiliate" means an entity controlling, controlled by or under common control with a party to this Agreement at any time during the Term, for so long as such control exists, where for purposes of this definition, "control" means direct or indirect ownership of more than 50% of the voting interests of the subject entity; provided, as it relates to Customer, such entity is not a current or prospective competitor to Fivetran or in the business of developing or offering products or technologies that are substantially similar to any Fivetran Product.

"Customer Data" means any data that Customer or its Users upload to any Fivetran Product for processing by such Fivetran Product.

"Documentation" means Fivetran's usage documentation for the applicable Fivetran Product made available on Fivetran's website.

"Fivetran Partner" means an authorized reseller, distributor or other partner of Fivetran for the Fivetran Products and/or Professional Services.

"Fivetran Product" means (a) a SaaS-based data integration product ("SaaS Product"), (b) downloadable data integration software component or product installed on premise or in Customer's private cloud environment ("On-Prem Software"), or (c) any combination or hybrid thereof, in each case provided by Fivetran.

"Order Form" means an ordering document, online order, or Term Sheet entered into between Customer and Fivetran, or online order process completed by Customer and confirmed by Fivetran, in each case specifying the Fivetran Product(s) and/or Professional Services to be provided under this Agreement.

"Professional Services" means consulting, developmental, training, educational, or advisory services provided by Fivetran as identified in the applicable Order Form and/or SOW.

"Software and Service Specific Requirements" means the requirements for certain of the Fivetran Products and Professional Services located at

<https://www.fivetran.com/legal/service-specific-requirements>, solely to the extent Customer uses such Fivetran Products or Professional Services.

“Source and Target Systems” means, with respect to On-Prem Software, the permitted type and number of computer hardware systems, storage platforms and computer frameworks from which Customer may use such On-Prem Software, as identified in the applicable Order Form.

“SOW” means a statement of work entered into between Customer and Fivetran containing the terms and conditions upon which Fivetran will provide Professional Services to Customer.

“Support Policy” means Fivetran’s support policy located at <https://support.fivetran.com/hc/en-us/articles/5893119459223-Fivetran-Support-Policy>.

“System Data” means data, information or outputs derived by Fivetran from the use of a Fivetran Product, including logs, statistics, or reports regarding the performance, availability, usage, integrity or security of the Fivetran Product (e.g., a user’s path through the Fivetran Product, login frequency, query logs, etc.) and any feedback, suggestions or similar information regarding a Fivetran Product provided by Customer to Fivetran. For the avoidance of doubt, System Data does not include Customer Data and does not relieve Fivetran from otherwise complying with its confidentiality obligations under this Agreement with respect to Customer Data.

“Term Sheet” means a written document entered into between or accepted by the parties specifying the Fivetran Product(s) or Professional Services that Customer has purchased through a Fivetran Partner, along with any terms and conditions relating to the authorized use thereof.

“Third Party Platform” means any product, add-on or platform not provided by Fivetran that Customer uses with the Fivetran Product.

“Trial Product” means any Fivetran Product provided on a free, trial, evaluation, proof of concept or similar basis.

“User” means an employee, contractor (to the extent providing services to Customer) or end user of Customer that Customer has provisioned to use a Fivetran Product through Customer’s account.

## **2 FIVETRAN PRODUCTS, SERVICES, AND SUPPORT; PROPRIETARY RIGHTS**

- 2.1 Fivetran Products and Professional Services. Fivetran will provide to Customer, and Customer will have the right to use and access, the Fivetran Products and Professional Services identified on each Order Form in accordance with this Agreement and the technical support and service level agreement terms referenced in the Support Policy. Fivetran will comply with applicable laws and regulations (“Applicable Laws”) related to the provision of the Fivetran Products and Professional Services to Fivetran’s customers generally.
- 2.2 On-Prem Software License. With respect to any Order Form that includes On-Prem Software, subject to the terms of this Agreement, Fivetran grants to Customer a limited, non-exclusive, non-transferable (except as part of a permitted assignment of this Agreement under Section 11.6 (Assignment)), non-sublicensable, royalty free, worldwide license during the subscription term of such Order Form to install, integrate and use for its own internal business purposes such On-Prem Software on the Source and Target Systems.
- 2.3 Affiliates. If any of Customer’s Affiliates desire to make separate purchases of Fivetran Products or Professional Services, such Customer Affiliate shall execute a new Order Form specifically for that Affiliate entity and such Customer Affiliate will be subject to this Agreement as if such Customer Affiliate were a signatory to this Agreement. Customer shall ensure that any claim by an Affiliate of Customer hereunder shall only be brought against Fivetran by Customer on behalf of such Affiliate.
- 2.4 Fivetran Partners. This Agreement specifies the terms and conditions under which Fivetran Products or Professional Services are provided by Fivetran to Customer, whether purchased directly through Fivetran or indirectly through a Fivetran Partner. Purchases through a Fivetran Partner will be placed through a separate agreement, ordering document or online order between Customer and a Fivetran Partner, or online order process completed by Customer and confirmed by a Fivetran Partner (any of the foregoing, the “Partner Sales Agreement”) which shall address, as between Customer and the Fivetran Partner, any terms and conditions relating to the quantity of Fivetran Products and Professional Services purchased, fees, payment (including any applicable refunds), taxes and renewals. The Partner Sales Agreement is between Customer and the Fivetran Partner and is not binding on Fivetran, and any disputes related to the Partner Sales Agreement shall be handled directly between Customer and the Fivetran Partner. In the event of any conflict between this Agreement and a Partner Sales Agreement, this Agreement shall govern as between Fivetran and Customer. Customer agrees that, in connection with Professional Services or Fivetran Products purchased through a Fivetran Partner: (a) Fivetran may share information with the Fivetran Partner related to Customer’s use and consumption of the Fivetran Products under this Agreement; (b) all payments of fees, refunds and credits, if any,

are payable by or to the Fivetran Partner; and (c) the Fivetran Partner is not authorized to make any changes to this Agreement or otherwise authorized to make any warranties, representations, promises or commitments on behalf of Fivetran.

- 2.5 **Proprietary Rights.** Customer owns all right, title and interest in and to the Customer Data and Customer's Confidential Information. Customer grants Fivetran all necessary rights to process Customer Data in accordance with the terms of this Agreement. Fivetran owns and retains all right, title and interest in and to the Fivetran Products (including any improvements thereto made as a result of Customer feedback or suggestions), System Data, Professional Services, Documentation and Fivetran's Confidential Information. All rights not expressly granted under this Agreement are reserved.

### 3 CUSTOMER RESPONSIBILITIES; POWERED BY FIVETRAN DEPLOYMENTS

#### 3.1 Customer Responsibilities.

- (a) **General.** Notwithstanding anything to the contrary herein, Customer is solely responsible for (i) the accuracy, content and legality of all Customer Data and warrants that it has sufficient rights in the Customer Data to permit: (A) Customer's use and receipt of the Fivetran Products and (B) with respect to SaaS Products, Fivetran's access to and processing of Customer Data pursuant to this Agreement; and (ii) the acts and omissions of its employees, contractors and Users and their compliance with this Agreement.
- (b) **Personal Health Information.** Where required by the U.S. Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Customer agrees not to upload to any SaaS Product any personal health information ("PHI Data") unless Customer and Fivetran have executed Fivetran's Business Associate Agreement ("BAA"), which BAA shall be incorporated by reference into, and subject to, this Agreement. Unless a BAA is in place, Fivetran will have no liability under this Agreement for PHI Data, notwithstanding anything in this Agreement, or pursuant to HIPAA or any other Applicable Laws.
- (c) **Restrictions and Requirements.** Customer will use the Fivetran Products and Professional Services in accordance with the Acceptable Use Policy and the Software and Service Specific Requirements.

- 3.2 **Powered by Fivetran Deployments.** If so specified in the applicable Order Form, Customer may offer the applicable Fivetran Product to its customers as part of an integrated product ("**Powered by Fivetran Deployment**" or "PBF"), subject to (a) a written agreement with each end-customer that conditions its authorization to use the Fivetran Product on its acceptance of terms equivalent to the Master Subscription Agreement available at <https://www.fivetran.com/legal/online-service-agreement> (the "**End-Customer Agreement**"); and (b) Fivetran's prior approval of the integrated product and specific PBF use case proposed by Customer for its customers. The End-Customer Agreement is between Customer and its end-customer and is not binding on Fivetran, and any disputes related to the End-Customer Agreement shall be handled directly between Customer and such end-customer. Customer is responsible for providing first-level support to its end-customers regarding Fivetran Product-related issues; Fivetran will provide support only to Customer regarding such Fivetran Product. Customer is responsible for its end-customer's use of the Fivetran Products under this section in a manner that conforms with the Documentation and the restrictions and requirements set forth in this Agreement.

### 4 CONFIDENTIALITY

- 4.1 **Confidential Information.** Subject to the limitations set forth in [Section 4.2](#) (Exceptions), all information disclosed by one party ("**Disclosing Party**") to the other party ("**Receiving Party**") during the Term (as defined below), whether in oral, written, graphic or electronic form the Disclosing Party has either marked as confidential or proprietary, the Disclosing Party has identified in writing as confidential or proprietary within 30 days of disclosure to the Receiving Party, or that a prudent business person in Receiving Party's position would conclude is confidential given the nature of the information or the circumstances surrounding its disclosure, shall be deemed to be "**Confidential Information**". Confidential Information of Fivetran includes non-public information regarding features, functionality, pricing (including any discounts) and performance of the Fivetran Products and Professional Services. Customer Data is considered Customer's Confidential Information. The terms of this Agreement and any agreement executed in connection herewith (including the Order Form and any SOW) shall be considered the Confidential Information of Fivetran and Customer. The Receiving Party agrees to maintain the confidentiality of any Confidential Information of the Disclosing Party using at least the same degree of care it uses to protect its own confidential information, which shall not fall below a reasonable standard of care.
- 4.2 **Exceptions.** Confidential Information does not include information that: (a) is part of the public domain at the time of disclosure; (b) becomes a part of the public domain through no fault of the Receiving Party or persons or entities to whom the Receiving Party has disclosed, transferred or permitted access to such information pursuant to [Section 4.3\(a\)](#) (Nondisclosure and Use); (c) becomes available to the Receiving Party on a non-confidential basis from a source legally entitled to share the information

without confidential treatment; (d) is independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information; or (e) is released from the confidentiality obligations herein by written consent of the Disclosing Party.

- 4.3 Nondisclosure and Use. The Receiving Party will not disclose any Confidential Information of the Disclosing Party to any person or entity, except: (a) to employees, agents and professional advisors of the Receiving Party who have a need to know such information and who are subject to confidentiality agreements with the Receiving Party at least as protective of the Disclosing Party's Confidential Information as this Agreement or, in the case of professional advisors, are bound by legal duties to keep such Confidential Information confidential consistent with the terms of this Agreement; or (b) as required to be disclosed by law by any governmental or other regulatory authority, securities exchange or pursuant to the terms of a valid and effective subpoena or court order, provided that the Receiving Party immediately notifies the Disclosing Party (to the extent permitted) of the existence, terms and circumstances surrounding such a request so that the Disclosing Party may seek appropriate protective action. The Receiving Party may not use the Disclosing Party's Confidential Information for any purpose other than to exercise its rights and comply with its obligations under this Agreement.
- 4.4 Return; Destroy; Protect. On the Disclosing Party's request, the Receiving Party will return or destroy all Confidential Information of the Disclosing Party that has been supplied to or acquired by the Receiving Party, other than: (a) records the Receiving Party has a separate legal right or obligation to retain; and (b) copies of such Confidential Information created in the ordinary course of the Receiving Party's business and retained in accordance with its internal document retention and information technology policies. To the extent the Receiving Party retains such Confidential Information, the Receiving Party will continue to protect such Confidential Information in accordance with Section 4.1 (Confidential Information) and Section 4.3 (Nondisclosure and Use) for so long as it meets the definition of Confidential Information.
- 4.5 Injunction for Breach. The parties agree that damages would be an inadequate remedy in the event of a breach of this Section 4 (Confidentiality). The parties agree the Disclosing Party is entitled, in addition to any other rights and remedies otherwise available, to seek injunctive and other equitable relief in the event of a breach or threatened breach by the Receiving Party of this Section 4 (Confidentiality).

## **5 SECURITY MEASURES**

- 5.1 Protection of Customer Data. Fivetran will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, in accordance with the Fivetran security policy located at <https://fivetran.com/docs/security> (the "Security Policy") posted as of the Effective Date (as the Security Policy may be updated by Fivetran in a manner that does not materially decrease the applicable protections). The Security Policy includes measures for preventing access, use, modification or disclosure of Customer Data by Fivetran personnel, except (a) to provide the applicable Fivetran Product and to prevent or address service or technical problems, or (b) as Customer expressly permits in this Agreement or otherwise in writing. To the extent applicable, Fivetran's Data Processing Addendum (available at <https://www.fivetran.com/legal/data-processing-addendum>) ("DPA") is incorporated by reference into this Agreement.
- 5.2 Deletion of Customer Data. Upon termination or expiration of this Agreement, in the event Fivetran has any Customer Data, Fivetran shall delete all such Customer Data from its systems without retaining any copies thereof, other than copies retained in accordance with Fivetran's internal document retention and information technology policies or, in the case of Customer Data constituting Personal Data (as defined in the DPA), in accordance with the DPA.
- 5.3 Customer Responsibilities. Customer is responsible for security relating to its environment, particularly its Source and Target Systems, and security relating to its configuration of the Fivetran Products. This includes implementing and managing procedural, technical, and administrative safeguards on its systems and networks sufficient to: (a) ensure the confidentiality, security, integrity, and privacy of Customer Data and (b) follow the principle of least privilege when connecting the Fivetran Products to Customer's data sources and destinations, especially by granting no more than read-only access to data sources. Customer is also responsible for provisioning Users, including: (i) methods of authenticating Users (such as SSO or industry-standard secure username/password policies); (ii) managing admin privileges; (iii) deauthorizing personnel who no longer need access to the applicable Fivetran Product; and (iv) setting up any API usage in a secure way. Fivetran will have no obligations or liability as to any loss resulting from Customer's security configuration or administration of the Fivetran Products.

## **6 PAYMENT OF FEES**

- 6.1 Calculation of Fees. Customer will pay Fivetran the applicable fees described in each Order Form (the "Fees"), except if Customer is purchasing a Fivetran Product or Professional Services through a Fivetran Partner then such fees shall be payable to the Fivetran Partner in accordance with the Partner Sales Agreement. All Fees are non-cancelable and non-refundable, except as expressly provided otherwise herein. If Customer's use of a Fivetran Product exceeds the usage or capacity set forth on the applicable Order Form, or otherwise requires the payment of additional Fees (per the terms of this Agreement or the Order Form), Fivetran will invoice Customer in arrears

for such additional usage or capacity and Customer agrees to pay the additional Fees in the manner provided herein.

- 6.2 **Payment Terms.** Fivetran will bill Customer for the Fivetran Products or Professional Services through an invoice, through the marketplace where the original purchase was made, or directly through a credit card if provided. Full payment for any Fivetran invoice must be received by Fivetran within 30 days after the issuance of the invoice (which may be sent by email). If Customer is paying by credit card, Customer represents and warrants that it has the right to use the credit card provided and grants Fivetran the right to provide the credit card information, including the credit card number, its expiration date and billing address, to third parties for the purposes of facilitating payment transactions. Fivetran reserves the right to charge a 3% surcharge for any credit card payments. Verification of information may be required prior to the acknowledgment or completion of any payment transaction. Except for Fees subject to a good faith dispute, any unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower. If Customer believes that Fivetran has billed Customer incorrectly, Customer must contact Fivetran no later than 60 days after the date of the first invoice in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Fivetran's customer support department.
- 6.3 **Taxes.** All amounts payable by Customer under this Agreement are exclusive of all applicable sales, use, value added, excise, property, withholding or similar tax and any related tariffs, and similar charges (collectively, "**Taxes**"). Customer is responsible for payment of all Taxes, except taxes based on Fivetran's net income. If Customer is required to pay any such Taxes, Customer shall pay such Taxes with no reduction or offset in the amounts payable to Fivetran hereunder. If an applicable tax authority requires Fivetran to pay any Taxes that should have been payable by Customer, Fivetran will advise Customer in writing, and Customer will promptly reimburse Fivetran for the amounts paid.
- 6.4 **On-Prem Software Usage Calculation.** With respect to On-Prem Software, if Customer's system configuration blocks Fivetran's ability to determine the monthly amounts owed for Customer's use of such software, then at Fivetran's request Customer will provide a monthly report and such other reasonably requested information in order for Fivetran to determine such amounts, including a breakdown of Users, data sources and destinations between Customer-internal usage and PBF usage.

## **7 TERM, TERMINATION AND SUSPENSION**

- 7.1 **Term.** This Agreement will commence on the Effective Date and will continue until terminated as set forth below (the "**Term**"). The initial term of each Order Form will begin on the effective date of such Order Form and will continue for the subscription term set forth therein, provided that if Customer is on a monthly plan (a) such Order Form will continue until such date as the applicable monthly plan is canceled; and (b) after cancellation, Customer may revive its account by recommencing data transfers. If Customer uses any Fivetran Product after the end of the subscription term listed on the Order Form, Customer will be billed in arrears according to the Order Form for any continued usage of such Fivetran Product. Except with respect to monthly plans, each Order Form will renew automatically for successive one-year periods on the then-current Order Form terms and conditions, unless a party provides notice of nonrenewal to the other party at least 60 days prior to expiration of the then-applicable subscription term.
- 7.2 **Termination.** Each party may terminate this Agreement upon written notice to the other party if there are no Order Forms then in effect. Each party may also terminate this Agreement or the applicable Order Form upon written notice (a) if the other party materially breaches any of the terms or conditions of this Agreement, any other terms or agreements incorporated by reference herein, or the applicable Order Form (including any failure by Customer to pay any amounts when due), and such other party fails to cure such breach within 30 days after receipt of written notice from the non-breaching party describing the breach or immediately if such material breach is incapable of cure; or (b) unless otherwise prohibited by Applicable Law, immediately if a party files for bankruptcy or is the subject of an involuntary filing in bankruptcy (in the latter case, which filing is not discharged within 60 days), makes an assignment for the benefit of creditors or a trustee is appointed over all or a substantial portion of its assets. Upon any expiration or termination of this Agreement, (i) Customer remains obligated to pay the balance due on Customer's account accrued prior to expiration or termination, and will be billed for such unpaid Fees, and (ii) Customer shall immediately cease using the applicable Fivetran Products.
- 7.3 **Survival.** All sections of this Agreement that by their nature should survive termination will survive termination, including accrued rights to payment, and terms and conditions relating to proprietary rights, technology restrictions, confidentiality, disclaimers, termination, indemnification, limitations of liability and the miscellaneous provisions below.
- 7.4 **Suspension.** Without limiting Fivetran's other remedies (including any termination rights) set forth in this Agreement, Fivetran reserves the right to suspend Customer's access to or prohibit the use of the Fivetran Products and Professional Services (a) if Fees are 30 days or more overdue, and are not otherwise subject to a good faith dispute pursuant to [Section 6.2](#) (Payment Terms); (b) if Fivetran deems such suspension necessary as a result of Customer's breach of [Section 3.1\(c\)](#) (Restrictions and Requirements), [Section 3.2](#) (Powered By Fivetran Deployments) or [Section 11.11](#) (Export Compliance; International Trade Laws); (c) if Fivetran reasonably determines suspension is necessary to avoid material harm to Fivetran or its customers, including if the Fivetran Product is experiencing denial of service attacks, mail flooding, or

other attacks or disruptions outside of Fivetran's reasonable control; or (d) as required by Applicable Law or at the request of a governmental entity. Where practicable, Fivetran will provide Customer with prior notice of the suspension so that Customer may seek to resolve the issue and avoid such suspension.

## 8 WARRANTIES AND DISCLAIMER

- 8.1 Mutual. Each of Fivetran and Customer warrants that: (a) it has the legal power and authority to enter into this Agreement, the Order Form and any other agreements contemplated hereby, and such agreements constitute a legal, valid and binding obligation of such party when signed by the other party; (b) the person signing or accepting this Agreement, the Order Form and any other such agreements on its behalf is a duly authorized representative of such party with the authority to bind such party to such agreements; (c) its entry herein does not violate any other agreement by which it is bound; and (d) it is a legal entity in good standing in the jurisdiction of its formation.
- 8.2 Fivetran Warranties. Fivetran warrants that the Fivetran Product will perform materially as described in the Documentation and Fivetran will not materially decrease the overall functionality of the Fivetran Product during the applicable subscription term (the "Performance Warranty"). Fivetran will use reasonable efforts to correct a verified breach of the Performance Warranty reported by Customer. If Fivetran fails to do so within a reasonable period of time after receipt of Customer's warranty report, then either party may terminate the applicable Order Form as it relates to the non-conforming Fivetran Product, in which case Fivetran will issue a pro rata refund to Customer for any prepaid subscription fees equal to the terminated portion of the applicable subscription term. To receive these remedies, Customer must report a breach of the Performance Warranty in reasonable detail within 30 days after discovering the issue in the Fivetran Product. These procedures are Customer's exclusive remedies and Fivetran's sole liability for breach of the Performance Warranty, except that if breach of the Performance Warranty constitutes a material breach of this Agreement, then Customer may terminate this Agreement in accordance with Section 7.2(a) (Termination).
- 8.3 Trial Products and Pre-commercial Features. From time to time, Customer may have the ability to use a Trial Product or new features on an alpha test, beta test or similar basis ("Pre-commercial Features"). Pre-Commercial Features are optional and will be identified as such so that Customer may decide whether to opt in. Either party may terminate Customer's use of Trial Products and Pre-Commercial Features at any time for any reason. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TRIAL PRODUCTS AND PRE-COMMERCIAL FEATURES ARE PROVIDED "AS IS", WITHOUT ANY WARRANTIES, REPRESENTATIONS, CONDITIONS, INDEMNITIES, SERVICE LEVEL COMMITMENTS, OR SUPPORT OR OTHER OBLIGATIONS OR LIABILITIES, AND FIVETRAN DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WITH RESPECT THERETO.
- 8.4 DISCLAIMERS. FIVETRAN DOES NOT WARRANT THAT THE FIVETRAN PRODUCTS OR PROFESSIONAL SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE FIVETRAN PRODUCTS OR PROFESSIONAL SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8 (WARRANTIES AND DISCLAIMER), TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FIVETRAN PRODUCTS AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND FIVETRAN DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE PROFESSIONAL SERVICES ARE NOT SUBJECT TO ANY UPDATES, MAINTENANCE OR SUPPORT, EXCEPT AS PROVIDED IN THE SOW. NOTWITHSTANDING ANYTHING HEREIN, FIVETRAN IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY PLATFORMS. CUSTOMER IS SOLELY RESPONSIBLE FOR TESTING ANY ON-PREM SOFTWARE BEFORE USING IT IN A LIVE ENVIRONMENT, THE PROTECTION OF ITS DATA AND INFORMATION THROUGH INSTALLATION OF THE MOST RECENT COMPUTER VIRUS DETECTION PROGRAMS, AND THE TIMELY CREATION OF BACK-UP COPIES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FIVETRAN DOES NOT WARRANT AND EXPRESSLY DISCLAIMS THAT ANY ON-PREM SOFTWARE LICENSED WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, AND THE RESULTS OF USING THE ON-PREM SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS. FIVETRAN SHALL NOT BE LIABLE FOR ANY DAMAGE (INCLUDING FOR LOSS OR CORRUPTION OF DATA), OR RESPONSIBLE FOR RESTORATION OF SUCH DATA, IN EACH CASE TO THE EXTENT SUCH DAMAGE RESULTS FROM CUSTOMER'S INSUFFICIENT TESTING OF ANY ON-PREM SOFTWARE PRIOR TO DEPLOYMENT IN A LIVE ENVIRONMENT.

## 9 INDEMNIFICATION

- 9.1 By Fivetran. Fivetran will indemnify and defend Customer and its Affiliates (authorized under Section 2.3 (Affiliates)) and its and their respective officers, directors and employees (collectively, "Customer Indemnified Parties") from and against any damages and costs finally awarded against the Customer Indemnified Parties or agreed to in settlement by Fivetran (including reasonable attorneys' fees) in connection with any claims, actions and demands brought by a third party (collectively, "Claims") alleging the Fivetran Product (excluding Customer Data) infringes such third party's trademark, issued patent, or copyright, or Fivetran misappropriated such third party's trade secrets in the development of the Fivetran Product (a "Fivetran IP Claim"). The foregoing obligations do not apply with respect to portions or components of the Fivetran

Product (a) made in whole or in part in accordance with Customer specifications; (b) that are combined with other products, processes or materials where the alleged infringement relates to such combination; (c) where Customer's use of the Fivetran Product is not strictly in accordance with this Agreement; or (d) in the case of On-Prem Software, (i) that are modified by or on behalf of Customer after delivery by Fivetran or (ii) where Customer continues the allegedly infringing activity after being notified thereof or after being provided an update that would have avoided the alleged infringement. If the use of the Fivetran Product by Customer has become, or in Fivetran's opinion is likely to become, the subject of any Fivetran IP Claim, Fivetran shall, at its option and expense (A) replace or modify the Fivetran Product to be non-infringing, provided that such modification or replacement contains substantially similar features and functionality; (B) obtain for Customer a license to continue using the Fivetran Product; or (C) if neither of the foregoing is commercially practicable, terminate this Agreement or the applicable Order Form and provide Customer a pro rata refund of any prepaid Fees equal to the terminated portion of the applicable subscription term.

- 9.2 By Customer. Customer will indemnify and defend Fivetran and its Affiliates and its and their respective officers, directors and employees (collectively, "Fivetran Indemnified Parties") from and against any damages and costs finally awarded against the Fivetran Indemnified Parties or agreed to in settlement by Customer (including reasonable attorneys' fees) in connection with any Claims arising from or related to: (a) Customer's failure to provide notice or obtain all consents, permissions and rights necessary for Fivetran and its subprocessors to lawfully process Customer Data for the purposes contemplated by this Agreement; (b) an allegation Customer Data or its use infringes such third party's trademark, issued patent or copyright, or Customer misappropriated such third party's trade secrets in the collection, transmission or processing of the Customer Data; and (c) Customer's breach of Section 5.3 (Customer Responsibilities).
- 9.3 Process. If the Customer Indemnified Parties or Fivetran Indemnified Parties (each, an "Indemnified Party") becomes aware of any Claim it believes it should be indemnified under Section 9.1 (Indemnification - By Fivetran) or Section 9.2 (Indemnification - By Customer), as applicable, the Indemnified Party will give Fivetran or Customer (the "Indemnifying Party") prompt written notice of such Claim; provided that the failure to do so will not relieve the Indemnifying Party of its indemnification obligations except to the extent that its ability to conduct the defense thereof is materially prejudiced thereby. The Indemnifying Party will have the sole and exclusive authority to defend and/or settle any such Claim; provided that it will not settle or compromise any Claim or make any admission of liability without the Indemnified Party's prior written consent, which will not be unreasonably withheld, unless it unconditionally releases the Indemnified Party of all related liability. The Indemnified Party will reasonably cooperate with the Indemnifying Party in connection with such defense and settlement of any Claim, and will have the right to participate fully, at its own expense, in the defense of such Claim with counsel of its own choosing.

## 10 LIMITATIONS OF LIABILITY

- 10.1 NO CONSEQUENTIAL DAMAGES. EXCEPT AS SET FORTH IN SECTION 10.5 (EXCLUDED LIABILITIES), IN NO EVENT SHALL EITHER PARTY OR ITS AGENTS AND SUPPLIERS (INCLUDING THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND SUPPLIERS) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, RELIANCE, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES OR LOSS OF PROFITS, BUSINESS OPPORTUNITY, ANTICIPATED GOODWILL, REVENUE, DATA OR DATA USE, WHETHER FORESEEABLE OR NOT AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 10.2 GENERAL CAP. EXCEPT AS SET FORTH IN SECTION 10.3 (SPECIAL CAP) AND SECTION 10.5 (EXCLUDED LIABILITIES), THE AGGREGATE, CUMULATIVE LIABILITY OF EACH PARTY (INCLUDING ITS AFFILIATES AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND SUPPLIERS) UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNTS PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM (THE "GENERAL CAP").
- 10.3 SPECIAL CAP. THE AGGREGATE, CUMULATIVE LIABILITY OF FIVETRAN (INCLUDING ITS AFFILIATES AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND SUPPLIERS) FOR A BREACH OF ITS OBLIGATIONS IN SECTION 4 (CONFIDENTIALITY) OR SECTION 5 (SECURITY MEASURES) THAT RESULTS IN THE UNAUTHORIZED DISCLOSURE OF CUSTOMER DATA BY FIVETRAN, WILL NOT EXCEED TWO TIMES (2X) THE AMOUNTS PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM ("SPECIAL CAP").
- 10.4 NO CUMULATIVE LIABILITY. IN NO EVENT WILL FIVETRAN (OR ITS AFFILIATES AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND SUPPLIERS) BE LIABLE FOR THE SAME EVENT UNDER BOTH THE GENERAL CAP AND SPECIAL CAP. SIMILARLY, THE GENERAL CAP AND SPECIAL CAP WILL NOT BE CUMULATIVE; IF THERE ARE ONE OR MORE CLAIMS BROUGHT BY THE CUSTOMER INDEMNIFIED PARTIES SUBJECT TO EACH OF THE GENERAL CAP AND SPECIAL CAP, THE MAXIMUM LIABILITY FOR ALL CLAIMS IN THE AGGREGATE WILL NOT EXCEED THE SPECIAL CAP.
- 10.5 EXCLUDED LIABILITIES. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION 10 (LIMITATIONS OF LIABILITY), LIABILITY IS NOT

LIMITED FOR THE FOLLOWING: (A) EACH PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT; (B) INFRINGEMENT OR MISAPPROPRIATION BY A PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (C) FIVETRAN'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9.1 (INDEMNIFICATION - BY FIVETRAN) FOR FIVETRAN IP CLAIMS; (D) CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 9.2 (INDEMNIFICATION - BY CUSTOMER); AND (E) CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 6 (PAYMENT OF FEES).

- 10.6 **INDEPENDENT ALLOCATIONS OF RISK.** EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THEY HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

## **11 MISCELLANEOUS**

- 11.1 **No Agency; No Third Party Rights.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect whatsoever to any third party. For the avoidance of doubt, there are no third party beneficiaries under this Agreement.
- 11.2 **Notices.** All notices under this Agreement must be in writing and will be deemed to have been duly given when received, if personally delivered; upon receipt, if transmitted by e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested to each party at its respective address provided on the then current Order Form.
- 11.3 **Marketing Permissions.** Fivetran may use and display Customer's name and logo on Fivetran's website and marketing materials in connection with identifying Customer as a customer. Subject to Customer's prior written approval (which shall not be unreasonably withheld), if Fivetran requests, Customer also agrees to participate in a win release, case study, video testimonial, and/or cooperate with Fivetran in presenting at a Fivetran event or speaking to the media.
- 11.4 **Enforceability.** If any provision of this Agreement is adjudicated invalid or unenforceable, the remaining provisions will remain in full force and effect and this Agreement will be amended to the minimum extent necessary to achieve, to the maximum extent possible, the same legal and commercial effect originally intended by the parties. To the extent permitted by Applicable Law, the parties waive any provision of law that would render any clause of this Agreement prohibited or unenforceable in any respect.
- 11.5 **Force Majeure.** If the performance of this Agreement or any obligations (other than payment obligations) hereunder is prevented or interfered with by any act or condition beyond the reasonable control of a party hereto, including acts of God, unusually severe weather, war, invasion, riot or other civil unrest, government laws, orders or embargoes, strikes or lockouts (a "**Force Majeure Event**"), that party upon giving prompt notice to the other party (including the cause and effect of such failure and the anticipated duration of its inability to perform) shall be excused from such performance during such occurrence for a period equal to the duration of such Force Majeure Event; provided, however, the party affected by a Force Majeure Event will take all reasonable actions to minimize the consequences and cause the cessation of any such event.
- 11.6 **Assignment.** This Agreement may not be assigned by either party without the other party's consent, whether by operation of law or otherwise; provided that either party may assign this Agreement to its (a) Affiliate or (b) successor in the event of a merger, acquisition or sale of all or substantially all of the assets of such party related to this Agreement, unless the successor is a competitor of the other party. Any other purported assignment shall be void.
- 11.7 **Integration; Order of Precedence.** This Agreement is the complete statement of the mutual understanding of the parties and supersedes and replaces all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. The parties agree that any term or condition stated in Customer's purchase order or in any other Customer's order documentation is void, even if accepted by Fivetran or executed by the parties after the Effective Date. In the event of a conflict or inconsistency among the following documents, the order of precedence will be: (a) the applicable Order Form(s); (b) the BAA; (c) the DPA; (d) the body of this Agreement; (e) the Acceptable Use Policy; (f) any other terms incorporated by reference herein or any other exhibits or attachments hereto; and (g) the applicable Documentation.
- 11.8 **Amendment; Counterparts.** No supplement, modification, or amendment of this Agreement shall be binding, unless executed by a duly authorized representative of each party. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. This Agreement may be executed by written signature or electronically and delivered in multiple counterparts, including facsimile, PDF, or other electronic counterparts, all of which will constitute one and the same instrument and agreement.



11.9 Governing Law and Jurisdiction; Fees. [if:conditionGovLawCa]This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. Any legal action relating to this Agreement must be brought in the federal or state courts in San Francisco or Alameda Counties, California. The parties hereby accept generally and unconditionally the jurisdiction, resolution method, and venue noted above. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.[endif][if:conditionGovLawNy]This Agreement shall be governed by the laws of the State of New York, without regard to its conflict of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. Any legal action relating to this Agreement must be brought in the federal or state courts in New York County, New York. The parties hereby accept generally and unconditionally the jurisdiction, resolution method, and venue noted above. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.[endif][if:conditionGovLawDe]This Agreement shall be governed by the laws of the State of Delaware, without regard to its conflict of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. Any legal action relating to this Agreement must be brought in the federal or state courts in New Castle County, Delaware. The parties hereby accept generally and unconditionally the jurisdiction, resolution method, and venue noted above. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.[endif][if:conditionGovLawEnglandWales]This Agreement shall be governed by the laws of England and Wales, UK, without regard to its conflict of laws provisions. In the event of any dispute in connection with this Agreement (other than for disputes related to the intellectual property of a party), each party's senior representatives will, in good faith, attempt to resolve the dispute. If the parties are unable to resolve the dispute within a reasonable period, then the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by a sole arbitrator designated by the parties or, failing that, in accordance with the Rules. The parties will share equally the fees and expenses of the arbitrator. An arbitration proceeding hereunder shall be conducted in London, England and shall be conducted in the English language. The decision or award of the arbitrator shall be in writing, final and binding on both parties and may be entered in any court of competent jurisdiction. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. The parties hereby accept generally and unconditionally the governing law, dispute resolution method, and venue noted above. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.[endif][if:conditionGovLawIreland] This Agreement shall be governed by the laws of Ireland, without regard to its conflict of laws provisions. In the event of any dispute in connection with this Agreement (other than for disputes related to the intellectual property of a party), each party's senior representatives will, in good faith, attempt to resolve the dispute. If the parties are unable to resolve the dispute within a reasonable period, then the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by a sole arbitrator designated by the parties or, failing that, in accordance with the Rules. The parties will share equally the fees and expenses of the arbitrator. An arbitration proceeding hereunder shall be conducted in Dublin, Ireland and shall be conducted in the English language. The decision or award of the arbitrator shall be in writing, final and binding on both parties and may be entered in any court of competent jurisdiction. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. The parties hereby accept generally and unconditionally the governing law, dispute resolution method, and venue noted above. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.[endif][if:conditionGovLawAustralia]This Agreement shall be governed by the laws of New South Wales, Australia, without regard to its conflict of laws provisions. In the event of any dispute in connection with this Agreement (other than for disputes related to the intellectual property of a party), each party's senior representatives will, in good faith, attempt to resolve the dispute. If the parties are unable to resolve the dispute within a reasonable period, then the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (the "Rules") by a sole arbitrator designated by the parties or, failing that, in accordance with the Rules. The parties will share equally the fees and expenses of the arbitrator. An arbitration proceeding hereunder shall be conducted in Sydney, Australia, and shall be conducted in the English language. The decision or award of the arbitrator shall be in writing, final and binding on both parties and may be entered in any court of competent jurisdiction. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. The parties hereby accept generally and unconditionally the governing law, dispute resolution method, and venue noted above. The prevailing party is entitled to recover all reasonable fees, costs and expenses of its rights, including reasonable attorneys' fees. [endif][if:conditionGovLawSingapore]This Agreement shall be governed by the laws of Singapore, without regard to its conflict of laws provisions. In the event of any dispute in connection with this Agreement (other than for disputes related to the intellectual property of a party), each party's senior representatives will, in good faith, attempt to resolve the dispute. If the parties are unable to resolve the dispute within a reasonable period, then the dispute shall be finally settled under the Singapore International Arbitration Centre in accordance with the Arbitration Rules of the International Arbitration Act (the "Rules") by a sole arbitrator designated by the parties or, failing that, in accordance with the Rules. The parties will share equally the fees and expenses of the arbitrator. An arbitration proceeding hereunder shall be conducted in Singapore City, Singapore and shall be conducted in the English language. The decision or award of the arbitrator shall be in writing, final and binding on both parties and may be entered in any court of competent jurisdiction. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. The parties hereby accept generally and unconditionally the governing law, dispute resolution method, and venue noted above. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.[endif]

11.10 Interpretation. For purposes hereof, "including" means "including without limitation". A reference to a statute or statutory provision shall be a reference to it as amended,

extended or re-enacted from time to time, and shall also include all subordinate legislation made from time to time under that statute or statutory provision. Any reference to the requirement for something to be given, received or similar in "writing" or "written" shall include and permit this to be done by e-mail provided such e-mail is sent to an authorized representative of that party. Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders. The headings used in this Agreement and its division into sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

- 11.11 Export Compliance; International Trade Laws. Fivetran Products may be subject to laws and regulations related to international transactions, including export controls, import controls, and trade sanctions administered or enforced by the United States and other applicable jurisdictions. Customer acknowledges and agrees that it will comply with all applicable export controls, import controls, trade sanctions, and all other applicable international trade laws, regulations and/or any other relevant restrictions in Customer's use of the Fivetran Products, including that Customer will not, export or re-export, directly or indirectly, the Fivetran Products in violation of Applicable Law, permit access to or use of any Fivetran Products in Afghanistan, Belarus, Russia and Venezuela (collectively, "Designated Jurisdictions") or any country where such access or use is subject to a trade embargo or prohibition, and that Customer will not use Fivetran Products in support of any controlled technology, industry, or goods or services, or any other restricted use, without having a valid governmental license, authority, or permission to engage in such conduct. Customer will not submit to any Fivetran Product any data controlled under the U.S. International Traffic in Arms Regulations. Each party further represents that it (and with respect to Customer, each User and / or Affiliate accessing the Fivetran Product) is (a) not located in a country or jurisdiction subject to a trade embargo or comprehensive sanctions relevant to this Agreement, (b) not named on any governmental or quasi-governmental denied party or debarment list relevant to this Agreement, and (c) is not owned directly or indirectly by persons whose aggregated interest in such party is 50% or more and who are named on any such list(s).
- 11.12 Government Terms. Fivetran Products, Professional Services, and related software and Documentation are "commercial products", "commercial items", "commercial computer software" and "commercially available off the shelf items" as defined in FAR 2.101 and other relevant government procurement regulations including agency supplements. This Agreement reflects (a) standard commercial practices for the acquisition of the Fivetran Products and Professional Services and (b) terms and conditions that Fivetran customarily provides to its other customers. This Agreement applies to Customer's use of the Fivetran Products and Professional Services as consistent with Applicable Law. If these terms fail to meet Customer's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue its use of the Fivetran Products and/or Professional Services. If this Agreement conflicts with Applicable Law (such as FAR Part 12.212(a)), those terms are deleted and unenforceable as applied to any Order Forms. Fivetran developed the Fivetran Products and Professional Services solely at private expense. All other use is prohibited.