



TERMS OF USE

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES. CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

IF YOU REGISTER FOR A FREE TRIAL OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING YOUR ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS "YOU" OR "YOUR" WILL REFER TO THE ENTITY. IF YOU DO NOT HAVE THIS AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE OUR SERVICES.

The Service may not be accessed for purposes of monitoring availability, performance, or functionality, or for any other benchmarking or competitive purposes.

Our direct competitors are prohibited from accessing the Service, except with Our prior written consent.

This Agreement was last updated on June 13, 2024. It is effective between You and Us as of the date of Your accepting this Agreement (the "**Effective Date**").

1. DEFINITIONS

"**Agreement**" means this Terms of Use document and any executed Order Forms.

"**Beta Service**" means a service of Ours that is not generally available to customers.

"**Confidential Information**" has the meaning stated in Section 7.1.

"**Disclosing Party**" has the meaning stated in Section 7.1.

"**Documentation**" means Our online user guides, documentation, and help and training materials, as updated from time to time, relating to the Service.

"**Feedback**" has the meaning stated in Section 6.1.

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

"**Order Form**" means an ordering document specifying the Service and any Professional Services to be provided that is entered into between You and Us, including any supplements to that document.

"**Product Support**" means the support services described at www.pimly.co/support or in the Order Form.

“Professional Services” means the implementation or other professional services, if any, described in an Order Form or otherwise provided by Us.

“Recipient” has the meaning stated in Section 7.1.

“Salesforce” means Salesforce, Inc.

“Service” means the products and services that are ordered by You and made available online by Us, including any associated offline components, as described in the Documentation and Order Form. The “Service” does not include the Professional Services or Product Support.

“Statement of Work” or “SOW” means any executed Statement of Work describing the Professional Services to be provided by Us.

“Transaction Taxes” has the meaning stated in Section 4.6.

“User” means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors, and agents, and third parties with which You transact business.

“We,” “Us” or “Our” means Pimly Inc., a Delaware corporation.

“Your Data” means electronic data and information submitted by or for You through the Service or collected and processed by or for You using the Service.

2. OUR RESPONSIBILITIES

2.1 Provision of Service. We shall: (a) make the Service available to You pursuant to this Agreement, and the applicable Order Forms and Documentation, (b) provide applicable Product Support at no additional charge, and Professional Services if purchased, (c) use commercially reasonable efforts to make the online Service available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Salesforce or Internet service provider failure or delay, or denial of service attack, and (d) provide the Service in accordance with laws and government regulations applicable to Our provision of the Service to customers generally (i.e., without regard for Your particular use of the Service), and subject to Your and Users’ use of the Service in accordance with this Agreement, the Documentation and the applicable Order Form. We make no guarantees as to the continuous availability of the Service or of any specific feature of the Service since: (a) it is hosted by third parties; and (b) it interoperates with products from third parties, including web browsers.

2.2 Protection of Your Data. We will receive, process, store, use, and transmit Your Data in accordance with Our privacy statement posted at <https://www.pimly.co/privacy-policy> or such other location as We may notify You in writing. The privacy statement may be amended from time to time, and it is Your responsibility to regularly review such privacy statement. Your continued use of the Service following any change to the privacy statement will constitute Your agreement to be bound by the revised terms of the privacy statement. We confirm that We (and any contractors, sub-contractors, temporary employees or other third-parties who it engages) will comply with the requirements set out in Our Data Privacy Addendum at www.pimly.co/legal. Certain of Your Data will be transmitted, processed and stored to and with Amazon Web Services, and Salesforce will not be responsible for the privacy, security, or integrity of that data.

2.3 Our Personnel. We shall be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

2.4 Beta Service. From time to time, We may invite You to try a Beta Service at no charge. You may accept or decline any such Beta Service in Your sole discretion. A Beta Service will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. A Beta Service is for evaluation purposes only and not for production use, is not considered a “Service” under this Agreement, is not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Service trial period will expire upon the earlier of 3 months after the trial start date or the date that a production version of the Beta Service becomes generally available. We may discontinue a Beta Service at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage related to use of a Beta Service.

2.5 Free Trial. If You register for a free trial on the Salesforce AppExchange, We shall make a Service available to You on a trial basis free of charge until the earlier of: (a) the end of the free trial period for which you registered to use the applicable Service (not to exceed 30 days); (b) the start date of any purchased Service ordered by You; or (c) termination by Us in our sole discretion. Your registration information will be disclosed to Salesforce and will be used by Salesforce pursuant to its privacy policy available at <http://www.salesforce.com>. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA YOU ENTER INTO THE SERVICE, AND ANY CUSTOMIZATIONS MADE TO THE SERVICE BY OR FOR YOU, DURING THE FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICE AS THOSE COVERED BY THE TRIAL, PURCHASE APPLICABLE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.

NOTWITHSTANDING SECTION 8 (REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICE IS PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND WE WILL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICE FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE OUR LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$1,000. WITHOUT LIMITING THE FOREGOING, WE, SALESFORCE AND ANY OTHER LICENSORS DO NOT REPRESENT OR WARRANT THAT: (A) YOUR USE OF THE SERVICE DURING THE FREE TRIAL PERIOD WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE SERVICE DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 9 (LIMITATION OF LIABILITY), YOU SHALL BE FULLY LIABLE UNDER THIS AGREEMENT FOR ANY DAMAGES ARISING OUT OF YOUR USE OF THE SERVICE DURING THE FREE TRIAL PERIOD, ANY BREACH BY YOU OF THIS AGREEMENT.

YOU SHALL REVIEW THE APPLICABLE SERVICE DOCUMENTATION DURING THE TRIAL PERIOD TO BECOME FAMILIAR WITH THE FEATURES AND FUNCTIONS OF THE SERVICE BEFORE MAKING A PURCHASE.

3. USE OF THE SERVICE

3.1 Your Responsibilities. You shall: (a) be responsible for Users’ compliance with this Agreement; (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Us promptly of any unauthorized access or use; and (d) use the Service only in accordance with the Documentation and applicable laws and government regulations.

3.2 Usage Restrictions. You shall not: (a) make the Service available to anyone other than Your Users, or use the Service for the benefit of any party other than You; (b) sell, resell, license, sublicense, distribute, rent or lease the Service, or include the Service in a service bureau or outsourcing offering; (c) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Service to store or transmit Malicious Code; (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained in the Service; (f) attempt to gain unauthorized access to the Service or its related systems or networks; (g) permit direct or indirect access to or use of the Service in a way that circumvents a contractual usage limit; (h) copy the Service or any part, feature, function, software code or user interface thereof; (i) copy the Documentation other than as reasonably needed in connection with Your permitted use of the Service; (j) frame or mirror any part of the Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation; (k) access the Service in order to build a competitive product or service; (l) reverse engineer the Service (to the extent this restriction is permitted by law); (m) use the Service for any benchmarking purposes; or (n) download, read, display, copy, modify or transmit any program code or documentation comprising an internal part of the Service.

3.3 Usernames and Passwords. To the extent that We requires a password to access the Service, or any portion of the Site, you agree (a) to provide Us with accurate, complete, and up to date information; (b) to update your information to keep it accurate, current and complete; and (c) comply with this Agreement. Failure to provide accurate information constitutes a breach of this Agreement, which may result in immediate termination of your right to access the Service. Furthermore, you agree that you will not (d) give your password to any unauthorized party, (e) use the Service as the agent of a third party, (f) allow any unauthorized party to use your account, (g) sell or transfer your use of or access to the Service or permit anyone else whose account was suspended or terminated to use the Service through your user name or password, or (h) select a username that impersonates someone else, is intended to disguise the user's identity, is or may be illegal, may be protected by trademark or other proprietary rights, is vulgar or offensive, or may cause confusion. We reserve the right to reject any username in Our sole discretion. If any security breach or unauthorized use of your account occurs, you will notify Us immediately in writing or via email. We will not be liable for any loss you incur as a result of someone else using your password and account with or without your permission.

3.4 Certification and Audit Rights. On Our written request, You shall provide a signed certification: (a) verifying that the Service is being used in accordance with the terms of this Agreement; and (b) listing the locations where the Service is accessed. We may audit Your use of the Service and compliance with the terms of this Agreement. Any audit will be conducted during business hours and will not unreasonably interfere with Your business activities. You shall provide all reasonable assistance and information reasonably requested to determine whether You are in compliance with this Agreement. If an audit reveals that You have underpaid under this Agreement, You shall be invoiced for the underpaid amounts based upon the generally available price list at the time the amounts would have otherwise been incurred, together with interest at a rate of one and one-half percent (1.5%) per month or partial month or the highest rate allowed by law, whichever is less, compounded, during which any amounts were owed and unpaid. If an audit reveals that You have underpaid amounts totaling five percent (5%) or more of the amounts due in any year, You shall reimburse all reasonable costs, fees, and expenses associated with the audit.

4. FEES AND PAYMENT

4.1 Fees. You shall pay all fees specified in an Order Form in accordance with the payment terms specified in that document. Except as otherwise specified in an Order Form: (a) fees are based on the Service purchased and not actual usage; (b) payment obligations are non-cancelable, and fees paid are non-refundable; and (c) quantities purchased cannot be decreased during the relevant subscription term.

4.2 Purchase Order Terms. Any terms or conditions on any purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect and both parties hereby reject all such terms and conditions.

4.3 Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies: (a) those charges may accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum

rate permitted by law, whichever is lower; and (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those previously specified.

4.4 Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your bank account or credit card), We may, without limiting Our other rights and remedies, do one or both of the following: (a) accelerate Your unpaid fee obligations so that they all become immediately due and payable; and (b) suspend Our services to You until the unpaid amounts are paid in full. We shall give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 10.3 (Notice), before suspending services to You.

4.5 Payment Disputes. We shall not exercise Our rights under Section 4.3 (Overdue Charges) or 4.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

4.6 Taxes. Our fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction related to our services (collectively, "**Transaction Taxes**"). You are responsible for paying all Transaction Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Transaction Taxes for which You are responsible, We shall invoice You and You shall pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are responsible for taxes assessable against Us based on Our income, property, and employees.

4.7 Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any verbal or written public comments made by Us regarding future functionality or features.

5. TERM AND TERMINATION

5.1 Term. This Agreement commences on the effective date of the first Order Form (or upon online acceptance of this Agreement, whichever is earlier) and continues until all subscriptions have expired or have been terminated. The term of each purchased subscription is specified in the applicable Order Form. Subscriptions will automatically renew for additional one year terms, unless either party gives the other written notice (email acceptable) at least 60 days before the end of the relevant subscription term.

5.2 Termination for Cause. A party may terminate this Agreement: (a) if the other party is in material breach of this Agreement and the breach remains uncured at least 30 days after receipt of written notice; or (b) if the other party becomes the subject of any bankruptcy or insolvency proceeding.

5.3 Your Data. Upon request by You made within 30 days after the termination of this Agreement and full payment of your obligations under this Agreement, We shall make Your Data available to You for export or download as provided in the Documentation. After that 30-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems, unless legally prohibited. You acknowledge that Salesforce has no obligation to retain Your Data that is stored in custom fields in our Service ("**Custom Fields**") following termination. You may request a copy of such data prior to termination, in which case Salesforce will make such data available to You in accordance with the Salesforce documentation for the applicable Service.

5.4 Surviving Provisions. Sections 1 (Definitions), 3 (Use of the Service), 4 (Fees and Payment), 5 (Term and Termination), 6 (Proprietary Rights and Licenses), 7 (Confidentiality), 8.4 (Disclaimers), 9 (Limitation of Liability), and 10 (General Provisions) will survive any termination of this Agreement.

6. PROPRIETARY RIGHTS AND LICENSES

6.1 Our Ownership. Subject to the limited usage rights expressly granted in this Agreement, We and Our licensors reserve all right, title, and interest in and to the Service, including all related patent, copyright, trade secret, trademark, and other intellectual property rights. Our ownership includes any suggestions, ideas, enhancement requests, feedback, or recommendations You may provide relating to the Service (“**Feedback**”), and You hereby assign to Us all right, title and interest in Your Feedback and all intellectual property rights therein. You are not getting a license to any software programs, but only the right to access and use the Service in accordance with this Agreement. No rights are granted to You other than as expressly set forth in this Agreement.

6.2 Ownership of Your Data. As between the parties, You retain ownership of all right, title and interest in and to Your Data, including all related patent, copyright, trade secret, trademark, and other intellectual property rights.

6.3 License to Your Data. You hereby grant Us a worldwide, limited-term license to host, copy, transmit and display Your Data as necessary for Us to provide the Service in accordance with this Agreement, and for Us to use Your Data on an anonymized basis to improve our products and services. We acquire no other right, title, or interest under this Agreement in or to Your Data.

6.4 Federal Government End Use Provisions. We provide the Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

7. CONFIDENTIALITY

7.1 Definitions. “**Confidential Information**” means all information disclosed by a party (the “**Discloser**”) to the other party (the “**Recipient**”), whether verbally 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. “**Representatives**” means a party’s directors, officers, employees, advisors (including financial advisors, counsel, and accountants), agents, or controlling persons. Your Confidential Information includes Your Data; Our Confidential Information includes the Service; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes of a Discloser.

7.2 Protection of Confidential Information. The Recipient shall take reasonable precautions to protect the confidentiality of the Confidential Information and shall use no less than the degree of care it uses in protecting its own Confidential Information of a similar nature. The Recipient shall: (a) not to use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement; and (b) except as otherwise authorized by the Discloser in writing, limit access to Confidential Information of the Discloser to those of its Representatives who need that access for purposes consistent with this Agreement and who have confidentiality obligations no less stringent than those in this Section 7 (Confidentiality). Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its Representatives without the other party’s prior written consent. The acts and omissions of a Party’s Representatives are deemed the acts and omissions of that Party under this Agreement.

7.3 Exceptions. Except for personally identifiable information, the Recipient has no obligations under Section 7.2 (Protection of Confidential Information) with respect to any Confidential Information if it: (a) is generally known, or readily ascertainable by proper means, by the public other than through a breach of this Agreement by the Recipient; (b) is known by the Recipient before it is disclosed to the Recipient by the Discloser as evidenced by Recipient's written records; (c) is developed independently by the Recipient in a manner that does not rely on Confidential Information of the Discloser; or (d) is disclosed to the Recipient or its Representatives by a third party not subject to any nondisclosure obligations with respect to the Confidential Information.

7.4 Compelled Disclosure. If the Recipient receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court or other governmental agency, the Recipient shall: (a) immediately notify the Discloser of the existence, terms, and circumstances surrounding the request; (b) consult with the Discloser on the advisability of taking legally available steps to resist or narrow the request; and (c) if disclosure is required, cooperate with the Discloser at the Discloser's expense in obtaining an order or other reliable assurance that confidential treatment will be accorded to the portion of the information as the Discloser may designate.

8. REPRESENTATIONS, WARRANTIES, AND DISCLAIMERS

8.1 Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2 Service Warranty. We warrant that the Service will perform substantially in accordance with the applicable Documentation and this Agreement.

8.3 Other Warranties. We warrant that the Professional Services and the Product Support will be performed in a professional and workmanlike manner. For any breach of this warranty, We shall exercise commercially reasonable efforts to re-perform any non-conforming services that were performed within the 30 day period immediately preceding the date of Your written notice to Us specifying in reasonable detail the non-conformance. If We conclude that conformance is impracticable, then We shall refund all fees paid by You to Us, if any, allocable to the nonconforming services. The express remedies in this Section 8.3 constitute Your exclusive remedies, and Our sole obligation and liability, for any claim that any Professional Services or Product Support were performed improperly.

8.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER US NOR OUR LICENSORS MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EACH PARTY DISCLAIMS ALL RESPONSIBILITY OR LIABILITY FOR ANY FUNCTIONALITY ISSUES OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS OR BY ANY THIRD PARTY PRODUCTS.

9. LIMITATION OF LIABILITY

9.1 Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICE OR SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

9.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9.3 Basis of the Bargain. YOU ACKNOWLEDGE THAT OUR FEES UNDER THIS AGREEMENT REFLECT THE OVERALL ALLOCATION OF RISK BETWEEN US AND YOU, INCLUDING BY MEANS OF THE LIMITATION OF LIABILITY AND EXCLUSIVE REMEDIES DESCRIBED IN THIS AGREEMENT. THESE PROVISIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN US AND YOU AND A MODIFICATION OF THESE PROVISIONS WOULD SUBSTANTIALLY AFFECT OUR FEES. IN CONSIDERATION OF THESE FEES, YOU AGREE TO THIS ALLOCATION OF RISK AND HEREBY WAIVE ANY RIGHT, THROUGH EQUITABLE RELIEF, AMENDMENT, OR OTHERWISE, TO SUBSEQUENTLY SEEK A MODIFICATION OF THESE PROVISIONS OR ALLOCATION OF RISK.

10. GENERAL PROVISIONS

10.1 Export Compliance. The Service, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use the Service in a U.S.-embargoed country or in violation of any applicable export or import law or regulation.

10.2 Legal Expenses. If legal action is taken by a party to enforce its rights under this Agreement, all costs and expenses incurred by the prevailing party, including reasonable attorney fees and costs of litigation, will be paid by the other party.

10.3 Notice. All notices under this Agreement, including notices of address change, must be in writing and will be deemed given when sent by: (a) registered mail, return receipt requested; or (b) a nationally recognized overnight delivery service (such as Federal Express), to the appropriate party at the relevant address stated in the Order Form, unless either party notifies the other of a new address in writing, in which case the new address will be used.

10.4 Severability. If any provision of this Agreement is held by a court to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining provisions will remain in full force and effect.

10.5 Governing Law; Arbitration. This Agreement is governed by the laws of the State of Illinois, without regard to its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. You and We agree that any dispute arising out of or in relation to this Agreement or the rights and obligations hereunder must be arbitrated in the English language before one arbitrator under the administration of the American Arbitration Association, and according to its Commercial Arbitration Rules. The seat of the arbitration will be Illinois, and the place of hearing will be Cook County, Illinois. A Party may seek interim injunctive relief under these Rules and before any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the initiating Party for such purposes. The initiating Party shall reimburse the other Party's costs if the court declines jurisdiction. The arbitral panel will be empowered to grant injunctive relief upon application. Awards of the arbitral panel will be enforceable in any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the enforcing Party for such purposes. The enforcing Party shall reimburse the other Party's costs if the court declines jurisdiction.

10.6 Waiver. The waiver by either party of any breach of this Agreement will not constitute a waiver of any other or subsequent breach.

10.7 Assignment. You shall not transfer, by operation of law or otherwise, this Agreement or any right or duty arising hereunder to a third party without Our prior written consent. We may transfer this Agreement, together with all of Our rights and duties under this Agreement, to a successor entity if We are acquired, whether by equity or asset purchase, merger, corporate restructuring, or reorganization, or the like. Any purported transfer or assignment in violation of this section is void.

10.8 Relationship of the Parties. The relationship of the parties is that of independent contractors. No party is the agent of the other, and neither party is authorized to act on behalf of the other party.

10.9 No Third-Party Beneficiaries. There are no third party beneficiaries of this Agreement.

10.10 Force Majeure. Except with regard to any obligation to pay money hereunder, neither party will be held responsible for any delay or failure in performance hereunder caused by fire, strike, flood, embargo, labor dispute, delay or failure of any subcontract, act of sabotage, riot, accident, delay of carrier or supplier, limitations or delays inherent in the use of the internet, voluntary or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, or any other cause beyond the party's reasonable control. If one of these events does occur, the time to perform an affected obligation will be extended by the length of time the event continues.

10.11 Entire Agreement; Modifications. This Agreement and all Order Forms, which are incorporated by this reference, contain all the agreements, representations, and understandings of the parties, and supersede any previous understandings, commitments, or agreements, verbal or written, with respect to the subject matter of this Agreement. We from time to time may make revisions to the Documentation to reflect additional services or revisions to the manner in which an existing service is provided. These revisions will be incorporated in our Agreement with You unless they represent a reduction of the Service then being provided to you in any material respect. We may make other changes to the Documentation or to these Terms of Use from time to time and the changes will be effective upon reasonable notice to you, which may include email or other electronic notification. We may also change or discontinue the Service, in whole or in part, including pricing, technical support options and other product-related policies. Your continued use of the Service after we notify you of any changes indicates your agreement to the changes. We will refund all amounts prepaid for a Service that has been discontinued. This Agreement may be otherwise modified or amended only in a written document signed by a duly authorized representative of each party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement.

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