

Effective Date: July 30, 2020

These Terms of Service (“Agreement”) govern your (“Customer,” “you,” or “your”) paid use of the Service and by clicking on the “I Agree” button on the New Relic account registration page and executing an Order as further described, you represent that (1) you have read, understand, and agree to be bound by this Agreement, (2) you are of legal age to form a binding contract with New Relic, Inc. (“New Relic,” “we,” “our,” or “us,” and collectively with Customer, “Parties”), and (3) you have the authority to enter into this Agreement personally or on behalf of the company or other organization you have named as the user, and to bind that entity to this Agreement. In the event you are agreeing to this Agreement on behalf of a company or organization, “Customer,” “you,” and “your” will refer to the entity you are representing.

We may update this Agreement from time to time in accordance with Section 11.5 (Updates). The most current version of this Agreement will be posted on [www.newrelic.com](http://www.newrelic.com) (the “Site”).

## Section 1 - The Service

1.1. Use of the Service. New Relic grants to Customer during the Subscription Term the right to use and access the Service for its internal business purposes only in accordance with the Documentation (including the Acceptable Use Policy), Order, and this Agreement.

1.2. Customer Users and Affiliates. The employees and contractors of Customer or Affiliates may access and use the Service on Customer’s or Affiliate’s behalf (each, a “User”). Each User may be required to provide a username, email address, password, or other personal information to create and manage an Account (“Login Credentials”) and must keep its Login Credentials confidential and not share them with anyone. New Relic uses and collects Login Credentials for account management and support in accordance with the New Relic General Data Privacy Notice (currently located at <https://newrelic.com/privacy>). Customer is responsible for its Users’ compliance with this Agreement and the actions taken through the Account. If Customer becomes aware of any compromise of a User’s credentials, Customer will let New Relic know as soon as possible.

1.3. Service Level Availability. New Relic will use commercially reasonable efforts to make the Service available in line with industry standards.

1.4. Support. New Relic will provide support to Customer in accordance with the Support Plan commitment set out in the Documentation.

1.5. Restrictions. Customer will not (and will not permit anyone else to) do any of the following: (a) use the Service to develop a similar or competing product or service; (b) obtain or attempt to obtain the Service by any means or device with intent to avoid paying the fees that would otherwise be payable for such access or use; (c) reverse engineer, decompile, disassemble, or seek to access the source code or non-public APIs to the Service or any related features; (d) modify or create derivative works of the Service or copy any element of or related features with the Service (other than authorized copies of the Software); (e) publish benchmarks or performance information about the Service; (f) fail to perform or observe the obligations set out in Section 2.5 (Obligations); (g) perform any security integrity review, penetration test, load test, denial of service simulation, or vulnerability scan on New Relic; (h) provide access to or sublicense the Service to a third party other than a Third-Party Service; or (i) use the Service on behalf of, or to provide any product or service to, third parties.

## Section 2 - Customer Data

2.1. Customer Data Configurations. The Service and related features are designed to provide Customer with control over its configuration and use, including in the types of Customer Data it processes. New Relic refers to the data, information, or content that Customer and Users send to an Account from the Software, the Customer Properties, or Third-Party Services, as “Customer Data.” The Customer Data will be hosted in the data region that Customer selects during the setup of the Account.

2.2. Use of Customer Data to Provide the Service. New Relic needs a limited license to Customer Data in order to provide the Service. For example, depending on the Service subscribed to, the Service and related features may create visualization aides, such as dashboards, charts, and graphs, which requires, among other rights, a right to create derivative works. Customer grants New Relic a non-exclusive, worldwide right to use, copy, store, transmit, display, modify, and create derivative works of the Customer Data, to the extent necessary to manage, improve, and provide the Service and related services, as well as to provide support to Customer.

2.3. Data Security Commitments. New Relic uses industry-standard administrative, technical, physical, and organizational measures designed to protect Customer Data for all of our customers across New Relic’s multi-tenant architecture. New Relic will provide Customer a copy of our most current security attestation report (SOC 2, Type II or equivalent report) upon written request.

2.4. Export of Customer Data; Retention. At any time during the Subscription Term, Customer may export Customer Data from its Account in supported formats. New Relic retains Customer Data in accordance with the data retention policy applicable to the Service.

## 2.5. Obligations.

(a) Customer, through its use and configuration of the Service, is instructing New Relic to process Customer Data. For example, the type, quantity, and frequency of Customer Data received by New Relic is pursuant to Customer's decisions and instructions. Customer is responsible for its configuration choices, and any risks resulting from Customer's disablement of any New Relic default privacy or security settings or features (e.g. disabling encryption of data in transit). Customer shall implement any Software updates immediately after New Relic makes such available for general release. Customer is responsible for Customer Data, including its content and accuracy. Customer agrees that its use of the Service and related features will comply with the Documentation, including the Acceptable Use Policy.

(b) Customer represents and warrants to New Relic that it has all necessary rights, consents, and permissions to grant New Relic the rights in Section 2.2 (Use of Customer Data to Provide the Service) and to use and submit Customer Data to the Service, all without violating or infringing any applicable laws, third-party rights (including intellectual property, publicity, or privacy rights), or any terms or policies governing Customer Data.

(c) Customer must not send any "Prohibited Data" to the Service, which means any: (1) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (2) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) ("HIPAA"); (3) credit, debit, or other payment card data or financial account information, including bank account numbers; (4) credentials granting access to an online account (e.g. username plus password); (5) social security numbers, driver's license numbers, or other government identification numbers; (6) other information subject to regulation or protection under specific laws such as the Children's Online Privacy Protection Act or Gramm-Leach-Bliley Act (or related rules or regulations); or (7) any data similar to the above protected under foreign or domestic laws. Customer also must not use the Service or related features in connection with any activities where its use or failure could lead to death, personal injury, or environmental damage, such as in life support systems, emergency services, nuclear facilities, autonomous vehicles, or air traffic control (collectively, "High Risk Activities"). Customer acknowledges that the Service and related features are not intended to meet any legal obligations for these uses, including HIPAA requirements, and that New Relic is not a Business Associate as defined under HIPAA. Therefore, notwithstanding anything else in this Agreement, New Relic has no liability for Prohibited Data processed, or High Risk Activity-related use, in connection with the Service.

2.6. Suspension. New Relic may suspend access to, or limit, the Service and related services (and the relevant fees for the Service will continue to apply during such period) if: (a) you breach this Agreement or an Order, including non-payment of any fees when due; or (b) there is a risk of harm to other New Relic customers or the security, availability, or integrity of the Service due to actions taken within an Account or resulting from a Third-Party Service. Where practicable, New Relic will use reasonable efforts to provide prior notice of any suspension. Once the issue requiring suspension is resolved, without limiting any New Relic remedies, New Relic will restore access to the Service in accordance with this Agreement.

2.7. Systems Operations Data. In order to provide its customers with the benefits of a multi-tenant cloud offering, New Relic may collect and process utilization statistics and other technical data (e.g. page load data) regarding use, configuration, and deployment of the Service to operate, manage, improve, instrument, benchmark, and support the Service; provided, New Relic will not disclose any information derived from such data if doing so would make it possible for a third party to identify Customer or any individual natural person.

2.8. Third-Party Services. Customer may choose to use the Service together with Third Party Services. Customer acknowledges that Third-Party Services do not form part of the Service and that Customer's use of Third-Party Services is subject to Customer's agreement with the relevant provider and not this Agreement. For clarity, because Third-Party Services are not controlled by New Relic and do not form part of the Service, New Relic bears no responsibility or liability for Third-Party Services, including their security, availability, functionality, or inoperability, or any effect they may have on your Customer Properties or how the Third-Party Services or their providers use Customer Data. If Customer enables a Third-Party Service with the Service, New Relic may access and exchange Customer Data with the Third-Party Service on Customer's behalf and instruction. Use of the Service with a Third-Party Service does not expand Customer rights or our obligations under this Agreement.

## **Section 3 - Commercial Terms**

3.1. Fees. Fees and invoicing may be described in each Order and/or the Usage Plan. Unless the Order or Usage Plan provides otherwise, all fees are payable in U.S. dollars and are due upon invoice issuance. If you exceed usage limits in an Order, you will pay overage fees in accordance with the Order, the Usage Plan, or this Agreement. New Relic refers to the Service pricing, invoicing related information, and product-specific terms (e.g. concurrent user account sessions) contained within the Documentation as the "Usage Plan." Late payments are subject to a service charge of 1% per month or the maximum amount allowed by law, whichever is less. All fees and expenses are non-cancellable and non-refundable except as set out in this Agreement.

3.2. Taxes. The fees do not include any sales or other applicable taxes, levies, duties, or similar assessments assessable by any jurisdiction. Each party is responsible for their own tax obligations. If New Relic has the legal obligation to pay or collect taxes for which Customer is responsible

under this Section 3.2 (Taxes), the appropriate amount will be invoiced to and paid by Customer, unless New Relic is provided with a valid tax exemption certificate authorized by the appropriate taxing authority.

3.3. Disputes. Unless the Usage Plan provides otherwise, Customer will notify us of any good-faith invoice dispute within 15 days of the invoice date (or within 5 days for overage invoices) and reasonably cooperate with New Relic to resolve the dispute. If the Parties cannot resolve the dispute prior to the payment due date as described in Section 3.1 (Fees), either party may seek any available remedies. Undisputed amounts must be paid in full in accordance with this Section 3 (Commercial Terms).

3.4. Subscription Term. Each Subscription Term will automatically renew for successive periods equal in duration to the previous Subscription Term, unless either party gives the other party notice of non-renewal at least 30 days before the then current Subscription Term ends. Per-unit rates for renewals will be the same as in the prior Subscription Term for the same Service, unless New Relic notifies you in advance of an increase. These increases will not exceed 10% over the rates for the same Service in the prior Subscription Term, unless prior Order pricing was designated as discount, promotional, or one-time.

3.5. Affiliate Orders. An Affiliate may enter into their own Order(s) with New Relic. This creates a separate agreement between the Affiliate and New Relic incorporating this Agreement with the Affiliate treated as "Customer". Neither Customer nor any Affiliate has any rights under each other's agreement with New Relic, and breach or termination of any such agreement is not breach or termination under any other.

#### **Section 4 - Disclaimers**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICE, SUPPORT, AND ALL RELATED NEW RELIC SERVICES ARE PROVIDED "AS IS". NEW RELIC AND ITS SUPPLIERS MAKE NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. WITHOUT LIMITING OUR EXPRESS OBLIGATIONS IN SECTIONS 1.3 (SERVICE LEVEL AVAILABILITY) AND 1.4 (SUPPORT), NEW RELIC DOES NOT WARRANT THAT USE OF THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, THAT WE WILL REVIEW CUSTOMER DATA FOR ACCURACY, OR THAT WE WILL MAINTAIN CUSTOMER DATA WITHOUT LOSS. NEW RELIC IS NOT LIABLE FOR ISSUES WITH THE SERVICE DUE TO CUSTOMER NOT INSTALLING THE LATEST VERSION OF THE SOFTWARE OR DELAYS, FAILURES, OR PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE OUR CONTROL. NEW RELIC MAKES NO WARRANTIES CONCERNING RESULTS TO BE ACHIEVED FROM THE SERVICE. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE LIMITED TO THE SHORTEST LEGALLY PERMITTED PERIOD.

#### **Section 5 - Confidentiality**

5.1. Confidential Information. For the purposes of this Agreement, the Parties define "Confidential Information" to mean any of the information disclosed under this Agreement that is designated by the disclosing party as proprietary or confidential, or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. New Relic's Confidential Information includes any technical, pricing, or performance information about the Service or related services. Customer's Confidential Information includes your Customer Data.

5.2. Obligations. As receiving party, each party will (a) hold in confidence and not disclose Confidential Information to third parties except as permitted in this Agreement, and (b) only use Confidential Information to fulfill its obligations and exercise its rights in this Agreement. The receiving party may disclose Confidential Information to its employees, agents, contractors, subcontractors, and other representatives having a legitimate need to know such Confidential Information, provided the receiving party remains responsible for their compliance with this Section 5 (Confidentiality) and such parties are bound to confidentiality obligations no less protective than this Section 5 (Confidentiality).

5.3. Exclusions. These confidentiality obligations do not apply to information that the receiving party can document: (a) is or becomes public knowledge through no fault of the receiving party; (b) it rightfully knew or possessed prior to receipt under this Agreement; (c) it rightfully received from a third party without breach of confidentiality obligations; or (d) it independently developed without using the disclosing party's Confidential Information. The receiving party may disclose Confidential Information if required by law, subpoena, or court order, provided (if permitted by law) it notifies the disclosing party in advance and cooperates in any effort to obtain confidential treatment.

5.4. Remedies. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone may be an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section 5 (Confidentiality).

#### **Section 6 - Ownership**

Neither Party grants the other any rights or licenses not expressly set out in this Agreement. Except for New Relic's use rights in this Agreement, as between the Parties, Customer retains all intellectual property and other rights in Customer Data. Except for Customer's use rights in this Agreement, New Relic and its licensors retain all intellectual property and other rights in the Service, the Documentation, and related New Relic technology, services, templates, formats, and dashboards, including any modifications or improvements to these items made by New Relic. If you provide New Relic with feedback or suggestions regarding the Service or other New Relic offerings, we may use the feedback or suggestions without restriction.

## **Section 7 - Limitations of Liability**

7.1. Liability Cap. EACH PARTY'S ENTIRE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED IN AGGREGATE THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO NEW RELIC FOR THE SERVICE MADE AVAILABLE TO CUSTOMER DURING THE PRIOR 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT CREATING LIABILITY UNDER THIS AGREEMENT, EXCEPT AS OTHERWISE SET OUT IN THIS SECTION 7 (LIMITATIONS OF LIABILITY).

7.2. Consequential Damages Waiver. EXCEPT FOR EXCLUDED CLAIMS, NEITHER PARTY WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MEASURES, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THEIR POSSIBILITY IN ADVANCE.

7.3. Excluded Claims. NO LIMITATION OF LIABILITY WILL APPLY TO EXCLUDED CLAIMS. "EXCLUDED CLAIMS" MEANS: (1) CLAIMS FOR WHICH LIABILITY CANNOT BE LIMITED UNDER APPLICABLE LAW; (2) BREACH OF SECTION 1.5 (RESTRICTIONS) OR PAYMENT OBLIGATIONS IN SECTION 3 (COMMERCIAL TERMS) OR CUSTOMER'S BREACH OF SECTION 5 (CONFIDENTIALITY); OR (3) AMOUNTS PAYABLE TO THIRD PARTIES UNDER THE INDEMNIFYING PARTY'S OBLIGATIONS IN SECTION 8.2 (INDEMNIFICATION BY CUSTOMER).

7.4. Nature of Claims and Failure of Essential Purpose. THE WAIVERS AND LIMITATIONS IN THIS SECTION 7 (LIMITATIONS OF LIABILITY) APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE AND WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

## **Section 8 - Indemnification**

8.1. Indemnification by New Relic. New Relic will defend Customer from and against any valid third-party claim to the extent alleging that the Service, when used by Customer as authorized, infringes a valid third-party's U.S. patent, copyright, or trademark, and will hold harmless and indemnify Customer against any damages or costs finally-awarded against Customer (including reasonable attorneys' fees) or agreed in settlement by New Relic resulting from the claim.

8.2. Indemnification by Customer. Customer will defend New Relic from and against any third-party claim to the extent related to or arising from Customer Materials, Customer Data or Customer's breach or alleged breach of (a) this Agreement, or (b) any applicable law or regulation, and Customer will hold harmless and indemnify New Relic against any damages or costs awarded against New Relic (including reasonable attorneys' fees) or agreed in settlement by Customer resulting from the claim.

8.3. Procedures. The indemnifying party's obligations in this Section 8 (Indemnification) are subject to receiving: (a) prompt written notice of the claim; (b) the exclusive right to control and direct the investigation, defense, and settlement of the claim; and (c) all reasonably necessary cooperation of the indemnified party, at the indemnifying party's expense for reasonable out-of-pocket costs. The indemnifying party may not settle any claim without the indemnified party's prior written consent if settlement would require the indemnified party to admit fault or take or refrain from taking any action (other than relating to use of the Service, when New Relic is the indemnifying party). The indemnified party may participate in a claim with its own counsel at its own expense.

8.4. Mitigation and Exceptions. In response to an actual or potential infringement claim, if required by settlement or injunction or as New Relic determines necessary to avoid material liability, New Relic may at its option: (a) procure rights for Customer continued use of the Service; (b) replace or modify the alleged infringing portion of the Service to avoid infringement with substantially similar functionality; or (c) terminate the applicable Service in the affected Order and refund any pre-paid, unused fees for the terminated portion of the Subscription Term. New Relic's obligations in this Section 8 (Indemnification) do not apply: (1) to infringement resulting from Customer's modification of the Service or use of the Service in combination with items not provided by New Relic (including Third-Party Services); (2) to infringement resulting from Software other than the most recent release; (3) to unauthorized use of the Service or if Customer is in breach of an Order, Usage Plan, or this Agreement; (4) if the total aggregate fees paid to New Relic for the Service is less than US\$100,000 in the twelve (12) month period immediately preceding the claim; (5) to infringement resulting from compliance by New Relic with Customer designs, plans, specifications or instructions; (6) if Customer settles or

makes any admissions about a claim without New Relic's prior written consent; or (7) to any claim arising from or related to Customer's indemnification obligations. This Section 8 (Indemnification) sets out Customer's sole and exclusive remedy and New Relic's entire liability regarding infringement of third-party intellectual property rights.

## **Section 9 - Term and Termination**

9.1. Term. This Agreement is effective for Customer's applicable Subscription Term unless terminated as described in this Agreement. Any unpaid use of the Service shall be governed as described in Section 11.4 (Entire Agreement).

9.2. Termination. Either party may terminate this Agreement (including all Orders) if the other party: (a) fails to cure a material breach of this Agreement (including a failure to pay fees) within 30 days after written notice; (b) ceases operation without a successor; or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days. If New Relic terminates this Agreement for Customer's material breach under this Section 9.2 (Termination), Customer will promptly pay New Relic any outstanding fees or expenses due and any fees for the terminated portion of the Subscription Term. If Customer terminates this Agreement for New Relic's material breach under this Section 9.2 (Termination), then, at Customer's request, New Relic will refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term. In no event will any termination relieve Customer of the obligation to pay any expenses and fees payable to New Relic for the period prior to the effective date of termination. Except where an exclusive remedy is provided, exercising a remedy under this Agreement does not limit other remedies a party may have. For clarity, New Relic may modify or discontinue the Service, including any portions of the Service, as we update our offerings and add more features.

9.3. Effect of Termination. Upon expiration or termination of this Agreement or an Order, Customer's access to the applicable Service will immediately cease. Termination of an Order will not be deemed a termination of this Agreement or any other Order; however, termination of this Agreement will immediately terminate all outstanding Orders. At the disclosing party's request upon expiration or termination of this Agreement, the receiving party will delete all of the disclosing party's Confidential Information (including Customer Data, which New Relic will delete after termination or expiration). Confidential Information may be retained in the receiving party's standard backups after deletion but will remain subject to this Agreement's confidentiality restrictions.

9.4. Survival. These Sections survive expiration or termination of this Agreement: 1.5 (Restrictions), 2.5 (Obligations), 2.7 (Systems Operations Data), 3.1 (Fees), 3.2 (Taxes), 4 (Disclaimers), 5 (Confidentiality), 6 (Ownership), 7 (Limitations of Liability), 8 (Indemnification), 9 (Term and Termination), 11.2 (Governing Law, Jurisdiction, and Venue), 11.3 (Notices), 11.4 (Entire Agreement), 11.5 (Updates), 11.6 (Waivers and Severability), and 11.13 (Channel Partner Service Subscriptions).

## **Section 10 - Technical Services**

10.1 Technical Services. From time to time, Customer may choose to engage New Relic for training, enablement, or other technical services in respect of the Service ("Technical Services"). Any purchased Technical Services are as described in the relevant Order. For clarity, the purchase of Technical Services is not required in order for Customer to use and access the Service and Customer agrees that Technical Services do not form part of the Service.

10.2 Delivery; Use. Customer will give New Relic timely access to Customer materials, systems, and other resources ("Customer Materials") reasonably needed to provide the Technical Services, and if Customer fails to do so, New Relic's obligation to provide Technical Services will be excused until access is provided. New Relic may make use of service partners to provide the Technical Services. Customer represents and warrants to New Relic that it has all necessary rights, consents, and permissions to provide the Customer Materials to New Relic. Customer, as between the Parties, retains all ownership rights in the Customer Materials and grants to New Relic a limited right to use and access the Customer Materials only to provide the Technical Services to Customer. New Relic will treat the Customer Materials as Confidential Information. Subject to payment of the applicable fees and a current subscription to the Service, Customer is granted a non-exclusive and non-transferable license to use the product of any Technical Services for its own internal business purposes only and consistent with the licenses and restrictions set forth in this Agreement.

10.3 Technical Services Warranty; Remedy. New Relic warrants to Customer that New Relic will perform any Technical Services in a professional and workmanlike manner. If New Relic breaches this warranty and Customer makes a reasonably detailed warranty claim within 30 days of discovering the issue, such that New Relic can reproduce or verify such issue, then New Relic will use commercially reasonable efforts to correct the non-conformity. If New Relic cannot correct the non-conforming Technical Services, either party may terminate the applicable Technical Services from the affected Order, in which case New Relic will refund to Customer any such pre-paid, unused fees for the terminated portion of the Subscription Term. These procedures are Customer's sole and exclusive remedy and New Relic's entire liability for breach of this Section 10.3

(Technical Services Warranty; Remedy). THE ENTIRE LIABILITY OF NEW RELIC UNDER OR IN CONNECTION WITH THE TECHNICAL SERVICES WILL AT ALL TIMES BE LIMITED TO THE GREATER OF FEES PAID FOR SUCH TECHNICAL SERVICES IN THE APPLICABLE TECHNICAL SERVICES ORDER OR FIFTY DOLLARS.

## **Section 11 - General Terms**

11.1. Assignment. Customer may not assign this Agreement (or any Order) without the prior written consent of New Relic, except that Customer may assign this Agreement (and applicable Order) in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all its assets or voting securities provided that Customer is in good standing with New Relic and that such assignment by Customer does not expand its scope of use for the Service. Any non-permitted assignment is void. This Agreement will bind and inure to the benefit of Customer's permitted successors and assigns.

11.2. Governing Law, Jurisdiction, and Venue. This Agreement is governed by the laws of the State of California and the United States without regard to conflicts of laws provisions or the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to this Agreement will be the state and United States federal courts located in San Francisco, California, and both Parties submit to the personal jurisdiction of those courts.

11.3. Notices. Notices to you will be deemed given upon: (a) personal delivery; (b) 3 days after sending via certified, registered mail, or deposit with a globally recognized courier; or (c) email to your account administrator or the contact on the Order. New Relic may also provide notices to you electronically, including but not limited to through the Site or Service, which shall be deemed given to you upon dispatch including if the last email address you provided to us is invalid, or for any reason that any such notice is not capable of delivery to you. Customer may update its address with notice to New Relic in accordance with this Section 11.3 (Notices). You are responsible for providing us with your most current email address and updating it as applicable. You may give us notice at: New Relic, Inc., 188 Spear Street, Suite 1000, San Francisco, California 94105, Attn: General Counsel. Such notice shall be deemed given when received by New Relic by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the foregoing address.

11.4. Entire Agreement. This Agreement (and all Orders), the Documentation, and any addenda or policies otherwise made available on the Site by New Relic is the Parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In the event of any conflict or inconsistency between the Order and this Agreement, the Order will prevail. Customer's purchases are not contingent on delivery of any future functionality or features. The terms set out in this Agreement apply to the Service only, and do not apply to any free trials, unpaid use of the service, or pre-release use of New Relic products or services. Pre-release use of New Relic products or services is governed by the Pre-Release Policy as set out in the Documentation. Any unpaid use of the service, including after any expiration or termination of a Subscription Term, is governed by the terms published at: <https://newrelic.com/termsandconditions/unpaid>. In this Agreement, headings are for convenience only and "including" and similar terms are to be construed without limitation. The terms in any Customer purchase order, business form, online terms (i.e. click-wrap or browse-wrap), or invoicing portal will not amend or modify this Agreement and are expressly rejected; any of this documentation is for Customer's own administrative purposes only and is not binding on New Relic.

11.5. Updates. New Relic may modify this Agreement from time to time. If we determine in our sole discretion that an update is material, we will provide notice of such material change to you through the Service, Site, our blogs or forums, and/or in accordance with Section 11.3 (Notices). Any changes to this Agreement posted on the Site will be effective immediately if Customer assents to such changes or for any new or renewal Subscription Term, and thirty (30) days thereafter for all other customers with an existing Subscription Term, except changes required by law or as necessary for use of any new products or features, which will immediately become effective to the extent necessary to comply with such law or as required to use such new products or features. If Customer objects to the updated Agreement within such period in accordance with Section 11.3 (Notices), as Customer's sole and exclusive remedy and without penalty, Customer may choose to continue its use of the Service under the prior version of this Agreement until Customer's next Subscription Term renewal and such updated Agreement will automatically apply as of the renewal Subscription Term unless you elect not to renew pursuant to Section 3.4 (Subscription Term). In any event continued use of the Service during the renewal Subscription Term will constitute Customer acceptance of the version of the Agreement in effect at the time the renewal Subscription Term begins.

11.6. Waivers and Severability. Waivers must be signed by the waiving party's authorized representative and cannot be implied. If any provision of this Agreement is held invalid, illegal, or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect.

11.7. Force Majeure. New Relic is not liable for any delay or failure to perform any obligation under this Agreement or any Order due to events beyond its reasonable control, such as a strike, blockade, war, act of terrorism, riot, Internet or utility failures, refusal of government license, or natural disaster.

11.8. Service Support Providers. New Relic uses third-party hosting and other service providers (e.g. data center providers or support ticketing systems) in our supply of the Service and related features and support.

11.9. Independent Contractors. The Parties are independent contractors, not agents, partners, or joint venturers.

11.10. Open Source Software. To the extent New Relic separately makes available other open source software ("OSS") for download (e.g. community tools), such code is governed by the terms of the applicable OSS license. To the extent required, the license for any OSS included in the Software, identified in the Documentation, will apply to the OSS instead of this Agreement.

11.11. Anti-Corruption and Export. Customer will, and will cause its employees, consultants, and agents to, comply with the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010. Customer agrees to comply with all applicable laws administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control, or other governmental entity imposing export controls and trade sanctions ("Export Laws"), including designated countries, entities, and persons ("Sanctions Targets"); and agrees not to directly or indirectly export, re-export, or otherwise deliver the Service to a Sanctions Target, or broker, finance, or otherwise facilitate any transaction in violation of any Export Laws. Customer represents that Customer is not a Sanctions Target or prohibited from receiving the Service. The Service will be used for non-prohibited, commercial purposes by non-prohibited Users and will not be exported or transferred to China or any Sanctions Target.

11.12. Government End-Users. Any United States federal, state, or local government customers are subject to the Government Addendum set forth in the Documentation in addition to this Agreement.

11.13 Channel Partner Service Subscriptions. This Section applies to any Customer access of the Service obtained through an authorized New Relic channel partner ("Channel Partner").

(a) Commercial Terms. Instead of paying New Relic, Customer will pay applicable amounts to the Channel Partner as agreed between Customer and the Channel Partner. Customer's order details (e.g., scope of use and fees) will be as stated in the Order placed by Channel Partner with New Relic on Customer's behalf. Customer's Order will renew with Channel Partner in accordance with Section 3.4 (Subscription Term), unless Channel Partner notifies New Relic that it is opting-out of auto-renewal on Customer's behalf as described in this Agreement or in the manner specified in the agreement between Channel Partner and New Relic. Channel Partner is responsible for the accuracy of such Order. New Relic may suspend or terminate Customer's rights to use the Service if it does not receive the corresponding payment from the Channel Partner. If Customer is entitled to a refund under this Agreement, New Relic will refund any applicable fees to the Channel Partner and the Channel Partner will be solely responsible for refunding the appropriate amounts to Customer, unless otherwise specified.

(b) Relationship with New Relic. This Agreement is directly between New Relic and Customer and governs all use of the Service by Customer. Channel Partners are not authorized to modify this Agreement or make any promises or commitments on New Relic's behalf, and New Relic is not bound by any obligations to Customer other than as set forth in this Agreement. New Relic is not party to (or responsible under) any separate agreement between Customer and Channel Partner. The amount paid or payable by the Channel Partner to New Relic for Customer's use of the applicable Service under this Agreement will be deemed the amount paid or payable by Customer to New Relic under this Agreement for purposes of Section 7 (Limitations of Liability). New Relic is not responsible for any acts, omissions, products or services provided by Channel Partner.

**GLOSSARY OF TERMS USED:**

*"Account"* means the online account or subaccounts that New Relic provides for Customer to manage its use of the Service.

*"Affiliate"* means an entity where Customer owns greater than 50% of the voting securities, provided that such an entity will be considered an Affiliate for only such time as such equity interest is maintained.

*"Customer Properties"* includes Customer's websites, infrastructure, networks, mobile applications, or other systems, as well as Customer accounts on Third-Party Services.

*"Documentation"* means the New Relic technical guides and documentation made available from the dedicated 'Documentation' page of the New Relic website.

*"Order"* means the purchasing order for access to the Service or related services that: (1) is either executed by the Parties or entered into by you via self-service, and references this Agreement, or (2) is entered into by you and a Channel Partner.

*"Service"* means the generally-available New Relic proprietary cloud service set out in the New Relic Order, the Software, and any updates, corrections, bug fixes, modifications, improvements, new features, and functionality (made generally available to New Relic's customer base) thereto.

*"Software"* means the distributed software, APIs, scripts, or other code proprietary to New Relic provided with the Service.

*"Subscription Term"* means the then-current period of use set out in the Order.

*"Third-Party Services"* means any third party platform, add-on, service, or product not provided by New Relic and that a User integrates or enables for use with the Service, including third-party applications and plug-ins.

[Prior Terms of Service versions available here.](#)