

BIO-KEY INTERNATIONAL, INC.

MASTER SUBSCRIPTION AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE PROGRAM. BIO-KEY WILL LICENSE THE PROGRAM TO YOU ONLY IF YOU FIRST ACCEPT THE TERMS OF THIS AGREEMENT. BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, OR USING THE PROGRAM OR BIO-KEY SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF ANOTHER PERSON OR A COMPANY, OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THAT PERSON, COMPANY, OR LEGAL ENTITY TO THESE TERMS.

IF YOU DO NOT AGREE TO THESE TERMS,

- DO NOT DOWNLOAD, INSTALL, COPY, ACCESS, OR USE THE PROGRAM OR SERVICE;**
- AND**
- PROMPTLY NOTIFY BIO-KEY THAT YOU DECLINE THESE TERMS.**

This Master Subscription Agreement (this "Agreement") is entered into between BIO-key International, Inc. ("BIO-key") and your organization ("Customer") as of the Effective Date (as defined below).

By accepting this Agreement on behalf of Customer, you represent that you have the authority to bind Customer to the terms of this Agreement. If you lack such authority, or if you do not agree with the terms and conditions of this Agreement, you must not accept this Agreement, may not use the Service and/or any POC, must notify BIO-key immediately of your non-acceptance, and must uninstall all BIO-key software not licensed to Customer under a separate agreement.

1. Hosted SaaS Services, On-Premise Installations, and Professional Services.

- 1.1. BIO-key's Obligations. BIO-key provides its products via hosted Software as a Service ("Service") offerings, as well as on-premise software object code runtime licenses ("On-Premise" or "Program").
- 1.2. Hosted Service. If the Order Forms specify that BIO-key is to provide hosted services, BIO-key shall make the Service available to Customer pursuant to this Agreement and the applicable Order Form during the Term, and grants to Customer a limited, non-sublicensable, non-exclusive, non-transferable (except as expressly permitted according to Section 14.1) right to allow its Users to access and use the Service in accordance with the Documentation, solely for Customer's business purposes, during the Term.
 - a) Hosted Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties:
 - (i) BIO-key has and will retain sole control over the hosted services operation, provision, maintenance, and management of the Services; and
 - (ii) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, Customer Systems, and sole responsibility for all access to and use of the BIO-key Materials by any person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or BIO-key; (ii) results obtained from any use of the Services or BIO-key Materials; and (iii) conclusions, decisions, or actions based on such use.

- 1.2. On-Premise Server License Grant. If the Order Forms specify that BIO-key has licensed on-Premise server software, then during the term, and subject to all of the terms and conditions of this Agreement, BIO-key hereby grants to Customer a limited, non-transferable, and non-exclusive subscription license, without the right to sublicense to others, to install and use the Licensed Software in Object Code form solely to serve the internal authentication, identification and security needs of Licensee's business for the number of Enrolled Users and subject to any limitations specified in the Pricing and Information Sheet, including, but not limited to, a term for use as a Subscription License. The license grants to the Other Products shall be as set forth in their applicable Sublicense Agreements attached hereto.
- a) Limitations. Licensee's use of the Licensed Software shall be limited to the purposes and scope set forth in this Section 1.2(a). Without limiting the generality of the foregoing, the Licensee shall not (i) modify, port, translate, localize, or create derivative works of the Licensed Software except as permitted herein; (ii) decompile, disassemble or otherwise reverse engineer the Licensed Software or permit third parties to do so, except as permitted by law; (iii) sublicense or otherwise transfer the Licensed Software; (iv) bypass or breach any security device or protection used by the Services or BIO-key Materials or access or use the Services or BIO-key Materials other than by an Authorized User through the use of his or her own then valid Access Credentials; (v) input, upload, transmit, or otherwise provide to or through the Services or BIO-key Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code; (vi) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, BIO-key Systems, or BIO-key provision of services to any third party, in whole or in part; (vii) remove, delete, alter, or obscure any trademarks, Specifications, Documentation, EULA, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or BIO-key Materials, including any copy thereof; (viii) access or use the Services or BIO-key Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other BIO-key customer), or that violates any applicable Law; (ix) access or use the Services or BIO-key Materials for purposes of competitive analysis of the Services or BIO-key Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the BIO-key detriment or commercial disadvantage; (x) access or use the Services or BIO-key Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; or (xi) otherwise access or use the Services or BIO-key Materials beyond the scope of the authorization granted under this Section 1.2(a).
- 1.3. Reservation of Rights. All rights, including but not limited to Intellectual Property Rights, not expressly granted hereunder by BIO-key, are reserved by BIO-key or its licensors.
- 1.4. Client Software License Grant. During the term, and subject to all of the terms and conditions of this Agreement, including without limitation the open source license provisions incorporated by reference and available for review at <https://www.bio-key.com/policies-and-legal/msa/BIO-keyOSSv1.1.pdf>, BIO-key hereby grants to Customer a limited, non-transferable and non-exclusive subscription license, without the right to sublicense to others, to install and use except for its Enrolled Users, to install and use the client credential provider (desktop) or other on-premise authentication and connector software ("Software"), solely for Customer's own internal or its customer- and partner-facing operational purposes. Customer shall not provide a copy of the Software to any third party except as may be required to provide independent contractor access to Customer Systems for Customer's benefit.

- a) Customer represents that its payment of license or subscription fees for the Service, On-Premise, or the purchase of Professional Services is neither contingent upon the delivery of any future features, application or operating system support or functionality nor in reliance on any oral or written statements by BIO-key with respect to future features, application or operating system support or functionality or features. BIO-key covenants to comply with all Laws applicable to its provision of the Service. BIO-key covenants to use commercially reasonable efforts to make the Service available to Customer 24 hours a day, 7 days a week during the term (except for any unavailability caused by Planned Downtime or Force Majeure event).

1.5. Customer's Obligations.

- a) Customer is responsible for all activities conducted under its and its Users' logins to the Service. Customer shall use the Service in compliance with this Agreement, the applicable Order Forms, Documentation, and all applicable Laws and shall not: (i) copy, rent, sell, lease, distribute, pledge, assign, or otherwise transfer, or encumber rights to the Service, or any part thereof, or make it available to anyone other than its Users; (ii) except as otherwise set forth in an Order Form, send or store in the Service any personal health information, credit card data, personal financial data or other sensitive data that may be, without limitation, subject to the Health Insurance Portability and Accountability Act, Gramm-Leach-Bliley Act, or the Payment Card Industry Data Security Standards; (iii) send or store infringing or unlawful material in connection with the Service; (iv) send or store Malicious Code to the Service; (v) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Service or the data contained therein; (vi) modify, copy or create derivative works based on the Service, or any portion thereof; (vii) access the Service for the purpose of building a competitive product or service or copying its features or user interface; (viii) delete, alter, add to or fail to reproduce in and on the Service the name of BIO-key and any copyright or other notices appearing in or on the Service or which may be required by BIO-key at any time.
- b) Any use of the Service constituting a breach of this Agreement, Documentation, or Order Forms by Customer or its Users that in BIO-key's judgment threatens the confidentiality, security, integrity, or availability of the Service may result in BIO-key's immediate suspension of Customer's access to the Service; however, BIO-key will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.
- c) Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; (b) provide BIO-key Personnel with such access to Customer's premises and Customer Systems as is necessary for BIO-key to perform the Services in accordance with the Availability Requirement and Specifications; and (c) provide all cooperation and assistance as BIO-key may reasonably request to enable BIO-key to exercise its rights and perform its obligations under and in connection with this Agreement.
- d) Effect of Customer Failure or Delay. Customer agrees that BIO-key shall not be responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Customer Failure").
- e) Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 1, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and BIO-key Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify BIO-key of any such actual or threatened activity.

- f) Service Management. Customer shall, throughout the Term, maintain within its organization a service manager to serve as Customer's primary point of contact for day-to-day communications, consultation, decision-making, consents, and approvals regarding this Agreement. Customer shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. The parties' initial service managers are identified in Sales Order/Quotation and may be updated by either party from time to time. Customer shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. If the service manager ceases to be employed by Customer or Customer otherwise wishes to replace its service manager, Customer shall promptly name a new service manager by written notice to BIO-key.
- 1.6. Non-Solicitation. During the Term and for one year after, Customer shall not, and shall not assist any other Person to, directly or indirectly, recruit or solicit for employment or engagement as an independent contractor any Person then or within the prior 12 months employed or engaged by BIO-key or any Subcontractor and involved in any respect with the Services or the performance of this Agreement. In the event of a violation of this Section 1.6, BIO-key will be entitled to liquidated damages equal to the compensation paid by BIO-key to the applicable employee or contractor during the prior six months. The parties agree that assessing actual damages would be difficult, and that these liquidated damages are a reasonable estimate of the damages that would be incurred by BIO-key.
- 1.7. Professional Services. Customer and BIO-key may enter into Statements of Work that describe the specific Professional Services to be performed by BIO-key. If applicable, while on Customer premises for Professional Services, BIO-key personnel shall comply with reasonable Customer rules and regulations regarding safety and conduct made known to BIO-key in writing prior to such engagement and will, at Customer's reasonable request, promptly remove from the project any BIO-key personnel not following such rules and regulations.
- 1.8. Customer Affiliates. Customer Affiliates may purchase and use the Service and Professional Services subject to the terms of this Agreement by executing Order Forms or Statements of Work hereunder that incorporate by reference the terms of this Agreement, and in each such case, all references in this Agreement to Customer shall be deemed to refer to such Customer Affiliate for purposes of such Order Form(s) or Statement(s) of Work. A Customer Affiliate agrees to be bound by this Agreement and the applicable Order Forms or Statements of Work executed by the Customer Affiliate.
- 1.9. Changes. BIO-key reserves the right, in its sole discretion, to make any changes to the Services and BIO-key Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of BIO-key services to its customers; (ii) the competitive strength of or market for BIO-key services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, Customer may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.
- 1.10. Subcontractors. BIO-key may from time to time at its discretion engage third parties to perform Services (each, a "Subcontractor").
- 1.11. Suspension or Termination of Services. BIO-key may, directly or indirectly, and by use of any lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other person's access to or use of all or any part of the Services or BIO-key Materials, without incurring any resulting obligation or liability, if: (a) BIO-key receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires BIO-key to do so; or (b) BIO-key believes, in its good faith discretion, that: (i) Customer or any Authorized User has

failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material] instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section 1.11 does not limit any of BIO-key's other rights or remedies, whether at law, in equity, or under this Agreement.

2. Purchasing Through a BIO-key Partner. This Agreement specifies the terms and conditions under which BIO-key products and services will be provisioned by BIO-key to Customer, whether purchased directly through BIO-key or indirectly through an authorized BIO-key Partner. Purchases through a BIO-key Partner will be placed through a separate agreement or ordering document between Customer and a BIO-key Partner (the "Partner Sales Agreement") which shall address, as between Customer and a BIO-key Partner, any terms and conditions relating to the quantity of products and services purchased, fees, payment (including any applicable refunds), taxes, and renewals. The Partner Sales Agreement is between Customer and the BIO-key Partner and is not binding on BIO-key, and any disputes related to the Partner Sales Agreement shall be handled directly between Customer and the BIO-key Partner. In the event of any conflict between this Agreement and a Partner Sales Agreement, this Agreement shall govern as between BIO-key and Customer. Customer understands and agrees that certain BIO-key products or services purchased through a BIO-key Partner are subject to additional product-specific terms available at <https://www.bio-key.com/policies-and-legal/msa> (or its successor site).

3. Support Services. During the applicable Term, BIO-key shall provide Support Services to Customer in accordance with BIO-key's then-current support policy, and as identified in the applicable Sales Order/Quotation Form ("Fees"). In the event that the level of support is not identified in the Order Form, Customer shall receive a "standard" level of support, as defined in Section 3.2, that is included in the Service at no additional cost. Any updates or modifications to the Support Services will not materially diminish BIO-key's responsibilities under the support policy during the applicable Term.

3.1. Incident Severity Levels.

The following categorizations shall be applied to incidents depending on the severity of the impact on Customer. Support issues are categorized according to a severity or priority scale. BIO-key support efforts are prioritized based on the severity level of the issue, and on the support level of the Customer organization. Technical support requests within a severity level are generally processed on a first-come, first-served basis. The Priority / Severity of a support ticket is set according to the guidelines listed below. Please keep in mind the descriptions below are guidelines and do not cover every possible condition or technical situation. Severity levels are further queued in the context of BIO-key Support Service Level Agreements by Technical Support Package as outlined below in this Section 3.2.

Severity Level	Definition	Examples
P1	A service failure or severe degradation. Customer is unable to access any business resources or users are unable to access a critical business application. Total system unavailability for all users.	<ul style="list-style-type: none"> - Service is down and not accessible by users. - Service is slowed to such a degree that multiple users cannot log in, resulting in consistent "page not found errors" or similar. - Users cannot access an important business application like email, payroll, financial reporting, etc.
P2	A partial service failure or mild degradation. Customer is able to access some, but not all business resources. Non-production instance of the service is unavailable. Bug creating significant impact to existing service or application integration. Partial system unavailability for at least 50% of users.	<ul style="list-style-type: none"> - Customer lacks write-access to the administrative console. - Users can access PortalGuard, but access is slow, sometimes resulting in "page not found" messages or similar, with access functioning as expected upon page

Severity Level	Definition	Examples
		refresh. - Issue with Preview (non-Production) environment.
P3	Minor service impact. Non-critical bug. Difficulty integrating new business or personal application with PortalGuard. Customer is able to access almost all business resources. Functional limitation – no workaround. Partial system unavailability for at least 10% of users.	- One user is not able access a business application. - Customer is unable to successfully integrate a new business application with PortalGuard.
P4	Minor service impact or feature enhancement request. Customer is able to access almost all business resources. Functional limitation with workaround in place.	- How-To Session with Customer or - Feature Enhancement Request.

- 3.2. Technical Support Services. BIO-key Support Team staff makes every possible effort to respond to support incidents in accordance with the time frames defined in the Support Service Level Agreement (SLA). Per the Agreement, initial response times and follow-up response times vary based on the Customer Support Package a customer has purchased and the Customer Support Ticket Severity / Priority Definition. Customers shall select and pay the amount outlined in the Sales Order/Quotation Form ("Fees") for the BIO-key Customer Support Package option of their choosing in accordance with this Section 3.2.

Technical Support Packages:

- (i) Standard Support Package – (12x5)
- (ii) Platinum Support Package – (24x7)

The Technical Support Package response times are as follows:

Standard Support Package – (12x5)

Standard Support Hours: 12 hours/day x 5 days/week, excluding BIO-key holidays
(8:00am - 8:00pm Eastern time US)

Severity Level	First Response	Subsequent Updates
P1	4 Hours (During Normal Business Hours)	1 Business Day (12 Business Hours)
P2	1 Business Day (12 Business Hours)	2 Business Days (24 Business Hours)
P3	2 Business Days (24 Business Hours)	3 Business Days (36 Business Hours)
P4	2 Business Days (24 Business Hours)	3 Business Days (36 Business Hours)

Platinum Support Package – (24x7)

Platinum Support Hours: 24 Hours/Day x 7 Days/Week x 365 Days/Year

Severity Level	First Response	Subsequent Updates
P1	1 Hour	2 Hours

Platinum Support Package – (24x7)

Platinum Support Hours: 24 Hours/Day x 7 Days/Week x 365 Days/Year

Severity Level	First Response	Subsequent Updates
P2	2 Hours	8 Hours
P3	24 Hours	48 Hours
P4	24 Hours	48 Hours

3.3. Access to the BIO-key's Licensee Center. With a Technical Support Package, Customer can use the Licensee Center to immediately:

- (i) Request remote technical support via online meeting services (for example: GoToMeeting)
- (ii) All P1 & P2 incidents (regardless of support tier) must be reported by phone for BIO-key to honor the documented response times published above.
- (iii) All P3 & P4 incidents, for the Platinum Support tier, must be reported by phone for BIO-key to honor the documented response times published above.
- (iv) Access a Product Knowledge Database (FAQ, User documentation, enhancement requests)
- (v) Review Product Release Notes (Bug fixes, new features)

4. Hosted Service Levels and Availability.

4.1. Hosted Service Level Commitments by BIO-key.

- (i) Availability. Throughout each Measurement Period, the core components of the Software shall be available for Customer's use at least 99.99% of the time.
- (ii) Downtime and Emergency Unavailability. BIO-key shall undertake commercially reasonable efforts to rectify any Downtime or Emergency Unavailability.
- (iii) Notice of Emergency Unavailability. If possible, BIO-key shall make commercially reasonable efforts to provide the Customer reasonable notice prior to making the material components of the Software unavailable for Customer use during Emergency Unavailability.

4.2. Hosted Service Reporting, Investigation & Classification.

- (i) Reporting Required. To be eligible for Downtime Credits described below, Customer must report Incidents to BIO-key that it considers Downtime immediately, but in no event later than 24 hours from when Customer became aware of, or reasonably should have become aware of, the occurrence; failure to make timely reports to BIO-key shall render Customer ineligible for any Downtime Credit for the untimely-reported Incident under this Agreement. In reporting, the Customer shall provide BIO-key sufficient information to investigate and classify the Incident, including: date, duration, and description of Incident.
- (ii) Investigation. BIO-key shall investigate and reasonably classify any reported outage/occurrence as Scheduled Unavailability, Emergency Unavailability, or Downtime. In making its classification, BIO-key shall rely solely upon its own statistics software and monitoring equipment, and any good faith determination as to the nature or cause of the outage shall be presumptively determinative as to entitlement to Downtime Credits.
- (iii) Downtime Credit. If after investigation and classification, BIO-key determines that Service Downtime during the Measurement Period was such that Availability fell below the level stated in

this section, the Customer shall be entitled to a credit of a portion of the Fees paid for Services to be provided during the relevant Measurement Period, calculated on the following basis:

<u>Availability</u>	<u>Client credit</u>
$99.99\% \leq x$	N/A
$99.9\% \leq x < 99.99\%$	1% of Licensee's Fees for that Measurement Period
$99.5\% \leq x < 99.9\%$	2.5% of Licensee's Fees for that Measurement Period
$99\% \leq x < 99.5\%$	5% of Licensee's Fees for that Measurement Period
$x < 99$	10% of Licensee's Fees for that Measurement Period

- (iv) Applications of Credit; Sole Remedy. Any credit so determined may only be applied against subsequent Fees invoiced for the next annual period and shall be the Licensee's sole remedy if that Availability falls below the level stated in this section; provided, however, that if this Agreement or the relevant Order is terminated or expires such that the entire credit cannot be applied for the Licensee benefit, the Supplier shall at its option refund such amount to the Licensee, or provide a credit for Services to be continued at no charge.

5. Security.

- 5.1. Security. BIO-key shall maintain appropriate administrative, physical, and technical safeguards to protect the security and integrity of the Service and the Customer Data as described in the applicable BIO-key Trust and Compliance Documentation. BIO-key will conform with security protocols which are further described in any audit reports or other similar independent third-party annual audit report ("Audit Report"). Upon Customer's request, BIO-key shall provide Customer with a copy of BIO-key's then-current Audit Report. During the Term, BIO-key shall not materially diminish the protections provided by the controls set forth in BIO-key's then-current Audit Report.

Except with respect to a POC, to the extent that BIO-key processes any Personal Data (as defined in BIO-key's Data Processing Addendum) on Customer's behalf in the provision of the Service, the Data Processing Addendum at <https://www.BIO-key.com/trustandcompliance> ("DPA") may be updated by BIO-key if required by applicable Law, which is hereby incorporated by reference, shall apply and the parties agree to comply with such terms. For purposes of the Standard Contractual Clauses attached to the DPA, when and as applicable, Customer and its applicable Affiliates are each the data exporter, and Customer's signing of or entering into this Agreement, and any applicable Affiliate's signing of or entering into an Order Form, shall be treated as signing of the Standard Contractual Clauses and their Appendices.

- 5.2. Information Security. BIO-key will employ security measures in accordance with BIO-key's Data Privacy and Security Policy as amended from time to time, a current copy of which is available upon request.
- 5.3. Data Breach Procedures. BIO-key maintains a data breach plan in accordance with the criteria set by its Office of Compliance and shall implement the procedures required under such data breach plan on the occurrence of a data breach (as defined in such plan).
- 5.4. Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and BIO-key Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access

Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

- 5.5. Access and Security. Customer shall employ all physical, administrative, and technical controls, screening, and security procedures, and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.
6. Confidentiality. Each party agrees to protect the Confidential Information (as defined below) of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event using less than a reasonable standard of care. A party shall not disclose or use any Confidential Information of the other party for any purpose outside the scope of this Agreement, without the disclosing party's prior written permission. A party may disclose the other party's Confidential Information to its employees, contractors, agents, and Affiliates that have signed an agreement containing disclosure and use provisions substantially similar to those set forth herein and have a "need to know" in order to carry out the purpose of this Agreement. Confidential Information shall not include any information that (a) is or becomes generally known to the public, other than as a result of the act or omission of the receiving party; (b) was rightfully known to a party prior to its disclosure by the other party without breach of any obligation owed to the other party; (c) is lawfully received from a third party without breach of any obligation owed to the other party; or (d) was independently developed by a party without breach of any obligation owed to the other party. If a party is compelled by law to disclose Confidential Information of the other party, it shall provide prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.

Due to the unique nature of the parties' Confidential Information disclosed hereunder, there may be no adequate remedy at law for a party's breach of its obligations hereunder, and any such breach may result in irreparable harm to the non-breaching party. Therefore, upon any such breach or threat thereof, the party alleging breach shall be entitled to seek injunctive and other appropriate equitable relief in addition to any other remedies available to it. Confidential Information is and shall remain the property of the disclosing party.

7. Ownership and Feedback.

- 7.1. Customer Data. As between BIO-key and Customer, Customer owns its Customer Data. Customer grants to BIO-key, its Affiliates, and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Customer Data, as reasonably necessary for BIO-key to provide the Service in accordance with this Agreement. Subject to the limited licenses granted herein, BIO-key acquires no right, title, or interest in any Customer Data. Customer shall be responsible for the accuracy, quality, and legality of Customer Data and the means by which Customer acquired Customer Data. Customer represents, warrants, and covenants to BIO-key that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by BIO-key and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, Biometric Information Privacy Act, GDPR, California Consumer Privacy Act or any privacy or other rights of any third party or violate any applicable Law. As it applies to GDPR and other similar regulatory regimes, BIO-key is a Processor, and Customer is a Controller. Customer is solely responsible for executing the necessary standard contractual clauses in order to allow for BIO-key to process Customer's data in the locations BIO-key may do so.
- 7.2. BIO-key Ownership of the Service. Except for the rights expressly granted under this Agreement, BIO-key and its licensors retain all right, title, and interest in and to the Service, Documentation, and Professional Services, including all related intellectual property rights inherent therein. If Customer purchases Professional Services, BIO-key grants to Customer a worldwide, non-exclusive, non-transferable (except as expressly permitted in Section 14.1), non-sublicensable right to use the

Professional Services solely for Customer's use with the Service. No rights are granted to Customer hereunder other than as expressly set forth in this Agreement.

- 7.3. Feedback. BIO-key shall have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into its products and services any Feedback. BIO-key shall have no obligation to use Feedback, and Customer shall have no obligation to provide Feedback.

8. Fees, Expenses, and Taxes.

- 8.1. Fees. Customer agrees to pay BIO-key or the Partner representing BIO-key all fees set forth in the applicable Order Form ("Fees") in accordance with this Agreement and the Order Form. If not otherwise specified on an Order Form, all such Fees (except Fees subject to a good faith dispute) will be due within thirty (30) days of the invoice date. Except as otherwise specifically provided in this Agreement, all Fees paid and payable to BIO-key or Partner hereunder are non-cancelable and non-refundable. If Customer fails to pay any Fees due under this Agreement by the due date, in addition to any other rights or remedies it may have under this Agreement or by matter of Law, (i) BIO-key reserves the right to suspend the Service upon thirty (30) days written notice, until such amounts are paid in full, and (ii) BIO-key will have the right to charge interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable Law until Customer pays all amounts due; provided that BIO-key will not exercise its right to charge interest if the applicable charges are under reasonable and good faith dispute and Customer is cooperating diligently to resolve the issue.
- 8.2. Expenses. Unless otherwise specified in the applicable Statement of Work, upon invoice from BIO-key, Customer will reimburse BIO-key for all pre-approved, reasonable expenses incurred by BIO-key while performing the Professional Services, including without limitation, transportation services, lodging, and meal and out-of-pocket expenses related to the provision of the Professional Services. BIO-key will include reasonably detailed documentation of all such expenses with each related invoice.
- 8.3. Taxes. Fees do not include and may not be reduced to account for any taxes including any local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder (excluding taxes based on BIO-key's net income or property), unless Customer provides BIO-key with a valid tax exemption certificate authorized by the appropriate taxing authority.

9. Warranties and Disclaimer.

9.1. Warranties.

- a) Service. Each party warrants that it has the authority to enter into this Agreement. BIO-key warrants that during the applicable Term: (i) the Service shall perform materially in accordance with the applicable Documentation; (ii) BIO-key will employ then-current, industry-standard measures to test the Service to detect and remediate Malicious Code designed to negatively impact the operation or performance of the Service, and (iii) the overall functionality of the Service will not be materially decreased as described in the applicable Documentation. BIO-key shall use commercially reasonable efforts to correct the non-conforming Service at no additional charge to Customer, and in the event BIO-key fails to successfully correct the Service within a reasonable time of receipt of written notice from Customer detailing the breach, then Customer shall be entitled to terminate the applicable Order Form as to the non-conforming Service and receive an immediate pro rata refund of any prepaid, unused Fees for the non-conforming Service. The remedies set forth in this subsection will be Customer's sole remedy and BIO-key's entire liability for breach of these warranties unless the breach of warranties constitutes a material breach of this Agreement and Customer elects to terminate this Agreement in accordance with Section 13.2 entitled "Termination." The warranties set forth in

this subsection shall apply only if the applicable Service has been utilized in accordance with the Documentation, this Agreement, and applicable Law.

- b) Professional Services. BIO-key warrants that the Professional Services will be performed in a good and workmanlike manner consistent with applicable industry standards. As Customer's sole remedy and BIO-key's entire liability for any breach of the foregoing warranty set forth in this Section 9.1(a), BIO-key will, at its sole option and expense, promptly re-perform the non-conforming Professional Services or refund to Customer the fees paid for the non-conforming Professional Services; provided that Customer notifies BIO-key no later than thirty (30) days after delivery of such Professional Services.

9.2. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH UNDER SECTION 9.1(A) AND (B), BIO-KEY AND ITS SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES RELATING TO THE SERVICE, PROFESSIONAL SERVICES, OR OTHER SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. THE PARTIES ARE NOT RELYING AND HAVE NOT RELIED ON ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, EXPRESS OR IMPLIED. BIO-KEY MAKES NO WARRANTY REGARDING ANY NON-BIO-KEY APPLICATION WITH WHICH THE SERVICE MAY INTEROPERATE.

10. Limitation of Liability.

10.1. 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 CUSTOMER AND ITS AFFILIATES TO BIO-KEY OR TO A BIO-KEY PARTNER HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE (12)-MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION SHALL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND CUSTOMER'S AFFILIATES' PAYMENT OBLIGATIONS UNDER THE 'FEES' SECTION 8 ABOVE AND WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10.2. Excluded Damages. IN NO EVENT WILL EITHER PARTY (OR BIO-KEY'S THIRD PARTY LICENSORS) BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY FOR ERROR OR INTERRUPTION OF USE, LOSS OR INACCURACY OR CORRUPTION OF DATA, COVER, LOST PROFITS OR REVENUES, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING EXCLUSIONS WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. Indemnification.

11.1. BIO-key Indemnification Obligation. Subject to Section 11.3, BIO-key will defend Customer from any and all Claims brought against Customer alleging that the Service, as provided by BIO-key to Customer under this Agreement, infringes any patent, copyright, or trademark or misappropriates any trade secret of any third party (each, an "Infringement Claim"). BIO-key will indemnify Customer for all damages, costs, reasonable attorneys' fees finally awarded by a court of competent jurisdiction, or paid to a third party in accordance with a settlement agreement signed by BIO-key, in connection with an Infringement

Claim. In the event of any such Infringement Claim, BIO-key may, at its option: (i) obtain the right to permit Customer to continue using the Service, (ii) modify or replace the relevant portion(s) of the Service with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, or (iii) terminate the applicable Order Form as to the infringing Service and provide a pro rata refund of any prepaid, unused Fees for such infringing Service. Notwithstanding the foregoing, BIO-key will have no liability for any Infringement Claim of any kind to the extent that it results from: (1) modifications to the Service made by a party other than BIO-key, (2) the combination of the Service with other products, processes or technologies (where the infringement would have been avoided but for such combination), or (3) Customer's use of the Service other than in accordance with the Documentation or this Agreement. The indemnification obligations set forth in this Section 11.1 are BIO-key's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third-party intellectual property rights of any kind.

- 11.2. Customer Indemnification Obligation. Subject to Section 11.3, Customer will defend BIO-key from any and all Claims brought against BIO-key alleging a violation of a third party's rights arising from Customer's provision or use of the Customer Data. Customer will indemnify BIO-key for all damages, costs, reasonable attorneys' fees finally awarded by a court of competent jurisdiction, or paid to a third party in accordance with a settlement agreement signed by Customer, in connection with such Claims.
- 11.3. Indemnity Requirements. The party seeking indemnity under this Section 11 ("Indemnitee") must give the other party ("Indemnitor") the following: (a) prompt written notice of any Claim for which the Indemnitee intends to seek indemnity, (b) all cooperation and assistance reasonably requested by the Indemnitor in the defense of the Claim, at the Indemnitor's sole expense, and (c) sole control over the defense and settlement of the Claim, provided that the Indemnitee may participate in the defense of the Claim at its sole expense and any settlement by the Indemnitor does not include an admission of liability by the Indemnitee.
12. Customer Name Use. BIO-key may use Customer's name to identify Customer as a BIO-key customer of the Service, including on BIO-key's public website. The use of Customer's name shall not be deemed Customer's endorsement of the Product or Service.
13. Term, Termination, and Effect of Termination.
- 13.1. Term. The term of this Agreement commences on the Effective Date and continues until the stated term in all Order Forms have expired or has otherwise been terminated. Subscription to the Service commences on the subscription start date and is for the Term as set forth in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions to the Service will automatically renew for additional terms equal to the expiring Term, unless and until either party gives the other notice of non-renewal at least thirty (30) days prior to the end of the then-current Term.
- 13.2. Termination. Either party may terminate this Agreement by written notice to the other party (i) in the event the other party materially breaches this Agreement and does not cure such breach within thirty (30) days of such notice, or (ii) immediately in the event the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination for cause by Customer pursuant to this Section 13.2, BIO-key will refund Customer a pro-rata portion of any prepaid fees that cover the remainder of the applicable Term after the effective date of termination and a pro-rata portion of any prepaid Professional Services fees that cover Professional Services that have not been delivered as of the effective date of termination. For clarity, a breach or termination of any Statement of Work shall not be considered a breach or termination of this Agreement or any Order Form.
- 13.3. Effect of Termination. Upon expiration or termination of this Agreement for any reason, all rights, and subscriptions granted to Customer (including all Order Forms) will immediately terminate, and Customer

will cease using the Service (except as otherwise permitted in the “Retrieval of Customer Data” section of the ‘Trust and Compliance’ Documentation) and BIO-key Confidential Information. Termination for any reason other than termination for cause by Customer pursuant to Section 13.2 shall not relieve Customer of the obligation to pay all future amounts due under all Order Forms. The sections titled “Definitions,” “Confidentiality,” “Ownership and Feedback,” “Fees, Expenses, and Taxes,” “Disclaimer,” “Limitation of Liability,” “Indemnification,” “Term, Termination, and Effect of Termination,” and “General” shall survive any termination or expiration of this Agreement.

- (i) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;
- (ii) BIO-key shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) promptly return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems BIO-key directly or indirectly controls;
- (iii) Customer shall immediately cease all use of any Services or BIO-key Materials and (i) promptly return to BIO-key, or at BIO-key's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any BIO-key Materials or BIO-key's Confidential Information; and (ii) permanently erase all BIO-key Materials and BIO-key's Confidential Information from all systems Customer directly or indirectly controls;
- (iv) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; (ii) BIO-key may retain Customer Data; (iii) Customer may retain BIO-key Materials, in the case of each of subclause (i), (ii) and (iii) in its then current state and solely to the extent and for so long as required by applicable Law;
- (v) BIO-key may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course;
- (vi) and all information and materials described in this Section 13 will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;
- (vii) BIO-key may disable all Customer and Authorized User access to the BIO-key Materials;
- (viii) if Customer terminates this Agreement, Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and BIO-key will: (a) refund to Customer Fees paid in advance for Services that BIO-key has not performed as of the effective date of termination; and (b) pay to Customer any unpaid Downtime Credits to which Customer is entitled;
- (ix) if BIO-key terminates this Agreement pursuant to a Customer failure to pay as promised, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees on receipt of BIO-key's invoice therefor.

14. General

14.1. Assignment. Neither the rights nor the obligations arising under this Agreement are assignable or transferable by Customer or BIO-key without the other party's prior written consent, which shall not be unreasonably withheld or delayed, and any such attempted assignment or transfer shall be void and without effect. Notwithstanding the foregoing, either party may freely assign this Agreement in its entirety (including all Order Forms), upon notice and without the consent of the other party, to its successor in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that all fees owed and due have been paid (in the case of an assignment by Customer) and the assignee agrees to be bound by all the terms of this Agreement.

14.2. Controlling Law, Attorneys' Fees, and Severability. This Agreement and any disputes arising out of or related hereto shall be governed by the laws of the State of New Jersey, without giving effect to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. With respect

to all disputes arising out of or related to this Agreement, the parties consent to exclusive jurisdiction and venue in the state and Federal courts located in Monmouth County, New Jersey, USA. In any action to enforce this Agreement, the prevailing party will be entitled to reasonable costs and attorneys' fees. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

- 14.3. Notices. All legal notices shall be in writing and effective upon: (i) personal delivery, (ii) one (1) business day after deposit with a recognized overnight courier for U.S. deliveries (or three (3) business days for international deliveries), or (iii) the day of sending by email (except for notices of termination and indemnifiable Claims), if to BIO-key then to "legal@BIO-key.com", or if to Customer then to the email address on the applicable Order Form or the Service system administrator designated by Customer, with the words "Legal Notice" in the subject line, and acknowledged by the recipient. Billing-related notices to Customer may be provided by email to the relevant billing contact designated by Customer.
- 14.4. Force Majeure. If the performance of this Agreement or any obligation hereunder (other than obligations of payment) is prevented or restricted by reasons beyond the reasonable control of a party including but not limited to pandemic, acts of God, computer-related attacks, hacking, or acts of terrorism (a "Force Majeure Event"), the party so affected shall be excused from such performance and liability to the extent of such prevention or restriction. The affected party shall notify the other party as soon as practicable of the existence of the Force Majeure Event and shall endeavor to perform its obligations in good faith.
- 14.5. Independent Contractors. The parties shall be independent contractors under this Agreement, and nothing herein shall constitute either party as the employer, employee, agent, or representative of the other party, or both parties as joint venturers or partners for any purpose. There are no third-party beneficiaries under this Agreement.
- 14.6. Export Compliance. Each party represents that it is not named on any U.S. government list of persons or entities with which U.S. persons are prohibited from transacting, nor owned or controlled by or acting on behalf of any such persons or entities, and Customer will not permit any User to access or use the Service or Products in any manner that would cause any party to violate any U.S. or international embargo, export control law, or prohibition.
- 14.7. U.S. Federal Government End Use Provisions. The Service, including any software or technology provided hereunder for ultimate federal government end use, or that are otherwise subject to the Federal Acquisition Regulations (FAR), are "Commercial Items" as defined in 48 C.F.R. 2.101 and are being provided as commercial computer software and commercial computer software documentation subject to restricted rights described in 48 C.F.R. 2.101, 12.211 and 12.212. If such items are acquired by or on behalf of any agency within the Department of Defense ("DOD"), then they are subject to the terms of the Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFARS") and its successors. This Section 14.8 is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses government rights in computer software or technical data. If a government agency needs additional rights beyond those customarily given by BIO-key to the public, Customer must negotiate with BIO-key a mutually acceptable written addendum to this Agreement specifically granting those rights.
- 14.8. Anti-Corruption. Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of BIO-key's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify BIO-key.

14.9. Pre-Purchase Proof of Concepts and Evaluation Trials. If Customer is provided with access to the Service prior to subscribing (“POC”), then the applicable provisions of this Agreement will govern that POC, and BIO-key will make such POC available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the POC period for which Customer agreed to use such POC, (b) the start date of any Service subscription purchased by Customer for such Service, or (c) termination of the POC by BIO-key in its sole discretion. A POC period may be extended upon mutual agreement by BIO-key and Customer. Notwithstanding anything to the contrary in this Agreement, a POC is provided “AS IS.” BIO-KEY MAKES NO REPRESENTATION OR WARRANTY AND SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO A POC. BIO-KEY SHALL HAVE NO LIABILITY OF ANY TYPE WITH RESPECT TO A POC, UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE BIO-KEY’S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO A POC IS US\$1,000. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 8 (“LIMITATION OF LIABILITY”), CUSTOMER SHALL NOT USE THE POC IN A MANNER THAT VIOLATES APPLICABLE LAWS AND WILL BE FULLY LIABLE FOR ANY DAMAGES CAUSED BY ITS USE OF A POC. ANY DATA AND CONFIGURATIONS ENTERED INTO CUSTOMER’S POC ACCOUNT MAY BE PERMANENTLY LOST UPON TERMINATION OF THE POC.

14.10. Entire Agreement. This Agreement, together with the Order Form(s) between BIO-key and Customer, constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all prior or contemporaneous written or oral agreements existing between the parties hereto, including any non-disclosure agreement(s), and related to the subject matter hereof are expressly superseded hereby. The parties agree that any term or condition stated in Customer’s purchase order or in any other Customer’s order documentation is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form between BIO-key and Customer, (2) this Agreement, and (3) the Documentation. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties hereto. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision.

15. Definitions.

15.1. “Affiliate” means, with respect to BIO-key or Customer, any entity that directly or indirectly controls, is controlled by, or is under common control with BIO-key or Customer, respectively. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

15.2. “BIO-key Partner” or “Partner” means authorized reseller, distributor, or other partners of BIO-key.

15.3. “POC” means any BIO-key service or functionality that BIO-key makes available to Customer to try at Customer’s option, at no additional charge, and which is clearly designated as “beta,” “trial,” “pre-GA,” “pilot,” “developer preview,” “POC,” “evaluation,” “proof of concept (POC),” or by a similar designation.

15.4. “Claims” mean any third-party claims, demands, suits, or proceedings.

15.5. “Confidential Information” means (a) Customer Data; (b) the Service, Documentation, and the terms and conditions of this Agreement and all Order Forms including pricing; and (c) each party’s technical and business information (including but not limited to hardware, software, designs, specifications, techniques, processes, procedures, research, development, projects, products or services, business and marketing plans or opportunities, finances, vendors, penetration test results and other security information, defect and support information and metrics, and third party audit reports and attestations) that is designated by the disclosing party as confidential or the receiving party should reasonably know is confidential given the nature of the information and circumstances of disclosure.

- 15.6. “Customer Data” means all electronic data submitted by or on behalf of Customer to the Service.
- 15.7. “Documentation” means BIO-key’s user guides and other end user documentation for the applicable Service available on the online help feature of the Service, as may be updated by BIO-key from time to time, including without limitation the materials available at <https://support.BIO-key.com>, and the ‘Trust and Compliance’ Documentation available at <https://www.BIO-key.com/trustandcompliance>.
- 15.8. “Effective Date” means the earlier of the last date this Agreement is executed or the first date of Customer’s access or use of the Service or POC in any manner, as applicable.
- 15.9. “Equipment” shall mean the fingerprint readers, FIDO tokens, smartcards or other hardware devices described on a Sales Order/Quotation form and supplied by BIO-key to Customer hereunder. Some Equipment is manufactured and/or distributed by third parties, and is subject to warranty by those parties. BIO-key will facilitate the warranty claims for all Equipment it sells to Licensee.
- 15.10. “Feedback” means suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Customer or its Users relating to the features, functionality, or operation of the Service, or the Professional Services.
- 15.11. “Intellectual Property Rights” means any patent, patent application, copyright, moral right, trade name, trademark, trade dress, and associated goodwill, trade secret, or any other intellectual property right and any applications or rights to apply for registration therefore, evidenced by or embodied in any ideas, know-how, show-how, inventions, discoveries, developments, technologies, processes, methods, improvements, and compositions (whether or not reduced to practice and whether or not protectable under state, federal, or foreign patent, copyright, trade secrecy or similar laws), including mask works, schematics, computer software programs or applications, tangible or intangible proprietary information, or any other intellectual property rights or proprietary information or technology recognized under the laws of any governmental authority, whether registered or unregistered and whether first made or created before or after the Effective Date.
- 15.12. “Laws” means any local, state, or national law, treaties, and/or regulations applicable to a respective party.
- 15.13. “Licensed Software” means the software products, hardware, demo software, and custom development software identified in the Sales Order/Quotation and all accompanying Documentation. The Licensed Software may, if applicable, include Other Products that are provided in connection with the Licensed Software pursuant to authority granted to BIO-key by such third parties or through sublicense agreements with Licensee. Where Open Source Software (“OSS”) has been incorporated into or accompanies Licensed Software, the terms and conditions governing the license of those OSS components are provided at <https://www.bio-key.com/policies-and-legal/msa/BIO-keyOSSv1.1.pdf>
- 15.14. “Malicious Code” means viruses, worms, time bombs, Trojan horses, and other malicious code, files, scripts, agents, or programs.
- 15.15. “Non-BIO-key Application” means a web-based, offline, mobile, or other software application functionality that is provided by Customer or a third party and interoperates with a Service.
- 15.16. “Object Code” means computer program code in the form of the executable (machine-readable) binary data generated through compilation, assembly, or linking of the source code form of that program code.

- 15.17. “Order Form” or “Sales Order” means an ordering document provided to Customer (directly by BIO-key or indirectly by a BIO-key Partner in connection with a Partner Sales Agreement) that specifies the products or services purchased by Customer or any of its Affiliates under this Agreement, including any product-specific terms, supplements, or addenda thereto. Order Forms do not include the terms of any preprinted terms on a Customer purchase order or other terms on a purchase order that are additional or inconsistent with the terms of this Agreement.
- 15.18. “Object Code” means computer program code in the form of the executable (machine-readable) binary data generated through compilation, assembly, or linking of the source code form of that program code.
- 15.19. “Other Products” shall mean, if applicable, the additional products or third party software being purchased by Licensee from Licensor as specified in an Addendum to this Agreement, under such terms and conditions as are defined from time to time.
- 15.20. “Professional Services” means implementation and configuration services provided by BIO-key in connection with the Service, as described more fully in a Statement of Work. Professional Services shall not include the Service.
- 15.21. “Service” means the products and services subscribed to by Customer under an Order Form and made available online by BIO-key, including associated BIO-key offline or mobile components, as described in the Documentation. “Service” excludes Professional Services, Support Services, POCs, training services, and Non-BIO-key Applications.
- 15.22. “Statement of Work” means a document that describes certain Professional Services purchased by Customer under this Agreement and/or pursuant to an Order Form. Each Statement of Work shall incorporate this Agreement by reference.
- 15.23. “Subscription License” shall mean the grant of license in Section 1, for a License Term, and subject to renewal for additional License Terms thereafter as allowed under this Agreement. The use of the Licensed Software beyond the term of a paid-for subscription is prohibited, and is considered a termination under Section 13 of this Agreement.
- 15.24. “Support Services” means the support services provided by BIO-key in accordance with BIO-key’s then-current support policy and as identified in an Order Form.
- 15.25. “Term” or “License Term” means the term of each subscription to the Service as specified in the applicable Order Form.
- 15.26. “Users” or “Authorized Users” means individuals (including non-human devices, such as computers, applications or services) who are authorized by Customer to use the Service, for whom a subscription to the Service has been procured. Users may include, for example, Customer’s and its Affiliates’ employees, consultants, clients, external users, contractors, agents, and third parties with which Customer does business.
- 15.27. “Enrolled User” means each individual person accessing the Licensed Software, incident to any one or more of the following events:
- (i) A user account enabled to provide an authentication, single sign on, or self-service password management experience for that person
 - (ii) The capture of an individual’s biometric measurements, even if it is subsequently deleted.