

RAVEN CUSTOMER TERMS AND CONDITIONS

Last Updated: 14 October, 2024

These *Raven Customer Terms and Conditions* (the "**Terms**") apply to, and govern, the ordering document (such as an *Order Form, Sales Order, Proposal, Quote or other online ordering document*) to which they are attached, hyperlinked, or otherwise incorporated by reference (the "**Order**"). These Terms are hereby incorporated by reference into, and made a part of, such Order.

These Terms and the Order are collectively referred to as this "**Agreement**". The Agreement constitutes a binding agreement between **Raven Cloud Inc.** (or, if applicable, the other Raven entity specified in the Order) ("**Company**") and the customer entity specified in the Order ("**Customer**"). Company and Customer may be collectively referred to herein as the "**Parties**", and each individually as a "**Party**". An individual entering into this Agreement on behalf of the Customer, represents that he/she has the right, authority and capacity to act on behalf of the Customer and to bind the Customer to this Agreement.

If Customer is purchasing its Service subscription from a Company-authorized reseller, distributor, or similar channel partner of the Service (a "**Reseller**"), then for purposes of these Terms the "Order" shall be the ordering document executed between Reseller and Company (the "**Company-Reseller Order**"), and the provisions of Section 6 (*Purchases via Resellers*) shall apply.

For the avoidance of doubt, these Terms shall not apply to Customer if Customer has both purchased its Service subscription from, and executed an end user license/subscription/services agreement with, a Reseller. In such cases, Customer is granted its subscription to the Service by and through the Reseller, and not directly by Company (and accordingly, Customer agrees that Company has no obligation or liability of any kind whatsoever in respect of Customer's purchase).

1. DEFINITIONS. The following capitalized terms have the meanings set forth below:

"**Affiliate**" means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, whereby "control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

"**Agents**" means the Service's software agent modules (in object-code) for installation on Customer's environment. Unless the context requires otherwise, references in this Agreement to the "Service" shall be deemed to include the Agents as well.

"**Content**" means any text, data, information, reports, files, images, graphics, software code, or other content.

"**Customer Content**" means any Content submitted or uploaded to, or transmitted through, the Service, or otherwise provided or made available to Company, by or on behalf of Customer.

"**Documentation**" means the Service-related operational guides or manuals, which Company provides or makes available to Customer, in any form or medium. Documentation does not include any marketing, or other publicly available, materials. Unless the context requires otherwise, references in this Agreement to the "Service" shall be deemed to include the Documentation as well.

"**DPA**" means the *Data Processing Agreement* (or *DPA*), if any, in effect between the Parties.

"**Effective Date**" means the date the Order is executed by the Parties, unless the Order itself specifies a different start/effective date; *provided, however*, that if, in connection with such Order, the date on which the Customer first accessed or used the Service, or set up an Account, was prior to Order execution, then the Effective Date shall be deemed to be such earlier date.

"**End Users**" means Customer's end user customers of the Service.

"**Intellectual Property Rights**" means any and all rights, titles, and interests (under any jurisdiction or treaty, whether protectable or not, whether registered or unregistered, and whether vested, contingent, or future) in and to inventions, discoveries, works of authorship, designs, software, technical information, databases, know-how, mask works, methods, branding, technology,

and other intellectual property (collectively, "**Intellectual Property**"), and includes but is not limited to patents, copyrights and similar authorship rights, moral (and similar personal) rights, mask work rights, data and database rights, trade secret rights and similar rights in confidential information and other non-public information, design rights, trademark, service mark, trade name, trade dress and similar branding rights, as well as: (i) all applications, registrations, renewals, reexaminations, extensions, continuations, continuations-in-part, provisionals, substitutions, divisions or reissues of or for the foregoing; and (ii) all goodwill associated with the foregoing.

"**Law**" means any federal, state, foreign, regional or local statute, regulation, ordinance, or rule of any jurisdiction.

"**Other Services**" means, as the case may be, Support Services, Professional Services, and/or any other services (other than the Service) provided by or on behalf of Company pursuant to this Agreement.

"**Professional Services**" means Service-related installation, deployment, configuration, training, customization, integration, or other professional services.

"**Service**" means Company's cloud runtime application protection known as *Raven*.

"**Service Content**" means any Content (excluding Customer Content) appearing on or in, or otherwise provided or made available via, the Service.

"**Subscription Scope**" means any Service-related usage or consumption limitations, entitlements, and parameters (for example, number of Agents licenses, number of Users, available features and functionalities, etc.) specified in the Order.

"**Sensitive Data**" means any (i) categories of data enumerated in Article 9(1) of the European Union's General Data Protection Regulation (Regulation 2016/679, aka the GDPR) or any successor law; (ii) credit, debit or other payment card data subject to the *Payment Card Industry Data Security Standards* ("**PCI DSS**"); (iii) *Nonpublic Personal Information* (NPI) (as defined by the Gramm-Leach-Bliley Act and its implementing rules and regulations) or *Personal Health Information* (PHI) data (as defined by the Health Insurance Portability and Accountability Act and its implementing rules and regulations); or (iv) any data similar to the foregoing that is protected under foreign or domestic laws.

"**Site**" means the Company's website currently at www.raven.io.

"**Support Services**" means any Service-related technical support and maintenance services specified in the Order.

"**Usage Statistics**" means any non-Customer-identifying information, data, reporting, suggestions, analyses, and/or intelligence relating to the operation, support, and/or Customer's use, of the Service and/or Service Content (such as metadata, aggregated data, analytics, etc.).

"**User**" means Customer's (and/or, pursuant to Section 4.3 (*Customer Affiliates*), its Affiliates') employees and contractors who are authorized by Customer to use the Service, and for whom Customer (or Company, at Customer's request) has supplied a user identification and password for the Service. Customer shall remain primarily responsible and liable for its Users' acts and omissions in connection with this Agreement as fully as if they were the acts and omission of Customer.

2. ACCOUNT

In order to access the Service, Customer may be given the opportunity (or otherwise be required) to generate an account by submitting the information requested in the applicable online form or Service interface ("**Account**"). If Customer is an entity, it might be required to designate an administrator Account ("**Admin Account**") and a user Account for each User (each, a "**User Account**"). Customer shall ensure that all information submitted during the registration process is, and will thereafter remain, complete and accurate. As between Company and Customer, Customer shall be solely responsible and liable for maintaining the confidentiality and security of its Account credentials, as well as for all activities that occur under or in such Account. Customer shall immediately notify Company in writing of any unauthorized access to, or use of, an Account, or any other breach of security. Personal information received during the Account registration process will be processed by Company in accordance with Company's privacy policy on the Site.

As an alternative to the above Account registration process, Customer may be able to generate an Account, or otherwise access the Service, by integrating and logging in via a supported third party platform (a "**Third Party Application**"). As part of such integration, the Third Party Application may provide Company with access to certain information that Customer and its Users have provided to such Third Party Application. The type of such information provided to Company, as well as the manner in which the Third Party Application uses, stores, and discloses such information, is governed solely by the policies of the third party operating the Third Party Application, and Company shall have no liability or responsibility for the privacy practices or other actions of such third parties. Company enables such integration merely as a convenience, and the availability of such integration does not (and shall not be construed to) in any way imply, suggest, or constitute any sponsorship, endorsement, or approval by Company of such Third Party Application or third party, nor any affiliation between Company and such third party. Company shall have no obligation or liability of any kind whatsoever for a Third Party Application or for the third party's policies, practices, actions, or omissions.

3. PROOF OF CONCEPT AND EVALUATION PRODUCTS

- 3.1.** **Proof of Concepts.** If agreed in the Order, Customer may be entitled to conduct an evaluation, 'proof-of-concept', or pilot of the Service (a "**POC**"). A POC is limited to whatever duration, features, and functionalities Company elects in its sole discretion (or that is otherwise specified in the Order), and, unless agreed otherwise in the Order, Company reserves the right to add and remove any features and functionalities, as well as terminate a POC, at any time, with or without notice.
- 3.2.** **Evaluation Products.** From time to time, Company may permit Customer to try certain Service features or functionalities (whether new or existing) at no charge for a free trial or evaluation period (each, an "**Evaluation Product**"). Evaluation Products may be designated or identified as beta, pilot, evaluation, trial, or the like. Unless configured otherwise by Company, or agreed otherwise (for example, in the Order), the default evaluation period for an Evaluation Product (the "**Evaluation Period**") is **thirty (30) days**. However, Company reserves the right to terminate an Evaluation Period at any time, with or without notice.
- 3.3.** **General.** For the avoidance of doubt, the restrictions set forth in Section (*Usage Restrictions*) shall also apply to Evaluation Products and POCs. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EVALUATION PRODUCTS AND POCs ARE PROVIDED FOR CUSTOMER'S INTERNAL EVALUATION ONLY (AND NOT FOR PRODUCTION USE), AND COMPANY SHALL HAVE NO OBLIGATION OR LIABILITY OF ANY KIND WHATSOEVER FOR EVALUATION PRODUCTS OR POCs. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE EXCLUSION OF COMPANY'S LIABILITY FOR AN EVALUATION PRODUCT OR POC, COMPANY'S AGGREGATE LIABILITY TO CUSTOMER IN RESPECT OF AN EVALUATION PRODUCT AND/OR POC SHALL NOT EXCEED **TEN US DOLLARS (USD\$10)**.

4. SERVICE SUBSCRIPTION

- 4.1.** **General.** Subject to the terms and conditions of this Agreement (including without limitation Customer's payment of all applicable Fees), Company grants Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license, during the Subscription Term (defined below), to do the following, in accordance with the Documentation (collectively, the "**Subscription**"):
- (a) Access and use the Service, and view the Service Content, for Customer's internal end use only; and
 - (b) Install such number of Agents as authorized by the Order, on such number of Customer's environments.

For the avoidance of doubt: (i) the Subscription is subject to the applicable Subscription Scope, and Customer shall not use any technical or other means within, or external to, the Service to exceed or circumvent the Subscription Scope, and (ii) the Service is only licensed or provided on a subscription basis (and is not sold) hereunder. Any rights not expressly granted herein are hereby reserved by Company and its licensors, and, except for the Subscription, Customer is granted no other right or license in or to the Service, whether by implied license, estoppel, exhaustion, operation of law, or otherwise.

- 4.2.** **Restrictions.** As a condition to (and except as expressly permitted by) the Subscription, Customer shall not do (or permit or encourage to be done) any of the following Subscription restrictions (in whole or in part): (a) copy, create public Internet "links" to, "frame", or

"mirror" the Service or Service Content; (b) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available the Service or Service Content to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (c) publicly perform, display or communicate the Service or Service Content; (d) modify, adapt, translate, or create a derivative work of the Service or Service Content; (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of, the Service or Service Content; (f) remove, alter, or conceal any copyright, trademark, or other proprietary rights notices displayed on or in the Service or Service Content; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Service or Service Content; (h) use the Service or Service Content to develop any service or product that is the same as (or substantially similar to), or otherwise competitive with, the Service; (i) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Service or Service Content, or use any robot, spider, scraper, or any other automated means to access the Service or Service Content; (j) employ any hardware, software, device, or technique to pool connections or reduce the number of Agents, Users, or servers/machines that directly access or use the Service or Service Content (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling'); (k) forge or manipulate identifiers in order to disguise the origin of any Customer Content; (l) take any action that imposes or may impose (as determined in Company's reasonable discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support the Service, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure; (m) use the Service or Service Content in connection with any stress test, penetration test, competitive benchmarking or analysis, or vulnerability scanning, or otherwise publish or disclose (without Company's prior express written approval) any the results of such activities or other performance data of the Service; or (n) use the Service or Service Content to circumvent the security of another person's network/information, develop malware, unauthorized surreptitious surveillance, data modification, data exfiltration, data ransom or data destruction.

- 4.3. Customer Affiliates.** Subject to (and without expanding) the Subscription Scope, Customer may permit its Affiliates to exercise Customer's Subscription rights under the Order, provided that: (a) Customer first informs Company in writing of the identity of such Affiliates (and Company may object to an Affiliate if Company deems such Affiliate a competitor); and (b) such Affiliates, in writing, acknowledge the terms and conditions of this Agreement, agree to comply with the Subscription, and agree that Company shall have no obligation or liability of any kind whatsoever towards such Affiliates. Customer shall remain primarily responsible and liable for its Affiliates' acts and omissions in connection with this Agreement as fully as if they were the acts and omission of Customer.
- 4.4. Monitoring.** Company and its Affiliates may, from their own systems, monitor (and collect data and information regarding) Customer's use of the Service in order to ensure quality, improve Company's products and services, and ensure compliance with this Agreement. Customer shall not interfere with this monitoring, and Company may use any technical means to overcome such interference.
- 4.5. Delivery and Hosting.** The Service will be made available to Customer electronically (via the Site or via an API integration, as elected by Company or as specified in the Order). Any software and other components distributed to Customer (such as the Agents) shall be deemed accepted upon delivery. The hosting of the Service (and related processing) may be provided by a third party cloud hosting provider selected by Company ("**Hosting Provider**"), and accordingly the availability of the Service shall be in accordance with the Hosting Provider's then-current uptime commitments. In the event Company decides to host the Service (or a part thereof) internally on Company's own servers under this Agreement, then Company shall notify Customer.
- 4.6. Usage Statistics.** For the avoidance of doubt, it is acknowledged and agreed that Company (alone and/or together with its Affiliates and service providers) may generate and commercially exploit Usage Statistics, as well as use Customer Content for the purpose of enhancing the Service, and nothing in this Agreement shall be deemed to prohibit or otherwise limit such activities.
- 4.7. Features and Functionalities.** Company may, from time to time, modify and replace the features and functionalities (but not material functionalities to which Customer is entitled

under the Order, unless it improves the material functionality), as well as the user interface, of the Service. Some features and functionalities may in any event be restricted by geography or otherwise, in order for Company to comply with applicable Law or commitments to third parties. Customer agrees that its purchase hereunder is not contingent on the delivery of any future functionality or feature, or dependent on any oral or written statements made by or on behalf of Company regarding future functionalities or features.

5. **SERVICES**

- 5.1. Support Services.** Subject to Customer remaining current all payment obligations under this Agreement, Customer will be entitled to receive the Support Services.
- 5.2. Professional Services.** Company is not obligated to provide any Professional Services. Any Professional Services mutually agreed to between the Parties shall be set out in sequential *Professional Services Statements of Work* signed by the Parties and referencing this Agreement (each, a "**Professional Services SOW**"). Professional Services shall be charged in accordance with such Professional Services SOW. Each Professional Services SOW shall be deemed incorporated into this Agreement by reference.
- 5.3. General.** Other Services will be performed by Company and/or its Affiliates, and are provided for the benefit of Customer only. Customer shall fully cooperate with Company, and shall make available to Company all relevant systems, assets, and resources, in connection with the provision of Other Services. With Customer's prior written approval (not to be unreasonably withheld, conditioned, or delayed) Company may subcontract Other Services (in whole or in part) to a third party contractor, and without derogating from Company's liabilities towards the Customer under this Agreement. Unless expressly agreed otherwise in writing, Other Services shall be carried out remotely, and any physical attendance at Customer's offices or other locations requested by Customer, if agreed to by Company (for example, in a Professional Services SOW), shall be charged at Company's then-current rates, and Company shall also be entitled to reimbursement for travel and lodging costs and expenses incurred.

6. **PURCHASES VIA RESELLERS**

If Customer is purchasing its Service subscription through a Reseller, then:

- (a) The order entered into between Customer and the Reseller (the "**Customer-Reseller Order**") is subject to, and Company's obligations and liabilities to Customer are governed by, these Terms;
- (b) The "Subscription Scope" shall be determined with reference to the Company-Reseller Order, and Company shall have no responsibility or liability for any discrepancy between the Subscription Scope under such Company-Reseller Order on the one hand, and the Customer-Reseller Order on the other hand;
- (c) Instead of paying Company, Customer will pay the applicable amounts to the Reseller, as agreed between Customer and the Reseller;
- (d) Company may suspend or terminate the Subscription if Company does not receive payment from the Reseller, as a result of Customer not paying the corresponding amount to the Reseller;
- (e) If Customer is entitled to a refund under the terms and conditions of this Agreement, then, unless Company specifies otherwise, Company will refund any applicable fees to the Reseller (and under no circumstances shall Company be required to refund more than it received from the Reseller), and the Reseller alone will be responsible for refunding the appropriate amounts to Customer; and
- (f) The Company will not be bound by, or subject to, any representations, warranties, promises, or commitments made by the Reseller.

7. **PAYMENT**

- 7.1. Fees.** Customer agrees to pay Company the fees and other charges set forth in the Order (the "**Fees**").
- 7.2. Fee Increases.** Company shall be entitled from time to time, and by written notice, to increase the Fees under the Order; *provided, however*, that:
- (a) the amount of such increase shall not exceed the *lesser of* five percent (5%) or the percentage rate of increase for the immediately preceding 12-month period in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-1984=100) as published by the Bureau of Labor Statistics of the United States Department of

- Labor (or, if such index is not available, such other index as the Parties may agree most closely resembles such index); and
- (b) the updated Fees shall apply to the next Order renewal, provided that such notice was given at least thirty (30) days prior to such renewal.
- 7.3. Payment Terms.** Unless expressly stated otherwise in the Order or this Agreement: (a) all Fees are stated, and are to be paid, in US Dollars; (b) all Fees are shall be paid in advance at the commencement of each billing cycle (except for Fees for overages, which are charged in arrears); (c) all payments and payment obligations under this Agreement are non-refundable, and are without any right of set-off or cancellation; (d) any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of the rate of one and a half percent (1.5%) per month or the highest amount permitted by applicable Law; and (e) Company shall be entitled to issue invoices (and any associated reporting) and billing notices via email to the applicable Customer contact email address specified in the Order and/or via a functionality of the Service.
- 7.4. Payment Dispute.** If Customer believes that Customer has invoiced Customer incorrectly, Customer must contact Company no later than thirty (30) days after receiving the invoice in which the alleged error appeared; otherwise Customer shall be deemed to have waived all claims in connection with the applicable invoice and payment.
- 7.5. Taxes.** Amounts payable under this Agreement are exclusive of all applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges, except for taxes based upon Company's net income. Customer must provide a valid tax exemption certificate if claiming a tax exemption. In the event that Customer is required by any Law applicable to it to withhold or deduct taxes for any payment under this Agreement, then the amounts due to Company shall be increased by the amount necessary so that Company receives and retains, free from liability for any deduction or withholding, an amount equal to the amount it would have received had Customer not made any such withholding or deduction.
- 7.6. Payment Processing.** Customer represents and warrants that all payment and billing information provided is (and will remain) complete and accurate, and Customer has obtained all necessary consents to enable the necessary payment method. If applicable to the payment method, payment of Fees may be processed through a third-party payment processing service (which will receive and process Customer's billing information), and additional terms may apply to such payments. Customer authorizes Company (and/or its designee) to: (a) request and collect payment (and to otherwise take other billing actions, such as refunds) from Customer on a recurring basis; and (b) make any inquiries Company deems necessary, from time to time, to validate Customer's designated payment method or financial information, in order to ensure timely payment of Fees (including, but not limited to, for the purpose of receiving updated payment details from Customer's payment, credit card, or banking account provider – such as, updated expiry date or card number).
- 7.7. Reporting; Usage Audit.** Company may issue Subscription- and Fee-related reporting and billing notices via email to the applicable Customer contact email address specified in the Order, as well as via a functionality of the Service. Company (or a third party it reasonably designates) shall, from time to time, be entitled to audit Customer's use of the Service (a "**Usage Audit**"), and Customer shall facilitate such Usage Audit by providing Company with all access (including without limitation VPN access) reasonably requested by Company (such as, for the purpose of calculating any Fees for overages).
- 8. OWNERSHIP**
- 8.1. Company Materials.** Company (and/or its licensors and suppliers, as applicable) is, and shall be, the sole and exclusive owner of all right, title and interest (including without limitation all Intellectual Property Rights) in and to: (a) the Service (and all underlying Intellectual Property); (b) Other Services; (c) the Service Content; (d) Company's Confidential Information; (e) any feedback, suggestions, or ideas for or about the Service or Service Content (collectively, "**Feedback**"); (f) Usage Statistics; and (g) any improvements, derivative works, enhancements, and/or modifications of/to any of the foregoing, as well as any other Intellectual Property conceived, authored, or otherwise developed pursuant to this Agreement, in each case regardless of inventorship or authorship. To the extent any of the foregoing Intellectual Property Rights do not automatically vest in Company, Customer hereby irrevocably assigns (and shall assign) same to Company (and its designees, successors, and assigns), and undertakes to do all things reasonably requested by Company

(including without limitation executing, filing, and delivering instruments of assignment and recordation), at Company's expense, to perfect such ownership rights.

8.2. Customer Content. As between the Parties, Customer is, and shall be, the sole and exclusive owner of all Customer Content.

- (a) License to Customer Content. Customer hereby grant to Company and its Affiliates a worldwide, non-exclusive, royalty-free, paid-up, sublicensable (to Company's data subprocessors, Hosting Providers, as well as to third party service providers engaged by Company in the provision of the Service), irrevocable right and license to copy, process, create derivative works of, modify, adapt, and otherwise use your Customer Content (in any media, now known or hereafter developed): (A) during the Term of this Agreement, for the purpose of performing under this Agreement; and/or (B) on a perpetual basis, and provided the Customer Content is anonymized, for the purpose of generally enhancing the Service (such as developing new features and functionalities);
- (b) No Sensitive Data. Unless the Service specifically requests otherwise, Customer shall ensure that no Customer Content includes or links to Sensitive Data.
- (c) Location of Customer Content. Customer Content may be hosted and processed by Company (and its Affiliates, Hosting Providers, and respective third party service providers) in Israel, the United States, the European Economic Area (EEA), the United Kingdom, and other locations around the world.
- (d) Responsibility for Customer Content. Customer is solely responsible for the legality, accuracy and quality of Customer Content, such as for ensuring that Customer's collection, processing, storage and transmission Customer Content is compliant with all applicable Laws, as well as any and all privacy policies, agreements or other obligations Customer may maintain or enter into with its customers. Customer represents and warrants that: (a) no processing of Customer Content under this Agreement (whether by Company, its Affiliates, or if applicable the Hosting Provider) will violate any Law, proprietary right, or privacy right; and (b) it has obtained and will maintain all required consents and licenses, and will maintain all ongoing legal bases under relevant privacy Laws (if applicable), necessary to provide, make available, and otherwise expose Customer Content to Company, its Affiliates, and the Hosting Provider (if applicable).
- (e) Data Storage. The Service is not intended to, and will not, operate as a data storage or archiving product or service, and Customer agrees not to rely on the Service for the storage of any Customer Content. Customer is solely responsible and liable for the maintenance and backup of all Customer Content.

9. CONFIDENTIALITY

9.1. General. Either Party may disclose or otherwise make available Confidential Information under this Agreement and shall, in doing so, be referred to as the "**Discloser**" hereunder. The other Party when receiving Confidential Information shall be referred to as the "**Recipient**". For the avoidance of doubt, disclosures by, to, or between the Parties' respective Affiliates shall also be deemed Confidential Information and be subject to this Agreement. "**Affiliate**" means, with respect to either Party, any person, organization or entity controlling, controlled by, or under common control with, such Party, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, organization or entity, whether through the ownership of voting securities or by contract or otherwise.

9.2. Exclusions. Confidential Information shall not include any information that: (a) is lawfully known by the Recipient at the time of disclosure, on a non-confidential basis; (b) is or becomes, through no fault of the Recipient, available to the general public; (c) is independently developed by the Recipient without use or reference to Confidential Information; or (d) is rightfully disclosed to Recipient on a non-confidential basis by a third party.

9.3. Safeguarding. The Recipient shall not use the Confidential Information for any purpose, except to perform its obligations under this Agreement. To maintain the confidentiality of the Discloser's Confidential Information, Recipient agrees to use the same degree of care it employs for the protection of its own Confidential Information (and in any event, a reasonable degree of care), and to procure that all such measures and safeguards are taken by its Representatives (defined below).

9.4. Non-Disclosure. Recipient shall not disclose or make available any Confidential Information to any person other than to its Representatives (defined below) who have a strict need to know

the Confidential Information for the purpose of Recipient performing its obligations under this Agreement, and who are bound to the Recipient by an agreement of confidentiality that contains substantially the same confidentiality obligations contained in this Agreement (or by comparable fiduciary or professional duties of confidentiality). Recipient shall remain primarily responsible and liable for its Representatives' acts and omissions in respect of the Confidential Information, as fully as if they were the acts and omissions of Recipient itself. "**Representatives**" means Recipient's and/or its Affiliates' directors, officers, employees, professional advisors (including, without limitation, attorneys, financiers, and accountants), contractors, and agents.

- 9.5. Compelled Disclosure.** Recipient may disclose Confidential Information to the minimum extent required by a Legal Requirement; *provided, however*, that before Recipient does so disclose it shall, to the extent legally permitted, use reasonable endeavours to give the Discloser as much notice of such disclosure as possible, and reasonably assist Discloser in seeking a protective order or other appropriate remedy. "**Legal Requirement**" means (a) an order of any court of competent jurisdiction, any regulatory, judicial, governmental or similar body, or any taxation authority of competent jurisdiction, (b) the rules of any listing authority or stock exchange on which its shares or those of any of its Affiliates are listed or traded, and/or (c) the laws or regulations of any country to which its affairs or those of any of its Affiliates are subject
- 9.6. Proprietary Notices.** Recipient shall not remove, alter, or conceal any copyright, trademark, patent, or other proprietary rights notices displayed on or in Confidential Information.
- 9.7. Return/Destruction of Confidential Information.** Promptly following written request by Discloser at any time (including within a reasonable time following termination of this Agreement), Recipient shall, as reasonably directed, return, destroy, and/or permanently delete all Confidential Information in its possession or control, and shall thereafter, upon written request, have one of its officers certify in a signed writing compliance with the foregoing. Notwithstanding the foregoing, the Recipient may retain an archival copy of Confidential Information solely to the extent that: (a) such archival copy is contained in electronic files as part of the Recipient's regular data backup or archiving procedures, and/or (b) such retention is required by any Legal Requirement; and in each of the foregoing cases under paragraphs (a) and (b), provided further that the Recipient shall refrain from accessing or using such Confidential Information, and shall treat such Confidential Information at all times in accordance with the provisions of this Agreement and shall refrain from any use thereof.
- 9.8. Definition of Confidential Information.** "**Confidential Information**" means all information disclosed by one Party to the other Party, regardless of form, which a reasonable person would understand to be confidential given the nature of the information and/or the circumstances of disclosure, and includes, but is not limited to: (a) any information related to Discloser's business, such as cost data, pricing methodologies, price lists, business plans and opportunities, marketing plans, financial and accounting information, forecasts and valuations, market share data, sales volumes, discounts, and budgets; (b) information relating to actual or potential customers, suppliers, products and services; and (c) technical data, computer programs and software code (including firmware and source code), ideas, inventions, algorithms, know-how, analyses, lab notebooks, specifications, processes, techniques, formulas, engineering designs and drawings, architectures, circuit schematics and circuit layouts, models, samples, hardware configuration information, and other technology and intellectual property.

10. DISCLAIMERS

- 10.1.** THE SERVICE, SERVICE CONTENT, OTHER SERVICES, EVALUATION PRODUCTS, ANY REPORTS OR OUTPUT GENERATED BY THE SERVICE, AS WELL AS ANY OTHER GOODS AND SERVICES PROVIDED OR MADE AVAILABLE BY OR ON BEHALF OF THE COMPANY HEREUNDER (COLLECTIVELY, THE "**COMPANY MATERIALS**") ARE PROVIDED AND MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL DEFECTS, AND ALL EXPRESS, IMPLIED AND STATUTORY CONDITIONS AND WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET POSSESSION, NON-INFRINGEMENT, OR QUALITY OF SERVICE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR USAGE OF TRADE) ARE HEREBY DISCLAIMED BY COMPANY AND ITS LICENSORS.

- 10.2.** COMPANY DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION: (A) REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, TIMELINESS, COMPLETENESS, OR QUALITY OF COMPANY MATERIALS; (B) THAT CUSTOMER'S USE OF COMPANY MATERIALS WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE; (C) REGARDING THE OPERATION OF ANY CELLULAR NETWORKS, THE PASSING OR TRANSMISSION OF DATA VIA ANY NETWORKS OR THE CLOUD, OR ANY OTHER CELLULAR OR DATA CONNECTIVITY PROBLEMS; OR (D) REGARDING THE SATISFACTION OF, OR COMPLIANCE WITH, ANY LAWS, REGULATIONS, OR OTHER GOVERNMENT OR INDUSTRY RULES OR STANDARDS. COMPANY WILL NOT BE LIABLE OR OBLIGATED IN RESPECT OF DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO HOSTING PROVIDERS OR PUBLIC NETWORKS.
- 10.3.** THE PROVISIONS OF THIS SECTION (*DISCLAIMERS*) AND OF SECTION 11 (*LIMITATION OF LIABILITY*) BELOW ALLOCATE THE RISK UNDER THIS AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THESE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT.

11. LIMITATION OF LIABILITY

- 11.1.** EXCEPT FOR BREACHES OF CONFIDENTIALITY UNDER SECTION 9 (*CONFIDENTIALITY*), CUSTOMER'S BREACH OF THE SUBSCRIPTION (INCLUDING WITHOUT LIMITATION A BREACH UNDER SECTION 4.2 (USAGE RESTRICTIONS)), AND/OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR LICENSORS BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, FOR:
- (a) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES;
 - (b) ANY LOSS OF PROFITS, BUSINESS, OPPORTUNITY, REVENUE, CONTRACTS, ANTICIPATED SAVINGS, OR WASTED EXPENDITURE;
 - (c) ANY LOSS OF, OR DAMAGE OR INTERRUPTION TO, DATA, NETWORKS, INFORMATION SYSTEMS, REPUTATION, OR GOODWILL; AND/OR
 - (d) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.
- 11.2.** THE COMBINED AGGREGATE LIABILITY OF COMPANY AND ALL COMPANY AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT IN THE **SIX (6) MONTHS** IMMEDIATELY PRECEDING THE DATE GIVING RISE TO LIABILITY (OR, IF NO FEES APPLY, **ONE HUNDRED US DOLLARS (USD\$100)**).
- 11.3.** THE FOREGOING EXCLUSIONS AND LIMITATION SHALL APPLY: (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; (B) EVEN IF A PARTY HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (C) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (D) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY, AND WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), STRICT LIABILITY, MISREPRESENTATION, OR OTHERWISE.

12. INDEMNIFICATION

- 12.1.** Indemnification by Company. In the event that, during the term of this Agreement and the six (6) month period thereafter, a third party makes or institutes any claim, action, or proceeding against Customer alleging that Customer's authorized access and use of the Service in accordance with this Agreement infringes such third party's copyright or patent (an "**Infringement Claim**"), Company shall:
- (a) At its own expense, defend Customer against the Infringement Claim; and
 - (b) Indemnify and hold harmless Customer for any amount finally awarded against or imposed upon Customer by the court (or otherwise agreed in settlement) under the Infringement Claim (*provided, however, that any insurance recoveries and/or indemnity or contribution amounts received by the Customer prior to receipt of indemnification by Company, shall reduce the indemnifiable amount to be paid by Company by the amount of such recovery*).

Company will have no obligation or liability under this Section (*Indemnification by Company*) to the extent that the Infringement Claim is based on or results from: (i) a modification to the Service not made by Company; (ii) the combination of the Service with any third party product or service; (iii) any Customer instructions or specifications; (iv) any Customer breach

under this Agreement; and/or (v) any failure by Customer to use the most current version of the Service made available by Company pursuant to this Agreement.

Should the Service (in whole or in part) become, or in Company's opinion be likely to become, the subject of an Infringement Claim or an injunction prohibiting Customer's use of the Service, then Customer permits Company, at Company's option and expense, to either: (x) obtain for Customer the right to continue using the Service (or part thereof, as applicable); or (y) replace or modify the Service (or part thereof, as applicable) so that its use hereunder becomes non-infringing; *provided, however*, that if (x) and (y) are not, in Company's opinion, commercially feasible, Company may terminate this Agreement upon written notice to Customer, and, following Customer's compliance with all post-termination obligations, Customer shall be entitled to receive a pro-rated refund of any prepaid Subscription-related Fees hereunder based remaining period of the Subscription Term.

12.2. Indemnification by Customer. If Company or its Affiliates (or their respective directors, officers, or employees) (collectively, "**Company Indemnitees**") incur or suffer any loss or liability whatsoever (including but not limited to a fine, penalty, damages award, legal costs and expenses such as attorney's fees, etc.) under or in connection with any demand, claim, suit, or proceeding made or brought (whether by an individual, organization, or governmental agency) against a Company Indemnitee (each, a "**Misuse Claim**"), and such Misuse Claim arises directly or indirectly from any breach by Customer under this Agreement and/or from Customer's use of the Service, Customer agrees to:

- (a) At its own expense, defend Company Indemnitees against the Misuse Claim; and
- (b) Indemnify and hold harmless Company Indemnitees for such loss and liability, as well as for any amount finally awarded against or imposed upon Company Indemnitees by the court (or otherwise agreed in settlement) under the Misuse Claim.

12.3. Indemnity Procedure. As a condition to indemnification under this Section (*Indemnification*), the indemnified Party agrees: (A) to provide the indemnifying Party with prompt written notice of the Infringement Claim or Misuse Claim, as applicable (the "**Claim**"); (B) to cede to the indemnifying Party sole control of the defense and settlement of the Claim (except that any settlement shall require the indemnified Party's prior written consent, not to be unreasonably withheld, conditioned or delayed); (C) to provide the indemnifying Party with all information and assistance reasonably requested by it; and (D) not to admit any liability under (or otherwise compromise the defense of) the Claim. The indemnified Party may participate in the defense of the Claim at its own cost and expense.

13. TERM AND TERMINATION

13.1. Term of Agreement. This Agreement commences on the Effective Date and, unless terminated in accordance herewith, shall continue for the duration of the Subscription Term (defined below).

13.2. Renewals. Unless specified otherwise in the Order, upon expiration of the initial Subscription term specified in the Order (the "**Initial Subscription Term**"), the Order and Subscription shall automatically renew for successive renewal terms of twelve (12) months each (each a "**Renewal Subscription Term**", and together with the Initial Subscription Term, the "**Subscription Term**"), unless either Party notifies the other Party in writing that it chooses not to renew ("**Non-Renewal Notice**"); *provided, however*, that the Non-Renewal Notice is given at least sixty (60) days prior to the end of the then-current Subscription Term. At the commencement of each Renewal Subscription Term, Company shall be entitled to invoice Customer for the applicable Fees therefor.

13.3. Termination. This Agreement may be terminated as follows:

- (a) In accordance with any termination rights specified the Order;
- (b) Either Party may terminate this Agreement for cause upon written notice if the other Party commits a material breach under this Agreement, and fails to cure such breach within thirty (30) days after receiving written notice from the other Party alleging the breach. The foregoing 30-day cure period shall: (i) not be required if the breach is not curable; and (ii) be reduced to ten (10) days if the material breach in question is non-payment by Customer; and/or
- (c) Either Party may terminate this Agreement upon written notice to the other Party upon the occurrence of any of the following events in respect of such other Party: (i) a receiver is appointed for the other Party or its property, which appointment is not

dismissed within sixty (60) days; (ii) the other Party makes a general assignment for the benefit of its creditors; (iii) the other Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief Law, which proceedings are not dismissed within sixty (60) days; or (iv) the other Party is liquidating, dissolving or ceasing normal business operations;

- 13.4. Suspension.** Company reserves the right to temporarily suspend provision of the Service: (a) if Customer is seven (7) days or more overdue on a payment; (b) if Company deems such suspension necessary as a result of Customer's breach of the Subscription (such as a breach under Section 4.2 (*Restrictions*)); (c) if Company reasonably determines suspension is necessary to avoid material harm to Company, to its other customers, or to the Service, including if the Service's cloud infrastructure is experiencing denial of service attacks or other attacks or disruptions outside of Company's control, or (d) as required by Law or at the request of governmental entities.
- 13.5. Effect of Termination; Survival.** Upon termination of this Agreement for any reason: (a) the Subscription shall automatically terminate; (b) Customer shall cease all access and use of the Service, and shall uninstall and permanently delete all copies of the Agents (and Company shall be entitled to verify same, and, if necessary, remotely uninstall or deactivate such Agents) and certify in a signed writing that it has done so; and (c) Customer shall pay any outstanding Fees and other charges that accrued as of termination, which shall become immediately due and payable, and, if necessary Company shall issue a final invoice therefor. Customer acknowledges that following termination it may have no further access to any Customer Content within the Service, and that Company shall be entitled to delete any Customer Content. Sections 8 (*Ownership*) through 14 (*Miscellaneous*) shall survive termination of this Agreement, as shall any right, obligation or provision that is expressly stated to so survive or that ought by its nature to survive. Termination shall not affect any rights and obligations accrued as of the effective date of termination.

14. MISCELLANEOUS

- 14.1. Entire Agreement.** This Agreement (and its annexes) represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings and statements by the Parties with respect to such subject matter. In entering into this Agreement, neither Party is relying on any representation or statement not expressly specified in these Terms. Without limiting the generality of the foregoing, this Agreement supersedes the following, each of which shall be deemed rejected, void and of no effect: (i) any shrink-wrap, click-wrap, or similar terms and conditions that accompany, or are included within, the Service, even if use of the Service requires an affirmative "acceptance" thereof (except where Customer has purchased its Subscription from a Reseller, and Customer is accepting these Terms via the Service); and (ii) any terms or conditions (whether printed, hyperlinked, or otherwise) in any purchase order or other standardized business forms, which purport to supersede, modify, or supplement this Agreement. Customer shall include the Order reference/number in any purchase order issued to Company. The section and subsection headings used in this Agreement are for convenience of reading only, and shall not be used or relied upon to interpret this Agreement. This Agreement may be executed in any number of counterparts (including digitally, electronically scanned and e-mailed PDF copies, and any similarly signed and electronically or digitally transmitted copies) each of which will be considered an original, but all of which together will constitute one and the same instrument.
- 14.2. Amendment.** This Agreement may only be modified or supplemented by a written instrument referencing this Agreement, which is duly signed by each Party.
- 14.3. Precedence.** To the extent of any conflict or inconsistency between a provision in these Terms on the one hand, and a provision in the Order or a Professional Services SOW on the other hand, the former shall prevail (except to the extent expressly stated otherwise in the Order or Professional Services SOW, or to the extent related solely to the commercial or technical particulars of the Order or Professional Services SOW, in which case the latter shall prevail).
- 14.4. Feature Specific Terms.** Features and functionalities may be accompanied by separate or additional terms and conditions (in each case, "**Feature Specific Terms**"). Except to the extent expressly stated otherwise within Feature Specific Terms, all Feature Specific Terms apply in addition to (and not instead of) this Agreement.

- 14.5. Third Party Content.** The Service may present, or otherwise allow Customer to view, access, link to, and/or interact with, Content from third parties and other sources that are not owned or controlled by Company (such Content, "**Third Party Content**"). The Service may also enable Customer to communicate with the related third parties. The display or communication to Customer of such Third Party Content does not (and shall not be construed to) in any way imply, suggest, or constitute any sponsorship, endorsement, or approval by Company of such Third Party Content or third party, nor any affiliation between Company and such third party. Company shall have no obligation or liability of any kind whatsoever for Third Party Content or for the third party's policies, practices, actions, or omissions. If Customer enables or uses Third Party Content with the Service, Company will allow the Third Party Content providers to access and use Customer Content as required for the interoperation of the Third Party Content and the Service. Any Third Party Content provider's use of Customer Content is subject to the applicable agreement between Customer and the Third Party Content provider.
- 14.6. Third Party Software.** The Service may include what is commonly referred to as 'open source' software. Under some of their respective license terms and conditions, Company may be required to provide Customer with notice of the license terms and attribution to the third party, in which case Company may provide Customer with such information (whether via the Service, via the Site, or otherwise). Notwithstanding anything to the contrary herein, use of the open source software will be subject to the license terms and conditions applicable to such open source software, to the extent required by the applicable licensor (which terms and conditions shall not restrict the license rights granted to Customer hereunder), and to the extent any such license terms and conditions grant Customer rights that are inconsistent with the limited rights granted to Customer in this Agreement, then such rights in the applicable open source license shall take precedence over the rights and restrictions granted in this Agreement, but solely with respect to such open source software. Company will comply with any valid written request submitted by Customer to Company for exercising any rights Customer may have under such license terms and conditions.
- 14.7. Assignment.** This Agreement may not be assigned by Customer, in whole or in part, without Company's prior express written consent. Company may assign this Agreement, in whole or in part, without restriction or obligation. Furthermore, any Company obligation hereunder may be performed (in whole or in part), and any Company right (including invoice and payment rights) or remedy may be exercised (in whole or in part), by an Affiliate of Company. Any prohibited assignment will be null and void. Subject to the provisions of this Section (*Assignment*), this Agreement will bind and inure to the benefit of each Party and its respective successors and assigns.
- 14.8. Governing Law; Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, USA without regard to any conflicts of laws rules or principles. The United Nations Convention on Contracts for the International Sale of Goods, as well as the Uniform Computer Information Transactions Act (UCITA) (regardless of where or when adopted), shall not apply to this Agreement and are hereby disclaimed. Any claim, dispute or controversy between the Parties will be subject to the exclusive jurisdiction and venue of the courts located in New York County, New York, USA and each Party hereby irrevocably submits to the personal jurisdiction of such courts and waives any jurisdictional, venue, or inconvenient forum objections to such courts. Notwithstanding the foregoing, each Party may seek equitable relief in any court of competent jurisdiction. EACH PARTY IRREVOCABLY WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY. EXCEPT TO SEEK EQUITABLE RELIEF, PAYMENT OF FEES, OR TO OTHERWISE PROTECT OR ENFORCE A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY OBLIGATIONS, NO ACTION, REGARDLESS OF FORM, UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER THE DATE ON WHICH THE CORRESPONDING LIABILITY AROSE. Any claims or damages that Customer may have against Company shall only be enforceable against Company, and not any other entity or Company's officers, directors, representatives, employees, or agents.
- 14.9. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) the Parties agree that the court making such determination shall have the power to limit the provision, to delete specific words or phrases, or to replace the provision with a provision that is legal, valid and enforceable and that most closely approximates the original legal intent and economic impact of such provision, and this Agreement shall be enforceable as so modified in respect of such jurisdiction. In the event such court does not exercise the power granted to it as aforesaid, then such provision

will be ineffective solely as to such jurisdiction, and will be substituted (in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

- 14.10. Publicity.** Company may use Customer's name and logo on Company's website and in its promotional materials to state that Customer is a customer of the Service. Moreover: (a) within thirty (30) days of the Effective Date, Customer agrees to provide a quote from one of Customer's executives about the Service, for publication in Company's marketing materials, such as the Site; and (b) Customer agrees to reasonably cooperate with Company in the creation and promotion of a case-study to be published in Company's marketing materials, such as the Site. For the avoidance of doubt, use and publication of such quotes and case-study shall be at Company's sole discretion.
- 14.11. Waiver and Remedies.** No failure or delay on the part of either Party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and will be valid only in the specific instance in which given. Except as may be expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or will be deemed, exclusive of any other right or remedy under this Agreement, at law, or in equity, but will be cumulative of such other rights and remedies.
- 14.12. Data Processing Agreement (DPA).** To the extent that, in connection with the processing of Customer Data pursuant to this Agreement, Customer requires a data processing agreement: (a) Customer shall execute (and deliver to Company the executed copy of) the DPA; and (b) Company processes any Personal Data (as defined in the DPA) of the Customer and/or its Affiliates solely as Processor (as defined in the DPA), and Customer shall be the Controller (as defined in the DPA). In addition to any further instructions specified in the DPA, this Agreement represents Customer's instructions for processing of Customer Data. In the event Customer fails to deliver an executed version of the DPA to Company, then: (a) to the maximum extent permitted by law, Customer shall be solely and fully responsible and liable for any breach, violation, infringement, and/or processing of such Personal Data without a data processing agreement; (b) in the event of any demand, claim, or proceeding of any kind related to any such breach, violation, or infringement, and/or any demand, claim, or proceeding related to processing of such Personal Data without a data processing agreement, Customer shall defend, hold harmless and indemnify Company and its Affiliates (as well as their respective employees, officers, directors, subcontractors and agents) from and against any and all losses, penalties, fines, damages, liabilities, settlements, costs and expenses, including reasonable attorneys' fees incurred or suffered by such persons; and (c) any limitations on, or exclusions of, of Customer's liability under this Agreement shall not apply in connection with the above subparagraphs (a) and (b).
- 14.13. No Third Party Beneficiaries.** Except as may be otherwise expressly provided in this Agreement (such as Company's Affiliates), there shall be no third-party beneficiaries of or under this Agreement.
- 14.14. Relationship.** The relationship of the Parties is solely that of independent contractors, neither Party nor its employees are the servants, agents, or employees of the other, and no exclusivities arise out of this Agreement. Nothing in this Agreement shall be construed to create a relationship of employer and employee, principal and agent, joint venture, franchise, fiduciary, partnership, association, or otherwise between the Parties. Except to the extent required by Company in connection with the provision of the Service and/or the performance of the Company's obligations hereunder, neither Party has any authority to enter into agreements of any kind on behalf of the other Party and neither Party will create or attempt to create any obligation, express or implied, on behalf of the other Party.
- 14.15. Force Majeure.** Neither Party shall have any liability for any performance (excluding payment obligations) under this Agreement that is prevented, hindered, or delayed by reason of an event of Force Majeure (defined below). The Party so affected shall be excused from such performance to the extent that, and for so long as, performance is prevented, interrupted, or delayed by the Force Majeure. If and when performance is resumed, all dates specified under this Agreement shall be automatically adjusted to reflect the period of such prevention, interruption, or delay by reason of such Force Majeure. For purposes of this Agreement, an event of "**Force Majeure**" shall be defined as: (a) fire, flood, earthquake, explosion, pandemic or epidemic (or similar regional health crisis), or act of God; (b) strikes,

lockouts, picketing, concerted labor action, work stoppages, other labor or industrial disturbances, or shortages of materials or equipment, not the fault of either party; (c) invasion, war (declared or undeclared), terrorism, riot, or civil commotion; (d) an act of governmental or quasi-governmental authorities (including without limitation lockdowns); (e) failure of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, shortage of adequate power or transportation facilities; and/or (f) any matter beyond the reasonable control of the affected Party. Notwithstanding the foregoing, Customer shall not be entitled to use, or rely on, this Section (*Force Majeure*) in connection with any Customer breach of the Subscription and/or of Company's Intellectual Property Rights. For the avoidance of doubt, any problems relating to hosting of the Service by a third party is beyond the reasonable control of Company.

14.16. Notices. Except as may be specified otherwise in this Agreement, all notices, consents, or other communications provided for in connection with this Agreement shall be in writing, and shall be deemed given as follows: (a) when received, if personally delivered; (b) the second business day after mailing, when mailed via either U.S. mail or registered or certified mail with postage prepaid and return receipt requested; (c) upon delivery confirmation, when delivered by nationally recognized overnight delivery service ("**Courier**"); (d) the second business day after sending confirmed by facsimile; (e) the first business day after sending by email. Notwithstanding the foregoing, Customer agrees that Company may also give Customer notices via Customer's Account and/or via postings on or through the functionality of the Service (and such notices shall be deemed given immediately). Notices by Customer to Company must be given by Courier or registered mail to: 550 California Ave, Palo Alto, 94306, California, USA.

14.17. Export Compliance. Customer represents and warrants that: (a) it is not a resident of, and will not access or use the Service in, a country that the U.S. government has embargoed for use of the Service, and that Customer is not a person or entity named on the U.S. Treasury Department's list of Specially Designated Nationals or any other applicable trade sanctioning regulations of any jurisdiction; and (b) its country of residence and/or incorporation (as applicable) is the same as the country specified in the contact and/or billing address provided to Company. Customer shall not transfer, export, re-export, import, re-import or divert the Service in violation of any Export Control Laws (defined below), and shall not transfer, export, re-export, import, re-import or divert the Service to Lebanon, Syria, Iran, Iraq, Sudan, Yemen, Cuba, or North Korea (or other countries specifically designated in writing by Company from time to time). In the event of a breach under this Section (*Export Compliance*), Customer agrees to indemnify and hold harmless Company and all Company Affiliates (and their respective directors, officers, and employees) for any fines and/or penalties imposed upon Company or a Company Affiliate (or such persons) as a result of such breach. "**Export Control Laws**" means all applicable export and re-export control Laws applicable to Customer and/or Company or its Affiliates, as well as the United States' Export Administration Regulations (EAR) maintained by the US Department of Commerce, trade and economic sanctions maintained by the US Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations (ITAR) maintained by the US Department of State.

14.18. Customer Resources. Except for the Service, Customer shall be solely responsible: (a) for providing all hardware, software, systems, assets, facilities, and ancillary goods and services needed for Customer to access and use the Service; (b) for ensuring their compatibility with the Service; and (c) for obtaining (and maintaining) all consents and licenses necessary to exercise Customer's rights under the Subscription. In the event Company is legally or contractually required to modify or replace features or functionalities of the Service in order to ensure the Service complies with the terms of service or privacy policies of various platforms, networks and/or websites, Customer shall be responsible for making all necessary changes to Customer's hardware, software, systems, assets, and facilities in order to continue using the Service.

14.19. Expense. Except as may be expressly stated otherwise in this Agreement, each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).

14.20. Government Users. If Customer is a U.S. government entity, or this Agreement otherwise becomes subject to the Federal Acquisition Regulations (FAR), Customer acknowledges that the Service constitutes "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212, DFARS 252.227-7014 and DFARS

227.7202. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Service shall be as provided in this Agreement. If a government agency needs additional rights, it must negotiate a mutually acceptable signed written addendum to this Agreement specifically granting those rights.

- 14.21. Subpoenas.** Nothing in this Agreement prevents Company from disclosing Customer Content to the extent required by Law, subpoenas, or court orders, but Company will use commercially reasonable efforts to notify Customer where permitted to do so.
- 14.22. High-Risk Activities.** Customer shall not use the Service with or for, and acknowledges that the Service is not intended for, High-Risk Activities. "**High-Risk Activities**" means activities where use or failure of the Service could lead to death, personal injury, damage to tangible property, or environmental damage, and includes without limitation life support systems, emergency services, nuclear facilities, autonomous vehicles, and traffic control.
- 14.23. 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 Company's employees or agents, or otherwise from any Resellers, in connection with this Agreement. If Customer learns of any violation of the above restriction, Customer shall use reasonable efforts to promptly notify Company.