



MASTER SUBSCRIPTION AGREEMENT

Effective February 1, 2024

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

Where Customer is using a Trial Product (as defined below), Customer consents to this Agreement by clicking Agree or using the Fivetran Product(s).

1 DEFINITIONS

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

"Affiliate" means an entity controlling, controlled by or under common control with a party to this Agreement at any time during the term of this Agreement, for so long as such control exists, provided, as it relates to Customer, such entity is not a current or prospective competitor to Fivetran or in the business of developing or offering products or technologies that are substantially similar to any Fivetran Product.

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

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

"Fivetran Partner" means an authorized reseller, distributor or other partner of Fivetran.

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

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

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

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

"Support Policy" means Fivetran's unified support policy located at <https://support.fivetran.com/hc/en-us/articles/5893119459223-Fivetran-Support-Policy>.



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

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

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

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

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

2 FIVETRAN PRODUCTS, SERVICES, AND SUPPORT

2.1 Fivetran Products and Services. Fivetran will provide to Customer the Fivetran Products identified on each Order Form in accordance with this Agreement, including Professional Services, and the technical support and SLA terms referenced in Fivetran's Support Policy, and Customer may use and access such Fivetran Products, each according to the terms of this Agreement (including the applicable Order Form). Customer's permitted use case will be described on the applicable Order Form or separate addendum mutually executed by the parties that references this Agreement (**"Addendum"**). Fivetran will comply with applicable laws and regulations in providing the Fivetran Products.

2.2 On-Prem Software License. With respect to any Order Form that includes On-Prem Software, subject to the terms of this Agreement, Fivetran grants to Customer a limited, personal, non-exclusive, non-transferable (except as part of a permitted assignment of this Agreement), non-sublicensable license during the subscription term of such Order Form to install, integrate and use for its own internal business purposes such On-Prem Software on the Source and Target Systems.

2.3 Affiliates. To the extent Customer's Affiliates wish to make separate purchases, any of Customer's Affiliates may execute a new Order Form specifically for that Affiliate entity and such Customer Affiliate will be subject to this Agreement as if such Customer Affiliate were a signatory to this Agreement.

2.4 Fivetran Partners. This Agreement specifies the terms and conditions under which Fivetran Products or Professional Services are provisioned by Fivetran to Customer, whether purchased directly through Fivetran or indirectly through a Fivetran Partner. Purchases through a Fivetran Partner will be placed through a separate agreement, ordering document or online order between Customer and a Fivetran Partner, or online order process completed by Customer and confirmed by a Fivetran Partner (any of the foregoing, the **"Partner Sales Agreement"**) which shall address, as between Customer and the Fivetran Partner, any terms and conditions relating to the quantity of products and services purchased, fees, payment (including any applicable refunds), taxes and renewals. The Partner Sales Agreement is between Customer and the Fivetran Partner and is not binding on Fivetran, and any disputes related to the Partner Sales Agreement shall be handled directly between Customer and the Fivetran Partner. In the event of any conflict between this Agreement and a Partner Sales Agreement, this Agreement shall govern as between Fivetran and Customer. Customer agrees that, in connection with Professional Services or Fivetran Products purchased through a Fivetran Partner: (a) Fivetran may share information with the Fivetran Partner related to Customer's use and consumption of the Fivetran Products; (b) all payments of fees, refunds and credits, if any, are payable by or to the Fivetran Partner; and (c) the Fivetran Partner is not authorized to make any changes to this



Agreement or otherwise authorized to make any warranties, representations, promises or commitments on behalf of Fivetran.

3 CUSTOMER DATA; RESPONSIBILITIES

3.1 Customer Responsibilities.

(a) General. Notwithstanding anything herein, Customer is solely responsible for (a) the accuracy, content and legality of all Customer Data and warrants that it has sufficient rights in the Customer Data to permit: (i) Customer's use and receipt of the Fivetran Products and (ii) with respect to SaaS Products, Fivetran's access to and processing of Customer Data pursuant to this Agreement, and (b) the acts and omissions of its employees, contractors and Users and their compliance with this Agreement.

(b) Personal Health Information. Where required by the U.S. Health Insurance Portability and Accountability Act of 1996, Customer agrees not to upload to any SaaS Product any personal health information ("PHI Data") unless Customer has executed Fivetran's Business Associate Agreement ("BAA"). Unless a BAA is in place, Fivetran will have no liability under this Agreement for PHI Data, notwithstanding anything in this Agreement or in HIPAA or any other laws or regulations. If Customer is permitted to submit PHI Data to a Fivetran Product, then Customer may submit PHI Data to the Fivetran Product only by uploading it as Customer Data. Upon mutual execution of the BAA, the BAA is incorporated by reference into, and subject to, this Agreement.

3.2 Powered by Fivetran Deployments. If so specified in the applicable Order Form or Addendum, Customer may offer the applicable Fivetran Product to its customers as part of an integrated product, subject to (a) a written agreement with each end-customer that conditions its authorization to use the Fivetran Product on its acceptance of the terms found at fivetran.com/legal, and (b) Fivetran's prior approval of the integrated product and specific PBF use

case proposed by Customer for its customers. Customer may not accept, and acknowledges that Fivetran will not be bound by, any terms or conditions with Customer's customers that modify, add to or change in any way this Agreement

(including any Order Form or Addendum). Customer is responsible for providing first-level support to its customers regarding Fivetran Product-related issues; Fivetran will provide support only to Customer regarding such Fivetran Product. Customer is responsible for its end-customer's use of the Fivetran Products under this section in a manner that conforms with the Documentation and restrictions set forth in this Agreement. To the extent Fivetran reasonably believes that Customer is not in compliance with this Section 3.2, Fivetran shall have the right to immediately suspend Customer's use of the PBF services and will provide notice of any such suspension.

4 CONFIDENTIALITY; TECHNOLOGY RESTRICTIONS; PROPRIETARY RIGHTS

4.1 Confidential Information. Subject to the limitations set forth in Section 4.2, all information disclosed by one party to the other party during the term of this Agreement, whether in oral, written, graphic or electronic form, shall be deemed to be "Confidential Information". Confidential Information of Fivetran includes non-public information regarding features, functionality and performance of the Fivetran Products and Professional Services. Customer Data is considered Customer's Confidential Information. The receiving party agrees to maintain the confidentiality of any Confidential Information of the disclosing party using at least the same degree of care it uses to protect its own confidential information, which shall not fall below a reasonable standard of care.



4.2 Exceptions. Confidential Information does not include information which: (a) is part of the public domain at the time of disclosure; (b) becomes a part of the public domain through no fault of the receiving party or persons or entities to whom the receiving party has disclosed, transferred or permitted access to such information; (c) becomes available to the receiving party on a non-confidential basis from a source legally entitled to share the information without confidential treatment; (d) is independently developed by the receiving party without use of or access to the disclosing party's Confidential Information; or (e) is released from the confidentiality obligations herein by written consent of the disclosing party.

4.3 Nondisclosure. The receiving party will not disclose any Confidential Information of the disclosing party to any person or entity, except: (a) to agents of the receiving party who have a need to know such information and who are subject to confidentiality agreements with the receiving party at least as protective of the disclosing party's Confidential Information as this Agreement, or (b) as required to be disclosed by law by any governmental or other regulatory authority, securities exchange or pursuant to the terms of a valid and effective subpoena or court order, provided that the receiving party immediately notifies the disclosing party (to the extent permitted) of the existence, terms and circumstances surrounding such a request so that the disclosing party may seek appropriate protective action. The receiving party may not use the disclosing party's Confidential Information for any purpose other than to exercise its rights and comply with its obligations under this Agreement.

4.4 Return; Destroy; Protect. On the disclosing party's request, the receiving party must return or destroy all Confidential Information of the disclosing party which has been supplied to or acquired by the receiving party, other than: (a) records the receiving party has a separate legal right or obligation to retain; and (b) copies of such Confidential Information created in the ordinary course of the receiving party's business and retained in accordance with its internal document retention and information technology policies. To the extent the receiving party retains such Confidential Information, the receiving party will continue to protect such Confidential Information in accordance with Sections 4.1 and 4.3 for so long as it meets the definition of Confidential Information.

4.5 Appropriate Use of the Fivetran Products. Customer will not, and will not allow, permit or assist any User or third party to, directly or indirectly:

(a) reverse engineer, decompile, disassemble, modify, create derivative works of, derive or otherwise attempt to discover the source code underlying any Fivetran Product; resell any Fivetran Product or use any Fivetran Product for timesharing or service bureau purposes or otherwise for the benefit of a third party, except as part of a Powered by Fivetran deployment identified on an Order Form; attempt to probe, scan or test the vulnerability of any Fivetran Product, breach the security or authentication measures of any Fivetran Product without proper authorization or willfully render any part of a Fivetran Product unusable; use or access any Fivetran Product to develop a product or service that is competitive with any Fivetran Product, engage in competitive analysis or benchmarking, or publicly disseminate performance information or analysis regarding any Fivetran Product; remove any proprietary notices or labels on any Fivetran Product; or use any Fivetran Product in violation of any applicable laws or regulations (including any export law) or outside the scope expressly permitted hereunder (including in the applicable Order Form);

(b) post, upload, forward, or otherwise transmit any file or software code which contains, facilitates, or launches viruses, worms, trojan horses or any other contaminating or destructive features, or that otherwise interferes with the proper working of any Fivetran Product; attempt to access any other Fivetran systems that are not part of a Fivetran Product; use any Fivetran Product to upload, post, process, distribute, link to, publish, reproduce, or transmit any information, software or content for which Customer does not have the legal right to engage in such activities;

(c) post, upload, forward or otherwise transmit any illegal, fraudulent, libelous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, harassing, offensive, inappropriate or objectionable information or communications of any kind; or



(d) with respect to On-Prem Software, (i) translate or localize any On-Prem Software; (ii) redistribute, encumber, sell, rent, lease, sublicense, display, publish, disclose or otherwise transfer rights to any On-Prem Software, in whole or in part, to any third party; or (iii) allow any third party (other than contractors that are Users) to access or use the On-Prem Software.

Customer and its Users will use the Fivetran Products in compliance with this Agreement, the applicable Order Form, the Documentation, and all applicable laws and regulations. Without limiting its other remedies, Fivetran may suspend Customer's access to the Fivetran Products or prohibit any use of the Fivetran Products if Customer breaches any of the above restrictions in this section or if Customer's use of a Fivetran Product risks material harm to the Fivetran Product or others, provided that, where practicable, Fivetran will give Customer prior notice thereof so that Customer may seek to resolve the issue and avoid suspension.

4.6 Injunction for Breach. The parties agree that damages would be an inadequate remedy in the event of a breach of this Section 4. Therefore, the parties agree that a party is entitled, in addition to any other rights and remedies otherwise available, to seek injunctive and other equitable relief in the event of a breach or threatened breach by the other party of this Section 4.

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

4.8 Marketing Permissions. Fivetran may use and display Customer's name and logo on Fivetran's website and marketing materials in connection with identifying Customer as a customer. Subject to Customer's prior written approval (which shall not be unreasonably withheld), if Fivetran requests, Customer also agrees to participate in a win release, case study, video testimonial, and/or cooperate with Fivetran in presenting at a Fivetran event or speaking to the media.



5 SECURITY MEASURES

5.1 Protection of Customer Data. Fivetran will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, in accordance with the Fivetran security policy located at <https://fivetran.com/docs/security> (the "Security Policy") posted as of the Effective Date (and as the Security Policy may be updated by Fivetran in a manner that does not materially decrease the applicable protections). Those safeguards will include measures for preventing access, use, modification or disclosure of Customer Data by Fivetran personnel, except (a) to provide the applicable Fivetran Product and to prevent or address service or technical problems, or (b) as Customer expressly permits in this Agreement or otherwise in writing. To the extent applicable, Fivetran's Data Protection Addendum (available at <https://www.fivetran.com/legal#dpa>) ("DPA") is incorporated by reference into this Agreement.

5.2 Removal of Customer Data. Upon termination or expiration of this Agreement, in the event Fivetran has any Customer Data, Fivetran shall delete all such Customer Data from its systems without retaining any copies thereof (other than copies retained in accordance with Fivetran's internal document retention and information technology policies).

5.3 Customer Responsibilities. Customer is responsible for security relating to its environment, particularly its Source and Target Systems, and security relating to its configuration of the Fivetran Products. This includes implementing and managing procedural, technical, and administrative safeguards on its systems and networks sufficient to: (a) ensure the confidentiality, security, integrity, and privacy of Customer Data and (b) follow the principle of least privilege when connecting the Fivetran Products to Customer's Source and Target Systems, especially by granting no more than read-only access to data sources. Customer is also responsible for provisioning Users, including: (i) methods of authenticating Users (such as SSO or industry-standard secure username/password policies); (ii) managing admin privileges; (iii) deauthorizing personnel who no longer need access to the applicable Fivetran Product; and (iv) setting up any API usage in a secure way. Fivetran will have no obligations or liability as to any loss resulting from Customer's security configuration or administration of the Fivetran Products.

6 PAYMENT OF FEES

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



6.2 Payment Terms. Fivetran will bill for the Fivetran Products or Professional Services through an invoice, through the marketplace where the original purchase was made, or directly through credit card if provided. Full payment for invoices must be received by Fivetran within 30 days after the issuance of the invoice (which may be sent by email). If Customer is paying by credit card, Customer represents and warrants that it has the right to use the credit card provided and grants Fivetran the right to provide the credit card information, including the credit card number, its expiration date and billing address, to third parties for the purposes of facilitating payment transactions. Fivetran reserves the right to charge a 3% surcharge for any credit card payments. Verification of information may be required prior to the acknowledgment or completion of any payment transaction. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, and, without limiting its other remedies, Fivetran may suspend Customer's access to the Fivetran Products if Customer's account is 30 days or more overdue. If Customer believes that Fivetran has billed Customer incorrectly, Customer must contact Fivetran no later than 60 days after the date of the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Fivetran's customer support department.

6.3 Taxes. All amounts payable by Customer under this Agreement are exclusive of all applicable sales, use, value added, excise, property, withholding or similar tax and any related tariffs, and similar charges (collectively, "Taxes"). Customer is responsible for payment of all Taxes, except taxes based on Fivetran's net income. If Customer is required to pay any such taxes, Customer shall pay such taxes with no reduction or offset in the amounts payable to Fivetran hereunder. If an applicable tax authority requires Fivetran to pay any taxes that should have been payable by Customer, Fivetran will advise Customer in writing, and Customer will promptly reimburse Fivetran for the amounts paid.

6.4 On Premise Usage Calculation. With respect to On-Prem Software, if Customer's system configuration blocks Fivetran's ability to determine the monthly amounts owed for Customer's use of such On-Prem Software, then at Fivetran's request Customer will provide a monthly report and such other reasonably requested information in order for Fivetran to determine such amounts, including a breakdown of Users, data sources and destinations between Customer-internal usage and PBF usage.

7 TERM AND TERMINATION

7.1 Term. This Agreement will continue from the Effective Date until terminated as set forth below (the "Term"). The initial term of each Order Form will begin on the effective date of such Order Form and will continue for the subscription term set forth therein, provided that if Customer is on a monthly plan (a) such Order Form will continue until such date as the applicable monthly plan is canceled and (b) after cancellation, Customer may revive its account by recommencing data transfers. If Customer uses any Fivetran Product after the end of the subscription term listed on the Order Form, Customer will be billed in arrears according to the Order Form for any continued usage of such Fivetran Product. Except with respect to monthly plans, each Order Form will renew automatically for successive one-year periods on Fivetran's then-current Order Form terms and conditions, unless a party provides notice of nonrenewal to the other party at least 60 days prior to expiration of the then-applicable subscription term.

7.2 Termination. Each party may terminate this Agreement upon written notice to the other party if there are no Order Forms then in effect. Each party may also terminate this Agreement or the applicable Order Form upon written notice (a) if the other party materially breaches any of the terms or conditions of this Agreement or the applicable Order Form (including any failure to pay any amounts when due) and fails to cure such breach within 30 days after written notice describing the breach; or (b) immediately if a party files for bankruptcy or is the subject of an involuntary filing in bankruptcy (in the latter case, which filing is not discharged within 60 days), makes an assignment for the benefit of creditors or a trustee is appointed over all or a substantial portion of its assets, or if a material breach by its nature is incapable of being cured. Upon any expiration or termination, (i) Customer remains obligated to pay the balance due on Customer's account accrued prior to expiration or termination, and will be billed for such unpaid fees, and (ii) Customer shall immediately cease using the applicable Fivetran Products.

7.3 Survival. All sections of this Agreement which by their nature should survive termination will survive termination, including accrued rights to payment, and terms and conditions relating to proprietary rights, technology restrictions, confidentiality, disclaimers, termination and limitations of liability and the miscellaneous provisions below.

8 WARRANTIES AND DISCLAIMER

8.1 Mutual. Each of Fivetran and Customer warrants that: (a) it has the legal power and authority to enter into this Agreement; (b) the person signing or accepting this Agreement on its behalf is a duly authorized representative of such party with the authority to bind such party to this Agreement; (c) its entry herein does not violate any other agreement by which it is bound; (d) it is a legal entity in good standing in the jurisdiction of its formation; and (e) it will use industry-standard measures to avoid introducing viruses or other malicious code into the Fivetran Product.

8.2 Fivetran Warranties. Fivetran warrants that the Fivetran Product will perform materially as described in the Documentation and Fivetran will not materially decrease the overall functionality of the Fivetran Product during the applicable subscription term (the "Performance Warranty"). Fivetran will use reasonable efforts to correct a verified breach of the Performance Warranty reported by Customer. If Fivetran fails to do so within a reasonable period of time after receipt of Customer's warranty report, then either party may terminate the applicable Order Form as it relates to the non-conforming Fivetran Product, in which case Fivetran will issue a pro rata refund to Customer for any prepaid subscription fees equal to the terminated portion of the applicable subscription term. To receive these remedies, Customer must report a breach of warranty in reasonable detail within 30 days after discovering the issue in the Fivetran Product. These procedures are Customer's exclusive remedies and Fivetran's sole liability for breach of the Performance Warranty, except that if breach of the Performance Warranty constitutes a material breach of this Agreement, then Customer may terminate this Agreement in accordance with Section 7.2.

8.3 Trial Products and Pre-commercial Features. From time to time, Customer may have the ability to use a Trial Product or new features on an alpha test, beta test or similar basis ("Pre-commercial Features"). Pre-Commercial Features are optional and will be identified as such so that Customer may decide whether to opt in. Either party may terminate Customer's use of Trial Products and Pre-Commercial Features at any time for any reason. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TRIAL PRODUCTS AND PRE-COMMERCIAL FEATURES ARE PROVIDED "AS IS", WITHOUT ANY WARRANTIES, REPRESENTATIONS, CONDITIONS, INDEMNITIES, SERVICE LEVEL COMMITMENTS, OR SUPPORT OR OTHER OBLIGATIONS, AND FIVETRAN DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, WITH RESPECT THERETO.

8.4 DISCLAIMERS. FIVETRAN DOES NOT WARRANT THAT THE FIVETRAN PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE FIVETRAN PRODUCTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 8, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE FIVETRAN PRODUCTS AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS" AND FIVETRAN DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NOTWITHSTANDING ANYTHING HEREIN, FIVETRAN IS NOT RESPONSIBLE OR LIABLE FOR ANY THIRD PARTY PLATFORMS. CUSTOMER IS SOLELY RESPONSIBLE FOR TESTING ANY ON-PREM SOFTWARE BEFORE USING IT IN A LIVE ENVIRONMENT, THE PROTECTION OF ITS DATA AND INFORMATION THROUGH INSTALLATION OF THE MOST RECENT COMPUTER VIRUS DETECTION PROGRAMS, AND THE TIMELY CREATION OF BACK-UP COPIES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, FIVETRAN DOES NOT WARRANT AND EXPRESSLY DISCLAIMS THAT ANY ON-PREM SOFTWARE LICENSED WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, AND THE RESULTS OF USING THE ON-PREM SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS. FIVETRAN SHALL NOT BE LIABLE FOR ANY DAMAGE (INCLUDING FOR LOSS OR CORRUPTION OF DATA), OR RESPONSIBLE FOR RESTORATION OF SUCH DATA, IN EACH CASE TO THE EXTENT SUCH DAMAGE RESULTS FROM CUSTOMER'S INSUFFICIENT TESTING OF ANY ON-PREM SOFTWARE PRIOR TO DEPLOYMENT IN A LIVE ENVIRONMENT.

9 INDEMNIFICATION

9.1 By Fivetran. Fivetran will defend any claims, actions and demands brought by third parties (collectively, “Claims”) against Customer to the extent that the third party expressly asserts that the Fivetran Product (excluding Customer Data) infringes such third party’s trademark, issued patent, or copyright, or Fivetran misappropriated such third party’s trade secrets in the development of the Fivetran Product (a “Fivetran IP Claim”). Fivetran will indemnify Customer for any damages finally awarded against Customer (or any settlement approved by Fivetran) in connection with any such Fivetran IP Claim. The foregoing obligations do not apply with respect to portions or components of the Fivetran Product (i) made in whole or in part in accordance with Customer specifications, (ii) in the case of On-Prem Software, that are modified by or on behalf of Customer after delivery by Fivetran, (iii) that are combined with other products, processes or materials where the alleged infringement relates to such combination, (iv) in the case of On-Prem Software, where Customer continues the allegedly infringing activity after being notified thereof or after being provided an update that would have avoided the alleged infringement, or (v) where Customer’s use of the Fivetran Product is not strictly in accordance with this Agreement. If the use of the Fivetran Product by Customer has become, or in Fivetran’s opinion is likely to become, the subject of any Fivetran IP Claim, Fivetran may, at its option and expense (x) replace or modify the Fivetran Product to be non-infringing, provided that such modification or replacement contains substantially similar features and functionality, (y) obtain for Customer a license to continue using the Fivetran Product, or (z) if neither of the foregoing is commercially practicable, terminate this Agreement or the applicable Order Form and provide Customer a pro rata refund of any prepaid subscription fees equal to the terminated portion of the applicable subscription term.

9.2 By Customer. Customer will defend any Claims against Fivetran where the third party expressly asserts that the Customer Data or its use: (a) violates any applicable laws or regulations; or (b) infringes such third party’s trademark, issued patent or copyright, or Customer misappropriated such third party’s trade secrets in the collection, transmission or processing of the Customer Data ((a) and (b), a “Customer Data Claim”). Customer will indemnify Fivetran for any damages finally awarded against Fivetran (or any settlement approved by Customer) in connection with any such Customer Data Claim.

9.3 Process. The indemnified party will promptly notify the indemnifying party of any Claim subject to indemnity as set forth above (provided that the failure to do so will not relieve the indemnifying party of its obligations above except to the extent that its ability to conduct the defense thereof is materially prejudiced thereby), the indemnifying party will have the sole and exclusive authority to defend and/or settle any such Claim (provided that it may not settle or compromise any Claim or make any admission of liability without the indemnified party’s prior written consent, which will not be unreasonably withheld, unless it unconditionally releases the indemnified party of all related liability), and the indemnified party will reasonably cooperate with the indemnifying party in connection with such defense and settlement.

10 LIMITATION OF LIABILITY

10.1 NO CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY OR ITS AGENTS AND SUPPLIERS (INCLUDING THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND SUPPLIERS) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES OR LOSS OF PROFITS, BUSINESS OPPORTUNITY, ANTICIPATED GOODWILL, REVENUE, DATA OR DATA USE, WHETHER FORESEEABLE OR NOT AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



10.2 DIRECT DAMAGES. THE AGGREGATE, CUMULATIVE LIABILITY OF EACH PARTY (INCLUDING ITS AFFILIATES AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS AND SUPPLIERS) UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO FIVETRAN OR A FIVETRAN PARTNER FOR THE FIVETRAN PRODUCT GIVING RISE TO THE LIABILITY DURING THE TWELVE MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM ("ORDINARY CAP").

10.3 EXCLUDED LIABILITIES. NOTWITHSTANDING THE FOREGOING IN SECTIONS 10.1 AND 10.2 ABOVE, LIABILITY IS NOT LIMITED FOR THE FOLLOWING: (A) EACH PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (B) INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (C) FIVETRAN'S INDEMNIFICATION OBLIGATIONS FOR FIVETRAN IP CLAIMS, AND (D) CUSTOMER'S INDEMNIFICATION OBLIGATIONS FOR CUSTOMER DATA CLAIMS (THE "EXCLUDED LIABILITIES").

10.4 SUPER CAP. NOTWITHSTANDING THE FOREGOING, FIVETRAN AND ITS AFFILIATE'S AGGREGATE, CUMULATIVE LIABILITY FOR A BREACH OF ITS OBLIGATIONS IN SECTIONS 4 (CONFIDENTIALITY) OR 5 (SECURITY MEASURES), THAT RESULTS IN THE UNAUTHORIZED DISCLOSURE OF CUSTOMER DATA BY FIVETRAN, WILL NOT EXCEED TWO TIMES (2X) THE ORDINARY CAP WITH RESPECT TO THE FIVETRAN PRODUCT GIVING RISE TO THE LIABILITY ("SUPER CAP").

10.5 NON CUMULATIVE LIABILITY. IN NO EVENT WILL FIVETRAN BE LIABLE FOR THE SAME EVENT UNDER THE ORDINARY CAP AND THE SUPER CAP. SIMILARLY, THOSE CAPS WILL NOT BE CUMULATIVE; IF THERE ARE ONE OR MORE CLAIMS SUBJECT TO EACH OF THOSE CAPS, THE MAXIMUM TOTAL LIABILITY FOR ALL CLAIMS IN THE AGGREGATE SHALL NOT EXCEED THE SUPER CAP.

10.6 TRIAL PRODUCTS, FREE PLANS, AND PRE-COMMERCIAL FEATURES. NOTWITHSTANDING ANYTHING HEREIN, FIVETRAN'S AGGREGATE LIABILITY WITH RESPECT TO TRIAL PRODUCTS, FREE PLANS, AND PRE-COMMERCIAL FEATURES WILL NOT EXCEED \$100.

11 MISCELLANEOUS

11.1 No Agency; No Third Party Rights. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect whatsoever to any third party. For the avoidance of doubt, there are no third party beneficiaries under this Agreement.

11.2 Notices. All notices under this Agreement must be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested to each party at its respective address provided on the then current Order Form.

11.3 Enforceability. If any provision of this Agreement is adjudicated invalid or unenforceable, the remaining provisions will remain in full force and effect and this Agreement will be amended to the minimum extent necessary to achieve, to the maximum extent possible, the same legal and commercial effect originally intended by the parties. To the extent permitted by applicable law, the parties waive any provision of law that would render any clause of this Agreement prohibited or unenforceable in any respect.



11.4 Force Majeure. If the performance of this Agreement or any obligations (other than payment obligations) hereunder is prevented or interfered with by any act or condition beyond the reasonable control of a party hereto, including without limitation, acts of God, unusually severe weather, war, invasion, riot or other civil unrest, government laws, orders or embargoes, strikes or lockouts, that party upon giving prompt notice to the other party shall be excused from such performance during such occurrence.

11.5 Assignment. This Agreement may not be assigned by either party without the other party's consent, whether by operation of law or otherwise; provided that either party may assign this Agreement to its (a) Affiliate or (b) successor in the event of a merger, acquisition or sale of all or substantially all of the assets of such party related to this Agreement, unless the successor is a competitor of the other party. Any other purported assignment shall be void.

11.6 Integration; Order of Precedence. This Agreement is the complete statement of the mutual understanding of the parties and, except for a previously negotiated and agreed upon Master Subscription Agreement with Fivetran, supersedes and replaces all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. The parties agree that any term or condition stated in Customer's purchase order or in any other Customer's order documentation is void, even if accepted by Fivetran or executed by the parties after the Effective Date. In the event of a conflict or ambiguity between the provisions of the main body of this Agreement (including its Exhibit(s)), any Order Form, and any Exhibit to an Order Form, the provisions of the Order Form will take precedence, followed by any Exhibit to an Order Form, then followed by the main body of this Agreement (including its Exhibit(s)).

11.7 Amendment; Counterparts. No supplement, modification, or amendment of this Agreement shall be binding, unless executed by a duly authorized representative of each party. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. This Agreement may be executed by written signature or electronically and delivered in multiple counterparts, including facsimile, PDF, or other electronic counterparts, all of which will constitute one and the same instrument and agreement. From time-to-time, Fivetran may modify this Agreement. Unless another agreement between the parties supersedes this Agreement, any modifications made by Fivetran to this Agreement become effective upon renewal of the then-current subscription term or entry into a new Order Form.

11.8 Governing Law and Jurisdiction; Fees. This Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws provisions. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act. Any legal action relating to this Agreement must be brought in the federal or state courts in San Francisco or Alameda Counties, California. The parties hereby accept generally and unconditionally the jurisdiction, resolution method, and venue noted above. The prevailing party is entitled to recover all reasonable fees, costs and expenses of enforcing its rights, including reasonable attorneys' fees.

11.9 Interpretation. For purposes hereof, "including" means "including without limitation".



11.10 Export Compliance, International Trade Laws. Fivetran Products may be subject to laws and regulations related to international transactions, including export controls, import controls, and trade sanctions administered or enforced by the United States and other applicable jurisdictions. Customer acknowledges and agrees that it will comply with all applicable export controls, import controls, trade sanctions, and all other applicable international trade laws, regulations and/or any other relevant restrictions in Customer's use of the Fivetran Products, including that Customer will not, export or re-export, directly or indirectly, the Fivetran Products in violation of applicable law, permit access to or use of any Fivetran Products in Afghanistan, Belarus, Russia and Venezuela (collectively, "Designated Jurisdictions") or any country where such access or use is subject to a trade embargo or prohibition, and that Customer will not use Fivetran Products in support of any controlled technology, industry, or goods or services, or any other restricted use, without having a valid governmental license, authority, or permission to engage in such conduct. Customer will not submit to any Fivetran Product any data controlled under the U.S. International Traffic in Arms Regulations. Each party further represents that it (and with respect to Customer, each User and / or Affiliate accessing the Fivetran Product) is (1) not located in a country or jurisdiction subject to a trade embargo or comprehensive sanctions relevant to this Agreement, (2) not named on any governmental or quasi-governmental denied party or debarment list relevant to this Agreement, and (3) is not owned directly or indirectly by persons whose aggregated interest in such party is 50% or more and who are named on any such list(s).

11.11 Government Terms. Fivetran provides the Fivetran Products or Professional Services, including related software and technology, for ultimate federal government end use solely in accordance with the terms of this Agreement. If Customer is an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Fivetran Products, Professional Services, or any related Documentation of any kind, including technical data, software, and manuals, is restricted by the terms of this Agreement. All other use is prohibited and no rights than those provided in this Agreement are conferred. The Fivetran Products were developed fully at private expense.