



MASTER SUBSCRIPTION AGREEMENT

Customer:	Address:	State of Incorporation:	Effective Date:

This MASTER SUBSCRIPTION AGREEMENT (the "Agreement") is entered into as of the Effective Date, by and between you and any Affiliates (as defined below) ("Customer") and Productboard, Inc. ("Productboard"), a Delaware corporation with offices at 333 Bush Street, 20th Floor, San Francisco, CA 94104. Customer and Productboard may be referred to herein individually as a "Party" and collectively as the "Parties."

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

For purposes of this Agreement, capitalized terms used herein shall have the meanings set forth in this Section or the meanings otherwise given to them in the main body of this Agreement or its Exhibits:

"Account(s)" means an account enabling a User to access and use the Subscription Services through User login credentials.

"Affiliate" of a Party means any entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Party. For purposes of this definition, the "control" of an entity means the direct or indirect ownership or control of more than 50% of the voting interests of such entity.

"AI Content" means Customer Property that is uploaded in Productboard ("Input") and used by Productboard AI, together with the output generated and returned by Productboard AI based on the Input ("Output"). For clarity, AI Content includes both Input and Output.

"Authentication Key" means any access key, application key or authentication key necessary for utilizing an Authorized API.

"Authorized API" means the application programming interfaces developed and provided by Productboard that permit Customer to access certain functionality provided by the Subscription Services.

"Beta Services" means the features and/or functionality of the Subscription Services that may be made available to Customer to try at its option at no additional charge for a period of time and which are clearly designated as beta, pilot, limited release, non-production, early access, evaluation, labs or by a similar description.

"Confidential Information" means all confidential and proprietary information of a Party ("Disclosing Party") disclosed to the other Party ("Receiving Party"), whether orally or in writing, or otherwise accessed by the Receiving Party, that is either marked or designated as confidential at the time of disclosure to the Receiving Party, or that a reasonable person should consider confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. Productboard's Confidential Information shall include the Productboard Property and the terms of this Agreement and all Order Forms and Statements of Work (if applicable). Notwithstanding the foregoing, Confidential Information shall not include any information that the Receiving Party can show: (i) is or becomes generally known to the public without breach of any obligation owed



to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party (excluding patentable subject matter which is not subject to this exclusion); or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. Confidential Information does not include Customer Property unless Productboard accesses such Customer Property.

“Customer Property” means any content (including text, images, illustrations, charts, tables and other materials) uploaded or supplied to the Subscription Services by Customer, either directly or indirectly (for example, through an integration with a Third Party Product).

“Documentation” means all documentation and other instructional material made available by Productboard regarding the use of the Subscription Services.

“End-Users” means any person or entity other than Customer or Users with whom Customer or Users interact using the Subscription Service. For clarity, End-Users may mean the Customer’s own customers.

“Order Form” means an ordering document for Services purchased from Productboard that has been executed hereunder by the Customer (or, in the case of an online transaction, which automatically applies to the Customer in order to access the Subscription Services) and approved by Productboard.

“Personal Data” means any information relating to an identified or identifiable natural person that relates to, describes, is capable of being associated with, or could be linked, directly or indirectly, with a particular natural person.

“Productboard AI” means any feature(s) or functionality made available by Productboard that utilizes artificial intelligence, machine learning, or similar technologies.

“Productboard Property” means (i) the Subscription Services, (ii) the Documentation, (iii) Productboard’s intellectual property, and (iv) all content and other materials and software supplied by Productboard in connection with, or used by Productboard in providing, any Services.

“Professional Services” means fee-based setup, implementation, configuration, and training, not including the Subscription Services or Productboard AI (as applicable) that Productboard provides pursuant to an Order Form and which may be detailed in an attached document (e.g. a statement of work) describing the Professional Services if necessary (“Statement of Work”).

“Services” means the products and services that are ordered by Customer through a link or via an Order Form, including the Subscription Services and/or Professional Services, but in all cases excluding Beta Services.

“Subscription Services” means the software services and platform provided by Productboard, including (i) the web and other user interfaces, applications, and software provided to Users and End-Users, (ii) the Authorized APIs and (iii) any modifications, updates, derivative works, optional modules, custom or standard enhancements, updates, and upgrades to or of any of the foregoing.

“Subscription Term” means the subscription period set forth in the applicable Order Form during which Productboard agrees to provide the Subscription Services to Customer. For self-service Customers, the Subscription Term is monthly.

“Third Party Products” means any third party applications, integrations, systems, or services used by Customer, but not supplied by Productboard, that are designed to interoperate with the Subscription Services (for example,



third-party ticketing and email services from which the Subscription Services can import Customer Property or SatisMeter (if applicable)).

"Users" means all users that are authorized to access Customer's Account on the Subscription Services, including "Makers" and "Contributors."

2. Services

(a) Subscription Services

(i) *Provision of Subscription Services.* Subject to the payment of all applicable Fees and for the applicable Subscription Term, Productboard hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive right to access and use the Subscription Services in accordance with the terms of this Agreement, applicable laws, and all Order Forms.

(ii) *Order Forms.* Each Order Form for Subscription Services will describe terms related to, and limitations on use of, the Subscription Services, including, to the extent applicable, Fees, the Subscription Term, the number of and/or class of permitted Users and the permitted scope of use of the Subscription Services, and any additional paid features or functionalities Customer shall receive with respect to the Subscription Services.

(iii) *Platform Guidelines.* Customer hereby acknowledges that it will at all times comply with, and ensure that all of its Users and End-Users comply with, the platform guidelines set forth at www.productboard.com/platform-guidelines, which are hereby incorporated into this Agreement by reference (the "Platform Guidelines").

(iv) *Service Level Agreements.* The Service Level Agreement with Productboard ("SLAs") is located here: <https://www.productboard.com/legal/sla/>. The SLAs are incorporated by reference herein and are part of this Agreement.

(v) *Trials.* If Customer registers for a trial for the Subscription Services or a Subscription Upgrade ("Trial"), Customer will be subject to Productboard's Evaluation Agreement located here: <https://www.productboard.com/evaluation-agreement/>.

(vi) *Third Party Products.* Customer or its Users may choose to use the Subscription Services with certain Third Party Products. Use of Third Party Products is subject to Customer's agreement with the relevant provider of such Third Party Products or their terms and conditions and are not governed by, or subject to, the terms of this Agreement. Productboard will have no liability for Customer's or its Users' use of Third Party Products, including their security, functionality, privacy practices, operation, availability, or interoperability or how the Third Party Products or their providers use Customer Property (including Personal Data). By enabling or otherwise using a Third Party Product with the Subscription Service, Customer hereby authorizes Productboard to exchange Customer Property with the Third Party Product on Customer's behalf. To the fullest extent permitted by applicable law, Productboard is not responsible for any Third Party Product's or their provider's use of any exported information (including Customer Property). Productboard makes no guarantees that any specific Third Party Products shall be supported or available for use with the Subscription Services.

(b) Professional Services

(i) *Scope.* Productboard will perform the Professional Services set forth in an Order Form executed by the Customer or a separate Statement of Work approved and agreed to by Productboard, which shall include and/or specify a description of the Professional Services to be provided to Customer and the applicable Fees and payment terms.



(ii) *Customer Cooperation.* Customer acknowledges and agrees that Productboard's ability to timely deliver the Services is dependent upon Customer's ongoing cooperation and assistance. Accordingly, Customer will supply to Productboard, on a timely basis, all information, materials, and assistance reasonably necessary for Productboard to perform the Professional Services described in an Order Form or Statement of Work (as applicable). Customer will also appoint and actively manage the key roles identified in the Statement of Work relating to such Order Form. Productboard's period of performance shall be reasonably extended to account for any delays resulting from Customer's failure to fully comply with the foregoing. Productboard will not be held liable or provide a refund if Customer chooses not to use the Services during the Subscription Term.

(iii) *Staffing.* Productboard shall be responsible for staffing decisions with respect to employees, partners, or contractors utilized in the performance of any Service(s) under this Agreement, and shall have the right at any time to delegate, subcontract, remove or replace any of its personnel, partners or contractors assigned to perform any Services under this Agreement. Productboard will be responsible for the acts or omissions of its employees and contractor personnel and any delays caused by the reassignment or replacement thereof.

3. Fees and Payment Terms

(a) *Invoices and Payment.* By providing a credit card or other payment method accepted by Productboard ("Payment Method") for the Services, Customer agrees that Productboard is authorized to charge to the elected Payment Method all applicable Fees when due, and any other charges Customer may incur in connection with Customer's use of the Services. Customer is responsible for ensuring that payment information and primary contact information for billing, notices, and renewals is up-to-date at all times. If Productboard does not collect a Payment Method from Customer at the time of purchase, Productboard will invoice Customer for the charges at the email address on file with Productboard. Customer will pay all invoiced amounts within thirty (30) calendar days of the invoice date. Unless otherwise specified in an Order Form, Customer will pay all Fees on an annual, prepaid basis. Overdue invoices are subject to a finance charge of 1.5% per month or the maximum permitted by law, whichever is lower, plus all expenses of collection. Fees are quoted and payable in United States dollars. Payment obligations are non-cancellable and Fees paid are non-refundable, except as otherwise expressly set forth in this Agreement.

(b) *Subscription Changes.* Customer will pay Productboard all fees specified in or otherwise incurred pursuant to an Order Form ("Fees") in accordance with this Section 3 and the applicable Order Form. If Customer adds additional Subscription Services or otherwise upgrades its tier of Subscription Services during a Subscription Term (a "Subscription Upgrade"), any incremental Fees associated with such Subscription Upgrade will be prorated over the remaining period of the then-current Subscription Term, charged to Customer and due and payable in accordance with Section 3(a). If Customer wishes to (i) reduce the number of paid-for Users under the applicable Subscription Term or (ii) downgrade to a lower Subscription plan, Customer must provide Productboard with written notice (email acceptable) at least thirty (30) days prior to the end of the then-current Subscription Term; and Productboard will reflect such reduction and/or downgrade in the next applicable Subscription Term via an executed Order Form. Productboard will not process Subscription reductions or downgrades mid-Subscription Term.

(c) *Subscription Overages.* If Customer's usage of the Subscription Services exceeds the previously purchased usage levels ("Overage"), Productboard will notify Customer of its Overage by email. In the event Customer does not decrease or correct its Overage to the previously purchased usage level or does not respond to the notice within thirty (30) days from the date the notice was sent, Productboard may charge Customer for the



Overage. The invoice reflecting the Overage will be paid by Customer in accordance with Section 3(a) of this Agreement and will reflect the prorated amount due as of the date of notice to the Customer.

(d) *Taxes.* Customer is solely responsible for the payment of all taxes, assessments, tariffs, duties, or other fees imposed, assessed, or collected by or under the authority of any governmental body arising from Productboard's provision of the Services hereunder (collectively, "Taxes"), except any taxes assessed upon Productboard's net income. If any withholding is required by law, Customer will pay Productboard any additional amounts necessary to ensure that the net amount that Productboard receives, after any such withholding, equals the amount Productboard would have received if no withholding had been applied. Upon request, Customer will provide documentation showing that the withheld amounts have been paid to the relevant taxing authority. If Productboard is required to directly pay Taxes related to Customer's use or receipt of any Services, Customer agrees to promptly reimburse Productboard for any amounts paid by Productboard.

(e) *Credits.* Productboard may, at its sole discretion, choose to offer credits for the Subscription Services in various ways, including but not limited to, coupons, promotional campaigns, and referrals for Productboard services such as training. Productboard reserves the right to award credits at its sole discretion. Credits have no monetary or cash value and can only be used by Customer to offset Customer's subsequent payments of Fees for the Subscription Services. Credits may only be applied to Fees due for the Subscription Services specifically identified by Productboard when issuing the credit. Credits can only be used by the Customer and are non-transferable. To the extent that Customer has been awarded credits, unless the instrument (including any coupon) states an earlier expiration date, credits shall expire and no longer be redeemable twelve (12) months from the date the credit was issued.

4. Proprietary Rights

(a) *Customer Property.* As between Customer and Productboard, Customer retains all rights, title, and interest in and to the Customer Property, including all patent, copyright, trade secret, trademark or other intellectual property rights embodied in or related to the Customer Property. Except as expressly set out in this Agreement, no right, title, or license under any Customer Property is granted to Productboard or implied hereby, and for any Customer Property that is licensed to Productboard, no title or ownership rights are transferred to Productboard with such license. Customer is solely responsible for Customer Property, including its content and accuracy, and for backing up Customer Property.

(b) *Productboard Property.* As between Productboard and Customer, Productboard retains all right, title, and interest in and to the Productboard Property, including all patent, copyright, trade secret, trademark or other intellectual property rights embodied in or related to the Productboard Property. Except as expressly set out in this Agreement, no right, title, or license under any Productboard Property is granted to Customer or implied hereby, and for any Productboard Property that is licensed to Customer, no title or ownership rights are transferred to Customer with such license.

(c) *Licenses to Productboard.* Customer hereby grants Productboard a limited, non-exclusive, non-transferable (except in connection with the permitted assignment of this Agreement), and royalty-free license to access and use the Customer Property made available to Productboard or any of its Affiliates solely as necessary for Productboard to provide the Services and/or Beta Services to Customer pursuant to this Agreement. Additionally, Customer hereby grants Productboard a non-exclusive, revocable license to use Customer's trademarks and logos to identify Customer as a subscriber of the Services; provided that, Customer may revoke such consent in writing at any time in its sole discretion. By submitting to Productboard any unsolicited



suggestions, enhancement requests, comments, feedback or other input relating to the Services ("Feedback"), Customer, its Users and End-Users (as applicable) hereby grant to Productboard a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate such Feedback into the Services in any manner. Additionally, where Customer chooses to enable or use Productboard AI, Customer hereby grants Productboard a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use AI Content for product development, training, and improvement, unless Customer has opted-out of such use via settings in the Subscription Services.

(d) *Usage Information*. Customer hereby grants Productboard a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use the data concerning Customer's, its Users' or End Users' use of the Services and/or Beta Services, in an aggregated and anonymous manner, for purposes including but not limited to compiling statistical and performance information related to the operation of the Services and/or Beta Services, improving the Services and/or Beta Services, and developing additional offerings (the aggregated and anonymized information created by Productboard being the "Usage Information"). The foregoing shall not limit, in any way, Productboard's confidentiality obligations as set forth in Section 6 of this Agreement. Customer agrees that Productboard may make such Usage Information publicly available, provided that (i) such Usage Information does not incorporate any Customer Property and (ii) such use does not identify Customer or any Users or End Users either directly or indirectly. Productboard shall retain all intellectual property rights in Usage Information from the date that such rights arise.

5. Data Privacy and Security

(a) *Transfer of Personal Data*. To the extent that Personal Data originates from a User or End-User in the EEA, as further described in the DPA, Productboard will ensure that, pursuant to (i) the EU Regulation 2016/679 and any applicable national laws made under it; and (ii) the Swiss Federal Act of 19 June 1992 on Data Protection (as may be amended or superseded), if Personal Data is transferred to a country or territory outside of the EEA (a "non-EEA country"), then such transfer will only take place if: (i) the non-EEA country in question ensures an adequate level of data protection based on a decision by the European Commission; (ii) one of the conditions listed in Article 46 or 49 of the GDPR (or its equivalent under any successor legislation) is satisfied; or (iii) the Personal Data is transferred on the basis of binding corporate rules.

(b) *Data Processing Agreements*. The Data Processing Agreement with Productboard ("DPA") applicable to the Services is located here: <https://www.productboard.com/dpa>. The DPA is incorporated by reference herein and is part of this Agreement.

(c) *Security Measures*. Productboard implements and maintains the security standards located at: <https://www.productboard.com/security-standards>.

6. Confidentiality

(a) *Confidentiality*. During the term of this Agreement and for a period of three (3) years thereafter, each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of a like kind (which in no event shall be less than a reasonable degree of care); provided that a Receiving Party may disclose Confidential Information of the Disclosing Party with Disclosing Party's consent or to its Affiliates, officers, directors, employees, subcontractors, agents or prospective financing sources or acquirers who need to know such information in connection with this Agreement and who are bound by written agreements requiring the protection of such Confidential Information that are at least as protective of the Confidential Information as the



terms of this Agreement. Each Party also agrees not to use any Confidential Information of the other Party for any purpose other than for the purposes of performing its obligations and/or exercising its rights and permissions under this Agreement, in each case consistent with the terms and conditions hereof. This Section 6 shall supersede any non-disclosure agreement by and between Customer and Productboard entered prior to the Effective Date that would purport to address the confidentiality of Confidential Information and such agreement shall have no further force or effect with respect to either Party's Confidential Information.

(b) *Compelled Disclosure*. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

(c) *Return of Confidential Information*. At any time upon the request of the Disclosing Party, the Receiving Party will destroy all Confidential Information of the Disclosing Party, including all copies thereof and notes and other materials incorporating such Confidential Information, whether in physical or electronic form; provided, however, the Receiving Party shall not be required to return or destroy electronic copies that are automatically stored in accordance with Receiving Party's generally applicable backup policies and which are not reasonably accessible by the Receiving Party ("Backup Media"). All Backup Media shall remain subject to the obligations set forth herein, notwithstanding the expiration or termination of this Agreement, so long as it remains undeleted.

(d) *Remedies*. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies are inadequate.

7. Warranties; Disclaimers

(a) *Mutual Warranties*. Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.

(b) *Productboard Warranties*. Productboard warrants that it has implemented industry standard technical measures and updates the Subscription Services periodically to prevent the introduction of software viruses, worms, logic bombs, Trojan horses or other code, files, or scripts intended to do harm to the Subscription Services. These warranties shall not apply to non-conformities, errors, or problems caused by acts within the control of Customer or any of its Users or End-Users, or arising from Customer's negligence or improper use of the Subscription Services, from the Customer Property, from unauthorized modifications made to the Subscription Services, from use of the Subscription Services in an unsupported operating environment or manner, or that arises from Customer's or any third party's software or systems (including Third Party Products).

(c) *Customer Warranties*. Customer warrants that (i) it will not use the Subscription Services for unlawful purposes or in a manner that infringes or otherwise violates the rights of any third party, (ii) its use of the Services is in compliance with applicable laws, and (iii) that it is legally entitled to transfer and/or upload the Customer Property to the Subscription Services.

(d) *Disclaimer*. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BUT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (1) THE SERVICES ARE PROVIDED "AS-IS"; (2) NEITHER PARTY MAKES ANY ADDITIONAL WARRANTY, CONDITION, REPRESENTATION, UNDERTAKING OR GUARANTY OF ANY KIND TO THE OTHER PARTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, (3) EACH PARTY



HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, REPRESENTATIONS, UNDERTAKINGS AND GUARANTIES, INCLUDING, WITHOUT LIMITATION, ANY WITH RESPECT TO TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND (4) PRODUCTBOARD'S LIABILITY UNDER ANY IMPLIED OR STATUTORY WARRANTY, CONDITION, REPRESENTATION, UNDERTAKING OR GUARANTY WHICH CANNOT BE LEGALLY EXCLUDED IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF SUPPLYING THE SERVICES AGAIN. PRODUCTBOARD EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF ITS CUSTOMER'S OR USERS' USE OF THE SERVICES.

(e) *Beta Services*. If Productboard makes Beta Services available to Customer, Customer may choose to try such Beta Services in its sole discretion at no charge. Beta Services are provided "AS IS" and Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms that will be presented to Customer. Beta Services are not considered "Subscription Services" under this Agreement for purposes of Section 7 (Warranties; Disclaimer) and Section 8(a) (Indemnification by Productboard); however, all restrictions, Productboard's reservation of rights and Customer's obligations concerning the Subscription Service, and use of any Third Party Products shall apply equally to Customer's use of Beta Services. Productboard may discontinue Beta Services at any time in its sole discretion.

8. Indemnification

(a) *Indemnification by Productboard*. Productboard will defend and pay Customer, its employees, directors and officers (the "Customer Indemnified Parties") from and against any and all amounts finally awarded by a court (collectively, "Losses") against any Customer Indemnified Party as a result of any claim brought by a third party ("Third Party Claim") against a Customer Indemnified Party alleging that the use of the Subscription Services in accordance with the terms and conditions of this Agreement infringes any patent, copyright, trademark or trade secret right of such third party (an "Infringement Claim"). Without limiting the foregoing, in the event that any portion of the Subscription Services is likely to, in Productboard's sole opinion, or does become the subject of an Infringement Claim, Productboard may, at its option and expense: (i) procure for Customer the right to continue using the allegedly infringing item, (ii) substitute a functionally equivalent non-infringing replacement for such item, (iii) modify such item to make it non-infringing and functionally equivalent, or (iv) terminate the Agreement and any outstanding Order Forms and refund to Customer prepaid unused Fees for the infringing items. Productboard shall have no liability for any Infringement Claim to the extent arising from (1) the Customer Property, including Customer's use or supply to Productboard of any Customer Property; (2) use of the Subscription Services in combination with any software, hardware, network or system not supplied by Productboard if the alleged infringement relates to such combination; (3) any modification or alteration of the Subscription Services (other than by Productboard); (4) Customer's violation of applicable law or third party rights; or (5) Customer's failure to comply with any material provision of this Agreement.

(b) *Indemnification by Customer*. Customer will defend and pay Productboard, its employees, directors and officers (the "Productboard Indemnified Parties") from and against any and all Losses against any Productboard Indemnified Party, arising from any Third Party Claim against a Productboard Indemnified Party (i) alleging that any Customer Property or Customer's use of the Services beyond the license granted in this Agreement infringes, violates or misappropriates any patent, copyright, trademark or trade secret right of any third party or (ii) arising from Customer's breach of the Platform Guidelines.



(c) *Indemnification Conditions.* The Parties' obligations under this Section 8 are contingent upon the indemnified party (i) giving prompt written notice to the indemnifying party of any claim subject to indemnification under this Section 8, (ii) giving the indemnifying party sole control of the defense or settlement of the claim, and (iii) cooperating in the investigation and defense of such claim(s). The indemnifying party shall not settle or consent to an adverse judgment in any such claim that adversely affects the rights or interests of the indemnified party without the prior express written consent of the indemnified party, which shall not be unreasonably withheld. The rights and remedies set forth in this Section 8 are the sole obligations of the indemnifying party and exclusive remedies available to the indemnified party in the event of an applicable Third Party Claim.

9. Limitation of Liability

(a) *Limitation of Liability.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY'S AND THEIR AFFILIATES' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH SUCH CLAIM OR CAUSE OF ACTION AROSE ("LIABILITY CAP"). THE FOREGOING LIMITATION APPLIES EVEN IF A PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

(b) *Exclusion of Consequential and Related Damages.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY AND THEIR AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOST PROFITS, LOSS OF USE OR DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE FOR ANY LOSS, DAMAGE OR INCONVENIENCE SUFFERED BY THE OTHER PARTY OR BY ANY THIRD PERSON, TO THE EXTENT THAT SUCH LOSS, DAMAGE OR INCONVENIENCE IS CAUSED BY THE FAILURE OF SUCH OTHER PARTY TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

(c) *Exceptions.* The following are not subject to the limitation in Section 9(a) and the exclusions in Section 9(b): (i) obligations to pay for Subscription Services or taxes set forth in Section 3, (ii) a Party's indemnification obligations set forth in Section 8 (Indemnification), (iii) claims set forth by a data subject in accordance with applicable laws, and (iv) damages directly resulting from a Party's gross negligence, willful misconduct, or fraud, separate and distinct from a cause of action for a breach of this Agreement.

10. Term and Termination

(a) *Term of Agreement.* This Agreement commences on the Effective Date and shall remain in effect until terminated in accordance with Section 10(c).

(b) *Term of Subscriptions.* Customer's access to the purchased Subscription Services shall commence on the start date specified in the relevant Order Form and continue for the Subscription Term specified on such Order Form. At the expiration of each Subscription Term, the Subscription Term for all purchased Subscription Services will automatically renew for the same period as the renewing Subscription Term, unless either Party elects to not renew by notifying the other Party in writing at least thirty (30) days before such renewal. Productboard may increase Fees at renewal by providing Customer with prior written notice of such increase. Any promotional pricing offered in a previous Subscription Term is one-time only and does not apply for a renewal Subscription



Term. For clarity, pricing for a renewal Subscription Term will be based on Productboard's pricing in effect at the time of the applicable renewal.

(c) *Termination.* Either Party may terminate this Agreement and/or any Order Form by providing written notice to the other Party only in the event the other Party materially breaches any of its duties, obligations or responsibilities under this Agreement and fails to: (i) cure such breach within thirty (30) days after written notice to the breaching Party specifying the breach, or (ii) if the breaching Party is incapable of curing such breach within thirty (30) days, provide the other Party with a reasonable plan to cure such breach within ten (10) days after the effective date of such notice and thereafter curing such breach in accordance with such plan.

(d) *Effect of Termination.* Unless otherwise set forth in this Agreement, Customer's access to the Services, and Productboard's obligation to provide the Services, shall immediately cease upon the effective date of termination of all applicable Order Forms and/or this Agreement. Expiration or termination of one Order Form shall not affect any other Order Forms with the Customer or its Affiliates. In the event of termination of this Agreement, Customer shall be entitled to export Customer Property in accordance with Productboard's [export documentation](#) for up to sixty (60) days from the effective date of termination of all applicable Order Forms and/or this Agreement. After such sixty (60) day period, Productboard will have no obligation to maintain or provide any Customer Property or restore any Customer workspaces and will thereafter, unless legally prohibited, delete all Customer Property within ninety (90) days from the effective date of termination of all applicable Order Forms and/or this Agreement.

(e) *Surviving Provisions.* The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 1, 3, 4, 6, 7(d), 8, 9, 10(d), 10(e), 11, and the Platform Guidelines. Termination or expiration of this Agreement shall not affect any obligation accrued or arising prior to such termination or expiration.

11. Miscellaneous Provisions

(a) *Relationship.* This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties, and Productboard will be considered an independent contractor when performing any Services hereunder.

(b) *Customer Affiliates.* An Affiliate of Customer may purchase Services subject to the terms of this Agreement by executing Order Forms with Productboard hereunder. By entering into an Order Form with Productboard hereunder, the Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto and Customer agrees that such Affiliate may take advantage of this Agreement between Productboard and Customer. Each Affiliate of Customer must have its own separate Productboard workspace that is independent and not linked to Customer's workspace. Notwithstanding the foregoing, Customer shall be fully responsible for all acts and omissions of its Affiliates hereunder and under any Order Form, including any acts and omissions that if performed by Customer would constitute a breach of this Agreement or an Order Form.

(c) *Entire Understanding.* This Agreement (including the DPA (if applicable), the Platform Guidelines and all Exhibits and Order Forms, which are incorporated herein by reference) constitutes the entire agreement between the Parties as to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of this Agreement. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form, the terms of such Order Form shall prevail. Notwithstanding any language to the contrary therein, all terms and conditions stated in any Customer purchase order or in any other ordering



documentation (excluding Order Forms) are hereby rejected. Such Customer terms will not be deemed incorporated into or form any part of this Agreement, and all such terms or conditions are null and void.

(d) *Modification; Waiver.* Except for Productboard's modification or update of the Documentation, the Subscription Services, any policies, or online terms referenced in this Agreement or as necessary to comply with applicable law, rules, or regulations, no modification of this Agreement, and no waiver of any breach of this Agreement or right under this Agreement, is legally binding against the other Party unless in writing and signed or electronically accepted by both Parties.

(e) *Governing Law; Venue.* Both Parties agree to the application of the laws of: (i) the State of California, United States if Customer is incorporated in the United States or any other jurisdiction not covered by 11(e)(ii)-(iii); (ii) England if Customer is incorporated in the United Kingdom; or (iii) Ireland if Customer is incorporated in the European Union; without regard to conflict of law principles. The exclusive jurisdiction and venue for each region shall be San Francisco, London, or Dublin, respectively. The United Nations Convention on Contracts for the International Sale of Goods does not apply to transactions under the Agreement.

(f) *Assignment.* Neither Party may assign, transfer or novate this Agreement any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other Party; provided, however, a Party may assign this Agreement in its entirety, together with all rights and obligations hereunder, without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets related to this Agreement. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

(g) *Notices.* Except for notification methods expressly permitted under the Platform Guidelines, all notices under this Agreement to Customer shall be in writing and shall be delivered to the addresses first set forth in the Order Form(s). Notices to Productboard shall be addressed to: Productboard, Inc., Attn: Legal Department, 333 Bush Street, 20th Floor, San Francisco, CA 94104, with a copy to legal@productboard.com. Either Party may change its address for notice by giving notice of such address change in the manner provided herein. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

(h) *Anti-Corruption and Anti-Bribery.* Each Party acknowledges and agrees that it has not received or been offered any illegal bribe, kickback, payment, gift or thing of value from the other Party employees, agent or representative in connection with this Agreement, other than reasonable gifts and entertainment provided in the ordinary course of business. Each Party will promptly notify the other Party if it offers or receives any such improper payment or transfer in connection with this Agreement.

(i) *Force Majeure.* Except for performance of a payment obligation, neither Party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, epidemics, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. In the event any of the foregoing events results in Productboard not being able to provide the Subscription Services for a period of more than thirty (30) days, then either Party may terminate the Agreement upon written notice to the other Party.



(j) *Export Control.* The Subscription Service and related technical data and services (collectively, "Controlled Technology") may be subject to the import and export laws of the United States, specifically the U.S. Export Administration Regulations (EAR), and the laws of any country where Controlled Technology is imported or re-exported. Customer agrees to comply with all applicable export and re-export control laws and regulations and will not export or re-export any Controlled Technology in contravention to U.S. law, nor to any prohibited country, entity, or person for which an export license or other governmental approval is required. All Controlled Technology is generally prohibited for export or re-export to Cuba, North Korea, Iran, Syria, Sudan, and any other country subject to relevant trade sanctions.

(k) *Severability.* If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

(l) *Equitable Relief.* The Parties recognize that a Party would suffer irreparable harm if the other Party breached its obligations under this Agreement and that monetary damages might not be adequate to compensate the non-breaching Party for any breach hereof. In the event of a breach or attempted breach of any of the provisions herein, the non-breaching Party, in addition to its other remedies, shall be entitled to seek injunctive relief in order to enforce performance or prevent any violation of the provisions of this Agreement.

(m) *Reseller Agreements.* To the extent Customer purchases Services from or through an authorized partner or reseller ("Reseller"), Customer's and its Users' access to and use of the Services will be governed by this Agreement, subject to this Section 11(m). Instead of Customer paying Fees to Productboard, Customer will pay applicable amounts to the Reseller as agreed upon between Customer and the Reseller and Reseller will pay Productboard the Fees set forth in the applicable Reseller Order (defined below). Customer's order details (e.g., scope of use, Subscription Term, and Fees) will be as stated in the order form placed by Reseller with Productboard on Customer's behalf ("Reseller Order"). The Reseller is responsible for the accuracy of such Reseller Order. Productboard may suspend or terminate Customer's rights to access and use the Services if it does not receive the corresponding payment from the Reseller. If Customer is entitled to a refund under this Agreement, Productboard will refund any applicable Fees to the Reseller and the Reseller will be solely responsible for refunding the appropriate amounts to Customer, unless otherwise specified. This Agreement is directly between Productboard and Customer and governs all use of the Services by Customer and its Users. Resellers are not authorized to modify this Agreement or make any promises, representations, warranties, or commitments on Productboard's behalf, and Productboard is not bound by any obligations to Customer other than as set forth in this Agreement. Productboard is not party to (or responsible under) any separate agreement between Customer and Reseller and is not responsible for the Reseller's acts, omissions, products or services. The amount paid or payable by the Reseller to Productboard for Customer's use of the applicable Services under this Agreement will be deemed the amount paid by and due from Customer to Productboard under this Agreement for purposes of Section 9(a).

IN WITNESS WHEREOF, the Parties' authorized signatories have duly executed this Agreement as of the Effective Date:



PRODUCTBOARD, INC.

[CUSTOMER NAME]

Signature:

Signature:

Print
Name:

Print
Name:

Title:

Title:

Date:

Date:
