

# CLOUD MARKETPLACE CONTENTSTACK MASTER AGREEMENT (US)

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**Last Updated: May 10, 2023**

## **Cloud marketplace Contentstack Master Agreement (US)**

This Cloud Marketplace Contentstack Master Agreement (“*Agreement*”) is made by and between Contentstack Inc. on behalf of itself and its affiliates (“*Contentstack*”), a Delaware corporation having offices at 315 Montgomery St., Suite 909, San Francisco, CA 94104, and the undersigned entity (“*Customer*”). This Agreement shall become effective upon the date of execution of the party to sign last (the “*Effective Date*”).

**BY ACCEPTING THE AGREEMENT, THE ENTITY IDENTIFIED AS “CUSTOMER” IN THE APPLICABLE ORDER FORM (“CUSTOMER”) (WHETHER ONLINE, ELECTRONIC DOCUMENT OR PAPER) AGREES TO THE TERMS AND CONDITIONS OF THIS MASTER AGREEMENT WITH CONTENTSTACK). IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MAY NOT AND MUST NOT ACCEPT THE AGREEMENT AND MAY NOT USE THE SAAS SERVICES.**

This Agreement, together with all Order Forms sets forth the terms under which Contentstack will license software to and/or perform services for Customer as described and defined herein. In consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Definitions.** Certain capitalized terms used in this Agreement shall have the meaning assigned to them as set forth herein.**1.1 Authorized Reseller:** the authorized reseller of Contentstack products that licensed Contentstack software to Customer under a separate agreement.**1.2 Confidential Information:** all non-public information disclosed by a party to the other party on or before the Effective Date and thereafter which: (a) is marked as “Confidential” or with a comparable legend if disclosed in written, graphic, machine readable or other tangible form; or (b) which should reasonably in good faith be treated as confidential or proprietary based on the nature of the information or the circumstance surrounding its disclosure (including Customer Data). Confidential Information does not include information which is: (i) generally known or publicly available, or which, hereafter through no wrongful act or omission on the part of recipient, becomes generally known or available; (ii) rightfully known to recipient at the time of receiving such information; (iii) furnished to recipient by a third party without restriction on disclosure; or (iv) independently developed by recipient without having relied on the Confidential Information of the disclosing party.**1.3 Customer Data:** all electronic content submitted by or on behalf of Customer into and for use in the Software and/or Services.**1.4 DPA:** for companies operating solely and exclusively in the United States and Canada, Contentstack’s data processing addendum located at <https://www.contentstack.com/legal/data-processing-addendum/>, and for all other companies, the data processing addendum located at <https://www.contentstack.com/legal/data-processing-addendum-emea-apac/> each of which are, as applicable, incorporated into, and form part of, this Agreement.

**1.5 Documentation:** the generally available end user documentation provided by Contentstack with the Software which are incorporated into, and form part of, this Agreement.

**1.6 Error:** a reproducible failure of the unmodified Software to conform to the specifications set forth in the Documentation, resulting in the inability to use, or material restriction in the use of, the Software.**1.7 Fee Adjustment:** the amounts due in addition to any License Fees, for Customer’s use of the Software that exceeds any limitations specified in an Order Form including the number of Users, bandwidth or number of instances.**1.8 Fees:** the License Fees and Service Fees.

**1.9 IPRs:** any and all intellectual property rights, including registered or unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patents, utility models, rights in designs, copyrights, moral rights, topography rights, database rights, trade secrets, trademarks, service marks, trade names, domain name rights, know-how, rights of confidence, or other intellectual property rights, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world from time to time.

**1.10 Internal Use:** use of the Software, Services, Documentation and Services Description for Customer’s general business use, solely for the benefit of Customer, but does not include use of the Software, Services, Documentation or Services Description to provide any software or services for the benefit of third parties.**1.11 License Fees:** the license fees set forth in the Order Form and any Fee Adjustments.**1.12 Losses:** any losses, liabilities, costs, expenses (including reasonable attorneys’ fees and expenses), penalties, judgments, settlement amounts and damages.**1.13 Order Form:** a Contentstack issued order form that describes the Software

licensed to Customer, and the Services purchased by Customer, and incorporates the terms of this Agreement.**1.14 Order Form Effective Date:** the effective date of each Order Form, as set forth in the applicable Order Form(s) (and if nothing is stated, shall be the last date executed by the parties of such Order Form).**1.15 Security Addendum:** Contentstack's Security Addendum located at <https://www.contentstack.com/legal/security-addendum/>, which is incorporated into, and forms part of, this Agreement.**1.16 Service Fees:** the fees payable for the Services, as set forth in the Order Form.**1.17 Services:** Contentstack's generally available services, as agreed upon in a relevant Order Form. A description of such Services may be found in the Services Description.**1.18 Services Description:** Contentstack's Services Description located at <https://www.contentstack.com/legal/services-description/> which is incorporated into, and forms part of, this Agreement.**1.19 SLA:** Contentstack's Service Level Agreement specified in the Services Description.**1.20 Software:** the generally available, commercially licensed software or Software as a Service, in binary form, set forth in the applicable Order Form(s), including all Updates thereto and the Documentation delivered to Customer hereunder. This does not include any software licensed to Customer by an Authorized Reseller.**1.21 Subscription Term:** the period of time the applicable licenses are valid, as specified in the Order Form (with the starting date of the Subscription Term referred to as "Subscription Start Date" in the Order Form). The initial term as set forth in the Order Form (and referred to as "Initial Subscription Term" in the Order Form) ("Initial Subscription Term") together with any renewal terms set out in the Order Form ("Renewal Term") are collectively referred to as the Subscription Term.**1.22 Update:** a major or minor release of the Software, or a fix or patch thereto, that Contentstack may make generally available to all customers, as further detailed in the Services Description.**1.23 User:** an individual who is authorized by Customer to use the Software on Customer's behalf, and to whom Customer (or Contentstack at Customer's request) has supplied a user identification and password. Users may include, for example, employees, consultants, contractors and agents of Customer and/or third parties who manage Customer's website or content (provided they are subject to confidentiality obligations in accordance with Section 9). Users shall be individual human beings, and shall not be, without limit, any form of bot, computer, AI or machine learning.**2. Software License and Restrictions.2.1 Software licensed.** Customer may license Software from Contentstack by entering into one or more Order Forms with Contentstack specifying such Software.

**2.2 Software Right to Use.** During the applicable Subscription Term, subject to this Section 2 and payment of the applicable License Fees, Contentstack grants to Customer a limited, world-wide, royalty-free, non-exclusive, non-sublicensable and non-transferable license to use the Software for Internal Use during the Subscription Term in accordance with the Documentation, subject to the limitations specified in the Order Form(s) ("**Permitted Purpose**").

**2.3 Software and Service Restrictions.** Except as expressly set forth in this Agreement, Customer shall not, directly or indirectly: (a) sublicense, resell, rent, lease, distribute, market, commercialize or otherwise transfer rights or usage in the Software or Services; (b) allow access or use of the Software and/or Documentation or any modified version or derivative work created by or for Customer for their own purposes or any reason other than for the Permitted Purpose; (c) provide the Software on a timesharing, service bureau, service provider or other similar basis; (d) remove, suppress, alter, destroy or modify any copyright, trademark or proprietary notice or markings in the Software or Documentation; (e) incorporate or merge the Software into another

software product, or otherwise access or use the Software and/or Documentation to create, modify or enhance any software or competing service; (f) disassemble, decompile, reverse engineer, make error corrections to the Software, or otherwise attempt to derive the structure, sequence or organization of source code, except as permitted by applicable law to achieve interoperability of the Software with the operation of other software or systems used by Customer; (g) modify, alter, adapt, recast, transform or otherwise prepare a derivative work of the Software and/or Documentation; (h) use the Software to store or transmit or authorize a third party to store or transmit malicious code, infringing, harassing, libelous or otherwise unlawful, illegal or tortious material, or to store or transmit material in violation of third-party privacy, intellectual property or proprietary rights; (i) otherwise use or access the Software or Services in breach of the Permitted Purpose, this Agreement, the Documentation, the Services Description, any applicable Order Form(s) and/or any applicable laws, rules and/or regulations; (j) copy any features, functions, or graphics of the Software and/or Documentation for any purpose; (k) use the Software, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for external publication without Contentstack's prior written consent; (l) permit or allow access or use of the Software, Services or Documentation by any third party, or permit or allow any third party to use the Software, Services or Documentation for its own purposes or for the purposes of any of its own customers; (m) intentionally interfere with or disrupt the integrity or performance of the Software or any data contained therein; (n) disclose the results of any benchmark, performance tests, or results of the Software to any third party; (o) use the Software and/or Documentation for the purposes of developing, directly or indirectly, a product competitive to the Software; (p) attempt to gain unauthorized access to the Software or Services or its related systems or networks; (q) breach any security feature readily apparent in the Software or Services; (r) combine or use the Software or Services with any third party hardware, networks, code, data, or services that infringes any third party right; (s) use the Software to advocate, sell or promote any services, goods or activities that are illegal or otherwise creates liability for Contentstack; (t) use or access the Services in any manner that interferes with, degrades, or disrupts the integrity, quality or performance of any of Contentstack's technologies, services, systems or offerings (including the Services and Software); or (u) permit any third party to do any of the foregoing. The restrictions in this Section 2.3 shall apply to the whole, and any part(s) of, the Documentation and as applicable the Software and Services. Customer acknowledges that in order to use certain of the Services, Customer must provide all necessary third party software (e.g., operating system and web browser). Contentstack is not responsible for providing any such third party software, unless otherwise provided in this Agreement or an applicable Order Form. Services do not automatically include the provision of Software to be hosted under this Agreement. Customer must order such Software under an Order Form or from an Authorized Reseller. With respect to software licensed from an Authorized Reseller, Customer is solely responsible for ensuring that it has all necessary rights to use the software for the purposes contemplated herein.

**2.4 Customer Obligations.** Customer shall: (a) be solely responsible and liable for all Users' and affiliates compliance with the terms and conditions of this Agreement and the Documentation; (b) be solely responsible and liable for the accuracy, use, integrity, and legality of any information processed within the Software (or any part thereof) (including Customer Data and Customer Data Results) and the means by which Customer acquires, processes, and uses such information; (c) use the Software only in accordance with the Documentation, the Permitted Purpose and applicable laws, rules and/or regulations (including export, data protection and privacy laws,

rules and regulations); (d) prevent unauthorized access to or use of the Software (or any part thereof); (e) keep the Software and Documentation confidential in accordance with Section 9; and (f) notify Contentstack promptly of (i) any unauthorized use of, or access to, the Software or Services (or any parts thereof) of which it becomes aware, or (ii) any notice or charge of noncompliance with any applicable law, rule or regulation asserted or filed against Customer in connection with information processed, stored or used in the Software (or any part thereof).

**2.5 Access Credentials.** Customer shall be responsible for ensuring the security and confidentiality of all access credentials and acknowledges that it will be solely and fully responsible for all Losses incurred through, or in connection with, access to and use of the Software and Services under such credentials. Customer agrees that User accounts may only be reassigned to a new individual replacing a User who will no longer use the Software and Services.

**3. Contentstack Services**  
**3.1 Services Offered.** Customer may purchase Services from Contentstack by entering into one or more Order Forms with Contentstack specifying such Services. The Services are for Internal Use only.  
**3.2 Services.** If purchased in an Order Form and paid for in accordance with Section 4, Contentstack will provide the Services. Where relevant, the Order Form will specify the number of hours or days of Services that will be made available by Contentstack. The Services shall be valid for the Subscription Term under the corresponding Order Form under which the Services are purchased. Any unused Services will not be subject to any credit or refund and will not be carried forward.  
**3.3 Conditions and Exclusions.** The Services are subject to the following conditions and exclusions, as well as any additional conditions and exclusions set forth in the Services Description or Documentation and any applicable Order Form: (a) Customer will designate a point of contact for the Services who will serve as an escalation point for Contentstack and assist in scheduling and providing Customer resources, as required for Contentstack to perform the Services; (b) Customer remains responsible and liable for project management. Contentstack is not responsible for providing management of Customer projects or implementation as part of the Services, but may provide recommendations to Customer; (c) Customer or its applicable implementation services provider will remain solely responsible and liable for any testing, development, configuration, implementation or similar steps required for commercial deployment of the Software; (d) Contentstack's provision of the Services does not include any consulting services, including any hands-on development, configuration or implementation of the Software; (e) the Services are provided on a non-exclusive basis; and (f) the restrictions set out in Section 2.3 shall apply to the Services and Services Description, as applicable. Nothing shall be construed as restricting or limiting Contentstack from providing the same or similar services to other customers.  
**3.4 Service Requirements.** Customer agrees that its participation and cooperation is critical for the success of the Services. Customer and its third party providers (provided they are subject to confidentiality obligations in accordance with Section 9), if any, will provide all necessary resources, access, data and information required for Contentstack to perform the Services. Customer will ensure its personnel and resources will be suitably skilled and made available to Contentstack in a timely and professional manner. Customer will use commercially reasonable efforts to have its third party provider's personnel and resources, if applicable, suitably skilled and available to Contentstack in a timely and professional manner. This includes, to the extent applicable to the Services: time for consultation, remote network access, access to data, logs, configuration builds

and production systems, provisioning of necessary data, reviewing work and working sessions with the Contentstack resource, optimizing data access performance and other performance aspects of Customer applications through tools and techniques mutually agreed by both parties, and such other responsibilities as set forth in the Services Description. Contentstack may rely upon any instructions, authorizations, approvals, data or other information provided by Customer or its third party provider, if applicable. Contentstack will be excused from performance of its obligations and the Services to the extent that such failure is attributable to Customer's or its third party provider's failure to provide timely and professional resources, access, data and/or information. Customer's time for completion of tasks and approvals and Customer resource availability may result in changes to the Services, timelines and Fees. Customer shall be responsible and liable for: (i) the acts and omissions of any third party provider that it uses in connection with the Services; and (ii) any software, data, information, goods and services that it uses in connection with the Services.

#### **4. Fees and Payments.**

**4.1 Payments & Fees for Reseller Purchases.** In the event Contentstack software is purchased hereunder through an Authorized Reseller, Customer's obligation to pay shall be as described in a separate agreement to pay such Authorized Reseller. Customer acknowledges, that in addition to all other remedies under law, the Authorized Reseller may be entitled to terminate licenses granted hereunder for breach of such separate agreement with Customer (e.g., a failure to pay for such licenses).

**4.2 Fees; Payment.** In consideration for the Software and/or Services licensed and/or provided by Contentstack under this Agreement pursuant to one or more Order Forms, Customer agrees to pay Contentstack the Fees as set forth on the applicable Order Forms. Except as otherwise provided in the Order Form, Fees are: (a) invoiced upon the Order Form Effective Date; (b) due within thirty (30) days from the date of Contentstack's invoice; (c) due on the first day of the Renewal Term with respect to renewal Fees; (d) based upon and limited by the metrics set forth in the Order Form; (e) non-refundable and non-creditable, except as expressly set forth in Sections 7.4, 8.1 and 10.1 of this Agreement; (f) payable in US dollars; and (g) exclusive of all taxes (for which Customer shall be responsible, except for taxes on Contentstack's net income). Customer agrees to provide Contentstack with complete and accurate billing and contact information. A service charge of 1.0% per month or the highest interest rate permitted by applicable law, whichever is lower, shall be applied to all amounts which are not paid when due under this Agreement and any Order Form(s), accruing from the due date. Customer shall not withhold or offset Fees due to Contentstack for any reason. Should Contentstack be required to use a collection agency or other means to collect payment due under this Agreement and/or any applicable Order Form(s), Customer agrees to pay reasonable collection agency fees or reasonable attorney's fees associated with such collection.

**4.3 Expenses.** If travel is agreed upon by the parties, Customer will pay or reimburse Contentstack for all reasonable travel and related expenses incurred by Contentstack personnel in performing Services. Expenses will be invoiced separately to Customer and due within thirty (30) days from invoice date.**4.4 Fees on Renewal.** Unless otherwise set forth in an Order Form, at the end of the Initial Subscription Term and each subsequent Renewal Term, the Subscription

Term will automatically renew. Contentstack reserves the right to modify the Fees in connection with any Renewal Term. Any price increases for renewals or extensions of the tier purchased will be calculated exclusive of any discounts.**4.5 Extension of License Fees.** Customer shall inform Contentstack if Customer exceeds the usage limits set forth in the Order Form, such notice to be provided within ten (10) business days of Customer becoming aware of such excess. In the event that Customer usage exceeds the applicable Customer limits set forth in the Order Form during the Subscription Term, Contentstack may, in its sole discretion, notify Customer of such overage and thirty (30) days after such notice shall adjust its invoice so that the License Fee is prorated from the date of such notice to the end of the then current Subscription Term.

**4.6 Tax Exempt.** If Customer is tax-exempt, Customer shall provide Contentstack with its tax-exemption number and certificate within five (5) business days after the Effective Date. Customer shall be responsible for any liability or expense incurred by Contentstack as a result of Customer's failure or delay in paying taxes due or if Customer's claimed tax exemption is rejected. If Customer is legally required to withhold tax from its payment of Fees to Contentstack, and/or to pay any equalization taxes, Customer agrees to gross up all Fees that are subject to such withholding tax and shall not be entitled to reduce the Fees on an Order Form by any equalization taxes, such that the net payment received by Contentstack is the full originally stated amount of such Fees.

**5. Proprietary Rights.****5.1 Contentstack IPRs.** Contentstack exclusively retains and will continue to exclusively retain all right, title and interest, including all related IPRs and all derivative works, in and to the Software, Documentation, Services, Services Description and Contentstack's Confidential Information, whether in machine-readable (source, object code or other format), printed or other form, including any and all performance data, usage data, machine learning, anonymized metadata, and anything developed or delivered by or on behalf of Contentstack under or connection with this Agreement and any Order Forms. All rights not expressly granted to Customer in this Agreement with respect to the Software or Services are reserved by, and for, Contentstack.

**5.2 Suggestions; Customer Data Results.** Customer is not obligated to provide Contentstack with any suggestions, enhancements, recommendations or other feedback relating to the Software or Services ("Suggestions"). Customer hereby grants to Contentstack a royalty-free, fully paid up, worldwide, transferable, sublicensable, irrevocable, perpetual right and license to use, copy, modify, analyze and distribute, including by incorporating into any software or services owned, licensed or provided by Contentstack (including the Software and Services), all Customer Data Results in anonymized and aggregated format and all Suggestions.

**5.3 Customer IPRs.** Customer exclusively retains and will continue to exclusively retain all right, title and interest in and to all IPRs embodied in or associated with Customer's Confidential Information and to any results generated by Customer using the Software and the Services ("Customer Data Results"), subject to Section 5.2.

**5.4 Customer Data and Customer Data Results.** Contentstack will have no liability or responsibility for Customer Data and Customer Data Results.

**5.5 Jointly Owned Intellectual Property.** No jointly owned IPRs are created by the parties under or in connection with this Agreement and/or any Order Forms.

## **6. Privacy and Security.**

**6.1 DPA.** The DPA shall apply to the processing of any Customer Personal Data (as such term is defined in the DPA). **6.2 Data Security.** Throughout the Subscription Term, Contentstack shall maintain security measures designed to protect the integrity of, and to prevent unauthorized access to, the Software and Customer Data as set forth in Security Addendum.

**6.3 Security Compliance; Security Terms.** Contentstack does not offer custom service offerings, and Contentstack is unable to apply different security terms to only Customer's account. Contentstack will not include one-off security terms or exhibits that are written with other services or applications in mind, or to generically cover broad services applications. Customer expressly agrees that any terms or conditions stated in Customer's additional security terms, or in any other of Customer's security exhibits are void and not legally binding.

**7. Term and Termination.** **7.1 Term.** This Agreement begins on the Effective Date and shall continue in full force and effect for the duration of any Subscription Term pursuant to a current Order Form. **7.2 Subscription Term.** Each Subscription Term shall commence on the date set forth in the relevant Order Form and automatically renew for subsequent Renewal Terms, unless terminated in accordance with Section 7.3. The expiration or termination of any individual Order Form shall not result in a termination of this Agreement but shall only result in the termination of such Order Form. The provisions of this Agreement relating to the effects of termination shall apply to each Order Form as an independent contract.

**7.3 Termination Rights.** If either party is in default of any material provision of this Agreement and/or any Order Form (including Sections 2.3 to 2.5 (inclusive), 3.3 and 3.4), and such default is not corrected (if capable of correction) within thirty (30) days of receipt of written notice, the other party shall have the right to terminate this Agreement and all Order Forms by providing written notice to the party in breach; such written notice shall specify in detail the alleged material breach. Either party shall have the right to immediately terminate this Agreement and all Order Forms in writing if the other party: (a) voluntarily or involuntarily becomes the subject of a petition in bankruptcy or of any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors which is not dismissed within one hundred and twenty (120) days; or (b) admits in writing its inability to pay its debts as they become due.

**7.4 Effect of Termination.** Upon expiration or termination of this Agreement or an Order Form as a whole: (a) the license(s) granted hereunder (excluding the license granted in Section 5.2), if any, shall immediately terminate and Customer shall immediately delete the Software and stop using the Software; (b) Contentstack's obligation to provide the Services will end immediately; (c) all unpaid Fees (including any unamortized amounts attributable to any equipment purchased by Contentstack to provide the Services to Customer) shall become immediately due and payable by Customer; and (d) each party shall, subject to Section 7.6 and the DPA, immediately return or destroy the other party's Confidential Information received hereunder in its possession or under its control. If an Order Form or this Agreement is terminated by Customer as a result of an



uncured confirmed material breach by Contentstack, Contentstack may refund to Customer any pro-rata pre-paid Fees for the period after the effective date of termination in connection with such material breach. The terms of Sections 1, 2.3, 2.4, 2.5, 3.3, 3.4, 4, 5, 7.4, 7.6, 8.3, 9, 10 to 12 (inclusive) shall survive termination or expiration of this Agreement and any Order Forms.

**7.5 Suspension.** In addition to any of its other rights or remedies: (a) if Customer's account is overdue in making payment of any Fees by more than thirty (30) days; and/or (b) if Contentstack is notified by an Authorized Reseller that Customer no longer has the necessary rights to use the Contentstack software for which Services are provided, in either case Contentstack reserves the right to suspend (as applicable) any licenses to use the software and/or the Services provided to Customer, without liability, penalty or further obligation to Customer, until such Fees are paid in full or Customer has the necessary rights to use the software, as applicable.

**7.6 Destruction of Data.** For thirty (30) days after the date of termination, Customer may request that Contentstack make available Customer Data for download, and either: (a) permanently delete or destroy Customer's accounts associated with the Services and all other Customer Confidential Information contained therein; or (b) provide to Customer or its designee, on a time-and-materials basis, any other Customer Confidential Information stored within the Services as of the time of termination, in a mutually agreed format and manner. After this thirty (30) day period, Contentstack will have no further obligations as it relates to Customer's accounts and Customer Confidential Information.

**8. Warranties; Disclaimers.**

**8.1 Software Warranty.** Contentstack warrants for the sole benefit of Customer that, during the Subscription Term, the Software shall perform materially in respects with the functional specifications set forth in the Documentation ("**Software Warranty**"). To the maximum extent permitted by law, this Software Warranty shall not apply to any Error resulting from and Contentstack shall not be liable for: (a) use of the Software in an operating environment other than as set forth in the Documentation; (b) Customer's failure to follow any reasonable instructions of Contentstack or in the Documentation; (c) use of the Software outside the terms and conditions of this Agreement, the Documentation and/or the Order Form, including the Permitted Purpose; (d) Customer's negligence, abuse, misuse or improper handling and/or use of the Software; (e) modification of or access to the Software or Customer Data by anyone other than Contentstack; (f) any software, third party applications or services that are not licensed by Contentstack; or (g) a Force Majeure Event. At Contentstack's election, during the Subscription Term, if Customer notifies Contentstack in writing of a breach of the Software Warranty within ten (10) days after Customer becomes aware of such breach, then Contentstack shall, at no charge: (i) respond within the times set forth in the SLA; (ii) use commercially reasonable efforts to make a correction available to the Software in accordance with the Services Description; or (iii) if such SLAs are not met, Contentstack shall remit service credits as set forth in the Services Description which shall be applied to the next invoice, or if this Agreement or Order Forms are terminated or expire without being renewed or upgraded then such service credits shall be remitted in the form of a refund credit. This Section 8.1 states Contentstack's entire liability and Customer's sole and exclusive remedy for a breach of the Software Warranty.

**8.2 Service Warranty.** Contentstack warrants for the sole benefit of Customer that, during the Subscription Term, Contentstack will perform the Services with due care and skill and in a professional and workmanlike manner ("**Service Warranty**"). This Service Warranty shall not

apply to any error or failure resulting from: (a) Customer's use of the Services other than as set forth in the Services Description; (b) Customer's failure to follow any reasonable instructions of Contentstack; (c) use of the Services outside the terms and conditions of this Agreement, the Services Description and/or the Order Form; (d) Customer's negligence, abuse, misuse or improper handling of the Services; (e) modification of the Services by anyone other than Contentstack; (f) an error or failure caused by any third party applications that are not licensed by Contentstack; or (g) a Force Majeure Event. At Contentstack's election, during the Subscription Term, if Customer notifies Contentstack in writing of a breach of the Service Warranty within ten (10) days after the applicable Services have been provided, then Contentstack shall re-perform such Services at no additional cost to Customer. This Section 8.2 states Contentstack's entire liability and Customer's sole and exclusive remedy for a breach of the Service Warranty.

**8.3 Disclaimer of Warranties.** EXCEPT AS SET FORTH IN SECTIONS 8.1 AND 8.2 AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, THE SOLE AND EXCLUSIVE WARRANTIES AND WARRANTY REMEDIES ARE SET FORTH IN SECTIONS 8.1 AND 8.2. ACCORDINGLY, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE SOFTWARE AND SERVICES (INCLUDING ALL FUNCTIONS, SAMPLES AND TOOLS) ARE PROVIDED ON AN "AS-IS" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, INCLUDING (A) ACCURACY OF CONTENT; (B) MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (C) NON-INFRINGEMENT; (D) NON-INTERFERENCE; OR (E) THAT THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED, TIMELY OR ERROR-FREE.

**9. Confidential Information.**  
**9.1 Obligations.** The parties each agree that, for a period of three (3) years after last receipt of the other party's Confidential Information, it will: (a) use the other party's Confidential Information only in connection with fulfilling its rights and obligations under this Agreement and applicable Order Form(s); and (b) hold the other party's Confidential Information in strict confidence and exercise due care with respect to its handling and protection, consistent with its own policies concerning protection of its own Confidential Information of like importance but in no instance with less than reasonable care, such due care including without limitation requiring its employees, professional advisors, consultants and contractors to execute non-disclosure agreements which are consistent with the terms and conditions of this Agreement and no less protective of each party's Intellectual Property Rights as set forth herein before allowing such third parties to have access to the Confidential Information of the other party.  
**9.2 Exceptions to Obligations.** Notwithstanding Section 9.1, either party may disclose the other party's Confidential Information to the extent required by law, provided the other party uses commercially reasonable efforts to give the party owning the Confidential Information sufficient notice of such required disclosure to allow the party owning the Confidential Information reasonable opportunity to object to, and to take legal action to prevent, such disclosure.  
**9.3 Equitable Relief.** The parties agree that the unauthorized release or disclosure of Confidential Information may cause irreparable injury, and that the parties may be entitled to seek injunctive relief against a threatened breach or continuation of any such breach and, in the event of such breach without posting of a bond, in addition to any other rights and remedies available in the event of breach of the confidentiality obligations under this Agreement.  
**10. Indemnity.**  
**10.1 Contentstack Intellectual Property Indemnification.** Subject to Section 10.2, Contentstack agrees

to indemnify Customer against any damages finally awarded against Customer including reasonable attorney's fees incurred in connection with a third party claim alleging that Customer's use of the unaltered Software in accordance with the Documentation, this Agreement and any applicable Order Form(s) infringes or misappropriates any third party U.S. or European Union member state's patent or copyright in the country designated for delivery of the Software in accordance with the terms of this Agreement; provided, that Customer: (a) provides prompt written notice of such claim to Contentstack specifying the nature of the claim in sufficient detail; (b) grants Contentstack the sole conduct of, or the right to settle, all negotiations and litigation arising from the claim; (c) provides to Contentstack all reasonable assistance and cooperation, including in connection with any negotiations and litigation; (d) immediately and continuously mitigates any and all Losses; and (e) does not compromise or settle such claim in any way or make any admissions with respect to such claim without Contentstack's prior written consent which must be provided by an authorized officer of Contentstack. In the event of a claim under Section 10.1 by a third party, Contentstack may, in its sole discretion, as Contentstack's entire liability and Customer's sole and exclusive remedy under Section 10.1: (i) revise the Software so that it no longer infringes or misappropriates as set forth above; (ii) obtain the right for Customer to continue using the Software; or (iii) terminate this Agreement upon thirty (30) days written notice and refund any pro-rata unused, pre-paid License Fees received by Contentstack.

**10.2 Indemnity Exclusions.** Notwithstanding the indemnity in Section 10.1, Contentstack shall have no liability for any claim, indemnification obligations, or Losses resulting from claims that arise from: (a) use of the Software (or any part thereof) outside the terms and conditions of this Agreement, the Documentation and/or the Order Form, including the Permitted Purpose; (b) a version of the Software other than the then-current version made available by Contentstack; (c) modification of the Software (or any part thereof) by anyone other than Contentstack; (d) combination, operation or use of the Software (or any part thereof) with any other products, software or data (including Customer Data) not supplied by Contentstack; (e) any claim made for any use of the Software (or any part thereof) outside of a valid Subscription Term; or (f) any claim for damages arising after Contentstack's notice to Customer that Customer should cease use of the Software in accordance with this Section 10.2.

**10.3 Customer Indemnity.** Customer will indemnify and hold Contentstack harmless against any Losses incurred or suffered by Contentstack in connection with, or as a result of, a third party claim arising out of, or in connection with (a) any breach of Sections 2 and/or 3 by Customer, its affiliates and/or Users; or (b) any claim that Customer Data and/or Customer Data Results (i) infringe and/or misappropriate any IPRs of any third party; (ii) infringe, violate, breach and/or misappropriate any other rights of any third party; and/or (iii) infringe, violate and/or breach any applicable laws, rules and/or regulations.

**10.4 Extent of Liability.** THIS SECTION 10 STATES THE ENTIRE LIABILITY OF CONTENTSTACK AND THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE SOFTWARE.

## **11. Limitations of Liability.**

**11.1 Aggregate Liability.** TO THE EXTENT NOT PROHIBITED BY LAW, EXCEPT FOR CUSTOMER'S LIABILITY ARISING UNDER OR IN CONNECTION WITH SECTIONS 2 AND 3 AND CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 4, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY, TOGETHER WITH ITS RESPECTIVE AFFILIATES, ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE DPA AND ALL ORDER FORMS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL NOT EXCEED IN THE AGGREGATE THE TOTAL PAYMENTS MADE BY CUSTOMER TO CONTENTSTACK (LESS ANY SERVICE CREDITS OR AMOUNTS REFUNDED OR CREDITED) IN THE TWELVE (12) MONTHS PRECEDING THE FIRST CLAIM MADE UNDER THIS AGREEMENT AND/OR ANY APPLICABLE ORDER FORM(S). CUSTOMER SHALL BE LIABLE FOR THE ACTS AND OMISSIONS OF ITS USERS AND AFFILIATES. IN NO EVENT SHALL CONTENTSTACK BE LIABLE FOR THE ACTS OR OMISSIONS OF ITS AUTHORIZED RESELLERS.**11.2 Disclaimer of Consequential Damages.** TO THE EXTENT NOT PROHIBITED BY LAW, EXCEPT FOR

CUSTOMER'S LIABILITY ARISING UNDER OR IN CONNECTION WITH SECTIONS 2 AND 3 AND CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 4, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ANY LOST PROFITS, REVENUE, OR DATA, INTERRUPTION OF BUSINESS OR FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN.**11.3 Invalidity.** The parties expressly agree that if any of the exclusions in Section 11.2 are found to be invalid, illegal or unenforceable by a court of

competent jurisdiction, a party's aggregate liability shall (to the extent permitted by applicable law) be subject to the financial limit set out in Section 11.1.**12. General****12.1 Publicity.**

Contentstack may include Customer's name and logo in customer lists on Contentstack's website and in marketing collateral. Customer also agrees to: (a) serve as a reference; (b) collaborate on press releases announcing or promoting the relationship; and (c) collaborate on case studies or other marketing collateral.**12.2 Governing Law; Venue.** This Agreement and the DPA shall be governed by and interpreted in accordance with the laws of the State of California without reference to its conflicts of law provisions. Neither the Uniform Computer Information Transactions Act nor the UN Convention on Contracts for the International Sale of Goods will apply to this Agreement or the DPA. Both parties hereby irrevocably consent to the personal and exclusive jurisdiction of the state and federal courts located in or having jurisdiction over San Francisco, California. The substantially prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses incurred.**12.3 Assignment.** Neither party may assign this Agreement or the DPA, by operation of law or otherwise, in whole or in part, without the other party's prior written consent (which will not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either party may assign this Agreement, the DPA and any Order Forms, in whole or in part without the consent of the other Party in the event of a reorganization, merger or sale of substantially all the assets of the assigning Party. A change of control shall be deemed an assignment by operation of law for the purposes of this provision and such change in control shall allow Contentstack to modify the terms of this Agreement, the DPA and any Order Form(s) in whole or in part. Subject to the foregoing, this Agreement and the DPA will be binding on, inure to the benefit of, and be enforceable by and against the parties and their

respective successors and permitted assigns. Contentstack may assign, subcontract or delegate the performance of Services to third parties (including as set out in the DPA) without Customers prior written consent but will remain liable to Customer for the delivery of those Services. Customer consents to Contentstack's use of third party contractors and individuals contracted through such third party contractors to provide the Services. Any assignment not in conformity with this Section 12.3 shall be null and void.

**12.4 Notices.** Excluding regular business communications and notices applicable to Contentstack's general customer base, any notices required under this Agreement shall be given in writing, shall reference this Agreement and any applicable Order Form(s), and shall be deemed to have been delivered and given: (a) when delivered personally; (b) three (3) business days after having been sent by registered or certified mail/post, return receipt requested; or (c) one (1) business day after deposit with a commercial overnight courier, with written verification of receipt. All communications shall be sent to the addresses set forth on the signature page hereto, or to such other address as may be designated by a party by giving written notice to the other party. Notices shall be addressed to the Legal Department of each party.

**12.5 Force Majeure.** Except for any payments due hereunder, neither party shall be responsible for delay or failure in performance caused by any act, event, omission or accident beyond its reasonable control, including strikes, lock-outs or other industrial disputes (other than one involving Contentstack's employees), ISP failure or delay, denial of service attacks, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, pandemic or epidemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors ("**Force Majeure Event**"), nor shall any such delay or failure be considered a breach of this Agreement, the DPA or any Order Form(s).

**12.6 Compliance with Law.** The Software is subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. With respect to Software licensed to Customer hereunder, Customer agrees to comply fully with all laws and regulations of the U.S. and other countries to assure that neither the Software, nor any direct products thereof are: (a) exported, directly or indirectly, in violation of such laws, either to any countries that are subject to U.S. embargo or export restrictions or to any end user who is prohibited from participating in the U.S. export transactions by any federal agency of the U.S. government; or (b) intended to be used for any purpose prohibited by such laws, including nuclear, chemical or biological weapons proliferation. Further, Customer agrees to comply with all applicable anti-bribery and anti-corruption laws in all business related to this Agreement, including the U.S. Foreign Corrupt Practices Act and the UK Anti-Bribery Act, if applicable.

**12.7 US Government Restrictions.** Customer acknowledges that the Software consists of "commercial computer software" and "commercial computer software documentation" as such terms are defined in the Code of Federal Regulations. No government procurement regulations or contract clauses or provisions shall be deemed a part of any transaction between the parties unless its inclusion is required by law, or mutually agreed in writing by the parties in connection

with a specific transaction. Use, duplication, reproduction, release, modification, disclosure or transfer of the Software is restricted in accordance with the terms of this Agreement.**12.8**  
General. No modification or waiver of any provision of this Agreement or the DPA shall be binding upon a party unless made in writing and signed by both parties. No modification of this Agreement, the DPA or any term or condition therein shall result due to either party's acknowledgment or acceptance of the other party's forms (e.g., purchase orders, statements of work, acknowledgment forms, etc.) containing different or additional terms and conditions unless expressly and specifically accepted and executed by both parties by means of a writing which expressly references this Section 12.8. A waiver on one occasion shall not be construed as a waiver of any right on any future occasion. No delay or omission by a party in exercising any of its rights hereunder shall operate as a waiver of such rights. In performing their respective duties under this Agreement and the DPA, the parties will operate as independent contractors and neither party is the legal representative, agent, joint venturer or employee of the other party for any purpose whatsoever. The headings of the Sections of this Agreement are for convenience only and shall not be of any effect in construing the meaning of the Sections. In the event that it is determined by a court of competent jurisdiction that any provision of this Agreement and/or the DPA is invalid, illegal or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of this Agreement and the DPA shall remain in full force and effect and bind the parties according to its terms. To the extent any provision cannot be enforced in accordance with the stated intentions of the parties, such terms and conditions shall be deemed not to be a part of (as applicable) this Agreement or the DPA. This Agreement and the DPA, including all Order Forms, may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Agreement, the DPA and all Order Forms, constitute the entire and exclusive agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, any marketplace terms, conditions, or agreements, and communications between the parties with respect to such subject matter. The parties expressly agree that any terms or conditions stated in Customer's purchase order or in any other Customer order documentation (excluding Order Forms) are void. In the event of any conflict or inconsistency, the terms of this Agreement, the DPA, all Order Forms, and the current Order Form(s) shall prevail in all respects over the terms provided in Customer's purchase order or in any other Customer order documentation. The words including, include, in particular, for example and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions.