



# Terms of Skuid Service

This agreement governs the use of the Skuid service. By executing an order form and/or by using the Skuid service, you agree that you are authorized to bind the applicable customer to this agreement and are agreeing to be bound by the terms contained in this agreement. You should not use this service if you cannot comply with this agreement. This agreement is between you and Skuid, Inc. and/or its affiliates or subsidiaries as applicable.

## 1. Definitions

1. “Affiliate” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of such entity.
2. “Agreement” means these terms and conditions, including any Order Forms, whether written or submitted online, and materials available on the Skuid website ([www.skuid.com](http://www.skuid.com)) specifically incorporated by reference herein, including the Skuid Privacy Statement, Skuid documentation ([docs.skuid.com](http://docs.skuid.com)), Skuid Support terms ([www.skuid.com/support](http://www.skuid.com/support)) as such materials may be updated by Skuid from time to time in its sole discretion.
3. “Content” means the audio and visual information, documents, software, products, and services contained or made available to You in the course of using the Skuid Services.
4. “Data” means electronic data and information submitted by You and stored in the Data Platform, and available to be processed by the Skuid Services, not including Metadata.
5. “Data Platform” means the cloud or on-premises platform upon which Your Data resides, and certain application services with which the Skuid



Services interoperate. Examples of Data Platform include Customer-maintained data platforms as well as Salesforce.com, Amazon Web Services (“AWS”), Microsoft Azure, Oracle (on-premises or cloud), and SAP Hana (on-premises or cloud) data platforms.

6. “Data Processing Addendum” or “DPA” means the addendum drafted in compliance with the EU General Data Protection Regulation 2016/679 (“GDPR”), available upon request at [legal@skuid.com](mailto:legal@skuid.com), and incorporated herein by this reference. By signing this Agreement, or by an Affiliate signing an Order Form, Customer is agreeing to the terms of the DPA and each of its appendices. For the purposes of the Standard Contractual Clauses attached to the DPA, as applicable, Customer and its authorized Affiliates are each the data exporter, and Skuid is the data importer.
7. “Direct Competition” by You is strictly prohibited and means accessing the Skuid Services to (a) use Skuid Services for service bureau purposes or to build Your own commercial service or commercial business; build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Skuid Services, (c) copy any ideas, features, functions or graphics of the Skuid Services; (d) modify or make derivative works based upon the Skuid Services or the Content; (e) reverse engineer the Skuid Services or any component thereof; or (f) copy, frame, or mirror any part or Content of the Skuid Services other than for Your own internal business purposes.
8. “Effective Date” means the earlier of: (1) the date You sign an applicable Order Form; or (2) the date You click to accept the terms of this Agreement.
9. “Intellectual Property Rights” means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, licenses and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.



10. “Malicious Code” means computer viruses, worms, time bombs, Trojan horse software and other harmful or malicious code, files, scripts, agents, or programs.
11. “Metadata” means configuration data that describes how a Skuid application functions and how it is presented in the user experience for You.
12. “Order Form” means the form evidencing the initial subscription for the Skuid Services and any subsequent Order Forms submitted online or in written form, specifying, among other things, the number of subscriptions and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of the Order Form shall prevail.
13. “Purchased Skuid Services” means Skuid Services that You or Your affiliates purchase under an Order Form.
14. “Service Administrator” means those Users designated by You who are authorized to purchase Skuid Services subscriptions and to create User accounts and otherwise administer Your use of the Skuid Services.
15. “Skuid Credentials” means the username and password that uniquely identifies a User and allows that User to access and use the Skuid Services. Skuid Credentials are stored where the Skuid Services are installed.
16. “Skuid Data” means data and/or Metadata You create with the Skuid Services to define and display Your user interfaces, such as new Skuid Pages, Skuid Page Assignments or Skuid apps, and any customizations made to or with the Skuid Services. Skuid Data is stored where the Skuid Services are installed.
17. “Skuid Professional Services” or “Pro Services” means the professional services, if any, performed by Skuid for You to develop a custom



application or other solution as set forth in an applicable Statement of Work.

18. “Skuid Services” means the online, Web-based applications provided by Skuid that are ordered by You as part of Purchased Skuid Services, or under an Order Form, including any associated online or offline components, but excluding Third-Party Applications. Skuid Services include software, Content, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information made available to You by Skuid in providing the Skuid Services. Skuid Services are installed on either [Salesforce.com](https://www.salesforce.com) as a Salesforce managed application, on AWS as a Platform as a Service (PaaS) offering, or other third-party or proprietary platform as published by Skuid.
19. “Term” means the contract term, beginning on the Effective Date and ending on the Contract End Date, specified on the applicable Order Form and any extension or continuation thereof.
20. “Third-Party Applications” means online, Web-based applications and offline software products that are provided by third parties, interoperate with the Skuid Services, and are identified as third-party applications.
21. “User” or “Users” means an individual or individuals who are authorized by You to use the Skuid Services, for whom subscriptions to the Skuid Services have been purchased, and who have been supplied User identifications and passwords by You (or by Skuid at Your request). Users may include, but are not limited to, Your employees, consultants, contractors, and agents; or third parties with which You transact business.
22. “User Guide” means the online documentation for the Skuid Services, accessible through [docs.skuid.com](https://docs.skuid.com), as updated from time to time.
23. “We” or “Us” means Skuid.
24. “You” or “Your” means the company or other legal entity for which You are accepting this Agreement, and the Affiliates of that company or



entity and/or the individual entering this Agreement on behalf of such entity, as indicated by context.

## 2. General Terms

**YOU AGREE TO THE TERMS OF THIS AGREEMENT BY SIGNING THIS AGREEMENT OR AN ORDER FORM THAT REFERENCES THIS AGREEMENT. YOU ACKNOWLEDGE THAT AN ACTIVE SUBSCRIPTION TO A DATA PLATFORM SERVICE IS REQUIRED FOR USE OF THE SKUID SERVICES. THE PERSON SIGNING THIS AGREEMENT REPRESENTS THAT S/HE IS ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR LEGAL ENTITY, AND THAT S/HE HAS THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SKUID SERVICES.**

## 3. Free Plan

1. If You register on the Service or an Affiliate's website for a free plan of the Service, Skuid will make the applicable Service(s) available to Customer on a limited basis free of charge until the end of the free usage period for which You registered to use the applicable Service(s) or termination by Skuid in its sole discretion. Notwithstanding the foregoing, and for the avoidance of doubt, Skuid may modify or alter the terms of such free usage, including the duration of the term, number of permitted users or approved functionality, for which Skuid will provide notice. Additional trial terms and conditions may appear on Order Form, and such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Any free plan of the Service shall be provided AS-IS, with no representations or warranties of any kind. All such free usage is subject to the restrictions set forth in this Agreement, including, but not limited to, the restriction against using an API or in any other tool or method designed to mask multiple users or permit non-authenticated users in contravention of the user restrictions.

## 4. Purchased Skuid Services



1. Provision of Purchased Skuid Services. We shall make the Purchased Skuid Services available to You pursuant to this Agreement and the relevant Order Form(s) during the Term. You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.
2. Updates to Skuid Services. Skuid may update the Skuid Services in its sole discretion, with each update to be provided to You as is made available by Skuid to any of its customers. Updates that are required to bring You into compliance with any applicable laws will be provided at least thirty (30) days before compliance is required by such laws, or as soon as is practicable. Updates to the Skuid Services will be deemed part of the Skuid Services.
3. User Subscriptions. Unless otherwise specified in the applicable Order Form:
  1. Skuid Services are purchased as user subscriptions and may be accessed by no more than the specified number of Users of the subscription type(s) defined in the applicable Order Form(s);
  2. Additional user subscriptions may be added during the subscription term, the cost of which will be prorated for the remainder of the Term in effect at the time the additional user subscriptions are added. Pricing for additional subscriptions will be the same as the preexisting subscriptions, unless otherwise specified in the Order Form for the preexisting subscriptions;
  3. The added user subscriptions shall terminate on the same date as the preexisting subscriptions;
  4. User subscriptions are for designated Users and subscription user types and User subscriptions cannot be shared or used by more than one User;
  5. User subscriptions of one type may not be assigned to user subscriptions of another type as defined on the applicable Order



Form(s); and,

6. Subscriptions of the same user subscription type may be reassigned to new Users of the same user subscription type, replacing former Users who shall have no further use of the Skuid Services during the Term.

## 5. Use of the Skuid Services

### Skuid's Responsibilities

1. Skuid shall provide the Purchased Skuid Services only according to applicable laws and government regulations.
2. For Purchased Skuid Services, unless otherwise indicated on an Order Form, Skuid shall provide at no additional charge during the Term (i) online access to updates of the Skuid Services; and (ii) basic online support services, including community support webpages at [community.skuid.com](https://community.skuid.com), online help webpages and user documentation for the Skuid Services at [docs.skuid.com](https://docs.skuid.com).
3. To the extent applicable, Skuid will provide the relevant Support that Customer has purchased as defined and described at [skuid.com/support](https://skuid.com/support), which may be updated from time to time upon notice.
4. Skuid will maintain administrative and technical safeguards for protection, security, confidentiality, and integrity of Skuid Data and Skuid Credentials only when deployed on a cloud platform managed by Skuid. When Skuid is deployed on a platform managed by You or a third party, these safeguards are provided and managed by You or such third party, as applicable. Such safeguards include measures for preventing access, use, modification, or disclosure of Skuid Data and Skuid Credentials by anyone other than Customer's personnel and Skuid's personnel, except (a) to provide the Skuid Services and prevent or address service or technical problems, (b) as expressly permitted in writing by Customer, or (c) as compelled by law. To the extent that Skuid processes any Personal



Data (as defined in the DPA) on Customer's behalf in the provision of Skuid Services, the terms and conditions of the DPA shall apply.

#### **Your Responsibilities**

1. The Skuid Services are provided solely for Your benefit, and for the benefit of any parent, subsidiary or affiliate of Yours specified on an applicable Order Form(s).
2. You acknowledge that the Skuid Services may experience interruptions arising out of limitations, delays, and other problems commonly occurring in the use of the Internet, use of Your Data Platform, use of other cloud platforms, and use of computer communications. You acknowledge that Skuid is not responsible for damages, including, but not limited to, incidental or consequential damages arising from such interruptions.
3. You shall be responsible for maintaining security of Your Data on the Data Platform(s) that You access with the Skuid Services.

#### **Prohibited Uses. You may not:**

1. Make the Skuid Services available to any third party, except as expressly permitted herein or in an Order Form;
2. Access the Skuid Services in Direct Competition with Skuid, or permit access to the Skuid Services to a person or entity that You know or should reasonably know is in Direct Competition with Skuid;
3. Sell, resell, rent, or lease the Skuid Services;
4. Access the Skuid Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking, competitive or anti-competitive purposes;
5. Use the Skuid Services to store, transmit, or publish infringing, libelous, or otherwise unlawful or tortious material, material in violation of third-party privacy rights, personal information in violation of any applicable law, financial information of Your members or constituents, or





material containing Malicious Code;

6. Provide access to the Skuid Services to any user, parent, affiliate or subsidiary organized or existing under the laws of a country or territory embargoed by the United States.

#### **Usage Limitations.**

1. Skuid Services may be subject to other limitations as described in the applicable agreement between You and Your Data Platform provider(s) and/or specified in Your Data Platform provider(s) user guide, such as limits on disk storage space, or limits on the number of calls You are permitted to make against the application programming interface. Some Data Platform providers give real-time information to enable You to monitor Your compliance with such limitations.

## **6. Third-Party Providers and Skuid Services**

1. Data Platform. To access the Skuid Services, You acknowledge that You have agreed to the terms provided by Your Data Platform provider as detailed in the provider's applicable license or subscription agreement (the "Data Platform Agreement"). You shall be solely responsible for compliance with the terms and conditions of any such Data Platform Agreement.
2. Data Source. In order to use Skuid Services, You must configure access to data source(s) (eg. Salesforce, AWS, Oracle, Microsoft Dynamics, or other) as desired. You and/or Your data source provider(s) are responsible for ensuring proper data protection and security practices are implemented and maintained. Skuid shall not be responsible for any damages resulting from a data breach caused by Your data source provider or by Your failure to adhere to the terms and conditions of any applicable Data Platform Agreement. When Skuid is deployed on cloud platform managed by Skuid, in order to connect to and authenticate Your desired data source(s), and depending upon the authentication method



used, You may be asked to provide credentials, tokens, and/or keys to access the data sources, which, depending on Your elected admin configuration, will be stored in Skuid's managed platform in a strongly encrypted form.

3. Third Party Applications. If You install or enable Third-Party Applications for use with the Skuid Services, Skuid shall not be responsible for any disclosure, modification, or deletion of Data resulting from any such access by Third-Party Application providers. Most Data Platform services allow You to restrict such access by restricting Users from installing or enabling such Third-Party Applications for use with the Skuid Services.

## **7. Skuid Professional Services**

1. Engagement. When You request, Pro Services will be implemented through one or more Statements of Work entered into from time to time by You and Skuid. If You request additional services or modifications to the Pro Services that are outside the scope of the original SOW, Skuid will advise You of any additional cost and/or modifications to the Delivery Schedule. Each SOW will be numbered sequentially, will reference this Agreement, and will specify the Pro Services to be performed by Skuid.
2. Project Team. Each SOW shall detail the responsibilities and obligations of both You and Skuid and, unless the parties agree otherwise, shall identify the names and roles of each member of Your and Skuid's project teams.
3. Limited License. If You provide any of Your materials to Skuid, then You grant Skuid a non-transferable, non-exclusive, royalty-free license for the term of this Agreement to use Your material solely for the purpose of Skuid meeting its obligations to provide the Pro Services to You under this Agreement.
4. Skuid IP. You shall not receive any ownership interest in: (i) any ideas, concepts, designs, techniques, inventions, methods, or utilities



(collectively “Background IP”) used by Skuid in rendering Pro Services; or  
(ii) any discoveries or improvements to the Background IP, whether patentable or not, that are conceived of or reduced to practice by Skuid or by one or more Skuid employees or agents in the performance of services for You under this Agreement (“Inventions”). The Background IP and the Inventions shall be the exclusive property of Skuid to use, copy, adapt, expand, develop, publish, change, or sublicense.

5. Expenses. Customer shall reimburse Skuid for all reasonable travel expenses as approved in advance by Customer, or as noted in the applicable SOW.

## **8. Fees and Payment for Purchased Services**

1. User Fees. You shall pay annually in advance all fees specified in all Order Forms hereunder. The initial charges will be equal to the current number of total user subscriptions requested times the user subscription fee currently in effect. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars (ii) fees are based on the Skuid Services purchased and not actual usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of user subscriptions purchased cannot be decreased during the relevant term. User subscription fees are based on periods that begin on the subscription start date and every year anniversary or as otherwise mutually agreed upon and described on an Order Form.
2. Fees for Pro Services. Skuid shall be compensated for Pro Services performed under an SOW in accordance with the fee schedule set forth in the applicable SOW. Your payment, sign-off on project work or use of such Pro Services deliverables shall reflect Your approval that Pro Services were satisfactorily performed. Skuid shall be paid within thirty (30) days from date of invoice evidencing work completed by Skuid.
3. Invoicing and Payment. You will provide Skuid with valid and updated



credit card information; or a valid purchase order or alternative documents reasonably acceptable to Skuid. If You provide credit card information to Skuid, You authorize Skuid to charge such credit for all Skuid Services listed in the Order Form. Such charges shall be made annually in advance annually or as otherwise stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, Skuid will invoice You in advance and otherwise according to the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due on receipt.

4. **Billing Information.** You agree to provide Us with complete and accurate billing and contact information. This information includes Your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Service Administrator. You agree to update this information within thirty (30) days of any change to it. If the contact information You have provided is fraudulent, Skuid reserves the right to terminate Your access to the Skuid Services without notice, in addition to any other legal remedies.
5. **Suspension of Skuid Services and Acceleration.** If any amount that You or Your authorized reseller owes under this or any other agreement for Skuid Services is thirty (30) or more days overdue or ten (10) or more days overdue in the case of amounts authorized to be charged to Your credit card, Skuid may, without limiting other rights and remedies, accelerate Your unpaid fee obligations so that all such obligations become immediately due and payable, and/or suspend Skuid Services until such amounts are paid in full.
6. **Payment Disputes.** To receive an adjustment or credit for any billing errors, You must contact Skuid in writing within thirty (30) days of the invoice date of the invoice containing the amount in question. Skuid shall not exercise its rights under Section 8.5 (Suspension of Skuid Services) if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute.



7. Taxes. Unless otherwise stated, Skuid's fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, but not limited to, value-added, sales, use, or withholding taxes, assessable by any local, state, provincial, federal, or foreign jurisdiction (collectively, "taxes"). You are responsible for paying all taxes that may be associated with Your purchases hereunder. If Skuid pays or collects taxes for which You are responsible, any amount paid, plus all costs and expenses incurred by Skuid, relative to such taxes shall be invoiced to and paid by You. If anything supplied under or in connection with Pro Services constitutes a taxable supply for the purposes of the applicable goods and services tax law ("GST"), then Skuid may recover from You an amount on account of GST. The amount on account of GST is: (a) equal to the value of the supply calculated in accordance with the GST Law multiplied by the prevailing GST rate; and is payable: (b) at the same time and in the same manner as the recipient is required to pay or provide monetary consideration for the supply to which the additional amount relates but not before the supplying party issues the tax invoice; or (c) where the recipient is not required to pay or provide monetary consideration for the supply, upon issue of a tax invoice by the supplying party. The supplier of a taxable supply made in connection with this Agreement must issue a tax invoice for the supply in accordance with GST Law to the recipient of the supply.
8. Reconnection Fee. We reserve the right to impose a reconnection fee in the event (i) Your access to the Skuid Services is suspended because of nonpayment; or (ii) Your access to Your Data Platform(s) has been suspended, and thereafter You request access using the Skuid Services.

## 9. Proprietary Rights

1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, Skuid reserve all rights, title, and interest in and to the Skuid Services and the Intellectual Property Rights, including all related



Intellectual Property Rights. No rights are granted to You hereunder other than as expressly set forth herein. Skuid alone (and its licensors, where applicable) shall own all right, title, and interest, including all related Intellectual Property Rights, in and to Skuid's technology, content and the Skuid Services, and any ideas, suggestions, enhancement requests, feedback, recommendations, or other information (collectively, the "Ideas") provided by You or any other party relating to the Skuid Services. Skuid may, in its sole discretion, incorporate any Ideas into the Skuid Services. This Agreement is not a sale and does not convey to You any rights of ownership in or related to the Skuid Services, technology, or the Intellectual Property Rights owned by Skuid.

2. Ownership of Your Data. You will retain all rights, title, and interest in and to any Data, information, or materials provided by You, including Skuid Data.
3. Federal Government End Use Provisions. Skuid provides the Skuid Services, including related software and technology, for ultimate federal government end use solely according to the following: Government technical data and software rights related to the Skuid Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided according to FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data — Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Skuid to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.
4. Infringement. You will promptly notify Skuid if You learn of a violation of any of Skuid's Intellectual Property Rights. Skuid may, but will not be



obligated to, prosecute such violation at Skuid's expense and to retain the full amount of any sums recovered as damages. You will provide Skuid with reasonable cooperation in any such action at Skuid's expense. Provided, however, if any violation relates to Your or any of Your User's actions or failure to act, You shall be responsible for all expenses, including attorney fees, associated therewith as determined by a court of competent jurisdiction or other trier of fact, to the extent that such action is finally determined to have resulted from Your negligence or willful misconduct.

## 10. Confidentiality

1. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Without limiting the foregoing, Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, formulas, concepts, product plans and designs, and business processes disclosed by such party. Your Confidential Information shall include Your Data; Skuid's Confidential Information shall include the Skuid Services and all pricing terms. However, Confidential Information shall not include any information that (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 without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without the breach of any obligation owed to the Disclosing Party.





2. Protection of Confidential Information. Except as otherwise permitted in writing by the Disclosing Party, Confidential Information shall be received and maintained by the Receiving Party in the strictest confidence in accordance with applicable law, and shall not be disclosed to any third party. The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care) and shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors, and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Furthermore, neither party shall use such Confidential Information for any purpose other than those purposes specified in this Agreement.
3. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prompt prior notice of such compelled disclosure to allow the Disclosing Party a reasonable opportunity to contest the disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil or criminal proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.
4. Privacy and Disclosure. Skuid will not access Your networks or access or use any personal data or Your-sensitive business information under this Agreement, except when necessary in the course of providing Skuid Services or Pro Services, and Skuid will not review, use, process,





disclose, or otherwise handle such information. To the extent applicable for the activities contemplated under this Agreement, Skuid will comply with all applicable privacy and security laws to which it is subject, and will not, by act or omission, place You in violation of any applicable privacy or security law.

5. Communications from Skuid. Users may be asked whether or not they wish to receive marketing and other noncritical Skuid Services-related communications from Skuid from time to time. Users may opt out of receiving such communications at that time or at any subsequent time by changing their preference under Personal Setup. Note that because the Skuid Services is a hosted, online application, Skuid occasionally may need to notify all Users (whether or not they have opted out as described above) of important announcements regarding the operation of the Skuid Services.
6. Customer Reference; Trademark License. Each party may display on its website and in sales presentation collateral the company logo of the other party, and may identify Customer as a customer of Skuid in the ordinary course of business. Any other use of a party's logo shall be upon prior written approval only; however, Skuid and Customer agree to discuss Customer's participation in the Skuid Customer Reference Program which may include: (i) Skuid Customer Advisory board, (ii) Skuid Beta Release program, (iii) reference calls with other companies that are evaluating Skuid, and iv) print or video testimonials. Customer's approval to participate in the Skuid Customer Reference Program activities will not be unreasonably withheld.

## **11. Warranties and Disclosures**

1. Limited Warranty. Skuid does not guarantee or warrant that the Skuid Services will properly function with the software of any third party unless specifically so stated herein. Skuid warrants that the Skuid Services will perform substantially in accordance with the User Guide, so long as You



follow the instructions provided. The foregoing warranty is void if the failure of the Skuid Services is due to Your act or failure to act (including, but not limited to, using the latest version or updates made available to You at no cost by Skuid), the acts of others, or events beyond Skuid's reasonable control.

2. **Limitation of Warranty.** You understand and agree that the Skuid Services are provided “as is” and, other than as expressly stated in Section 11.1, Skuid disclaims all warranties of any kind, express or implied, including, without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement. Skuid makes no warranty or representation regarding the results that may be obtained from the use of the Skuid Services, regarding the accuracy or reliability of any information obtained through the Skuid Services, or that the Skuid Service will meet Your requirements, or be uninterrupted, timely, secure, or error free. Use of the Skuid Services is at Your sole discretion and risk. Except with respect to breach of Section 10 (Confidentiality) and Section 12 (Indemnification by Skuid), You will be solely responsible for any damage resulting from Your use of the Skuid Services. Except with respect to breach of Section 10 (Confidentiality), Section 11.1 (Limited Warranty) and Section 12 (Indemnification by Skuid), the entire risk arising out of use or performance of the Skuid Services remains with You.
3. **Warranty on Pro Services.** Skuid warrants and represents that it and its employees and agents have all training, skills, tools, and equipment necessary to competently perform the Pro Services described herein and that such Pro Services shall be performed in a timely, professional, and high-quality manner. To the extent permitted by law, Skuid makes no other warranties on Pro Services, whether written, oral, or implied including without limitation the implied warranties of merchantability and fitness for a particular purpose.
4. **Mutual Warranties.** Each party represents and warrants that (i) it has the



legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code.

## **12. Indemnification by Skuid**

1. Indemnification. Skuid will indemnify, defend, and hold You harmless against any claim, demand, suit, or proceeding (“Claim”) made or brought against You alleging that the use of the Skuid Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party. Skuid’s obligations in this Section 12 are void if You fail to (a) give prompt written notice of the Claim; (b) give Skuid sole control of the defense and settlement of the Claim (provided that Skuid may not, without Your prior approval, settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provided to Skuid all reasonable assistance, at Skuid’s expense.
2. Injunction. If an injunction is issued against Your use of the Skuid Services due to a covered infringement, or if in Skuid’s judgment any Skuid Services are likely to become the subject of a successful claim of infringement, Skuid may at its option and expense: (i) procure for You the right to use such services, or (ii) replace or modify such services so they become non-infringing, or if options (i) and (ii) are not available despite Skuid’s commercially reasonable efforts, (iii) terminate the subscriptions granted under this Agreement, disable Your access to the Skuid Services, and refund to You an amount equal to the amortized Subscription Fee paid by You for the remainder of the term.
3. Limitation. This Section 12 states Skuid’s sole liability to You, and Your exclusive remedy against Skuid for any type of Claim described in this Section. Skuid shall have no obligation to You to the extent a Claim arises from (i) any modification of the Skuid Services not performed by Skuid or (ii) any failure to use corrections or enhancements made available to You that would have rendered the Skuid Services non-infringing, or (iii) any use of the Skuid Services in combination with any product or information



not supplied or recommended by Skuid except where combination is required to utilize the Skuid Services.

### **13. Indemnification by You**

1. Indemnification. You will indemnify, defend, and hold harmless Skuid against any Claim made or brought against Skuid relating to (i) the content or use of Your Data, or (ii) Your use of the Skuid Services in violation of any term of this Agreement, provided that Skuid (a) promptly gives You written notice of the Claim; (b) gives You sole control of the defense and settlement of the Claim (provided that You may not, without Skuid's prior approval, settle any Claim unless the settlement unconditionally release Skuid of all liability); and (c) provide to You all reasonable assistance, at Your expense.

### **14. Limitation of Liability**

1. Limitation of Liability. Except with respect to a breach of Skuid's obligation of confidentiality or its indemnity obligations, in no event shall Skuid be liable for: (i) any special, indirect, incidental, exemplary, punitive, consequential damages, loss of revenues or loss or inaccuracy of Data or cost of procurement of substitute goods, services or technology, even if Skuid has been notified of the possibility of such damages; or (ii) damages in excess of the amount of fees paid by You under this Agreement during the 12 months prior to the event giving rise to the claim. The foregoing limitation of liability shall apply to any claim arising under or relating to this Agreement, the Skuid Services, Pro Services or any other services provided by Skuid under any theory of liability including contract, strict liability, indemnity, tort (including negligence), or otherwise. Limitation of liability for transfer, protection, storage, security, or confidentiality of Your Data is governed by Your applicable third-party Data Platform provider agreement.



2. Exclusion of Consequential and Related Damages. Except with respect to breaches of Section 10 (Confidentiality), Section 12 (Indemnification by Skuid), or Section 13 (Indemnification by You) in no event shall either party have any liability to the other party for any lost profits or revenues or for any indirect, special, incidental, consequential, cover or punitive damages however caused, whether in contract, tort or under any other theory of liability, and whether or not the party has been advised of the possibility of such damages. The foregoing disclaimer shall not apply to the extent prohibited by applicable law.

## **15. Terms and Termination**

1. Term of Agreement. This Agreement commences on the Effective Date and continues, unless earlier terminated, until the later of expiration or termination of all user subscriptions granted under an Order Form.
2. Renewals. Skuid charges and collects in advance for use of the Skuid Services. Unless otherwise set forth in an applicable Order Form, subscriptions will automatically renew for additional periods equal to the shorter of the expiring subscription term or one year, unless either party gives notice of nonrenewal at least thirty (30) days prior to the end of the Term, as it may have been previously extended. The renewal charge will be equal to the then-current number of total user subscriptions times the then-current, generally applicable subscription fee unless specified otherwise on an applicable Order Form.
3. Termination for Cause. A party may terminate this Agreement for cause:
  - (i) upon thirty (30) days written notice to the other party of a material breach, if the breach remains uncured at the expiration of such period, or
  - (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
4. Refund or Payment upon Termination. Upon any termination for cause by You, Skuid will refund any prepaid fees covering the remainder of the



Term of all subscriptions after the effective date of termination. Upon any termination for cause by Skuid, You will not be entitled to a refund of any prepaid fees. You will pay any unpaid subscription fees otherwise due as of the termination date, and You will pay any other outstanding balances owed to Skuid.

5. Return of Your Metadata. Skuid will provide Your Metadata to You upon request.
6. Surviving Provisions. All obligations relating to non-use and non-disclosure of Confidential Information, indemnity, limitation of liability, and such other terms which by their nature survive termination, will survive termination of this Agreement.

## **16. Miscellaneous Provisions**

1. Export Compliance. Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Skuid Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) You shall not permit Users to access or use the Skuid Services in violation of any U.S. export embargo, prohibition, or restriction, and (iv) You will not export, re-export, divert, transfer, or disclose any portion of the Skuid Services or any related technical information or materials, directly or indirectly, in violation of any applicable export law or regulation.
2. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third-party beneficiaries to this Agreement.
3. Non-solicitation. Neither party shall during the term of this Agreement and for a period of 1 year immediately following the termination of this Agreement, or any extension of it, for any reason, either directly or indirectly, knowingly recruit or solicit for employment any of the other



party's employees.

4. **Waiver and Cumulative Remedies.** No waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. A waiver of any provision of this Agreement by either party will not be construed as a waiver of any other provision of this Agreement, nor will such waiver operate as or be construed as a waiver of such provision respecting any future event or circumstance. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
5. **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.
6. **Notices.** If notice or demand is required or permitted to be given or served by either party to this Agreement to or on the other, the notice or demand must be given or served in writing and served personally or forwarded by certified or registered mail, return receipt requested, or by guaranteed overnight courier service, addressed to Skuid at 605 Chestnut Street, Suite 700, Chattanooga, TN 37450 or [dept.legal@skuid.com](mailto:dept.legal@skuid.com), or to You at the email address You have provided. The date of service of a notice served by mail or overnight courier service will be the date of receipt or refusal of receipt. Either party may change its address by written notice to the other.
7. **Governing Law and Jurisdiction.** This Agreement and the respective rights and obligations of the parties hereto shall be governed by and construed in accordance with the laws of the State of Tennessee and controlling United States law, without giving effect to choice of law principles. The parties hereto consent to the jurisdiction of the courts in Chattanooga, Tennessee.



8. Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
9. Attorney Fees. Should Skuid bring an action to enforce the payment terms of this Agreement and prevail, it shall be entitled to recover its reasonable attorneys' fees and costs from You.
10. Language and Headings. This Agreement has been prepared in the English language and such version shall be controlling in all respects and any non-English version of this Agreement is solely for accommodation purposes. The captions and headings appearing in this Agreement are for reference only and will not be considered in construing this Agreement.
11. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, Skuid may assign this Agreement in its entirety, without Your consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
12. Entire Agreement. This Agreement, including any Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement or any Order Form, shall be effective unless in writing and either signed or accepted





electronically by the party against whom the modification, amendment or waiver is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form, such Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in forms (such as purchase orders or invoices) provided by either party with preprinted or “boilerplate” language shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

13. Force Majeure. Except for Your payment obligations, neither party shall be liable to the other for any loss or damage due to delay or failure to perform due to flood, riot, insurrection, fire, earthquake, strike, communication line failure and power failure, explosion, act of God, death or incapacitating illness or injury to key personnel, or any other force or cause beyond the reasonable control of the party.

*Updated September 1, 2022*