



Updated: November 5, 2025

## CLOUD SERVICE AGREEMENT

This Cloud Services Agreement, together with its Exhibits and the applicable Order Form (the “**Agreement**”), is entered into by Customer, identified in the Order Form (“**Customer**”), who is purchasing services from OutboundSync Inc. (the “**Provider**”). The Agreement consists of the terms and conditions set forth below, any attachments or exhibits identified below, and all Order Forms (as defined below) that reference this Agreement.

The “**Effective Date**” of this Agreement is the date which is the earlier of (a) Customer's initial access to any Services (as defined below) or (b) the effective date of the first Order Form referencing this Agreement.

### 1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following terms have the following meanings:

- 1.1. “**Affiliate**” means an entity that, directly or indirectly, controls, is under the control of, or is under common control with a party, where control means having more than fifty percent (50%) of the voting stock or other ownership interest.
- 1.2. “**Data Processing Agreement**” or “**DPA**” means the data processing agreement or addendum that governs the processing of Personal Data under this Agreement and is subject to Applicable Data Protection Laws.
- 1.3. “**Applicable Data Protection Laws**” means the Applicable Laws that govern how Services may process or use an individual’s personal information, personal data, personally identifiable information, or other similar term.
- 1.4. “**Applicable Laws**” means the laws, rules, regulations, court orders, and other binding requirements of a relevant government authority that apply to or govern Provider or Customer.
- 1.5. “**Beta Product**” means an early or prerelease feature or version of the Product that is identified as beta or similar, or a version of the Product that is not generally available.
- 1.6. “**Code**” means certain relevant source code with its derivatives, software development kits (SDKs), or other code provided by Provider for deployment on Customer Properties.
- 1.7. “**Confidential Information**” means information in any form disclosed by or on behalf of a Discloser, including before the Effective Date, to a Recipient in connection with this Agreement that (a) the Discloser identifies as “confidential”, “proprietary”, or the like; or (b) should be reasonably understood as confidential or proprietary due to its nature and the circumstances of its disclosure. Confidential Information includes the existence of this Agreement. Customer’s Confidential Information includes non-public Customer Content, and Provider’s Confidential Information includes non-public information about the Product.
- 1.8. “**Contractor**” means an independent contractor or consultant of Customer who is not a competitor of Provider.
- 1.9. “**Customer Content**” means data, information, or materials submitted by or on behalf of Customer or Users to the Product but excludes Feedback.
- 1.10. “**Customer Properties**” means Customer's websites, servers, apps, or other offerings owned and operated by (or for the benefit of) Customer through which Customer uses Services.
- 1.11. “**Discloser**” means a party to this Agreement when the party is providing or disclosing Confidential Information to the other party.
- 1.12. “**Documentation**” means the usage manuals and instructional materials for Services or Software that are made available by Provider.

- 1.13. **“Embargoed Country”** means any country or region to or from which Applicable Laws generally restrict the export or import of goods, services, or money.
- 1.14. **“Feedback”** means suggestions, feedback, or comments about the Product or related offerings.
- 1.15. **“Fees”** means the applicable amounts described in an Order Form.
- 1.16. **“Force Majeure Event”** means an unforeseen event outside a party’s reasonable control where the affected party took reasonable measures to avoid or mitigate the impacts of the event. Examples of these kinds of events include unpredicted natural disasters like a major earthquake, war, pandemic, riot, act of terrorism, or public utility or internet failure.
- 1.17. **“Indemnifying Party”** means a party to this Agreement when the party is providing protection for a particular indemnification.
- 1.18. **“OFAC”** means the United States Department of Treasury’s Office of Foreign Assets Control.
- 1.19. **“Order Form”** means a written or electronic form to order Services referencing this Agreement. Upon execution by the authorized parties, each Order Form will be subject to the terms and conditions of this Agreement.
- 1.20. **“Personal Data”** will have the meaning(s) set forth in the Applicable Data Protection Laws for personal information, personal data, personally identifiable information, or other similar term.
- 1.21. **“Product”** means the Service, Software, and Documentation.
- 1.22. **“Prohibited Data”** means (a) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act; (b) credit, debit, bank account, or other financial account numbers; (c) social security numbers, driver’s license numbers, or other unique and private government ID numbers; (d) special categories of data as defined in the GDPR; and (e) other similar categories of sensitive information as set forth in the Applicable Data Protection Laws.
- 1.23. **“Protected Party”** means a party to this Agreement when the party is receiving the benefit of protection for a particular indemnification claim.
- 1.24. **“Recipient”** means a party to this Agreement when the party receives Confidential Information from the other party.
- 1.25. **“Service”** means the product described in the Order Form.
- 1.26. **“Software”** means the client-side software or applications made available by Provider for Customer to install, download (whether onto a machine or in a browser), or execute as part of the Product.
- 1.27. **“Third-Party Platform”** means any software, software-as-a-service, data sources, or other products or services not provided by Provider that are integrated with or otherwise accessible through Services.
- 1.28. **“Usage Data”** means data and information about the provision, use, and performance of the Product and related offerings based on Customer’s or User’s use of the Product.
- 1.29. **“User”** means any individual who uses the Product on Customer’s behalf or through Customer’s account.

## 2. SERVICE

- 2.1. **Access and Use.** Services are provided on a subscription basis for a Subscription Period. Customer will purchase, and Provider will provide Services identified and agreed upon in the applicable Order Form. During the Subscription Period and subject to the terms of this Agreement, Customer may (a) access and use Services; and (b) copy and use the included Software and Documentation only as needed to access and use Services, in each case, for its internal business purposes. If a Customer Affiliate enters a separate Order Form with Provider, Customer’s Affiliate creates a separate agreement between Provider and that Affiliate, where Customer remains responsible for its Affiliates, and such Order Form shall be governed by this Agreement.

- 2.2. **Support.** During the Subscription Period, Provider will provide Technical Support if purchased and described in the Order Form.
- 2.3. **User Accounts.** Use of and access to Services is permitted only by permitted Users. Customer is responsible for all actions on Users' accounts and for all Users' compliance with this Agreement. Customer and Users must protect the confidentiality of their passwords and login credentials. Customer will promptly notify Provider if it suspects or knows of any fraudulent activity with its accounts, passwords, or credentials, or if they become compromised.
- 2.4. **Contractors and Affiliates.** Customer may permit its Affiliates and Contractors to serve as permitted Users, provided Customer remains responsible for compliance by such individuals with all the terms and conditions of this Agreement, and all use of Services by such individuals is for the sole benefit of Customer.
- 2.5. **Feedback and Usage Data.** Customer may, but is not required to, give Provider Feedback, in which case Customer gives Feedback "AS IS". Provider may use all Feedback freely without any restriction or obligation. In addition, Provider may collect and analyze Usage Data, and Provider may freely use Usage Data to maintain, improve, enhance, and promote Provider's products and services without restriction or obligation. However, Provider may only disclose Usage Data to others if the Usage Data is aggregated and does not identify Customer or Users.
- 2.6. **Machine Learning.** Usage Data and Customer Content may be used to develop, train, or enhance artificial intelligence or machine learning models that are part of Provider's products and services, including third-party components of the Product, and Customer authorizes Provider to process its Usage Data and Customer Content for such purposes. However, (a) Usage Data and Customer Content must be aggregated before it can be used for these purposes, and (b) Provider will use commercially reasonable efforts consistent with industry standard technology to de-identify Usage Data and Customer Content before such use. Nothing in this Section will reduce or limit Provider's obligations regarding Personal Data that may be contained in Usage Data or Customer Content under Applicable Data Protection Laws. Due to the nature of artificial intelligence and machine learning, information generated by these features may be incorrect or inaccurate. Product features that include artificial intelligence or machine learning models are not human and are not a substitute for human oversight.
- 2.7. **Provider APIs.** If Provider makes access to any APIs available as part of Services, Provider may monitor Customer's usage of such APIs and limit the number of calls or requests Customer may make if Provider believes that Customer's usage is in breach of this Agreement or may negatively affect the security, operability, or integrity of Services (or otherwise impose liability on Provider).
- 2.8. **Apps.** To the extent Provider provides applications for use with Services (the "Apps"), subject to all the terms and conditions of this Agreement, Provider grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license only during an applicable Subscription Period to use the object code form of the Apps internally, but only in connection with Customer's use of Services and otherwise in accordance with the Documentation and this Agreement.
- 2.9. **Deployment of the Code.** Subject to all the terms and conditions of this Agreement, Provider grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license only during an applicable Subscription Period to copy the Code in the form provided by Provider on Customer Properties solely to support Customer's use of Services and otherwise in accordance with the Documentation and this Agreement. Customer must implement the Code on Customer Properties to enable the features of Services. Customer will implement all the Code in strict accordance with the Documentation and other instructions provided by Provider. Customer acknowledges that any changes made to Customer

Properties after initial implementation of the Code may cause Services to cease working or function improperly and that Provider will have no responsibility for the impact of any such change.

- 2.10. **Trial Subscriptions.** If Customer receives free access or a trial or evaluation subscription to Services (a “**Trial Subscription**”), then Customer may use Services in accordance with the terms and conditions of this Agreement for a period of fourteen (14) days or such other period granted by Provider and specified in the Order Form (the “**Trial Period**”). Trial Subscriptions are permitted solely for Customer's use to determine whether to purchase a paid subscription to Services. Trial Subscriptions may not include all functionality and features accessible as part of a paid Subscription Period. If Customer does not enter into a paid Subscription Period, this Agreement and Customer's right to access and use Services will terminate at the end of the Trial Period. Provider has the right to terminate a Trial Subscription at any time for any reason. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, PROVIDER WILL HAVE NO WARRANTY, LIABILITY, INDEMNITY, SUPPORT, OR OTHER OBLIGATIONS WITH RESPECT TO TRIAL SUBSCRIPTIONS.
- 2.11. **Beta Products.** If Provider gives Customer access to a Beta Product, the Beta Product is provided “AS IS”. Customer acknowledges that Beta Products are experimental in nature and may be modified or removed at Provider’s discretion with or without notice. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, PROVIDER WILL HAVE NO WARRANTY, LIABILITY, INDEMNITY, SUPPORT, OR OTHER OBLIGATIONS WITH RESPECT TO BETA PRODUCTS.

### 3. RESTRICTIONS & OBLIGATIONS

#### 3.1. Restrictions on Customer.

3.1.1. Except as expressly permitted by this Agreement, Customer will not (and will not allow anyone else to): (i) reverse engineer, decompile, or attempt to discover any source code or underlying ideas or algorithms of the Product (except to the extent Applicable Laws prohibit this restriction); (ii) provide, sell, transfer, sublicense, lend, distribute, rent, or otherwise allow others to access or use the Product; (iii) remove any proprietary notices or labels; (iv) copy, modify, or create derivative works of the Product; (v) conduct security or vulnerability tests on, interfere with the operation of, cause performance degradation of, or circumvent access restrictions of the Product; (vi) access accounts, information, data, or portions of the Product to which Customer does not have explicit authorization; (vii) use the Product to develop a competing service or product; (viii) use the Product with any activity prohibited by Applicable Laws; (ix) use the Product to obtain unauthorized access to anyone else’s networks or equipment; or (x) upload, submit, or otherwise make available to the Product any Customer Content to which Customer and Users do not have the proper rights.

3.1.2. Use of the Product must comply with all Documentation and Use Limitations.

3.1.3. Except for the limited license in Section 2.1 (Access and Use), Provider retains all right, title, and interest in and to the Product, whether developed before or after the Effective Date. Except for the limited rights in Section 2.6 (Machine Learning) and Section 4 (Customer Content), Customer retains all right, title, and interest in and to Customer Content.

- 3.2. **Suspension.** If Customer (a) has an outstanding, undisputed balance on its account for more than 30 days; (b) breaches Section 3.1 (Restrictions on Customer); or (c) uses the Product in violation of the Agreement or in a way that materially and negatively impacts the Product or others, then Provider may temporarily suspend Customer’s access to the Product with or without notice. However, Provider will try to inform the Customer before suspending the Customer's account when practical. Provider will reinstate Customer’s access to the Product only if Customer resolves the underlying issue.

3.3. **Third-Party Integrations.** Services may support integrations with certain Third-Party Platforms. To enable Services to access and receive Customer's information from a Third-Party Platform, Customer may be required to input its credentials for such Third-Party Platform. By enabling use of Services with any Third-Party Platform, Customer authorizes Provider to access Customer's accounts with such Third-Party Platform for the purposes described in this Agreement. Customer is responsible for complying with any relevant terms and conditions of the Third-Party Platform and for maintaining appropriate accounts in good standing with Providers of the Third-Party Platforms. Customer acknowledges and agrees that Provider has no responsibility or liability for any Third-Party Platform, or how a Third-Party Platform uses or processes Customer Content after such is exported to a Third-Party Platform. Provider cannot ensure that Services will maintain integrations with any Third-Party Platform, and Provider may disable integrations of Services with any Third-Party Platform at any time with or without notice to Customer. For clarity, this Agreement governs Customer's use of and access to Services, even if accessed through an integration with a Third-Party Platform. TO THE EXTENT CUSTOMER USES FEATURES IN SERVICES THAT INTEGRATE WITH A THIRD-PARTY PLATFORM AND CUSTOMER REQUESTS THAT PROVIDER INTEGRATE WITH SUCH THIRD-PARTY PLATFORM'S BETA OR PRE-RELEASE FEATURES (THE "THIRD-PARTY BETA RELEASES"), PROVIDER WILL HAVE NO LIABILITY ARISING OUT OF OR IN CONNECTION WITH PROVIDER'S PARTICIPATION IN SUCH THIRD-PARTY BETA RELEASES OR CUSTOMER'S USE OF SUCH INTEGRATED FEATURES.

#### 4. CUSTOMER CONTENT

- 4.1. **Personal Data.** All data processing activities by Services will be governed by the DPA. If the parties have a DPA, each party will comply with its obligations in the DPA, the terms of the DPA will control each party's rights and obligations as to Personal Data, and the terms of the DPA will control in the event of any conflict with this Agreement.
- 4.2. **Rights in Customer Content.** As between the Parties, Customer will retain all right, title, and interest (including all intellectual property rights) in and to Customer Content as provided to Provider. Subject to the terms of this Agreement, Customer hereby grants to Provider a non-exclusive, worldwide, royalty-free right to use, copy, store, transmit, modify, and display Customer Content solely to the extent necessary to provide the Product to Customer.
- 4.3. **Customer Content Obligations.** Customer is solely responsible for the accuracy, content, and legality of all Customer Content. Customer represents and warrants to Provider that Customer has all necessary rights, consents, and permissions to collect, share, and use all Customer Content as contemplated in this Agreement (including granting Provider the rights in Section 4.2 (Rights in Customer Content)) and that no Customer Content will violate or infringe (i) any third party intellectual property rights or publicity, privacy, or other rights, (ii) any Applicable Laws, or (iii) any terms of service, privacy policies or other agreements governing Customer's accounts with any third-party services. Customer further represents and warrants that all Customer Content complies with the Agreement. Customer will be fully responsible for all Customer Data submitted to Services by any person as if it were submitted by Customer.
- 4.4. **Storage of Customer Content.** Provider does not provide an archiving service outside the scope required under applicable Laws. Provider agrees only that it will not intentionally delete any Customer Content from Services prior to termination of Customer's applicable Subscription Period and expressly disclaims all other obligations with respect to storage
- 4.5. **Prohibited Data.** Customer will not (and will not allow anyone else to) submit Prohibited Data to the Product unless authorized by the Order Form. Customer acknowledges that Provider is not a payment card processor, and that Services are not PCI DSS compliant. Customer shall be responsible for any

Prohibited Data it inadvertently submits to Services, and Provider will treat such submissions as Customer Content as defined in this Agreement, such that Provider is not subject to any additional obligations that apply to Prohibited Data.

## 5. PAYMENT & TAXES

- 5.1. **Fees.** All Fees shall be paid in the currency stated in the applicable Order Form and are exclusive of taxes. Except for the prorated refund of prepaid Fees allowed with specific termination rights given in the Agreement, Fees are non-refundable.
- 5.2. **Invoicing.** For a payment process with invoicing, Provider will send invoices for usage-based Fees in arrears and for all other Fees in advance, in each case according to the payment process.  
**Automatic Payment.** For a payment process with automatic payment, Provider will automatically charge the credit card, debit card, or other payment method on file for Fees according to the payment process, and Customer authorizes all such charges. In this case, Provider will make a copy of Customer's bills or transaction history available to Customer.
- 5.3. **Taxes.** Customer is responsible for all duties, taxes, and levies that apply to Fees, including sales, use, VAT, GST, or withholding, that Provider itemizes and includes in an invoice. However, Customer is not responsible for Provider's income taxes.
- 5.4. **Payment Dispute.** If Customer has a good-faith disagreement about the Fees charged or invoiced, Customer must notify Provider about the dispute before payment is due, or within 30 days of an automatic payment, and must pay all undisputed amounts on time. The parties will work together to resolve the dispute within 15 days. If no resolution is agreed upon, each party may pursue any remedies available under the Agreement or Applicable Laws.

## 6. TERM & TERMINATION

- 6.1. **Order Form and Agreement.** For each Order Form, the Agreement will start on the Effective Date, continue through the Subscription Period, and automatically renew for equal Subscription Periods unless one party gives notice of non-renewal to the other party at least 30 days before the renewal start date.
- 6.2. **Termination.** Either party may terminate this Agreement or applicable Order Form immediately:
  - 6.2.1. if the other party fails to cure a material breach of the Agreement following 30 days' notice;
  - 6.2.2. upon notice if the other party (i) materially breaches the Agreement in a manner that cannot be cured; (ii) dissolves or stops conducting business without a successor; (iii) makes an assignment for the benefit of creditors; or (iv) becomes the debtor in insolvency, receivership, or bankruptcy proceedings that continue for more than 60 days.
- 6.3. **Force Majeure.** Either party may terminate an affected Order Form upon notice if a Force Majeure Event prevents the Product from materially operating for 60 or more consecutive days. Provider will pay to Customer a prorated refund of any prepaid Fees for the remainder of the Subscription Period for unused Services affected by the Force Majeure Event. A Force Majeure Event does not excuse Customer's obligation to pay Fees accrued prior to termination.
- 6.4. **Effect of Termination.** Termination of this Agreement will automatically terminate all Order Forms governed by the Agreement at the end of each Order Form's Subscription Period. Upon any expiration or termination:
  - 6.4.1. Customer will no longer have any right to use the Product.
  - 6.4.2. Provider will delete Customer Content.
  - 6.4.3. Each Recipient will return or destroy Discloser's Confidential Information in its possession or control.

6.4.4. Provider will submit a final bill or invoice for all outstanding Fees accrued before termination, and Customer will pay the invoice according to Section 5 (Payment & Taxes).

6.5. **Survival.** The following sections will survive expiration or termination of the Agreement: Section 1 (Definitions), Section 2.5 (Feedback and Usage Data), Section 2.6 (Machine Learning), Section 3.1 (Restrictions on Customer), Section 5 (Payment & Taxes) for Fees accrued or payable before expiration or termination, Section 6.4 (Effect of Termination), Section 6.5 (Survival), Section 7 (Representations & Warranties), Section 8 (Limitation of Liability), Section 9 (Indemnification), Section 10 (Confidentiality), Section 11 (General Terms). Each Recipient may retain Discloser's Confidential Information in accordance with its standard backup or record retention policies maintained in the ordinary course of business or as required by Applicable Laws, in which case Section 4 (Customer Content) and Section 10 (Confidentiality) will continue to apply to retained Confidential Information.

## 7. REPRESENTATIONS & WARRANTIES

- 7.1. **Mutual.** Each party represents and warrants to the other that: (a) it has the legal power and authority to enter into this Agreement; (b) it is duly organized, validly existing, and in good standing under the Applicable Laws of the jurisdiction of its origin; (c) it will comply with all Applicable Laws in performing its obligations or exercising its rights in this Agreement.
- 7.2. **From Customer.** Customer represents and warrants that it, all Users, and anyone submitting Customer Content each have and will continue to have all rights necessary to submit or make available Customer Content to the Product and to allow the use of Customer Content as described in the Agreement.
- 7.3. **From Provider.** Provider represents and warrants to Customer that it will not materially reduce the general functionality of Services during the Subscription Period.
- 7.4. **Provider Warranty Remedy.** If Provider breaches the warranty in Section 7.3 (Representations & Warranties from Provider), Customer must give Provider notice (with enough detail for Provider to understand or replicate the issue) within 45 days of discovering the issue. Within 45 days of receiving sufficient details of the warranty issue, Provider will attempt to restore the general functionality of Services. If Provider cannot resolve the issue, Customer may terminate the affected Order Form, and Provider will pay to Customer a prorated refund of prepaid Fees for the remainder of the Subscription Period. Provider's restoration obligation, and Customer's termination right, are Customer's only remedies if Provider does not meet the warranty in Section 7.3 (Representations & Warranties from Provider).
- 7.5. **Disclaimer of Warranties.** Provider makes no guarantees that the Product will always be safe, secure, or error-free, or that it will function without disruptions, delays, or imperfections. The warranties in Section 7 (Representations & Warranties) do not apply to any misuse or unauthorized modification of the Product, nor to any product or service provided by anyone other than Provider. Except for the warranties in Section 7 (Representations & Warranties), Provider and Customer each disclaim all other warranties and conditions, whether express or implied, including the implied warranties and conditions of merchantability, fitness for a particular purpose, title, and non-infringement. These disclaimers apply to the maximum extent permitted by Applicable Laws.

## 8. LIMITATION OF LIABILITY

- 8.1. **Liability Caps.** Except as provided in Section 8.4 (Exceptions), each party's total cumulative liability for all claims arising out of or relating to this Agreement shall not exceed, in aggregate, the amount actually paid or payable by Customer to Provider under this Agreement in the 12 months preceding the event giving rise to the claim.

- 8.2. **Damages Waiver.** Except as provided in Section 8.4 (Exceptions), under no circumstances will either party be liable to the other for lost profits or revenues (whether direct or indirect), or for consequential, special, indirect, exemplary, punitive, or incidental damages relating to this Agreement, even if the party is informed of the possibility of this type of damage in advance.
- 8.3. **Applicability.** The limitations and waivers contained in Sections 8.1 (Liability Caps) and 8.2 (Damages Waiver) apply to all liability, whether in tort (including negligence), contract, breach of statutory duty, or otherwise.
- 8.4. **Exceptions.** The liability cap in Section 8.1 does not apply to liability arising out of or relating to: (a) a party's gross negligence or willful misconduct; (b) Customer's indemnification obligations (Section 9.2); Restrictions on Customer (Section 3.1); Customer Content Obligations (Section 4.3). Section 8.2 (Damages Waiver) does not apply to breach of Section 10 (Confidentiality). Nothing in this Agreement will limit, exclude, or restrict a party's liability to the extent prohibited by Applicable Laws.

## 9. INDEMNIFICATION

- 9.1. **Protection by Provider.** Provider will defend Customer, its Affiliates, and their respective officers, directors, and employees from and against any claim by a third party alleging that Product infringe any Intellectual Property right and will indemnify and hold Customer harmless from and against any damages and costs finally awarded against Customer or agreed in settlement by Provider (including reasonable attorneys' fees) resulting from such claim.
- 9.2. **Protection by Customer.** Customer shall indemnify and hold Provider, its Affiliates, and their respective officers, directors, and employees harmless, and defend Provider from and against any damages and costs awarded against Provider or agreed in settlement by Customer (including reasonable attorneys' fees) to the extent such claim is arises from (a) any Customer Content, including claims alleging infringement of intellectual property rights or violation of privacy or publicity rights; or (b) Customer's use of a third-party services in connection with Services; or (c) from Customer's use of Provider's Product in violation of Applicable Laws or this Agreement; or (d) any gross negligence, recklessness, or willful misconduct by Customer, its Affiliates, or Users in connection with this Agreement.
- 9.3. **Procedure.** The Indemnifying Party's obligations in this Section are contingent upon the Protected Party: (a) promptly notifying the Indemnifying Party of each claim for which it seeks protection; (b) providing reasonable assistance to the Indemnifying Party at the Indemnifying Party's expense; and (c) giving the Indemnifying Party sole control over the defense and settlement of each claim. A Protected Party may participate in a claim for which it seeks protection with its own attorneys only at its own expense. The Indemnifying Party may not agree to any settlement of a claim that contains an admission of fault or otherwise materially and adversely impacts the Protected Party without the prior written consent of the Protected Party.
- 9.4. **Changes to Product.** If required by settlement or court order, or if deemed reasonably necessary in response to a Provider indemnification claim, Provider may: (a) obtain the right for Customer to continue using the Product; (b) replace or modify the affected component of the Product without materially reducing the general functionality of the Product; or (c) if neither (a) nor (b) are reasonable, terminate the affected Order Form and issue a pro-rated refund of prepaid Fees for the remainder of the Subscription Period.
- 9.5. **Exclusions.**
  - 9.5.1. Provider's obligations as an Indemnifying Party will not apply to claims that result from (i) modifications to the Product that were not authorized by Provider or that were made in compliance with Customer's instructions; (ii) unauthorized use of the Product, including use in

violation of this Agreement; (iii) use of the Product in combination with items not provided by Provider; or (iv) use of an old version of the Product where a newer release would avoid Provider claim.

9.5.2. Customer's obligations as an Indemnifying Party will not apply to Customer claims that result from the unauthorized use of Customer Content, including use in violation of this Agreement.

9.6. **Exclusive Remedy.** This Section 9 (Indemnification), together with any termination rights, describes each Protected Party's exclusive remedy and each Indemnifying Party's entire liability for such claims.

## 10. CONFIDENTIALITY

10.1. **Non-Use and Non-Disclosure.** Except as otherwise authorized in the Agreement or as needed to fulfill its obligations or exercise its rights under this Agreement, Recipient will not (a) use Discloser's Confidential Information; nor (b) disclose Discloser's Confidential Information to anyone else. In addition, Recipient will protect Discloser's Confidential Information using at least the same protections Recipient uses for its own similar information, but no less than a reasonable standard of care.

10.2. **Exclusions.** Confidential Information does not include information that (a) Recipient knew without any obligation of confidentiality before disclosure by Discloser; (b) is or becomes publicly known and generally available through no fault of Recipient; (c) Recipient receives under no obligation of confidentiality from someone else who is authorized to make the disclosure; or (d) Recipient independently developed without use of or reference to Discloser's Confidential Information.

10.3. **Required Disclosures.** Recipient may disclose Discloser's Confidential Information to the extent required by Applicable Laws if, unless prohibited by Applicable Laws, Recipient provides Discloser reasonable advance notice of the required disclosure and reasonably cooperates, at Discloser's expense, with Discloser's efforts to obtain confidential treatment for the Confidential Information.

10.4. **Permitted Disclosures.** Recipient may disclose Discloser's Confidential Information to Users, employees, advisors, contractors, and representatives who each have a need to know the Confidential Information, but only if the person or entity is bound by confidentiality obligations at least as protective as those in this Section 10 (Confidentiality) and Recipient remains responsible for everyone's compliance with the terms of this Section 10 (Confidentiality).

## 11. General Terms

11.1. **Entire Agreement.** This Agreement is the only agreement between the parties about its subject and this Agreement supersedes all prior or contemporaneous statements (whether in writing or not) about its subject. Provider expressly rejects any terms included in Customer's purchase order or similar document, which may only be used for accounting or administrative purposes. No terms or conditions in any Customer documentation or online vendor portal will apply to Customer's use of the Product unless expressly agreed to in a legally binding written agreement signed by an authorized Provider representative, regardless of what such terms may say.

11.2. **Modifications, Severability, and Waiver.** Any waiver, modification, or change to the Agreement must be either (i) in writing and signed or electronically accepted by each party or (ii) in accordance with Section 11.3 (Updates). If any term of this Agreement is determined to be invalid or unenforceable by a relevant court or governing body, the remaining terms of this Agreement will remain in full force and effect. The failure of a party to enforce a term or to exercise an option or right in this Agreement will not constitute a waiver by that party of the term, option, or right.

11.3. **Updates.** From time to time, the Provider will update its Services and may modify this Agreement. Unless otherwise specified by the Provider, changes become effective for the Customer upon renewal of

Customer's current Subscription Period or entry into a new Order Form. The Provider will use reasonable efforts to notify Customer of the changes through communications via Customer's account, email or other means. In any event, continued use of the Services after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version. If the Provider specifies that changes to the Agreement will take effect prior to Customer's next renewal or order (such as for legal compliance or product change reasons) and the Customer objects to such changes within 10 calendar days, The Provider may either (i) move the effective date of a change of the Agreement to Customer's next renewal or order; or (ii) terminate the applicable Subscription Period and give to the Customer as its sole remedy a refund of any fees the Customer has pre-paid for use of the applicable Services for the terminated portion of the Subscription Period, commencing on the date notice of termination was received or a different date the Parties agree on. The Provider may make changes to the Services, and the Provider will update the applicable Documentation accordingly. Other support or service level documents may be updated from time to time upon reasonable notice to the Customer to reflect process improvements or changing practices (but the modifications will not materially decrease the Provider's obligations as compared to those reflected in such terms as of the Effective Date).

- 11.4. **Governing Law and Chosen Courts.** The Governing Law is chosen by Provider to be the laws of the state of California. The Law will govern all interpretations and disputes about this Agreement, without regard to its conflict of laws provisions. The Parties agree that any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted exclusively in the state courts of the State of California, County of San Mateo, or the federal courts of the Northern District of California ("**Chosen Courts**"). Each party irrevocably submits to the exclusive jurisdiction of the Chosen Courts.
- 11.5. **Construction and Joinder.** THIS AGREEMENT MUST BE CONSTRUED AS IF IT WAS JOINTLY WRITTEN BY BOTH PARTIES. BOTH CUSTOMER AND PROVIDER AGREE THAT EACH MAY BRING OR PARTICIPATE IN CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS. NO ARBITRATION OR CLAIM UNDER THIS AGREEMENT SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF SERVICES, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED.
- 11.6. **Injunctive Relief.** Despite Section 11.3 (Governing Law and Chosen Courts), a breach of Section 10 (Confidentiality) or the violation of a party's intellectual property rights may cause irreparable harm for which monetary damages cannot adequately compensate. As a result, upon the actual or threatened breach of Section 10 (Confidentiality) or violation of a party's intellectual property rights, the non-breaching or non-violating party may seek appropriate equitable relief, including an injunction, in any court of competent jurisdiction without the need to post a bond and without limiting its other rights or remedies.
- 11.7. **Court Orders.** Nothing in this Agreement prevents Provider from disclosing Customer data to the extent required by law, subpoenas, or court orders, but Provider will use commercially reasonable efforts to notify Customer where permitted to do so.
- 11.8. **Non-Exhaustive Remedies.** Except where the Agreement provides for an exclusive remedy, seeking or exercising a remedy does not limit the other rights or remedies available to a party.
- 11.9. **Assignment.** Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other party. However, either party may assign this Agreement upon notice if the assigning party undergoes a merger, change of control, reorganization, or sale of all or substantially all its equity, business, or assets to which this Agreement relates. Any attempted but non-permitted assignment

is void. This Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

- 11.10. **Logo Rights.** Provider may identify Customer and use Customer's name and logo in marketing to identify Customer as a user of Provider's products and services.
- 11.11. **Notices.** Any notice, request, or approval about the Agreement must be in writing and sent to the Notice Address. Notices will be deemed given (a) upon confirmed delivery if by email, registered or certified mail, or personal delivery; or (b) two days after mailing if by overnight commercial delivery.
- 11.12. **Independent Contractors.** The parties are independent contractors, not agents, partners, or joint venturers. Neither party is authorized to bind the other to any liability or obligation.
- 11.13. **No Third-Party Beneficiary.** There are no third-party beneficiaries of this Agreement.
- 11.14. **Conflict.** In the event of a conflict or inconsistency among the following documents, the order of precedence shall be: (i) the Order Form, (ii) the Data Processing Agreement, (iii) the Cloud Service Agreement, (iv) the Terms of Use, and (v) the Privacy Policy.
- 11.15. **Export Controls.** Customer may not remove or export from the United States or allow the export or re-export of the Product or any related technology or materials in violation of any restrictions, laws, or regulations of the United States Department of Commerce, OFAC, or any other United States or foreign agency or authority. Customer represents and warrants that it is not (a) a resident or national of an Embargoed Country; (b) an entity organized under the laws of an Embargoed Country; (c) designated on any list of prohibited, restricted, or sanctioned parties maintained by the U.S. government or agencies or other applicable governments or agencies, including OFAC's Specially Designated Nationals and Blocked Persons List and the UN Security Council Consolidated List; nor (d) 50% or more owned by any party designated on any of the above lists. Provider may terminate this Agreement immediately without notice or liability to comply, as determined in Provider's sole discretion, with applicable export controls and sanctions laws and regulations.
- 11.16. **Government Rights.** The Services and Software are deemed "commercial items" or "commercial computer software" according to FAR section 12.212 and DFAR section 227.7202, and the Documentation is "commercial computer software documentation" according to DFAR section 252.227-7014(a)(1) and (5). Any use, modification, reproduction, release, performance, display, or disclosure of the Product by the U.S. Government will be governed solely by the terms of this Agreement and all other use is prohibited.
- 11.17. **Anti-Bribery.** Neither party will take any action that would be a violation of any Applicable Laws that prohibit the offering, giving, promising to offer or give, or receiving, directly or indirectly, money or anything of value to any third party to assist Provider or Customer in retaining or obtaining business. Examples of these kinds of laws include the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010.
- 11.18. **Titles and Interpretation.** Section titles are for convenience and reference only. All uses of "including" and similar phrases are non-exhaustive and without limitation. The United Nations Convention for the International Sale of Goods and the Uniform Computer Information Transaction Act do not apply to this Agreement.
- 11.19. **Signature.** This Agreement may be signed in counterparts, including by electronic copies or an acceptance mechanism. Each copy will be deemed an original, and all copies, when taken together, will be the same agreement.