

## Cloud Subscription Agreement

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” WILL REFER TO THAT ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT ACCESS OR USE THE SUBSCRIPTION SERVICES.

This Cloud Subscription Agreement (**Agreement**) is made between SecureAuth Corporation (**Company**) and the customer executing the Order (**Customer**). This Agreement is effective as of the last date signed on the Order.

### 1. DEFINITIONS

**Affiliate** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**Application** means an application program, including Client Software, with the functionality described in the Documentation, including modifications, revisions, upgrades, updates and enhancements, if any. Updates and upgrades do not include products, features and modules that are separately marketed for an additional fee.

**Client Software** means a software component provided by us and installed at your premises which is required for use of the Subscription Service. Not all Subscription Services require the use of Client Software.

**Confidential Information** means any material, data, or information, in any form or media, that is proprietary or confidential to a disclosing party and is marked as confidential, or by its nature or treatment by its owner should reasonably be considered confidential.

**Customer Data** means Confidential Information, data (whether in an audio, video, image or text format) and personal information (data, either alone or in combination with other information, by which a natural person can be identified or located) that you, including your customers and end users, transmit to or from the Subscription Service or processes through the Subscription Service. Customer Data does not include information or data regarding usage or performance of the Subscription Service that are not linked to or associated with personal information.

**Deliverable** means a quantifiable service to be provided with our professional services and specified in an Order, including without limitation application program interfaces (**API**), configurations,

information, documents, reports, technical and non-technical data, specifications and other material. Deliverables do not include third party products, work for hire, or custom development.

**Documentation** means Company or its licensors' user manuals and other published protocols, standards and technical specifications for use with the Subscription Service and as updated from time to time, as long as the later modification does not materially diminish your ability to use and access the Subscription Services.

**Evaluation Service** means a Subscription Services made available by Subscription but only for Customer's internal evaluation purposes and not for use in a production environment.

**Intellectual Property Rights** means current and future worldwide rights under patent, copyright, trade secret, trademark, tradename, moral rights, mask works and other similar rights, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Subscription Service is used or offered.

**Order** means an ordering document (e.g., quote, schedule, order form, SOW) specifying the Subscription Service(s) to be provided and that is entered into between you and us or any of our Affiliates and which incorporates this Agreement by reference.

**Subscription** means a non-exclusive, non-transferable, non-sublicensable right to access and use the Subscription Service for your internal business operations in the Territory, and when applicable, for the number of Users or assets specified in an Order.

**Subscription Service** means an Application or other functionality, if any, made available as a SaaS, cloud or hosted service by Subscription as specified in an Order. Subscription Service includes Deliverables and Documentation.

**Subscription Term** means a period during which we will provide the Subscription Service.

**Territory** means worldwide unless otherwise agreed in the Order (subject always to applicable export restrictions) and except for any countries sanctioned, embargoed or prohibited to do business with under U.S. or other applicable laws.

**Users** means (a) a specifically identified individual or machine authorized to use the Subscription Service (named user); (b) individuals with a unique user identification who are enabled (e.g., have access to an Application, Subscription Service portal or the Subscription Service) or can be managed by the Subscription Service, including but not limited to those individuals that are designated by you as active or inactive within the Subscription Service's profile data store, and authorized by you to use the Subscription Service and may include, for example, you and your Affiliates' employees, consultants, clients, external users, contractors, agents, and third parties with which you do business; or (c) a user as otherwise defined on the Order.

**We, us, or our** means SecureAuth Corporation, with a place of business at 8845 Irvine Center Dr., Irvine, CA 92618, and/or any of its Affiliates who enter into an Order under this Agreement.

**You or your** means the company or other legal entity for which you are accepting this Agreement together with Affiliates of that company or entity which have entered into an Order under this Agreement.

## 2. SUBSCRIPTION SERVICE

**2.1. Subscription.** We or our Affiliates will provide the Subscription Service(s) to you as specified in the Order during the Subscription Term. Current Subscriptions may not include new features or functionality added to a Subscription Service after the beginning of the Subscription Term.

**2.2. Subscription Term.** Subscription Service is available for the period specified in the Order. The Subscription Term will renew automatically for subsequent Subscription Terms equal to the original Subscription Term for the current Subscription Service and Users or assets, as applicable, unless either party provides written notice of termination at least 90 days prior to the end of the current Subscription Term.

**2.3. Effective Service Date.** Unless otherwise specified in the Order, the effective service date is the date we provide you with administration credentials to access the Subscription Service (**Effective Service Date**). The Effective Service Date is the date the Subscription Term begins, which is not dependent on a customer launch date, go-live date or the date a Subscription Service is ready for use in a production environment. The Effective Service Date will apply to all the Subscription Services on the Order.

**2.4. Evaluations.** If you are provided access to an Evaluation Service, you may access and use the Evaluation Service for the number of Users or assets and length of time specified by us. Upon the expiration or termination of the evaluation period, you will no longer have access to the Evaluation Service. Notwithstanding anything otherwise set forth in the Agreement, the Evaluation Service is provided “AS IS” and we do not provide any warranties or Support in connection with an Evaluation Service.

**2.5. Support.** We or our designated representative will provide support (**Support**) for the Subscription Service during the Initial Term and any Renewal Terms. Support will be provided in accordance with our standard maintenance and support policy, and as updated from time to time, as long as the later modification does not materially diminish your ability to use and access the Subscription Service. Our current Support policies are available at [www.secureauth.com/support/terms](http://www.secureauth.com/support/terms).

**2.6. Modifications.** We may modify the Subscription Service, provided the modification does not materially negatively affect the Subscription Service (e.g., to maintain or improve functionality or security).

## 3. CUSTOMER RESPONSIBILITIES AND USE

**3.1. Customer Use.** You are responsible for: (a) all activity occurring under your and your User accounts and logins; (b) the way you and your Users use the Subscription Service; (c) the results obtained and conclusions drawn from your use of the Subscription Service; and (d) the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. You will:

a. select, purchase, configure, operate and maintain your equipment, hardware, websites, network and Internet, data and

telephone connections necessary for use and support of the Subscription Service;

b. install and use upgrades to Client Software if required;

c. use Client Software only in combination with the Subscription Services and solely for purposes of using the Subscription Services in accordance with the Documentation;

d. obtain all necessary consents and authorizations (i) to use the Subscription Services to access the computers and network systems and the data contained therein, and (ii) from your Users for the transmission of Customer Data to third parties in connection with the Subscription Services; and

e. use best practices and commercially reasonable efforts to prevent unauthorized access to, or use of, the Subscription Service, including promptly notifying us when you become aware of any unauthorized access or use;

f. use Subscription Services only in accordance with the Agreement, Documentation, and applicable laws and government regulations.

**3.2. Restrictions.** The Subscription Service may only be used to administer your internal business operations. You may not and may not permit others to:

a. provide, disclose or make available to, or permit use or access to the Subscription Service by persons other than your employees, consultants, agents, representatives or authorized contractors;

b. sell, resell, license, sublicense, transfer, distribute, lend, rent or lease the Subscription Service to any third party or use the Subscription Service on behalf of any third-party (unless otherwise agreed in writing by us);

c. use any method other than the one approved by us for connection to the Subscription Services;

d. exceed the number of Users or assets for a particular Subscription Service as set forth in an Order;

e. use the Subscription Service (i) to maliciously or negligently cause damage to any third-party’s computer, network systems or data, (ii) to infringe on the Intellectual Property Rights of any third party or any rights of publicity or privacy, (iii) send or store infringing or unlawful material, (iv) to propagate, send or store any virus, worms, Trojan horses, harmful or malicious code, or other programming routine intended to damage any computer, network system or data, or (v) in any application that may involve risks of death, personal injury, severe property damage or environmental damage, or in any life support applications, devices or systems;

f. interfere with or disrupt the integrity or performance of a Subscription Service or our networks, any other of our customer’s use of a Subscription Service, or third party data contained therein;

g. infringe or misappropriate our or our licensors’ Intellectual Property Rights;

h. modify or create derivative works or copy of a Subscription Service or any part, feature, function or user interface thereof, access a Subscription Service to build a competitive product or service, or reverse engineer, disassemble or decompile a Subscription Service or component, or attempt to discover or disclose the source code, underlying ideas or algorithms of the Subscription Service or any component;

i. remove, alter or obscure a Subscription Service’s confidentiality or proprietary rights notices (including copyright and trademark notices);

j. attempt to gain or allow unauthorized access to a Subscription Service or its related systems or networks, or permit direct or indirect access to or use of a Subscription Service in a way that circumvents the limitations on your use of the Subscription Service;

or

k. disclose the results of any performance, functionality or other evaluation or benchmarking of the Subscription Service to a third party without our express prior written consent.

**3.3. Relationship to Products.** This Agreement is limited to Subscription Services and does not convey any license or right to use our proprietary software applications in object/binary code available for premise based installations (the **Software**) or any appliances or hardware, including virtual machines or servers, which we may provide associated with the Software (collectively the **Products**). Any use of our Products by you will be governed by a separate agreement.

**4. INTELLECTUAL PROPERTY RIGHTS.** Except as expressly set forth in this Agreement, this Agreement does not grant (a) us any Intellectual Property Rights in Customer Data or (b) you any Intellectual Property Rights in the Subscription Services or our trademarks. Title and full ownership, trade secrets, copyright, patent rights and all other Intellectual Property Rights to the Subscription Services remains with us, whether or not any portion thereof is or may be validly copyrighted or patented. We will own all rights in any copy, translation, modification, adaptation or derivation of the Subscription Services, including any improvement or development thereof. You are only granted the limited rights to the Subscription Services as described in this Agreement. All rights not specifically granted in this Agreement to you are exclusively reserved to us or our licensors. You agree to treat the Subscription Services as our proprietary information. You agree that we own and have the right to exploit and include in the Subscription Services, our products and other services, any suggestions, enhancement requests, feedback, recommendations or other information provided by you, your employees, contractors and Users to us without any obligation to you.

## 5. CUSTOMER DATA

**5.1. Ownership.** You control and own all right, title, and interest in and to Customer Data and at all times remain the data controller under this Agreement and applicable data protection laws and regulations. We obtain no rights to Customer Data except as set forth in this Agreement. You represent and warrant that you have complied with all relevant laws in collecting, using and disclosing the Customer Data.

**5.2. Customer Data Responsibilities.** You are responsible for: (a) the accuracy, quality, reliability, legality and means by which you acquired the Customer Data; (b) obtaining the right and consent to use the Customer Data and your decisions concerning the processing and use of the Customer Data; (c) complying with applicable data privacy laws and regulations; and (d) uploading, sharing, withdrawal, management and deletion (unless an automatic deletion period is specified for the Subscription Service) of Customer Data.

**5.3. License.** You grant us, our licensors and subcontractors a non-exclusive and limited license to access, copy, store, process, transmit and display Customer Data for the purposes of (a) performing our obligations under this Agreement, (b) preventing or addressing service or technical problems, and responding to your requests in connection with Support matters, (c) communicating to and with you and your Users regarding the Subscription Services, (d) enforcing this Agreement, and (e) complying with laws. We will

not disclose Customer Data to a third party except to the extent necessary to carry out the terms of this Agreement or as permitted or required by law.

## 6. SECURITY

**6.1. Safeguards.** We will maintain commercially reasonable and appropriate technical and organizational measures designed to secure Customer Data against unauthorized and unlawful loss, access or disclosure. We will maintain physical, electronic and procedural safeguards in compliance with our then current security policies and applicable privacy laws, to protect Customer Data, including, but not limited to: (a) the maintenance of appropriate safeguards to restrict access to Customer Data to the employees, agents, licensors or service providers of ours who need that information to carry out our obligations under this Agreement; (b) procedures and practices for the safe transmission or transportation of the Customer Data; (c) the maintenance of appropriate safeguards to prevent the unauthorized access of the Customer Data; and (d) procedures and practices for the safe disposal of Customer Data. We provide production environment Subscription Services to our customers uniformly, and all appropriate and then current technical and organizational measures apply to our entire customer base subscribed to the same Subscription Service. You understand and agree that the technical and organizational measures are subject to technical progress, development and improvements for the protection of personal information and we reserve the right to update the technical and organizational security measures provided the technical and organizational security measures will not materially decrease.

**6.2. Notification.** If we discover that Customer Data has been acquired by an unauthorized person or otherwise been the subject of an unauthorized disclosure, we will promptly notify you as allowed by applicable law.

**6.3. Customer Responsibilities.** You are responsible for maintaining the security of your Subscription Service login credentials, user passwords and access to the Subscription Service from your network. Log-in credentials are for your internal use only and you may not sell, transfer, or sublicense them to any other entity or person. You will: (a) use commercially reasonable efforts to prevent unauthorized access to or use of the Subscription Service; and (b) contact us promptly if you believe there is unauthorized access or use of your Subscription Service account, if your Subscription Service account information is lost or stolen, or if you are aware of another breach of security related to the Subscription Service.

**6.4. Audits.** Upon your written request, we will provide a copy of our most recent third party security audits or certifications for our production systems, as applicable, or any summaries that we generally make available to our customers at the time of the request. You may, with our consent (not to be unreasonably withheld), at your own expense, conduct independent audit or vulnerability scanning at a time mutually agreed upon by you and us with respect to our compliance under this Agreement with the following stipulations: (a) the assessment and scanning process scope, duration, times and tools are agreed to in writing by you and us no less than 90 days prior to the planned initiation of any audit or vulnerability scanning; (b) any information or findings the assessment or scanning teams gather must be immediately communicated to us; and (c) the following information is provided



in writing no less than 30 days prior the planned initiation of the audit or vulnerability scanning: (i) points-of-contact responsible for your management, oversight and execution of the assessment and vulnerability scanning services including all third party contacts involved (if applicable), (ii) all source IP address(s) designated to execute vulnerability scanning; and (iii) identification of all scanning tools. Any audit or vulnerability scanning requested or performed by you is limited to once in any 12-month period, unless required by mandatory data protection law. You will keep our trade secrets, data security measures, and information disclosed in connection with any audit confidential in accordance with the confidentiality provisions of the Agreement. If an audit determines that we are required to take corrective technical and/or organizational security measures, we will at our sole discretion determine which measures are best suitable to ensure compliance and perform the measure within a reasonable time frame.

## 7. ORDERS AND PAYMENT

**7.1. Orders.** You will place a binding order, subject to our acceptance, by sending us a signed Order (or purchase order, where allowed by us). You agree that your purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by us, our distributors or resellers regarding future functionality or features of the Subscription Services.

**7.2. Affiliate Orders.** Your Affiliates located in the Territory may execute an Order subject to this Agreement and will be entitled to all the rights and be bound by all the obligations of you under this Agreement, any amendments whenever made, and the Order executed by the Affiliate. You will (a) remain obligated to perform your commitments (including payment obligations) under the Agreement with respect to any Subscription Services provided to your Affiliates; and (b) act as the single point-of-contact with us with respect to the Subscription Services provided to your Affiliates.

**7.3. Fees Generally.** You will pay us for the Subscription Services and related expenses at the rates set forth on the Order. Invoiced amounts will be due and payable net 30 days from the invoice date or other period (if any) as may be indicated in the invoice. Fees are nonrefundable and your payment obligation is not cancelable. You are responsible for providing us with your complete and accurate billing and contact information and notifying us of any changes to your billing and contact information.

**7.4. Subscription Service Fees.** You are responsible for payment of the fees at all times during the Subscription Term. Fees based on the number of Users or other quantity as indicated on an Order, will not be decreased during the Subscription Term or Renewal Term, as applicable.

**7.5. Usage Verification.** You will cooperate with us to ascertain your usage and compliance with this Agreement. If your use of any Subscription Service is found to exceed the scope of this Agreement, you will be charged additional fees at our then-current rates, for each instance of additional use in excess of the rights granted and payment is due 30 days from the date of the invoice.

**7.6. Price Increases.** The pricing during any Renewal Term may increase by up to 7% above the applicable pricing in the prior term,

unless we provide you notice of different pricing at least 60 days prior to the applicable Renewal Term. Except as expressly provided in the applicable Order, renewal of promotional or one-time priced Subscriptions will be at our applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which Subscription volume for any Subscription Service has decreased from the prior term will result in repricing at renewal without regard to the prior term's per-unit pricing.

**7.7. Overdue Charges.** Subject to the "Payment Disputes" section, if any invoiced amount is not received by us by the due date, then without limiting our rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. You will pay to us all reasonable costs and expenses for collection of overdue amounts, including legal fees. In addition, we may condition future purchases on payment terms shorter than those specified in this Section 7.

**7.8. Payment Disputes.** We will not exercise our rights under the "Overdue Charges" section above if you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. You must provide written notice to us of your good faith dispute within 15 days of invoice receipt. We will promptly review and respond to the notice. After the dispute is resolved, you will immediately pay the invoice. If you fail to provide notice to us within the 15-day period, then your right to dispute the invoice will be deemed waived.

**7.9. Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, **Taxes**). You are responsible for paying all Taxes (including taxes which may be applicable to online transactions in your state) associated with your purchases. If we have the legal obligation to pay or collect Taxes for which you are responsible, we will invoice you and you will pay that amount, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, we are solely responsible for taxes assessable against us based on our income, property and employees.

## 8. TERMINATION

**8.1. Subscription Service Termination.** A party may terminate the Agreement, an Order or a Subscription Service for cause upon 30 days' written notice to the other party of a material breach, including untimely payment, if the breach remains uncured at the expiration of the 30-day period. Consent to extend the cure period will not be unreasonably withheld, so long as the breaching party has commenced cure during the 30-day notice period and pursues cure of the breach in good faith. We may terminate the Agreement, an Order and/or a Subscription Service: (a) immediately if (i) you cease your business operations or become subject to insolvency proceedings and the proceedings are not dismissed within 90 days, (ii) you are using the Subscription Services for illegal purposes; or (iii) you are infringing on our or our licensors' Intellectual Property Rights; and (b) with at least 30 days prior notice if a change in law comes into effect which renders our provision of the Subscription Service illegal, impossible or would materially adversely affect our ability to provide the Subscription Service.

**8.2. Temporary Suspension.** We may, without liability to you, suspend the Subscription Services, including access by all or some of your Users in the event the we deem, in good faith, suspension is necessary: (a) following an actual, attempted, or aborted security breach or cyber-attack on us; (b) to protect our systems and their integrity; or (c) if required by a governmental or regulatory entity or law enforcement agency. We will notify you of the cause of the suspension to the extent and in the manner, that we provide a notification to all of our affected customers. The suspension will only remain in place for the minimum amount of time necessary to cure the cause of the suspension, if possible.

**8.3. Effect of Termination.**

- a. If the Agreement or Subscription Service is terminated by you in accordance with Section 8.1, we will refund to you any prepaid fees for the remainder of the Subscription Term after the effective date of termination.
- b. If the Agreement or Subscription Service is terminated by us in accordance with Section 8.1, you will pay any unpaid fees covering the remainder of the Subscription Term.
- c. Termination of this Agreement, Order or any Subscription Service will not prevent either party from pursuing all available legal remedies. Any payment obligations as of the termination of the Agreement, Order or Subscription Service will remain in effect.
- d. Upon termination of the Agreement, Order or Subscription Service: (i) your Subscription Service and access to it will immediately cease and your license to use Client Software and Deliverables will immediately terminate; (ii) we have no obligation to maintain any Customer Data except as otherwise specified in Section 8.4; and (iii) you must, in accordance with our directions, return or destroy our Confidential Information, Client Software, Deliverables and Documentation, and provide written certification of destruction.

**8.4. Return of Customer Data after Termination.** Upon your request within 10 days after the effective date of termination or expiration of this Agreement or a Subscription Service, we will make Customer Data available to you for export or download. After the 10-day period, we will have no obligation to maintain or provide any Customer Data and will thereafter delete or destroy all copies of Customer Data in our systems or otherwise in its possession or control, unless legally prohibited.

**8.5. Survival.** Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assigns, including the Sections titled "Intellectual Property Rights", "Orders and Payment", "Effect of Termination", "Return of Customer Data after Termination", "Confidentiality", "Indemnification", "Limitation of Liability" and "General".

**9. PROFESSIONAL SERVICES AND TRAINING**

**9.1. Professional Services.** Professional services will be provided in accordance with the terms and conditions of the Professional Services Agreement at [www.secureauth.com/product-and-service-terms](http://www.secureauth.com/product-and-service-terms). We offer professional services for standard consulting, installation, integration, configuration, tailoring, architectural review, value added modules and other time and materials services. You are responsible for establishing your access to the Subscription Services and installing any Client Software as permitted under this Agreement unless you purchase professional

services and execute a statement of work with us.

**9.2. Training.** Training and education services may be purchased in accordance with terms and conditions of the Education and Training Terms at [www.secureauth.com/product-and-service-terms](http://www.secureauth.com/product-and-service-terms).

**10. CONFIDENTIALITY**

**10.1. Confidential Information.** Confidential Information means all 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. Confidential Information of each party includes the terms and conditions of this Agreement, all Orders (including pricing), as well as the Subscription Services, business and marketing plans, financial information, strategies, data, technology and technical information, research and development, product plans and designs, and business processes disclosed by a party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

**10.2. Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (a) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (b) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those in this Agreement. Neither party will disclose the terms of this Agreement or Order to any third party other than its Affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for the Affiliate's, legal counsel's or accountant's compliance with Section 10 (Confidentiality).

**10.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party: (a) gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted); (b) reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure; and (c) discloses only the information required by law.

**11. WARRANTIES AND DISCLAIMERS**

**11.1. General Warranty.** Each party represents and warrants that it has validly entered into this Agreement and has the legal power to do so.

**11.2. Warranty.** We warrant that: (a) the Subscription Service will perform in substantial accordance with the Documentation; and (b) except as specified in the Documentation and to the best of our knowledge, the Subscription Service does not contain any program routine, device, or other undisclosed feature, including, without limitation, malicious logic, worm, or Trojan horse. If the Subscription Service fails to fulfill or is not in compliance with one or more of the warranties set forth in this Section, then you must inform us in writing and provide information and materials, reasonably requested by us, to document and reproduce the noncompliance. Your exclusive remedy under this provision will be to have us, at our expense and sole option, either modify or replace the nonconforming Subscription Service with other services offering comparable functionality; and if we are unable to correct the warranty issue after a reasonable opportunity, you may terminate the Subscription Service and we will refund any prepaid fees covering the remainder of the Subscription Term for the applicable Subscription Service. If refunded, your access to the defective Subscription Service will be terminated. This warranty does not apply to problems caused by (i) abuse, misuse, alteration, neglect, accident, unauthorized repair or installation, or acts or omissions of any party other than us; (ii) your hardware, software, networks or systems; (iii) your failure to promptly install or allow an installation of a revision, update or release provided by us or our licensor; or (iv) use of the Subscription Service not in accordance with the Documentation or the Agreement. For products, acquired from a third-party on behalf of you by us, then you agree to look solely to the manufacturer of those products for all warranties made by manufacturer regarding those products.

**11.3. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 11.2, THE SUBSCRIPTION SERVICE (INCLUDING BUT NOT LIMITED TO ALL EVALUATION SERVICES) ARE OFFERED "AS IS" AND "AS AVAILABLE" AND YOU RECEIVE NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. WE, OUR AFFILIATES AND LICENSORS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT; AND ANY WARRANTY ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WE DO NOT WARRANT THAT THE USE OR OPERATION OF ANY OF THE SUBSCRIPTION SERVICES WILL BE SECURE, UNINTERRUPTED, FREE OF HARMFUL CODE OR ERROR FREE OR THAT THE SUBSCRIPTION SERVICE WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE, EQUIPMENT OR HARDWARE (EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION), OR THAT THE SUBSCRIPTION SERVICE WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA, OR THAT THE SUBSCRIPTION SERVICE WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS. SUBSCRIPTION SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, TELEPHONIC AND ELECTRONIC COMMUNICATIONS AND WE ARE NOT RESPONSIBLE FOR DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE AS A RESULT.

## **12. INDEMNIFICATION**

**12.1. Indemnifications.** We agree to indemnify, defend and hold

you harmless from and against any unaffiliated third-party claim or legal action alleging: (a) that the Subscription Service as made available to you by us infringe any United States patent, copyright or trademark (**IP Indemnity**); or (b) death, bodily injury or the damage to or loss of any real or tangible personal property to the extent arising out of our gross negligence or willful misconduct in the performance of this Agreement. You agree to indemnify, defend and hold us and our licensors harmless from and against any unaffiliated third-party claim or legal action arising from or in connection with your breach of this Agreement.

**12.2. Procedure.** The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. Failure to provide timely notice or reasonable assistance will relieve the indemnifying party of its obligations under Section 12 to the extent the indemnifying party has been materially prejudiced. The indemnifying party will have full control and authority over the defense, including appeals, negotiations and any settlement, except that: (a) it may not make an admission of fault on behalf of the other party without written consent, (b) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (c) the other party may join in the defense with its own counsel at its own expense. The indemnifying party will (i) retain and pay attorneys and court costs as part of its defense obligation, (ii) reimburse the other party for reasonable out-of-pocket expenses that it incurs in providing assistance, and (iii) pay the amount of any resulting adverse final judgment (including any award of attorney's fees and costs), penalties, sanctions or settlement. SECTION 12 STATES THE SOLE LIABILITIES AND EXCLUSIVE REMEDIES FOR CLAIMS DESCRIBED IN SECTION 12.

**12.3. Exceptions.** We have no obligation to indemnify you for an IP Indemnity to the extent that any claim or allegation arises from: (a) your use of the Subscription Service contrary to this Agreement or the Documentation; (b) use of a Subscription Service in combination any other services, technology, content or material not provided or approved by us if infringement would not occur without the combination, unless contemplated by this Agreement or the Documentation expressly authorizes a combination with other services, technology, content or material; (c) modification of the Subscription Service by anyone other than us, or modification made by us for non-standard features or functionality for you or according to your direction if the infringement would not have occurred without your requested modifications; or (d) your failure to install or allow an installation of a revision, update or release made available or provided by us or our licensors that would have eliminated the infringement.

**12.4. Possible Infringement.** In the event that we, in our sole discretion, reasonably determine, that the Subscription Service, or any portion thereof, infringes or misappropriates, or may infringe or misappropriate, any third-party Intellectual Property Right, we will, as your sole and exclusive remedy (but without limitation of our indemnification obligations under Section 12), and at our sole discretion, either: (a) obtain the right, at reasonable cost, for you to continue using the Subscription Service, or portion thereof; (b) modify the Subscription Service while retaining substantively equivalent functionality; (c) provide a non-infringing, functionally equivalent replacement; or (d) terminate the applicable Subscription Service in whole or in part and give you a refund for

any unused, prepaid fees for the infringing Subscription Service covering the remainder of the Subscription Term, after the date of termination.

### **13. LIMITATION OF LIABILITY**

**13.1. NO CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES OR LICENSORS HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING FOR THE LOSS, WHETHER DIRECT OR INDIRECT, OF USE, PROFIT, REVENUE, BUSINESS OPPORTUNITY, GOODWILL OR DATA, OR FOR BUSINESS INTERRUPTION OR COST OF COVER), HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING UNDER ANY CONTRACT, NEGLIGENCE, TORT OR OTHER THEORY OF LIABILITY) EVEN IF THE PARTY OR ITS AFFILIATES KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE OR REASONABLY FORESEEABLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

**13.2. LIMITATION.** THE AGGREGATE LIABILITY FOR ALL CLAIMS UNDER THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES UP TO: (A) THE AMOUNT PAID BY YOU TO US UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY IF THE BREACHING PARTY IS US; OR (B) THE AMOUNT DUE FROM YOU UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY IF THE BREACHING PARTY IS YOU. THIS LIMITATION APPLIES TO ANY DAMAGE, HOWEVER CAUSED, AND ON ANY THEORY OR LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, NEGLIGENCE (ACTIVE OR OTHERWISE), THE USE OR PERFORMANCE OF THE SUBSCRIPTION SERVICES, OR OTHERWISE AND REGARDLESS OF WHETHER THE DAMAGES WERE FORESEEABLE OR NOT. NOTWITHSTANDING THE ABOVE, OUR CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO AN EVALUATION SERVICE WILL NOT EXCEED \$100. Neither party will be liable for any claim brought by the other party more than 12 months after the other party became aware of the claim.

**13.3. Exceptions to Limitations.** The limits of liability in Section 13.2 apply to the fullest extent permitted by law, except with regard to: (a) violation of the other party's Intellectual Property Rights; (b) willful misconduct, gross negligence or fraud; (c) your failure to comply with your payment obligations; or (d) breach of a party's obligations under Section 10 (Confidentiality) or Section 12 (Indemnification). Notwithstanding anything to the contrary in the Agreement, our aggregate liability with respect to Customer Data will be limited to the amounts in Section 13.2.

### **14. GENERAL**

**14.1. Entire Agreement.** The Agreement, any attached specific Subscription Service terms, Order(s), and any amendments contain the entire agreement with respect to the subject matter of this Agreement and supersede and replace all prior or

contemporaneous proposals, understandings, agreements, negotiations and representations, oral or written. Any pricing, payment and term length conditions in an Order that are inconsistent with the Agreement will control for that Order only. Any inconsistent or additional terms of your purchase order or similar document are excluded regardless of us accepting the purchase order or other Customer document for payment purposes. All headings are for reference purposes only and must not affect the interpretation of the Agreement.

**14.2. Assignment.** Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without the other party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. Notwithstanding the foregoing, if you are acquired by, sell substantially all your assets to, or undergo a change of control in favor of, either (a) a direct competitor of ours or an Affiliate of a direct competitor of ours, or (b) an entity located outside of the United States, then we may terminate this Agreement. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.3. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction or arbitrator to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

**14.4. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. Any waiver, amendment or other modification of this Agreement must be in writing and signed by an authorized representative of both parties.

**14.5. Notices.** Notice or approval must be in writing, signed by a party's authorized representative. Notices will be deemed to have been given upon: (a) personal delivery, (b) the second business day after mailing, or (c) the first business day after sending by email (provided email will not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to you will be addressed to the relevant billing contact designated by you. All other notices to you will be addressed to the relevant contact administrator designated by you.

**14.6. Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, internet failure, communication line failure and power failures, war, acts of terror, riot, acts of God or governmental action (including the passage of laws or regulations or other acts of government that impact the delivery of the Subscription Service).

**14.7. 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. Each party will be solely responsible for payment of all compensation owed to its



employees, as well as all employment-related taxes. We do not undertake to perform any of your regulatory obligations or assume any responsibility for your business or operations.

**14.8. Dispute Resolution.** The parties will attempt in good faith to resolve any controversy or claim promptly through business discussions and will, upon written request, escalate a dispute to executive management for resolution. If the parties fail to resolve the dispute within 30 days of written request, or any longer period agreed to in writing, the parties may pursue the remedies to which they are entitled. This Section does not restrict either party's right to seek injunctive relief.

**14.9. Governing Law; Arbitration.** This Agreement is to be governed by and interpreted in accordance with the laws of the State of Delaware, U.S.A., without giving effect to its principles of conflict of laws. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Transactions Act, as adopted by any state or governing body, do not apply to this Agreement. Any action or proceeding arising out of or relating to this Agreement will be resolved by arbitration in Orange County, California in accordance with the Commercial Dispute Resolution Procedures of the American Arbitration Association and, in the event either party seeks injunctive or provisional relief, the Optional Rules for Emergency Measures of Protection. The arbitration will be heard and determined by a single arbitrator experienced in the software industry. The arbitrator's decision in any arbitration will be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The prevailing party will be entitled to recover its attorneys' fees and arbitration costs from the other party. The parties agree that the arbitration will be kept confidential and that the existence of the proceeding and any element of it (including, but not limited to, any pleadings, briefs or other documents submitted or exchanged and any testimony or other oral submissions and awards) will not be disclosed beyond the arbitration panel, except as may lawfully be required in judicial proceedings relating to the arbitration or by disclosure rules and regulations of securities regulatory authorities or other governmental agencies.

**14.10. Injunctive Relief.** Each party acknowledges that money damages may not be sufficient compensation for a breach of Sections 2-5 or 10. Each party agrees that the other will have the right, in addition to its other rights and remedies, to seek injunctive relief in accordance with this Agreement for any violation or threatened violation of Sections 2-5 or 10 and waives any requirement that the party seeking injunctive relief post a bond or any other security.

**14.11. U.S. Government Customer Rights.** Where the United States Government is the Customer, the Government acquires the Subscription Service with only those rights set forth in this Agreement, and any use of the Subscription Service by the Government constitutes agreement by the Government that that the Subscription Service is a "commercial item", "commercial computer software", "commercial computer software documentation" and "technical data" as defined in the Federal Acquisition Regulation and the Defense Federal Acquisition Regulation Supplement. If for any reason any Subscription Service is not considered commercial or the terms of this Agreement are otherwise deemed not applicable, the Subscription

Service will be deemed to have been provided with "restricted rights."

**14.12. Compliance with Laws.** Each party will comply with the laws and regulations applicable to it in connection with its obligations and performance under this Agreement. You are responsible for ensuring that your use of the Subscription Service is in accordance with laws and regulations that apply to you.

**14.13. Export.** Each party is responsible for ensuring that its actions with respect to the Subscription Service comply with the export control laws of the United States. You will not, directly or indirectly, export, re-export, transfer, re-transfer, sell, supply, or allow access to or use of the Subscription Service to, in, by, or for sanctioned, embargoed, or prohibited countries, persons, or end uses under U.S. or other applicable law (collectively, **Prohibited Uses**). You are responsible for screening for Prohibited Uses and obtaining any required licenses, governmental approval, or other authorizations.

**14.14. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**14.15. Marketing.** We may use your company name, logo, trademark, trade name, service mark, or other commercial designation to indicate the existence of a customer relationship between you and us. We may place your name and/or logo in audio and online presentations to potential and current customers and business partners and use your name in a press release.