

## DEVO TERMS OF SERVICE

These Terms of Service (the "Agreement") are a legally binding agreement between you (a single natural or legal person, hereinafter referred to by the term "You") and Devo, Inc. (hereinafter "Devo", or "Us" or "We" or words of similar import) with regard to the Devo services for managing and analyzing Customer's IT systems logs, as described at [www.devo.com](http://www.devo.com), accessed via the website located at [app.devo.com](http://app.devo.com) or such other site that may be designated by Devo from time to time (the "Services"). For the purposes of this Agreement, the term Services includes all software contained in the Services.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SERVICES. BY ACCESSING OR USING THE SERVICES, IN ANY FORM OR MEDIA, YOU CONFIRM YOU HAVE READ AND UNDERSTAND THIS AGREEMENT AND YOU AGREE TO BE BOUND BY IT. IF YOU DO NOT AGREE TO THE TERMS OR DO NOT WISH TO BECOME A PARTY TO THIS AGREEMENT, YOU SHOULD NOT ACCESS OR USE THE SERVICES.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF (AND FOR USE ON BEHALF OF) A COMPANY, GOVERNMENTAL ENTITY OR OTHER ENTITY (AN " ENTITY"), YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS OF THIS AGREEMENT. THE TERM "YOU" REFERENCED HEREIN REFERS TO: (1) THE ENTITY, ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES OR (2) YOU, AS AN INDIVIDUAL, IN THE CASE OF A NON-LEGAL ENTITY.

THE "EFFECTIVE DATE" FOR THIS AGREEMENT IS THE EARLIER OF THE FIRST DATE OF ANY APPLICABLE ORDER FORM, THE DATE OF THE FIRST INVOICE ISSUED, THE DATE YOUR CREDIT CARD PAYMENT IS PROCESSED, OR THE FIRST DAY YOU ACCESS OR USE THE SERVICES. Any terms or conditions appearing on the face or reverse side of any purchase order, purchase order acknowledgment or other order document that are different from, or in addition to, the terms of this Agreement will not be binding on Us, even if payment is accepted. You agree that your order is neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

### **1. THE SERVICES.**

We will provide you with the specific Services identified on the applicable order form ("Order Form"). We will provide support for the Services if and as described in the Order Form, in accordance with the Devo Support Services Addendum as updated by Devo from time to time, which is attached to this Agreement as an Exhibit and incorporated herein by reference. Some of our Services are (i) hosted by Us and are offered to you as a cloud offering ("Cloud Services"); (ii) are hosted by You in Your own environment or a Cloud environment obtained by You ("Hybrid Cloud Services"); or (iii) are performed on premise by You in Your own environment ("Managed On-Premise Services"). Your Order Form will identify whether You are receiving Cloud Services, Hybrid Cloud Services or On-Premise Services. Certain provisions of this Agreement are applicable only to Cloud Services, Hybrid Cloud Services or On-Premise Services respectively, but only if the provision expressly states such limitation.

Subject to this Agreement, and subject to the payment of fees set forth on the applicable Order Form, We hereby grant to You, solely during the Subscription Term (defined in Section 13), a non-exclusive, non-transferable (except as set forth in Section 15 under Assignment) worldwide right to access and use the Services solely for Your internal business purposes. This license is restricted to use by You and Your Users and does not include the right to use the Services on behalf of any third party. "User" means an individual employee, contractor, agent or IT service supplier authorized by You to access the Services, and who has been given a unique login and password information necessary to access and use the Services ("Access Code"). You will only use the Services to analyze your own logs. User accounts cannot be shared or used by more than one User, but may be reassigned to new Users replacing former Users who no longer use the Services. Each User must have a unique email address. Other restrictions to your use of the Services may be set forth on the Order Form, including volume limitations. If at any time You exceed the volume limitations agreed in the applicable Order Form, You will execute a separate Order Form for additional capacity, and pay the applicable fees for any such additional volume or use.

As part of the Service, you are provided access to a User administration interface that allows You to manage Your Users. You acknowledge that You are responsible for the creation of Your User accounts and for managing the Access Codes. You are responsible for procuring and maintaining the technical environment and internet and other connections required to access the Services.

### **2. OUR RESPONSIBILITIES.**

Subject to the terms of this Agreement, we will use commercially reasonable efforts to provide you with access to the applicable Services during the Subscription Term in accordance with Our SLA policy and the Documentation. "Documentation" means the generally available technical manuals published by Us and accessible at [docs.devo.com](https://docs.devo.com) as well as quotes or invoices You have received from Us in writing with respect to the Services. We may make modifications to the Services or particular components of the Services (including support levels) from time to time, provided that such modifications do not materially degrade any functionality or features of the Services.

If you are receiving Cloud Services, We will use commercially reasonable efforts to perform regular backups of Your Data (defined in Section 7) as provided in the Support Services Addendum attached hereto as an Exhibit. In the event of any loss of Your Data, We will provide commercially reasonable recovery services to attempt to restore Your most recent backup, but You are responsible for making your own backups of Your Data. We are not responsible or liable for any loss of Your Data.

### **3. FEES AND PAYMENT.**

You agree to pay Us for Services provided and expenses incurred on the basis and at the rates specified in each Order Form, or if no rate is specified, Our then-current rate. All fees are non-cancellable and non-refundable. We reserve the right to change the rates, applicable charges and usage policies and to introduce new charges by providing You at least 30 days' prior written notice (by email) of the change, but any such modifications will not apply until the start of your next renewal Subscription Term, unless there are new or additional Services ordered by You.

Except as otherwise agreed in the applicable Order Form or as otherwise set forth on Your invoice, payment is due in advance, thirty (30) days after receipt of invoice and shall be made in US Dollars. You will pay all pre-approved reasonable travel and out-of-pocket expenses incurred by Us in connection with any Services rendered. If You are purchasing the Services through an authorized reseller, the reseller's payment terms shall prevail.

If You are paying by credit card, we reserve the right to verify credit card or debit card payments prior to accepting your Order Form. If You are paying by credit card, You hereby authorize Us to charge such credit card for all Services and any other items listed on the applicable Order Form, for the Subscription Term and any renewal term. You are responsible for promptly updating any changes to Your credit card or other payment information.

You understand We may charge You a late charge of one and a half percent (1.5%) per month (or part of a month), or the maximum lawful rate permitted by applicable law, for any amounts not paid on time. Furthermore, We reserve the right to suspend or terminate this Agreement and Your access to the Services if You do not fully pay Your invoices as they become due and payable.

Fees are exclusive of taxes. You are responsible for the payment of all sales, use and similar taxes arising from or relating to the Services rendered hereunder, except for taxes related to Our net income and any taxes or obligations imposed upon Us under federal, state and local wage laws.

### **4. EVALUATION SERVICES.**

We may make certain Services or features available to You for evaluation purposes only ("Evaluation Services"). If Your Order Form specifies that You will receive Evaluation Services, then subject to the terms and conditions of this Agreement, We grant You a limited, non-exclusive, revocable, non-transferable, personal, non-sublicensable license to install and use the Evaluation Services, solely for testing and evaluation purposes during the test period defined in the Order Form. Evaluation Services are performed in Our cloud production environment only. You will not use the Evaluation Services in a production environment or for production purposes. Beta Software is Our Confidential Information. We are not obligated to correct any bugs, defects, or errors in the Evaluation Services or otherwise support or maintain the Evaluation Services. Only Sections 1, 2, 4, 6-9, 12 and 15 of this Agreement apply to the Evaluation Services. NOTWITHSTANDING ANY WARRANTIES IN THIS AGREEMENT, THE EVALUATION SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. THE EVALUATION SERVICES ARE NOT INTENDED FOR ANY PRODUCTIVE USE OF ANY KIND, AND WE HAVE NO LIABILITY FOR ANY USE OUTSIDE OF THE TESTING ENVIRONMENT. YOUR USE OF THE EVALUATION SERVICES IS AT YOUR OWN RISK. UPON EXPIRATION OF THE EVALUATION PERIOD, YOUR DATA WILL NO LONGER BE ACCESSIBLE, AND WE ARE NOT LIABLE FOR ANY LOSS OF YOUR DATA.

### **5. BETA SERVICES.**

From time to time, We may make available (but have no obligation to make available) certain Beta Services to You. "Beta Services" means non-production beta software, including any updates or upgrades, whether hosted by You or Us, and any related documentation. If Your Order Form specifies that You will receive Beta Services, then subject to the terms and conditions of this Agreement, We grant You a limited, non-exclusive, revocable, non-transferable, personal, non-sublicensable license to install and use the Beta Services, solely for testing and evaluation purposes during the test period defined in the Order Form. You will not

use the Beta Services in a production environment. Beta Services are Our Confidential Information. We are not obligated to correct any bugs, defects, or errors in the Beta Services or otherwise support or maintain the Beta Services. Only Sections 1, 2, 5-9, 12, and 15 of this Agreement apply to the Beta Service. NOTWITHSTANDING ANY WARRANTIES IN THIS AGREEMENT, THE BETA SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND WHATSOEVER. THE BETA SERVICES ARE NOT INTENDED FOR ANY PRODUCTIVE USE OF ANY KIND, AND WE HAS NO LIABILITY FOR ANY USE OUTSIDE OF THE TESTING ENVIRONMENT. WE DO NOT GUARANTEE THAT WE WILL MAKE A COMMERCIAL RELEASE OF A VERSION OF THE BETA SERVICES AVAILABLE. THE BETA SERVICES ARE A PRE-RELEASE VERSION, AND MAY CONTAIN BUGS, ERRORS, OR OTHER PROBLEMS. YOUR USE OF THE BETA SERVICES IS AT YOUR OWN RISK.

## **6. YOUR RESPONSIBILITIES, YOUR DATA.**

You are responsible for maintaining and updating Your account information to ensure it is accurate and complete. You are responsible for all activities conducted under Your User logins and for Your Users' compliance with this Agreement, and with all applicable laws and regulations. Unauthorized use, resale or commercial exploitation of the Services in any way is expressly prohibited. Without Our express prior written consent in each instance, You shall not (and shall not allow any third party to): reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the Services or the underlying software, or access the Services in order to build a competitive product or service or copy any ideas, features, functions or graphics of the Services. You will not modify or make derivative works of the Services. Except as expressly permitted in this Agreement, You will not copy, rent, license, sublicense, sell, transfer, make available, lease, time-share, distribute, or assign this license, the Services to any third-party. You will be liable for any breach of this Agreement by any of Your Users. You and Your Users will at all times comply with Our Acceptable Use Policy. In addition to Our other remedies hereunder, We reserve the right upon notice to You to terminate any User's right to access the Subscription Service if such User has violated any of the restrictions contained in this Agreement.

You are solely responsible for Your Data, including the accuracy, integrity or quality of Your Data, and the means by which You acquire and use Your Data. You are responsible for the security of Your Data when transmitted to and from the Services. Neither You nor Your Users may use the Services to: (a) send, upload or otherwise transmit any of Your Data that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (b) upload or otherwise transmit, display or distribute any of Your Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (c) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (d) interfere with or disrupt the Services or networks connected to the Services; or (e) violate any applicable law or regulation. Unless Your Order Form expressly states that You are purchasing a subscription to the Services for use with protected health information (as defined in the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented, known as "HIPAA") or payment card information, You acknowledge and agree that You will not access or store any protected health information (as defined in HIPAA) or any payment card information or other financial information protected under the Gramm-Leach-Bliley Act within the Services.

During the Agreement Term (defined in Section 13), You hereby grant to Us a worldwide, non-exclusive, royalty-free transferable right to use, reproduce, analyze, display, transmit, and distribute Your Data as necessary to provide the Services to You. You acknowledge and agree that We shall have the right to copy, use, distribute, and display any information, analysis, statistics and other data generated by the Services (or derived from Your use of the Services), including compilation of aggregated statistics about the Services, solely to optimize performance of our Service and provide You with analytics and data about Your use of the Services.

You are responsible for keeping Your User Access Codes confidential. If You are aware of any disclosure or threatened disclosure of the User Access Codes, You will notify us immediately. We may close the account and/or block access to the corresponding User account, and We will issue You a new Access Code.

## **7. INTELLECTUAL PROPERTY.**

You retain ownership of all right, title and interest in and to all Your Data. "Your Data" means any information, data or other materials that You transmit to the Services or that are transmitted on Your behalf by a third party.

You acknowledge and agree that as between Us and You, all right, title and interest in and to the Services and all enhancements, modifications and derivatives thereof (including any and all patents, copyrights, trade secret rights, trademarks, trade names and other proprietary rights embodied therein or associated therewith) are and shall remain Ours or Our licensors', and We in no way convey any right or interest in the Services other than a limited license to use, as set forth in this Agreement. We also retain

ownership of all right, title and interest in and to all know-how related to the Services. All rights to the Services not expressly granted to You under this Agreement are reserved by Us.

We also retain ownership of all right, title and interest in and to all Our Data. During the Agreement Term, We grant You a limited, non-exclusive, non-transferable, royalty-free right to use, display, transmit, and distribute the Our Data solely in connection with Your permitted use of the Services. "Our Data" means any information, data, technology and materials other than the Services (or the Software contained in the Services) that We make available in connection with the Services, including any Documentation, sample code, software libraries and other related technology and materials.

From time to time You may provide to Us comments, suggested improvements, and other feedback about the use, operation, functionality, and features of the Services (collectively, the "Feedback"). You agree that We have the right to use the Feedback at Our sole discretion, including incorporating all or some of the Feedback into our Services, all without notice to, payment to, or consent from You. This right is an unlimited, perpetual, fully paid-up, worldwide, non-exclusive, fully transferable, fully sublicensable, and irrevocable right to execute, reproduce, distribute, perform, display, modify, create derivative works of, make, have made, use, import, sell, offer to sell, and otherwise transfer the Feedback and to practice or have practiced any process or method involved in any use thereof.

## **8. MONITORING AND AUDIT.**

With respect to Cloud Services or Hybrid Cloud Services only: For security reasons, We monitor User IP addresses and We will use reasonable efforts to inform You if a User account is accessed from multiple IP addresses. The Services include User control software that reports the number of authorized Users and permits Us and/or our resellers to verify usage of the Services. You agree that We may monitor or audit Your use of the Services (which does not involve any access to Your Data or IT systems). You will not seek to block or otherwise interfere with the monitoring or audit, and We may use technical means to overcome any methods used to block or interfere with such monitoring. We reserve the right to put in place additional mechanisms to verify and protect against unauthorized access. Failure to reasonably comply with Our efforts to audit Your compliance with this Agreement constitutes a material breach of this Agreement.

## **9. CONFIDENTIALITY.**

During the Agreement Term, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information also includes information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. Your Confidential Information includes Your Data. Our Confidential Information includes the Services and Our Data. The receiving Party will hold in confidence, and will not disclose (or permit or suffer its personnel to disclose) any Confidential Information to any person or entity *except* to a director, officer, employee, outside consultant, or advisor (collectively "Representatives") who has a need to know such Confidential Information in the course of the performance of their duties for the receiving party and who is bound by a duty of confidentiality no less protective of the disclosing party's Confidential Information than this Agreement. The receiving party and its Representatives will use such Confidential Information only for the purpose for which it was disclosed and will not use or exploit such Confidential Information for its own benefit or the benefit of another person without the prior written consent of the disclosing party. Each party accepts responsibility for the actions of its Representatives and will protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event using less than reasonable care. The parties expressly agree that the terms and pricing of this Agreement are Confidential Information and You further agree that You will not use the Services for the purposes of conducting comparative analysis, evaluations or product benchmarks with respect to the Services and will not publicly post any analysis or reviews of the Services without Our prior written approval. A receiving party will promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and will cooperate with any reasonable request of the disclosing party in enforcing its rights.

Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

Notwithstanding any other provision of this Agreement, both parties acknowledge that any use of the disclosing party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the disclosing party

irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, both parties agree that, in addition to any other remedy to which the disclosing party may be entitled hereunder, at law or equity, the disclosing party will be entitled to an injunction or injunctions (without the posting of any bond and without proof of actual damages) to restrain such use in addition to other appropriate remedies available under applicable law.

**10. SECURITY AND DATA PROTECTION**

During the Agreement Term, we will maintain a security program that materially complies with generally accepted industry standards. We will maintain the physical and technical safeguards further described here [docs.devo.com](https://docs.devo.com).

**11. LIMITED WARRANTY**

We warrant that during the Subscription Term for the applicable Services, the Services will conform, in all material respects, with the Documentation. For any breach of the above warranty, We will, at no additional cost to You, provide remedial services necessary to enable the Services to conform to the warranty. You will provide Us with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this section are Your sole remedies for breach of this warranty. This warranty will only apply if the Services have been utilized by You in accordance with the Order Form and this Agreement.

WE DO NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICES AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND YOUR LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED HEREIN ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY US. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. YOU ASSUME ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICES ARE ACCURATE, RELIABLE OR SUFFICIENT FOR YOUR PURPOSES.

**12. LIMITATION OF LIABILITY.**

NEITHER PARTY WILL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR LOSS OF PROFITS, LOSS OF DATA OR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES, OR THE PERFORMANCE OF ANY OTHER OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF IT IS AWARE OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. EACH PARTY'S TOTAL CUMULATIVE LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS AND DAMAGES UNDER THIS AGREEMENT, WHETHER ARISING BY STATUTE, CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID OR PAYABLE BY YOU TO US UNDER THE ORDER FORM FOR THE SERVICES WHICH FORM THE SUBJECT OF THE CLAIM DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

THE FOREGOING LIMITATIONS DO NOT APPLY TO (I) EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14, (II) EACH PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9, (III) YOUR PAYMENT OBLIGATIONS UNDER SECTION 3 AND (IV) DAMAGES ARISING FROM FRAUD OR A PARTY'S INTENTIONAL MISCONDUCT OR TO THE EXTENT SUCH LIMITATIONS ARE PROHIBITED BY LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF WARRANTIES OR INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE THE LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW.

**13. TERM & TERMINATION, SUSPENSION**

This Agreement will begin on the Effective Date as set forth above and will continue until otherwise terminated under this Section 13 (the "Agreement Term"). The term of the subscription to the Services shall be set forth on the Order Form (the "Subscription Term"). The Subscription Term will automatically renew for successive periods equal in length to the initial Subscription Term, unless either party provides the other with written notice of intent to terminate 30 days prior to the end of the current Subscription Term.

Either party may terminate this Agreement or any Order Form (i) immediately in the event of a material breach of this Agreement or any such Order Form by the other party that is not cured within thirty (30) days of written notice from the other party, or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within ninety (90) days of filing. Termination of an Order Form will not terminate this Agreement. Termination of this Agreement will however terminate all outstanding Order Forms and Subscription Terms. Either party may also terminate this Agreement by providing 30 days' prior written notice to the other party, if there are no outstanding Order Forms then currently in effect. All rights and obligations of the parties which by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of this Agreement and each Order Form.

Immediately upon any termination or expiration of this Agreement or any applicable Order Form, We will no longer provide the applicable Services to You and You will stop using the Services. You will pay Us for all fees that had accrued prior to the termination date, including any fees for the remainder of the applicable term of the Order Form(s). Upon termination of this Agreement, each party will promptly return or destroy all Confidential Information of the other party in its possession. Within thirty (30) days following termination, You may retrieve Your Data in accordance with established and reasonable system access procedures. After such period, We will have no further obligation to store and/or make available Your Data and may delete the same. All terms which by their nature should survive termination of this Agreement shall survive such termination.

We reserve the right to suspend or limit access to the Services provided to You (or to a particular User) if You breach the terms of this Agreement, including non-payment of any fees. We are not responsible for any liability or damage suffered by You as a result of any suspension or termination in accordance with this Agreement.

#### **14. INDEMNIFICATION**

We will indemnify, defend and hold You harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") incurred, arising out of or in connection with a claim, suit, action, or proceeding brought by any third party against You alleging that the use of the Services as permitted hereunder infringes any patent, copyright or trademark, or constitutes a misappropriation of a trade secret of a third party. Excluded from the above indemnification obligations are claims to the extent arising from (a) use of the Services in violation of this Agreement or applicable law, (b) use of the Services after We notify You to discontinue use because of an infringement claim, (c) any claim relating to any third party products or services or Your Data, (d) modifications to the Services made by anyone other than Us (where the claim would not have arisen but for such modification), (e) the combination, operation, or use of the Services with software or equipment which was not provided by Us, to the extent that Your liability for such claim would have been avoided in the absence of such combination, operation, or use; (f) compliance by Us with Your custom requirements or specifications if and to the extent such compliance with Your custom requirements or specifications resulted in the infringement; or (g) any copyright issued or application published after the effective date of this Agreement. If the Services are held to infringe, We will, at Our own expense, in Our sole discretion, use commercially reasonable efforts either (a) to procure a license that will protect You against such claim without cost to You; (b) to replace the Services with non-infringing Services without material loss of functionality; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement or the applicable Order Form and refund to You any prepaid unused fees paid to Us for the infringing Services. The rights and remedies granted to You under this Section 14 state Our entire liability, and Your exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third party, whether arising under statutory or common law or otherwise.

You will indemnify, defend, and hold Us harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding brought by any third party against Us that arises out of or results from a claim alleging that Your Data, or any use thereof, infringes the intellectual property rights or proprietary rights of any third party, or arising out of Your violation of any applicable law or the provisions of Section 7 of this Agreement.

Each Party will indemnify, defend, and hold the other Party harmless from and against any and all Losses resulting from a claim, suit, action, or proceeding arising out of or resulting from bodily injury, death of any person or damage to real or tangible, personal property resulting from the willful, fraudulent or negligent acts or omissions of such Party or its personnel under this Agreement.

The indemnified party shall (i) promptly notify the indemnifying Party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement; provided that the indemnifying party shall not settle any claim without the indemnified party's prior written consent (such consent not to be unreasonably withheld or delayed). The indemnified party shall also provide the indemnifying party with reasonable cooperation and assistance in defending such claim (at the indemnifying party's cost).

#### **15. THIRD PARTY SOFTWARE.**

The Services may be performed with or contain software governed by licenses from third parties ("Third Party Software"), including any software component that is subject to any open-source copyright license agreement ("Open Source"). Notwithstanding anything to the contrary in this Agreement, all Third Party Software is licensed to You solely under the terms of the corresponding third party license agreements provided or referenced in the Services. We make no representation or warranty concerning Third Party Software and have no obligation or liability with respect to any Third Party Software. If the applicable third party licenses provide for the availability of source code of such Third Party Software and such source code is not already included in the Services' distribution, please contact Us to obtain such source code.

#### **16. GENERAL PROVISIONS.**

**Entire Agreement.** This Agreement, including all attachments and hyperlinks hereto and all Order Forms, contains the entire agreement between the parties, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between the parties relating thereto and is binding upon the parties and their permitted successors and assigns. Any inconsistent or conflicting terms and conditions contained in any purchase order issued by You shall be of no force or effect, even if the purchase order is accepted by Us. In the event of any conflict between the terms of this Agreement and any Order Form, this Agreement shall control, unless such Order Form expressly states that it is to control. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the party drafting this Agreement in construing or interpreting the provisions hereof.

**Assignment.** This Agreement shall be binding upon and for the benefit of each party and their permitted successors and assigns. Either party may assign this Agreement and all Order Forms as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets. Except as expressly stated in this Agreement, neither party may otherwise assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, and any attempted assignment or delegation without such consent will be void. We may use independent contractors or subcontractors to assist in the delivery of Services; provided, that We remain liable for the actions or omissions of the independent contractors or subcontractors and for the payment of their compensation.

**Marketing.** You agree that We may use Your trade names, trademarks or service marks in connection with the performance of the Services, and in Our promotional materials, notices, and advertisements.

**Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York, USA without regard to its conflict of law provisions if You are located in the United States or rest of world outside the European Union. This Agreement shall be governed by and construed in accordance with the laws of Spain, without regard to its conflict of law provisions if You are located within the European Union.

**Relationship of the Parties.** Each party is an independent contractor, and nothing in this Agreement shall be construed as a partnership or creating the relationships of employer and employee, or principal and agent, for any purpose whatsoever. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf.

**Force Majeure.** Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control of the non-performing party.

**Notices.** You consent to receiving electronic communications (including emails at the address in Your Order Form) and notifications from Us in connection with Your Use of the Services, and with respect to any notice, approval, request, authorization, direction or other communication to be provided to You under this Agreement. You are responsible for providing us with Your most current email address, and an email will be deemed received once it has been sent to the email address We have on file. We may also send notices to You via regular mail, and any notice You send to us will be via regular mail. All such written notices (other than electronic communications) shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the party to whom the same is directed; (ii) one (1) business day after deposit with a nationally recognized overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date whether or not actually received, if sent by certified mail, return receipt requested, postage and charges pre-paid or any other means of rapid mail delivery for which a receipt is available, to the address of the party set forth on the applicable Order Form. Either party may change its address by giving written notice of such change to the other party.

**No Third Party Beneficiaries.** Nothing contained in this Agreement is intended or shall be construed to confer upon any person any rights, benefits or remedies of any kind or character whatsoever, or to create any obligation of a party to any such person.

**Waiver and Severability.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights. The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted.

**Export.** You will not export, re-export, use, or divert the Services to or on behalf of (a) any country that is subject to U.S., EU or UN economic sanctions administered by the US Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the European Commission or the UN, including but not limited to Burma, Cuba, Iran, Libya, Sudan, Syria and North Korea; (b) the government of any country sanctioned by any of the above, wherever located; or (c) persons or entities identified as "Specially Designated Nationals" by OFAC or sanctioned pursuant to applicable EU Regulation, or persons or entities that are owned or

controlled by such person or entity. You shall not distribute or supply the Services to any person if You have reason to believe that such person intends to export, re-export or otherwise transfer the Services to, or use the Services in or for the benefit of, any such OFAC- or EU sanctioned countries, governments, persons, or entities. You shall not use the Services in connection with the commission of terrorist acts or the design, development, production, or use of nuclear, biological, or chemical weapons; missiles; or unmanned aerial vehicles. You shall not export, re-export, or transfer the Services to any person or entity with knowledge or reason to know that any of the prohibited activities identified in this section are intended by such person or entity. Without limiting the foregoing, You shall not commit any act which would, directly or indirectly, violate, or which may cause Us to violate, any United States, EU or local law, regulation, treaty or agreement relating to the export or re-export of the Services. At Your expense, You shall obtain any government consents, authorizations, or licenses required for You to exercise Your rights and to discharge its obligations under this Agreement. You acknowledge that Your Data, once placed on the Services may constitute an export of Your Data by the You to one or more foreign jurisdictions, You shall not cause any such export of data in violation of the laws of the United States and/or such other foreign jurisdictions.

*United States Government Restricted Rights.* This provision applies only if You are the United States Government or a state or local government entity located in the United States (collectively, the "Government"), or if You are accessing or otherwise using the Services on behalf of the Government. Any technical data or Services which are licensed to the Government, its agencies and/or instrumentalities as a result of this Agreement are commercial technical data or commercial computer software developed exclusively at private expense as defined in FAR 2.101 or DFARS 252.227-7014 as applicable. For Technical data, use, duplication or disclosure by the Government is subject to restrictions as set forth in DFARS 202.227-7015 and this Agreement. For Services and any software contained therein, in accordance with FAR 12-212 or DFARS 227-7202, as applicable, use duplication or disclosure by the Government is set forth in this Agreement. No other rights are granted. Use of the Services and/or any technical data provided with such Services shall be deemed acceptance of this clause by You.

*Last Updated: April 2020*