

**By creating an Adapnex Cloud account, signing in to the Adapnex Cloud, clicking “Agree & Sign in” (or similar button) in any online sign-up or sign-in flow, indicating your acceptance of this Agreement in any other online interface, or accessing or using the Service or Software, you are agreeing to be bound by the terms and conditions of this Agreement. Each party expressly agrees that this Agreement is legally binding upon it. If a separate written license agreement with respect to any Service or Software exists between Customer and Service Provider, the terms of that written license agreement (excluding the pre-printed terms of any purchase order, confirmation or similar document, which will have no effect and will not be considered agreed to by Service Provider) shall take precedence over this Agreement, and you acknowledge that you are bound by the terms of that written license agreement.**

**This Master Subscription Agreement (“Agreement”) is entered into by and between the entity or person placing an Order Form (“Customer” or “you”) and Adapnex Inc. (“Service Provider”). This Agreement consists of the terms and conditions set forth below and any Order Forms. If you are accessing or using the Service or Software on behalf of your company, you represent that you are authorized to accept this Agreement on behalf of your company, and all references to “you” reference your company. The “Effective Date” of this Agreement is the date which is the earlier of (a) Customer’s initial access to the Service or Software through any online provisioning, registration or order process or (b) the subscription start date of the first Order Form.**

### **Master Subscription Agreement**

#### **1. Using the Service.**

1.1. **Permitted Use.** Subject to this Agreement, Customer may use the Service for its own business purposes in accordance with the terms of an applicable Order Form (“**Permitted Use**”). This includes the right to copy and use the Service Provider Software (if any) and Documentation as part of Customer’s Permitted Use and:

- (a) Operating, maintaining, and managing industrial systems and machinery using the Service;
- (b) Developing custom applications using the Adapnex SDK;
- (c) Integrating third-party platforms and systems with the Service as permitted herein;
- (d) Deploying the Service on Customer’s own infrastructure or in a private cloud environment (as identified in the Order Form); and
- (e) Using the Service in air-gapped (disconnected) environments where permitted.

Customer will comply with all Documentation and applicable SDK License terms in using the Service.

1.2. **Software Development Kit.** Customer’s use of the SDK is subject solely to the terms available at <https://adapnex.com/terms/sdk-license.pdf> (“**SDK License**”). In the event of conflict regarding the SDK, the SDK License will control solely with respect to the SDK.

1.3. **Users.** Customer may permit Users to use the Service on its behalf. Customer is responsible for (a) provisioning and managing its User accounts, (b) its Users’ actions through the Service, (c) ensuring Users comply with all applicable laws and regulations governing industrial safety, control systems, and machinery operation, (d) their compliance with this Agreement. Customer will ensure that Users keep their login credentials confidential and will promptly notify Service Provider upon learning of any compromise of User accounts or credentials.

1.4. **Affiliates.** Customer’s Affiliates may serve as Users under this Agreement. Alternatively, Customer’s Affiliates may enter into their own Order Forms as mutually agreed with Service Provider, which creates a separate agreement between each such Affiliate and Service Provider incorporating this Agreement with the Affiliate treated as “Customer”. Neither Customer nor any Customer Affiliate has any rights under each other’s separate agreement with Service Provider, and breach or termination of any such separate agreement affects only that agreement.

1.5. **Mutual Compliance with Laws.** Each party will comply with all Laws, including regulations governing industrial control systems, machinery safety, data protection, export controls, and environmental standards. Customer is responsible for: (a) compliance with all OSHA, machinery safety, and equipment-specific regulations applicable to Customer’s use of the Service and integrated machinery; (b) ensuring that Customer Data does not include prohibited items (e.g., ITAR-controlled technical data, unless Service Provider has authorized such submission); and (c) obtaining all necessary governmental approvals and licenses for Customer’s deployment of the Service in Customer’s jurisdiction.

1.6. Orders; Quotes; Purchase Orders; Online Orders. Customer may purchase subscriptions to the Service (and any related hardware or Professional Services, if applicable) through one or more Order Forms. Order Forms may take the form of: (a) a written sales quote, order form or other ordering document issued by Service Provider that incorporates this Agreement by reference and is executed by both parties (including electronically); (b) a sales quote or order form issued by Service Provider that incorporates this Agreement by reference and is accepted by Customer by issuing a purchase order that references that quote or order form; or (c) an Online Order. Each constitute an “Order Form” for the purposes of this Agreement. Where Customer issues a purchase order, the quote that it references will control over any conflicting or additional terms in the purchase order. Customer purchase orders are for administrative convenience only and any pre-printed or boilerplate terms in a purchase order will be void and of no effect.

## 2. Customer Data.

2.1. Use of Customer Data. Subject to this Agreement, Service Provider will access and use Customer Data solely to provide and maintain the Service, Support and Professional Services under this Agreement (“**Use of Customer Data**”). Use of Customer Data includes sharing Customer Data as Customer directs through the Service, but Service Provider will not otherwise disclose Customer Data to third parties except as permitted in this Agreement.

2.2. Security. Service Provider will implement and maintain the Security Measures, if any, identified in the Order Form. If no Security Measures are identified, Service Provider will use appropriate technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of Customer Data.

2.3. Usage Data. Service Provider may collect Usage Data and use it to operate, improve and support the Service and for other lawful business purposes, including benchmarking and reports. However, Service Provider will not disclose Usage Data externally unless it is (a) de-identified so that it does not identify Customer, its Users or any other person and (b) aggregated with data across other customers.

3. **Support.** Service Provider will provide technical support on a best-efforts basis during normal U.S. business hours Pacific Time, excluding holidays). Support may be provided via: (a) email; (b) online documentation and knowledge base; (c) other method if specified in an Order Form.

## 4. Warranties.

4.1. Mutual Warranties. Each party represents and warrants that: (a) it has the legal power and authority to enter into this Agreement, and (b) it will use industry-standard measures to avoid introducing Viruses into the Service.

4.2. Performance Warranty. Service Provider warrants that the Service will perform materially as described in the Documentation and Service Provider will not materially decrease the overall functionality of the Service during the Order Form Term. Customer must report a breach of warranty in reasonable detail within 30 days after discovering the issue in the Service. Within 30 days of receiving a timely warranty claim, Service Provider will use reasonable efforts to correct or provide a reasonable workaround for the Claim. If Service Provider fails to materially resolve the claim or provide a workaround within 30 days, Customer may on 30 days’ notice to the other terminate the Order Form as it relates to the nonconforming Service and Service Provider will refund to Customer any prepaid, unused fees for the terminated portion of the Order Form Term. **The procedures set forth in this Section are Customer’s exclusive remedies and Service Provider’s sole liability for breach of warranty.**

4.3. Disclaimers. **Except as expressly set out in this Agreement, each party disclaims all warranties, whether express, implied, statutory or otherwise, including warranties of merchantability, fitness for a particular purpose, title and noninfringement. Service Provider’s warranties in this Section do not apply to issues arising from Third-Party Platforms or misuse or unauthorized modifications of the Service. Customer acknowledges that the Service is software and may contain errors or defects. The Service is not certified as a safety-critical system under any functional safety standards. These disclaimers apply to the full extent permitted by Law.**

## 5. Usage Rules.

5.1. Compliance. Customer (a) will comply with all applicable laws, regulations, and industry standards governing industrial control systems, including OSHA, EPA, and machinery-specific requirements, and (b) represents and warrants that it has all rights necessary to use Customer Data with the Service and grant Service Provider the rights to Customer Data specified in this Agreement, without violating third-party intellectual property, privacy or other rights. Between the parties, Customer is responsible for the content and accuracy of Customer Data. Customer is responsible for: (i) conducting its own safety assessment before integrating the Service with critical industrial machinery; and (ii) implementing independent safety interlocks and emergency stops.

5.2. **High-Risk Activities and Sensitive Data.** Customer (a) will not use the Service for High-Risk Activities, (b) will not submit Sensitive Data to the Service, and (c) acknowledges that the Service is not designed for (and Service Provider has no liability for) use prohibited in this Section. Notwithstanding the foregoing, Customer may use the Service to control and automate industrial machinery and processes (conveyor belts, assembly lines, chemical reactors, etc.), provided that: (i) Customer implements independent safety interlocks and emergency stop systems; (ii) Customer conducts hazard analysis before deployment; (iii) the Service is not used as the sole protective layer for high-consequence risks; (iv) Customer obtains all necessary regulatory approvals (e.g., EPA, OSHA) before operating the system.

5.3. **Restrictions.** Customer will not and will not permit anyone else to: (a) sell, sublicense, distribute or rent the Service (in whole or part), grant non-Users access to the Service or use the Service to provide a hosted or managed service to others, (b) reverse engineer, decompile or seek to access the source code of the Service, except to the extent these restrictions are prohibited by Laws and then only upon advance notice to Service Provider, (c) copy, modify, create derivative works of or remove proprietary notices from the Service, (d) conduct security or vulnerability tests of the Service, interfere with its operation or circumvent its access restrictions or (e) use the Service to develop a product that competes with the Service.

6. **Third-Party Platforms.** To the extent offered by Service Provider, Customer may choose to enable integrations or exchange Customer Data with Third-Party Platforms. Customer's use of a Third-Party Platform is governed by its agreement with the relevant provider, not this Agreement, and Service Provider is not responsible for Third-Party Platforms or how their providers use Customer Data.

7. **Professional Services.** Service Provider will perform Professional Services as described in an Order Form or Statement of Work, which may identify additional terms or milestones for the Professional Services. Customer will give Service Provider timely access to Customer Materials reasonably needed for Professional Services, and Service Provider will use the Customer Materials only for purposes of providing Professional Services. Subject to any limits in an Order Form or Statement of Work, Customer will reimburse Service Provider's reasonable travel and lodging expenses incurred in providing Professional Services. Customer may use code or other deliverables that Service Provider furnishes as part of Professional Services only in connection with Customer's authorized use of the Service under this Agreement.

8. **Fees.**

8.1. **Payment.** Customer will pay the fees described in the Order Form. Unless the Order Form states otherwise, all amounts are due within 30 days after the invoice date (the "**Payment Period**"). Late payments are subject to a charge of 1.5% per month or the maximum amount allowed by Law, whichever is less. All fees and expenses are nonrefundable except as expressly set out in this Agreement. Customer is responsible for any sales, use, GST, value-added, withholding or similar taxes or levies that apply to its Order Forms, whether domestic or foreign ("**Taxes**"), other than Service Provider's income tax. Fees and expenses are exclusive of Taxes.

8.2. **Payment Disputes.** If Customer disputes an invoice in good faith, it will notify Service Provider within the Payment Period and the parties will seek to resolve the dispute over a 15-day discussion period. Customer is not required to pay disputed amounts during the discussion period, but will timely pay all undisputed amounts. After the discussion period, either party may pursue any available remedies.

9. **Suspension.** Service Provider may suspend Customer's access to the Service and related services due to a Suspension Event, but where practicable will give Customer prior notice so that Customer may seek to resolve the issue and avoid suspension. Service Provider is not required to give prior notice in exigent circumstances or for a suspension made to avoid material harm or violation of Law. Once the Suspension Event is resolved, Service Provider will promptly restore Customer's access to the Service in accordance with this Agreement. "**Suspension Event**" means (a) Customer's account is 30 days or more overdue, (b) Customer is in breach of the Section entitled "Usage Rules" or (c) Customer's use of the Service risks material harm to the Service or others.

10. **Term and Termination.**

10.1. **Term.** Unless the Order Form states otherwise (a) each Order Form Term will last for an initial 12-month period and (b) automatically renew for subsequent terms of 12 months unless either party provides 45 days prior notice of nonrenewal. This Agreement starts on the Effective Date and continues until the end of all Order Form Terms, unless sooner terminated in accordance with its terms. If no Order Form is in effect, either party may terminate this Agreement for any or no reason with notice to the other party.

10.2. **Termination.** Either party may terminate this Agreement (including all Order Forms) if the other party (a) fails to cure a material breach of this Agreement within 30 days after notice, (b) ceases operation without a successor or (c) seeks protection

under a bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days.

10.3. **Data Export and Deletion.** During a Order Form Term, Customer may export Customer Data from the Service (or Service Provider will otherwise make the Customer Data available to Customer) as described in the Documentation. Within 30 days of request Service provider will, or within 60 days after expiration or termination of this Agreement Service Provider may, delete Customer Data and each party will delete any Confidential Information of the other in its possession or control. Nonetheless, the recipient may retain Customer Data or Confidential Information in accordance with its standard backup or record retention policies or as required by Law, subject to security and confidentiality obligations herein. For on-premises deployments: (a) Customer Data resides on Customer's infrastructure, and (b) Customer is responsible for backup, export, and deletion of Customer Data.

10.4. **Effect of Termination.** Customer's right to use the Service, Support and Professional Services will cease upon any termination or expiration of this Agreement, subject to this Section. Any provision of this Agreement that, by its nature, should survive termination or expiration will survive, including those relating to payment obligations, confidentiality, intellectual property rights, data protection, disclaimers, limitations of liability, indemnification, governing law and dispute resolution. Except where an exclusive remedy is provided, exercising a remedy under this Agreement, including termination, does not limit other remedies a party may have.

## 11. Intellectual Property.

11.1. **Reserved Rights.** Neither party grants the other any rights or licenses not expressly set out in this Agreement. Except for Service Provider's express rights in this Agreement, as between the parties, Customer retains all intellectual property and other rights in Customer Data and Customer Materials provided to Service Provider. Except for Customer's express rights in this Agreement, as between the parties, Service Provider and its licensors retain all intellectual property and other rights in the Service, Professional Services deliverables and related Service Provider technology.

11.2. **Feedback.** If Customer gives Service Provider feedback regarding improvement or operation of the Service, Support or Professional Services, Service Provider may use the feedback without restriction or obligation. All feedback is provided "AS IS" and Service Provider will not publicly identify Customer as the source of feedback without Customer's permission.

## 12. Limitations of Liability.

12.1. **Damages Waiver.** **In no event will Service Provider (or any of its agents, affiliates, licensors or suppliers) be liable for any indirect, punitive, incidental, special, or consequential damages, or cost of procurement of substitute goods, services or technology, arising out of or in any way connected with the use of the services or anything provided in connection with this agreement, the delay or inability to use the services or anything provided in connection with this agreement or otherwise arising from this agreement, including without limitation, loss of revenue or anticipated profits or lost business or lost sales, whether based in contract, tort (including negligence), strict liability, or otherwise, even if Service Provider has been advised of the possibility of damages.**

12.2. **Liability Cap.** **The total liability of either party, whether based in contract, tort (including negligence or strict liability), or otherwise, will not exceed, in the aggregate, the fees paid to Service Provider hereunder in the 12 month period ending on the date that a claim or demand is first asserted.**

12.3. **Nature of Claims.** The waivers and limitations in this Section apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.

## 13. Indemnification.

13.1. **Covered Claims.** Each party will defend, indemnify, and hold harmless the other party, its affiliates and each of their respective employees, contractors, directors, suppliers and representatives from damages or costs awarded against the indemnified party and paid or payable to an unaffiliated third party (including reasonable attorneys' fees), that arise from or relate to any claim by an unaffiliated third party that (a) Customer has breached the "Usage Rules" Section (in the case of Customer as indemnifying party), or (b) the Services (in the case of Service Provider as indemnifying party) infringes, violates, or misappropriates any intellectual property or proprietary right of such third party.

13.2. **Procedures.** The indemnifying party's obligations in this Section are subject to receiving from the indemnified party: (a) prompt notice of the claim (but delayed notice will only reduce the indemnifying party's obligations to the extent it is prejudiced by the delay), (b) the exclusive right to control the claim's investigation, defense and settlement and (c) reasonable cooperation at the indemnifying party's expense. The indemnifying party may not settle a claim without the indemnified party's prior approval if settlement would require the indemnified party to admit fault or take or refrain from taking any action (except regarding use of the Service when Service Provider is the indemnifying party). The indemnified party may participate in a claim with its own counsel at its own expense.

13.3. Mitigation. In response to an infringement or misappropriation claim, if required by settlement or injunction or as Service Provider determines necessary to avoid material liability, Service Provider may: (a) procure rights for Customer's continued use of the Service, (b) replace or modify the allegedly infringing portion of the Service to avoid infringement, without reducing the Service's overall functionality or (c) terminate the affected Order Form and refund to Customer any prepaid, unused fees for the terminated portion of the Order Form Term.

13.4. Exceptions. Service Provider's obligations in this Section do not apply to claims resulting from (a) modification or unauthorized use of the Service or Software, (b) use of the Service in combination with items not provided by Service Provider, including Third-Party Platforms or (c) Service Provider Software other than the most recent release, if Service Provider made available (at no additional charge) a newer release that would avoid infringement.

13.5. Exclusive Remedy. This Section sets out the indemnified party's exclusive remedy and the indemnifying party's sole liability regarding third-party claims of intellectual property infringement or misappropriation covered by this Section.

#### **14. Confidentiality.**

14.1. Use and Protection. As recipient, each party will (a) use Confidential Information only to fulfill its obligations and exercise its rights under this Agreement, (b) not disclose Confidential Information to third parties without the discloser's prior approval, except as permitted in this Agreement and (c) protect Confidential Information using at least the same precautions recipient uses for its own similar information and no less than a reasonable standard of care.

14.2. Permitted Disclosures. The recipient may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Service Provider, the subcontractors referenced herein), provided it remains responsible for their compliance with this Section and they are bound to confidentiality obligations no less protective than this Section. The recipient may disclose Confidential Information (including Customer Data) to the extent required by Law. If permitted by Law, the recipient will give the discloser reasonable advance notice of the required disclosure and reasonably cooperate, at the discloser's expense, to obtain confidential treatment for the Confidential Information.

14.3. Exclusions. These confidentiality obligations do not apply to information that the recipient can document (a) is or becomes public knowledge through no fault of the recipient, (b) it rightfully knew or possessed, without confidentiality restrictions, prior to receipt from the discloser, (c) it rightfully received from a third party without confidentiality restrictions or (d) it independently developed without using or referencing Confidential Information.

14.4. Remedies. Breach of this Section may cause substantial harm for which monetary damages are an insufficient remedy. Upon a breach of this Section, the discloser is entitled to seek appropriate equitable relief, including an injunction, in addition to other remedies.

**15. Publicity.** Customer may request that Service Provider cease using Customer's name or logo at any time by written notice. Service Provider will promptly cease such use. During the Order Form Term, Service Provider may include Customer's name and logo in its online and offline marketing materials, including its website, customer lists, pitch decks and presentations, to identify Customer as a customer of the Services. Service Provider will use Customer's logo in accordance with any reasonable brand guidelines that Customer provides and will promptly cease any particular use upon Customer's written request if Customer reasonably objects to that use.

**16. Trials and Betas.** Use of Trials and Betas is permitted only for Customer's internal evaluation during the period designated by Service Provider on the Order Form (or if not designated, 30 days). Either party may terminate Customer's use of Trials and Betas at any time for any reason. Trials and Betas may be inoperable, incomplete or include features never released. Use of Trials and Betas is subject to this Agreement and begins when Customer first accesses the Trial or Beta, including by creating an Adapnax Cloud account or signing into the Adapnax Cloud to enable Trial or Beta features. **Notwithstanding anything else in this Agreement, Service Provider offers no warranty, indemnity, SLA or Support for Trials and Betas and its liability for Trials and Betas will not exceed US\$1,000.**

#### **17. General Terms.**

17.1. Assignment. Neither party may assign this Agreement without the prior consent of the other party, except that either party may assign this Agreement, with notice to the other party, in connection with the assigning party's merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any non-permitted assignment is void. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

17.2. Governing Law and Courts. This Agreement and any dispute or claim arising out of or relating to it, or its subject matter or formation, will be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of laws rules. The parties irrevocably submit to the exclusive jurisdiction and venue of the state and federal courts

located in San Francisco, California, for all such disputes or claims, and waive any objection to such courts based on inconvenient forum or lack of personal jurisdiction.

17.3. Dispute Resolution. Before initiating formal proceedings, the parties will attempt to resolve disputes through good-faith negotiation in 30 days. If unresolved, either party may bring an action in the courts specified above. Notwithstanding the foregoing, either party may pursue injunctive relief or specific performance in any court of competent jurisdiction to prevent irreparable harm.

17.4. Notices. Except as set out in this Agreement, notices, requests and approvals under this Agreement must be in writing to the addresses specified by Service Provider and Customer and will be deemed given: (1) upon receipt if by personal delivery, (2) upon receipt if by certified or registered U.S. mail (return receipt requested), (3) one day after dispatch if by a commercial overnight delivery service or (4) upon delivery if by email. Service Provider and Customer will each initially specify their notice address through the Order Form process (or, in the case of Service Provider, in the Order Form) and either party may update its address with notice to the other. Service Provider may also send operational notices through the Service.

17.5. Entire Agreement. This Agreement is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In this Agreement, headings are for convenience only and "including" and similar terms are to be construed without limitation. Excluding Order Forms, terms in business forms, purchase orders or quotes used by either party will not amend or modify this Agreement; any such documents are for administrative purposes only. This Agreement may be executed in counterparts (including electronic copies and PDFs), each of which is deemed an original and which together form one and the same agreement. An Order Form may not modify any other part of this Agreement unless the Order Form specifically identifies the provisions that it supersedes. Any amendments to this Agreement must be in writing and signed by each party's authorized representatives (an "**Amendment**"). With notice to Customer, Service Provider may modify the Acceptable Use Policy, Security Measures, SLA or Support Policy to reflect new features or changing practices, but the modifications may not be retroactive or materially decrease Service Provider's overall obligations during a Order Form Term.

17.6. Waivers and Severability. Waivers must be signed by the waiving party's authorized representative and cannot be implied from conduct. If any provision of this Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect.

17.7. Force Majeure. Neither party is liable for a delay or failure to perform this Agreement due to a Force Majeure. If a Force Majeure materially adversely affects the Service for 15 or more consecutive days, either party may terminate the affected Order Form(s) upon notice to the other and Service Provider will refund to Customer any prepaid, unused fees for the terminated portion of the Order Form Term. However, this Section does not limit Customer's obligations to pay fees owed.

17.8. Relationship of the Parties. The parties are independent contractors, not agents, partners or joint venturers. Service Provider may use subcontractors and permit them to exercise its rights and fulfill its obligations, but Service Provider remains responsible for each subcontractor's compliance with this Agreement and for Service Provider's overall performance under this Agreement. This does not limit any additional terms for subprocessors under a DPA. There are no third-party beneficiaries to this Agreement.

17.9. Open Source. Service Provider Software distributed to Customer (if any) may include third-party open source software ("**Open Source**") as listed in the Documentation or by Service Provider upon request. Customer acknowledges that its license to use any Open Source will be the Open Source license applicable to such code and not the license to Service Provider Software set forth above to the extent required by such Open Source license.

17.10. Export. Each party (a) will comply with all export and import Laws in performing this Agreement and (b) represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country subject to a U.S. government embargo or designated by the U.S. government as a "terrorist supporting" country. Customer will not submit to the Service any data controlled under the U.S. International Traffic in Arms Regulations.

17.11. Government Rights. To the extent applicable, the Service is "commercial computer software" or a "commercial item" for purposes of FAR 12.212 and DFARS 227.7202. Use, reproduction, release, modification, disclosure or transfer of the Service is governed solely by the terms of this Agreement, and all other use is prohibited.

## **18. Definitions.**

"**Affiliate**" means an entity controlled, controlling or under common control with a party, where control means at least 50% ownership or power to direct an entity's management.

"**Attachments**" means any AUP, Security Measures, SLA, Support Policy or other policies specified in the Order Form.

"**Service**" means Service Provider's proprietary software as a service (SaaS) or cloud service as identified in the applicable Order Form. The Service includes the Service Provider Software and Documentation but not Professional Services deliverables or Third-Party Platforms.

**“Confidential Information”** means information disclosed by or on behalf of one party (as discloser) to the other party (as recipient) under this Agreement, in any form, which (a) the discloser identifies to recipient as “confidential” or “proprietary” or (b) should be reasonably understood as confidential or proprietary due to its nature and the circumstances of its disclosure. Service Provider’s Confidential Information includes technical or performance information about the Service, and Customer’s Confidential Information includes Customer Data.

**“Customer”** means the party identified as “Customer” in the applicable Order Form.

**“Customer Data”** means any data, content or materials that Customer (including its Users) submits to its Service accounts, including from Third-Party Platforms.

**“Customer Materials”** means materials and resources that Customer makes available to Service Provider in connection with Professional Services.

**“Documentation”** means Service Provider’s standard usage documentation for the Service.

**“Force Majeure”** means an unforeseen event beyond a party’s reasonable control, such as a strike, blockade, war, pandemic, act of terrorism, riot, third-party Internet or utility failure, refusal of government license or natural disaster, where the affected party takes reasonable and customary measures to avoid or mitigate such event’s effects.

**“High-Risk Activities”** means activities where use or failure of the Service could lead to death, personal injury or environmental damage, including life support systems, emergency services, nuclear facilities, autonomous vehicles or air traffic control.

**“Laws”** means all laws, regulations, rules, court orders or other binding requirements of a government authority that apply to a party.

**“Order Form”** means an order by Customer for a subscription to products or services that is (a) a sales quote, order form or similar document issued by Service Provider and accepted by Customer as described in this Agreement, (b) a purchase order issued by Customer that references such sales quote, order form or document, but only to the extent it confirms the products, quantities, pricing and commercial terms set out in the applicable quote or order form, (c) an order by Customer for a subscription to products/services that is entered into by the parties through the Website (including through an online flow) (an “Online Order”), or (d) separate written agreement referencing this Agreement. Any additional or conflicting terms in a Customer purchase order will have no effect unless expressly agreed in writing by Service Provider.

**“Professional Services”** means training, migration or other professional services that Service Provider furnishes to Customer related to the Service.

**“Service Provider”** means the party providing the Service.

**“Service Provider Software”** means any proprietary apps or software that Service Provider distributes to Customer as part of the Service.

**“Sensitive Data”** means (a) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented), (b) credit, debit, bank account or other financial account numbers, (c) social security numbers, driver’s license numbers or other government ID numbers and (d) special categories of data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation.

**“Statement of Work”** means a statement of work for Professional Services that is signed by the parties and references this Agreement.

**“Order Form Term”** means the term for a subscription to a product/service as identified in the Order Form.

**“Third-Party Platform”** means any product, add-on or platform not provided by Service Provider that Customer uses with the Service.

**“Trials and Betas”** mean access to the Service on a free or trial basis or to particular features designated by Service Provider as “beta” or “early access”.

**“Usage Data”** means Service Provider’s technical logs, data and learnings about Customer’s use of the Service, but excluding Customer Data.

**“User”** means anyone that Customer allows to use its accounts for the Service, who may include (a) employees, advisors and contractors of Customer and its Affiliates and (b) others if permitted in this Agreement, the Documentation or an Order Form.

**“Virus”** means viruses, malicious code or similar harmful materials.