



Last updated:
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Proximia Master Terms and Conditions

These Master Terms and Conditions are between Proximia, Inc., a Montana corporation (“**Provider**”) and the individual or entity that has executed an order for Proximia’s products or services that incorporate these Master Terms and Conditions by reference (“**Customer**” or “**You**”).

You agree that by placing an Order that incorporates these Master Terms and Conditions, you are agreeing to be bound by the terms and conditions of the Order and these Master Terms and Conditions. If you are placing an Order on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to the terms and conditions of the Order and these Master Terms and Conditions and, in such event “You” and “Your” as used in these Master Terms and Conditions shall refer to such entity.

1. Definitions.

"**Access Credentials**" means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the Products.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"**Affiliate**" of Provider or a Customer means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Provider or such Customer. The term "control" (including the terms "controlled by" and "under common control with") means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or ownership of more than 50% of the voting securities of a Person.

"**Aggregated Statistics**" has the meaning set forth in Section 10.4.

"**Availability Requirement**" has the meaning set forth in Section 5.

"**Available**" means the Products are operational and available for use by or on behalf of Customer.

"**Backup Policy**" has the meaning set forth in Section 6.

"**Business Continuity Plan**" has the meaning set forth in Section 6.4.

"**Confidential Information**" has the meaning set forth in Section 9.1.

“Continuity Event” means any occurrence that results in a significant disruption of Provider’s business operations and ability to provide the Products.

“Corrective Action Plan” has the meaning set forth in Section 5.5.

“Critical Service Error” has the meaning set forth in Section 5 (chart).

“Customer” means the Person submitting an Order to Proximia, or on whose behalf an Order has been submitted. For purposes of these Master Terms and Conditions, a Customer may be referred to as “You” or “Your.”

“Customer Data” means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly, from Customer or a User by or through the Products or that incorporates or is derived from the Processing of such information, data, or content by or through the Products. Notwithstanding anything to the contrary, the Customer Data shall not include Aggregated Statistics or Feedback, both of which shall be the sole and exclusive property of Provider.

“Customer Failure” has the meaning set forth in Section 4.2.

“Customer Indemnitee” has the meaning set forth in Section 12.1.

“Customer Systems” means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

“Data Breach” means the unauthorized access or disclosure of Customer Data available on or through the Provider Systems.

“Disaster” means an event resulting in a major hardware or software failure or destruction of Provider facilities.

“Disclosing Party” has the meaning set forth in Section 9.1.

“Documentation” means any manuals, instructions, or other documents or materials that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Products or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“Effective Date” means the date on which your Order is accepted or acknowledged by Proximia.

“EULA” means End User License Agreement.

“Feedback” has the meaning set forth in Section 10.5.

“Fees” has the meaning set forth in Section 8.1.

"Force Majeure Event" has the meaning set forth in Section 15.8.

"Harmful Code" means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner, any computer, software, firmware, hardware, operating system, or network, or any application, integration or function of any of the foregoing; or (b) compromise the security, integrity, confidentiality, or use of any data or information available thereon or therethrough.

"Indemnitee" has the meaning set forth in Section 12.3.

"Indemnitor" has the meaning set forth in Section 12.3.

"Initial Term" has the meaning set forth in Section 14.1.

"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"Losses" means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Order" shall mean the ordering documents representing a Customer's subscription for the Products, including any additional orders that may be entered into by Proximia and a Customer from time to time, that incorporate these Master Terms and Conditions by reference.

"Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"Personal Information" means information that Customer provides or for which Customer provides access to Provider, or information which Provider creates or obtains on behalf of Customer, in accordance with such Customer's Subscription Agreement, that: (i) directly or indirectly identifies an individual; or (ii) can be used to authenticate an individual (including, passwords or PINs, user identification and account access credentials or passwords, answers to security questions, biometric data, and other personal identifiers). Customer's business contact information is not by itself Personal Information.

"Process" means to take any action or perform any operation or set of operations that the Products are capable of taking or performing on any data, information, or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate, or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose, or otherwise provide or make available, or block, erase, or destroy. **"Processing"** and **"Processed"** have correlative meanings.

"Products" means those products and related implementation and support services specified in Customer's Order.

"Provider" has the meaning set forth in the Preamble.

"Provider Indemnitee" has the meaning set forth in Section 12.2.

"Provider Materials" means the Products, Specifications, Documentation, and Provider Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Provider or any Subcontractor in connection with the Products or otherwise comprise or relate to the Products or Provider Systems. For the avoidance of doubt, Provider Materials include all Aggregated Statistics and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Products, but do not include Customer Data.

"Provider Personnel" means all individuals involved in the performance of Products as employees, agents, or independent contractors of Provider or any Subcontractor.

"Provider Systems" means the information technology infrastructure used by or on behalf of Provider in providing the Products, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Provider or through the use of third-party services.

"Receiving Party" has the meaning set forth in Section 9.1.

"Renewal Term" has the meaning set forth in Section 14.2.

"Representatives" means, with respect to each of Customer and Provider, their employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors, and the employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors of any Affiliates of Customer or Provider.

"Resolve" (including **"Resolved," "Resolution,"** and correlative capitalized terms) means that, as to any Service Error, Provider has provided Customer the corresponding Service Error correction and Customer has confirmed such correction and its acceptance thereof.

“**Scheduled Uptime**” means the maximum number of minutes of Availability in a Service Period, assuming no periods of outage or downtime.

"**Scheduled Downtime**" has the meaning set forth in Section 5.3.

"**Secondary Facility**" has the meaning set forth in Section 6.2.

“**Security Incident**” means an actual or attempted: (i) violation of any information security standard applicable to the Products; (ii) unauthorized access to a Provider System or misuse of any Access Credential; (iii) introduction of Harmful Code to a Provider System; or (iv) failure to observe or enforce any administrative, technical, or physical safeguards applicable to the Products. A suspected Data Breach will be considered a Security Incident during the initial assessment phase.

"**Service Availability Credit**" has the meaning set forth in Section 5 (chart).

“**Service Error**” means a disruption, malfunction, or other deficiency in the Products that does not rise to the level of a Continuity Event or Disaster. Service Errors are classified by severity in accordance with **Exhibit A**.

“**Service Error Classification**” has the meaning set forth in **Exhibit A**.

"**Service Level Credit**" has the meaning set forth in **Exhibit A**.

"**Service Level Requirements**" has the meaning set forth in **Exhibit A**.

“**Service Period**” means one fiscal quarter.

"**Specifications**" means the minimum requirements and specifications for the Products, which includes the minimum hardware and software components set forth at proximia.com/productspec.

"**Subcontractor**" has the meaning set forth in Section 2.6.

"**Subscription Agreement**" means a Customer Order and these Master Terms and Conditions, as updated or modified by Proximia from time to time.

“**Support Request**” has the meaning set forth in Section 5.4(a).

"**Support Services**" has the meaning set forth in Section 5.

"**Term**" means the Initial Term and any Renewal Term(s).

"**Third-Party Materials**" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, that may be accessed through or used with the Products and are obtained or derived from a third-party.

"User" means Customer's employees, consultants, contractors, Affiliates, and agents who are authorized by Customer to access and use the Products in accordance with a Subscription Agreement.

2. Products.

2.1 Access and Use. Subject to and conditioned on Customer's and its Users' compliance with the terms and conditions of any applicable Subscription Agreement, Provider hereby grants Customer and its Affiliates a non-exclusive, non-transferable (except in compliance with Section 15.7) right to access and use the Products during the Term, solely for use by Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. Provider shall provide to Customer the Access Credentials within a reasonable time following the Effective Date specified in the applicable Order. The total number of Users will not exceed the number specified in such Order, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the Fees payable hereunder.

2.2 Documentation License. Provider hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 15.7) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Products.

2.3 Service and System Control. Except as otherwise expressly provided in these Master Terms and Conditions, as between the parties:

- (a) Provider has and will retain sole control over the operation, provision, maintenance, and management of the Provider Materials; and
- (b) Customer has and will retain sole control over the operation, maintenance, security, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Provider Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any User, regardless of whether such access and use was known to or authorized by Customer or any applicable User.

2.4 Reservation of Rights. Nothing in any Subscription Agreement grants any right, title, or interest in or to any Intellectual Property Rights in or relating to, the Products, Provider Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to any and all Intellectual Property Rights associated with the Products are and will remain with Provider and the respective rights holders in the Third-Party Materials.

2.5 Changes. Provider reserves the right, in its sole discretion, to make any changes to the Products and Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's services to its customers; (ii) the competitive strength of or market for Provider's Products; or (iii) the Products' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, Customer, at any time during the Term, subscribe for additional Products by submitting an additional

Order. Orders may be accepted or rejected by Provider in its sole discretion and may be subject to additional terms and conditions, including pricing.

2.6 Subcontractors. Provider may from time to time in its discretion engage third parties to perform Products (each, a "**Subcontractor**").

2.7 Suspension or Termination. Provider may, directly or indirectly, suspend, terminate, or otherwise deny Customer, any User, or any other Person's access to or use of all or any part of the Products or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its discretion, that: (i) Customer or any User has failed to comply with any material term of any applicable Subscription Agreement, or accessed or used the Products beyond the scope of the rights granted or for a purpose not authorized under any applicable Subscription Agreement or in any manner that does not comply with any instruction or requirement of the Specifications; (ii) Customer or any User, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Products; (iii) any applicable Subscription Agreement expires or is terminated, (iv) any Customer System or Access Credential has been compromised, misappropriated, or otherwise disclosed to a third-party; or (v) a third-party has accessed the Provider Materials or any Provider System through a Customer System or using an Access Credential, with or without Customer's knowledge. This Section 2.7 does not limit any of Provider's other rights or remedies, whether at law, in equity, or under any applicable Subscription Agreement.

2.8 Product Hardware Returns Policy: Most hardware items may be returned within 360 days of delivery for a refund or exchange. To initiate a return, (a) Request a Return Authorization (RA) by contacting support at support@proximia.com. (b) Ensure all items are securely packaged in appropriate protective materials to prevent damage during shipping. (c) Send the authorized return via UPS Ground to the address provided by our support team. (d) Returned items must be in original condition and include all accessories, components, and packaging materials. (e) Refunds or exchanges are issued within 7–10 business days after we receive and inspect the returned item.

3. Use Restrictions; Service Usage and Data Storage.

3.1 Use Restrictions. Customer shall not, and shall not permit or facilitate any other Person to access or use the Products or Provider Materials except as expressly permitted by the applicable Subscription Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as these Master Terms and Conditions expressly permit:

(a) copy, modify, or create derivative works or improvements of the Products or Provider Materials;

(b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Products or Provider Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

(c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Products or Provider Materials, in whole or in part;

(d) bypass or breach any security device or protection used by the Products or Provider Materials or access or use the Products or Provider Materials other than by an User through the use of his or her own then valid Access Credentials;

(e) input, upload, transmit, or otherwise provide to or through the Products or Provider Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;

(f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Products, Provider Systems, or Provider's provision of services to any third party, in whole or in part;

(g) remove, delete, alter, or obscure any trademarks, Specifications, Documentation, EULA, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Products or Provider Materials, including any copy thereof;

(h) access or use the Products or Provider Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Provider customer), or that violates any applicable Law;

(i) access or use the Products or Provider Materials for purposes of competitive analysis of the Products or Provider Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; or

(j) access or use the Products or Provider Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Products could lead to personal injury or severe physical or property damage; or

(k) otherwise access or use the Products or Provider Materials beyond the scope of the authorization granted under this Section 3.1.

4. Customer Obligations.

4.1 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Products are accessed or used; (b) provide Provider Personnel with such access to Customer's premises and Customer Systems as is necessary for Provider to provide the Products in accordance with the Availability Requirement and Specifications; (c) notify Provider of any Security Incident

originating on or through the Customer Systems or Users, as soon as practicable upon discovery thereof; (d) cause its Users to execute and comply with Proximia's then-current form of EULA as a condition of accessing the Products; (e) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with any applicable Subscription Agreement, including, without limitation, in connection with any investigation of security breach, data loss, or interruption of service conducted by Provider or Provider's authorized representative.

4.2 Effect of Customer Failure or Delay. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under any applicable Subscription Agreement (each, a "**Customer Failure**").

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3.1, Customer shall, and shall cause its Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Products and Provider Materials, segregating and securing all impacted devices and networks); and (b) notify Provider of any such actual or threatened activity. Notwithstanding the foregoing, to the maximum extent practicable, Customer shall preserve all logs, archives, records, hardware, and correspondence that documents or is otherwise relevant to such actual or threatened activity until Provider has had the opportunity to review and approve the destruction or disposal of the same.

5. Support and Maintenance. Provider shall provide maintenance and support services (collectively, "**Support Services**") for the Products in accordance with the provisions of this Section 5.

5.1 Service Monitoring and Management. Provider will continuously monitor and manage the Products to optimize Availability that meets or exceeds the Availability Requirement as set forth in **Exhibit A**. Such monitoring and management shall include:

(a) proactively monitoring on a 24-hour by seven-day basis all relevant Service functions, servers, firewall, and other components of Product security;

(b) if such monitoring identifies, or Provider otherwise becomes aware of, any circumstance that is reasonably likely to threaten the Availability of the Products, taking all necessary and reasonable remedial measures to promptly eliminate such circumstance;

(c) upon receiving notice or otherwise becoming aware of a disruption of the Products (including by written notice from Customer pursuant to the procedures set forth herein), Provider shall:

(i) confirm the existence and extent of the interruption or outage;

(ii) notify Customer in writing pursuant to the procedures set forth herein that an outage has occurred, providing such details as may be available,

including a Provider trouble ticket number, if appropriate, time of outage, and suspected cause or cause(s);

(iii) Resolving any problems causing and caused by the outage in accordance with their respective Support Request Classification, as set forth in Section 5.3, or, if determined to be an internet provider problem, in coordination with the responsible internet provider; and

(iv) notifying Customer that Provider has corrected the outage and any related problems, along with any pertinent findings or action taken to close the trouble ticket.

5.2 **Service Maintenance.** Provider will work to continuously maintain the Products to optimize Availability that meets or exceeds the Availability Requirement. Such maintenance services shall include providing to Customer and its Users:

(a) all updates, bug fixes, enhancements, new releases, new versions, and other improvements to the Products, that Provider provides at no additional charge to its other similarly situated customers (collectively, “**Updates**”);

(b) ongoing services and repairs as are required to maintain the Products in accordance with these Master Terms and Conditions and the Specifications; and

(c) a minimum of 24 hours advance notice of all scheduled maintenance that will result in the temporary unavailability of the Products (“**Scheduled Downtime**”). Scheduled Downtime shall not be included for purposes of determining the Availability of the Products and any associated Service Availability Credits.

(d) **Emergency Maintenance Exception.** Notwithstanding subsection (c), Provider may perform emergency maintenance without prior notice if such maintenance is reasonably necessary to address a critical security vulnerability, prevent data loss, or avoid imminent Service failure. Provider shall use commercially reasonable efforts to:

(i) provide Customer with as much advance notice as reasonably practicable under the circumstances;

(ii) minimize the duration and impact of any such emergency maintenance; and

(iii) promptly notify Customer once the emergency maintenance is complete. Emergency maintenance shall be included in calculating Availability for purposes of Service Availability Credits unless the emergency was caused by Customer's breach of these Master Terms and Conditions or acts of third parties beyond Provider's reasonable control.

5.3 **Support Requests.** Provider will correct Service Errors and respond to and Resolve Support Requests in accordance with the required times and other terms and conditions set forth in **Exhibit A (“Support Service Level Requirements”)** and these Master Terms and Conditions.

(a) Support Requests. Customer shall submit requests for support (each, a “**Support Request**”) with a proposed Service Error Classification in accordance with the descriptions set forth in the chart in **Exhibit A**. Customer shall notify Provider of Support Requests by email, telephone, or such other means as the parties may hereafter agree to in writing. Provider reserves the right to determine the proper classification of all Service Errors, based on Customer’s proposed classification, any supporting information contained in the Service Request, and Provider’s initial assessment of the Service Error. Provider’s determination of the appropriate Service Error Classification shall be considered definitive and binding by the parties.

(b) Support Service Level Requirements. Provider will Respond to and Resolve all Service Errors within the Required Response Time and Required Resolution Time, respectively, set forth in Exhibit A or provide Customer the corresponding Service Level Credit. For the avoidance of doubt, Customer’s sole remedy for Provider’s failure to achieve the Required Response Time or the Required Resolution Time shall be (i) the applicable Service Level Credit, and (ii) solely with respect to the occurrence of two or more Critical Service Errors within any thirty (30) day period during the term, execution of a Corrective Action Plan in accordance with Section 5.5 below. Customer shall not be entitled to, nor shall Provider be liable for, any form of damages (including, without limitation, business interruption or lost profits) based on Provider’s failure to achieve the Required Response Time or Required Resolution Time.

(c) Escalation. Provider will escalate all Critical Service Error Support Requests within sixty (60) minutes of the receipt of such Support Request, including, as applicable, to the Provider Service Manager and Provider’s management or engineering personnel, as appropriate.

5.4 Support Service Level Credits. Failure to achieve the Support Service Level Requirements will constitute a Service Level Failure for which Provider will issue to Customer the corresponding service credits set forth in **Exhibit A** (“**Service Level Credits**”).

5.5 Corrective Action Plan. If two or more Critical Service Errors occur in any thirty (30) day period during (a) the Term; or (b) any additional periods during which Provider does or is required to perform the Products, Provider will promptly investigate the root causes of these Service Errors and provide to Customer within thirty (30) Business Days of its receipt of notice of the second such Support Request a root cause analysis and a proposed written corrective action plan for Customer’s review, comment, and approval (the “**Corrective Action Plan**”). The Corrective Action Plan will include, at a minimum: (i) Provider’s commitment to Customer to devote the appropriate time, skilled personnel, systems support, equipment, and other resources necessary to Resolve and prevent any further occurrences of the Service Errors giving rise to such Support Requests; (ii) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy and prevent any further occurrences of such Service Errors; and (iii) time frames for implementing the Corrective Action Plan.

6. Redundancy, Data Backup, and Disaster Recovery. Provider will maintain or cause to be maintained disaster response procedures designed to maintain the Availability of the Products and safeguard the Customer Data and Customer’s other Confidential Information throughout the Term of any applicable Subscription Agreement.

6.1 Service Availability. Provider shall maintain disaster recovery and business continuity procedures designed to ensure the availability of the Products and the protection of Customer Data, limited to credentials, device information, and activity logs (“Customer Data”), during the Term of any applicable Subscription Agreement.

6.2 Redundant Hosting and Connectivity. Provider shall maintain redundant systems in hardened data center facilities located within the United States, including a geographically remote secondary facility (the “Secondary Facility”), to ensure continuity of service in the event of an outage at the primary facility.

6.3 Data Backup. Provider shall perform periodic backups of Customer Data actively stored and processed within the Products and shall maintain such backups at the Secondary Facility in accordance with its internal data recovery procedures. Provider shall not maintain backups of data once returned to Customer Systems, and Customer acknowledges that the Products do not replace the Customer’s responsibility to maintain its own business continuity measures, backups, or archives.

6.4 Disaster Recovery / Business Continuity. Provider shall maintain a Business Continuity Plan and Disaster Recovery Plan (the “BC/DR Plan”) with respect to the Products and shall implement such Plan in the event of a disaster or continuity event. Summaries or redacted versions of the BC/DR Plan, and reports of testing thereunder, shall be made available to Customer upon reasonable request.

7. Security (Including Customer Responsibilities).

7.1 Information Security. Provider shall implement and maintain written information security policies and procedures reasonably designed to protect the confidentiality, integrity, and availability of Customer Data, including administrative, technical, and physical safeguards appropriate to the nature of Customer Data. Customer acknowledges and agrees that Provider shall process only credentials, device information, and activity logs as Customer Data, and that Provider shall not accept or be responsible for any other categories of regulated or sensitive information, including but not limited to payment card information, protected health information, or financial records.

7.2 Customer Obligations. If Customer is not authorized to access any data through the Products other than credentials, device information, and activity logs. If Customer exceeds Customer’s authorized use of the Products, Customer shall be solely responsible for compliance with all regulatory, legal, or data security obligations associated with such data. Provider shall have no liability with respect thereto.

7.3 Data Breach Procedures. In the event of a confirmed unauthorized acquisition of Customer Data maintained by Provider (a “Data Breach”), Provider shall:

- (a) notify Customer without undue delay following confirmation of such Data Breach;
- (b) investigate the cause and scope of the Data Breach;
- (c) implement measures to contain and remediate the Data Breach; and
- (d) comply with all applicable laws with respect to notifications.

7.4 Data Breach Investigation and Remediation. Customer shall reasonably cooperate with Provider's investigation and remediation efforts. If a Data Breach results from Customer's breach of these Master Terms and Conditions or any legal or regulatory requirement applicable to Customer and Customer's collection, handling, or use of Customer Data, Customer shall bear the costs of investigation, remediation, and any legally required notifications.

7.5 Customer Control. Customer has and will retain sole responsibility for:

- (a) all Customer Data provided by Customer or collected by the Products on Customer's behalf, including its accuracy, quality, legality, and the means by which Customer acquired such data;
- (b) all instructions, information, and materials provided to Provider;
- (c) the adequacy, availability, security, and functionality of Customer's information technology infrastructure and systems, including computers, software, databases, and networks ("Customer Systems");
- (d) the confidentiality and security of all access credentials issued to or created by Customer or its Users; and
- (e) all access to and use of the Products through Customer Systems or User credentials, whether authorized or unauthorized.

7.6 Access and Security. Customer shall implement and maintain appropriate administrative, technical, and physical safeguards designed to:

- (a) securely issue, distribute, and manage all access credentials;
- (b) prevent unauthorized access to the Products by or through Customer, a User, or any Customer System; and
- (c) protect the transmission of Customer Data, including credentials, device information, and activity logs, when uploading or otherwise transmitting such data to the Products.

8. Fees and Payment.

8.1 Fees. Customer shall pay Provider the fees and costs set forth in the applicable Order.

8.2 Taxes. All Fees and other amounts payable by Customer under any applicable Subscription Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Provider's income.

8.3 Payment. Customer shall pay all fees in accordance with the payment terms specified on the applicable invoice. Customer shall make payments to the address or account specified in their invoice.

8.4 Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a) Provider may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b) Customer shall reimburse Provider for all costs incurred by Provider in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and

(c) if such failure continues for fifteen (15) days following written notice thereof, Provider may suspend Customers' access to the Products until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

8.5 No Deductions or Setoffs. All amounts payable to Provider under any applicable Subscription Agreement shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to Section 5.4 or any deduction or withholding of tax as may be required by applicable Law).

8.6 Fee Increases. Provider may increase Fees no more than once annually for any contract year after the Initial Term, including any Renewal Term, by providing written notice to Customer at least thirty (30) calendar days prior to the commencement of such Renewal Term.

9. **Confidentiality.**

9.1 Confidential Information. In connection with any applicable Subscription Agreement, each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 9.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated, or otherwise identified as "confidential." Without limiting the foregoing, all Provider Materials, including without limitation, all Aggregated Statistics and Feedback developed or furnished pursuant to any applicable Subscription Agreement are the Confidential Information of Provider.

9.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with any applicable Subscription Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with any applicable Subscription Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

9.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with any applicable Subscription Agreement;

(b) except as may be permitted by and subject to its compliance with Section 9.4, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with any applicable Subscription Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 9.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9;

(c) safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care;

(d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and cooperate with Disclosing Party to prevent further unauthorized use or disclosure;

(e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 9; and

(f) Notwithstanding any other provisions of any applicable Subscription Agreement, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

9.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 9.3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances

from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

10. Intellectual Property Rights.

10.1 Provider Materials. All right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Provider Materials except as expressly set forth in Section 2.1 and Section 2.2 or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the Provider Materials are expressly reserved by Provider. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Provider an assignment of all right, title, and interest in and to all Aggregated Statistics and Feedback, including all Intellectual Property Rights relating thereto.

10.2 Customer Data. As between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, subject to the rights and permissions granted in Section 10.3.

10.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Provider, its Subcontractors, and the Provider Personnel to enforce any applicable Subscription Agreement and exercise Provider's, its Subcontractors', and the Provider Personnel's rights and perform Provider's, its Subcontractors', and the Provider Personnel's obligations hereunder. Customer represents and warrants that Customer has obtained all consents, approvals, authorizations and permissions, and made all disclosures, that are required by applicable law, rule or regulation in connection with Customer's collection and use of the Customer Data, including Customer's provision of the Customer Data to Provider for processing.

10.4 Aggregated Statistics. Notwithstanding anything to the contrary in any applicable Subscription Agreement, Provider may monitor Customer's use of the Products and collect and compile data and information related to Customer's use of the Products that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Products ("**Aggregated Statistics**"). As between Provider and Customer, all right, title, and interest in Aggregated Statistics, and all Intellectual Property Rights therein, belong to and are retained solely by Provider. Customer acknowledges that Provider may compile Aggregated Statistics based on Customer Data input into the Products. Customer agrees that Provider may (i) use the Aggregated Statistics for internal improvement purposes and make them publicly available in compliance with applicable law if required.

10.5 Feedback. If Customer or any of its employees or Users transmits any communications to Provider suggesting or recommending changes to the Products, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like concerning the Products ("**Feedback**"), Provider is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Customer hereby assigns to Provider on Customer's behalf, and on behalf of its

employees, contractors, and agents, all right, title, and interest in, and Provider is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Provider is not required to use any Feedback.

10.6 Privacy Policy. Provider shall follow the privacy policy posted to its website at <https://proximia.com/privacy-policy/> when collecting a User's personal data through Proximia's website, mobile application(s), or the Products.

11. Intellectual Property Rights.

11.1 Provider Representations, Warranties, and Covenants. Provider represents, warrants, and covenants to Customer that Provider will perform the Products using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under any applicable Subscription Agreement.

11.2 Customer Representations, Warranties, and Covenants. Customer represents, warrants, and covenants to Provider that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and Processed in accordance with any applicable Subscription Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any of any third party or violate any applicable Law.

11.3 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1 AND SECTION 11.2, ALL PRODUCTS AND PROVIDER MATERIALS ARE PROVIDED "AS IS." PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE PRODUCTS OR PROVIDER MATERIALS, OR ANY RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. Indemnification.

12.1 Provider Indemnification. Provider shall indemnify, defend, and hold harmless Customer and permitted assigns (each, a "**Customer Indemnitee**") from and against any and all Losses incurred by Customer resulting from any Action by a third party (other than an Affiliate of a Customer Indemnitee) that Customer's or a User's use of the Products in accordance with any applicable Subscription Agreement infringes or misappropriates such third party's US Intellectual Property Rights in the USA. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

- (a) Third-Party Materials or Customer Data;
- (b) access to or use of the Provider Materials in combination with any hardware, system, software, network, or other materials or service not provided by Provider or specified for Customer's use in the Documentation, unless otherwise expressly permitted by Provider in writing;
- (c) modification of the Provider Materials other than: (i) by or on behalf of Provider; or (ii) with Provider's written approval in accordance with Provider's written specification;
- (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Provider; or
- (e) any act, omission, or other matter for which Customer would be obligated to indemnify, defend and hold harmless the Provider Indemnitees pursuant to Section 12.2.

12.2 Customer Indemnification. Customer shall indemnify, defend, and hold harmless Provider and its officers, directors, employees, agents, successors, and assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee resulting from any Action by a third party (other than an Affiliate of a Provider Indemnitee) that arise out of or result from, or are alleged to arise out of or result from:

- (a) Customer's noncompliance, whether actual or alleged, with any applicable legal or regulatory requirement concerning the Customer's collection of the Customer Data and use of the Products to process such Customer Data, including without limitation, the requirements of any employment, consumer protection, or privacy law or regulation;
- (b) a Security Incident or Data Breach originating on or through a Customer System, regardless of Customer's knowledge thereof or active involvement therein;
- (c) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any User to the extent prepared without any contribution by Provider;
- (d) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under any applicable Subscription Agreement; or
- (e) gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any User, or any third party on behalf of Customer or any User, in connection with any applicable Subscription Agreement.

12.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to

Section 12.1 or Section 12.2, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. The Indemnitee's failure to perform any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this Section 12, except to the extent that the Indemnitor can demonstrate that it has been prejudiced as a result of such failure.

12.4 **Mitigation.** If any of the Products or Provider Materials are, or in Provider's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's or any User's use of the Products or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense:

- (a) obtain the right for Customer to continue to use the Products and Provider Materials as contemplated by any applicable Subscription Agreement;
- (b) modify or replace the Products and Provider Materials, in whole or in part, to seek to make the Products and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Products and Provider Materials, as applicable, under any applicable Subscription Agreement; or
- (c) by written notice to Customer, terminate any applicable Subscription Agreement and require Customer to immediately cease any use of the Products and Provider Materials or any specified part or feature thereof.

12.5 **Sole Remedy.** THIS SECTION 12 SETS FORTH CUSTOMER'S SOLE REMEDIES AND PROVIDER'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE PRODUCTS AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF ANY APPLICABLE SUBSCRIPTION AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

13. Limitations of Liability.

13.1 **EXCLUSION OF DAMAGES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 12 HEREOF, IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH ANY APPLICABLE SUBSCRIPTION AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE PRODUCTS, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5.4; (c) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR PRODUCTS; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL,

INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY. EXCEPT AS OTHERWISE PROVIDED IN SECTION 12 HEREOF, IN NO EVENT WILL THE AGGREGATE LIABILITY OF PROVIDER AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO ANY APPLICABLE SUBSCRIPTION AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO PROVIDER UNDER ANY APPLICABLE SUBSCRIPTION AGREEMENT IN THE TWELVE (12) MONTHS PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13.3 Exceptions. The exclusions and limitations in Section 13.1 and Section 13.2 do not apply to liability for Provider's gross negligence or willful misconduct.

14. Term and Termination.

14.1 Initial Term. The initial term of any applicable Subscription Agreement commences as of the Effective Date and, unless terminated earlier in accordance with these Master Terms and Conditions, will continue in effect for a period of one (1) year from such date (the "**Initial Term**").

14.2 Renewal Term. Any applicable Subscription Agreement will automatically renew for additional one (1) year terms, unless earlier terminated pursuant to Section 14.3 below or either party gives the other party written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current term (each a "Renewal Term" and, collectively, together with the Initial Term, the "Term").

14.3 Termination. In addition to any other express termination right set forth elsewhere in any applicable Subscription Agreement:

(a) Provider may terminate any or all Order(s), effective on written notice to Customer, if: (i) Customer fails to pay any amount when due hereunder or pursuant to any applicable Order, and such failure continues more than thirty (30) days after Provider's delivery of written notice thereof; or (ii) Customer breaches any of its obligations under Section 3.1, Section 7, or Section 9;

(b) either party may terminate any or all Order(s), effective on written notice to the other party, if the other party materially breaches these Master Terms and Conditions and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) either party may terminate any or all Order(s), effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally

unable to pay, or fails to pay, its debts as they become due; (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

14.4 Effect of Termination or Expiration. Upon any expiration or termination any Order subject to these Master Terms and Conditions:

(a) all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;

(b) Provider shall immediately cease all use of any Customer Data or Customer's Confidential Information and (i) within forty-five (45) days return to Customer, or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Provider directly or indirectly controls;

(c) Customer shall immediately cease all use of any Products or Provider Materials and (i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Provider Materials or Provider's Confidential Information; and (ii) permanently erase all Provider Materials and Provider's Confidential Information from all systems Customer directly or indirectly controls; and (iii) upon Provider's request, certify to Provider in a signed written instrument that it has complied with the requirements of this Section 14.4(c);

(d) notwithstanding anything to the contrary in these Master Terms and Conditions, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; and (ii) Provider may retain Customer Data; in the case of each of subclause (i) and (ii) in its then current state and solely to the extent and for so long as required by applicable Law; (iii) Provider may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (iv) all information and materials described in this Section 14.4(d) will remain subject to all confidentiality, security, and other applicable requirements of any applicable Subscription Agreement;

(e) Provider may disable all Customer and User access to the Products and Provider Materials;

(f) if Provider terminates any applicable Subscription Agreement pursuant to Section 14.3(a) or Section 14.3(b), all Fees that would have become payable had the applicable Order(s) remained in effect until expiration of the Term will become

immediately due and payable, and Customer shall pay such Fees, together with all previously accrued but not yet paid Fees, on receipt of Provider's invoice therefor; and

(g) if Customer requests in writing at least thirty (30) days prior to the effective date of expiration or termination, subject to Section 14.4(d), Provider shall, within forty-five (45) days following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Provider, provided that Customer has at that time paid all Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Provider's services in transferring such Customer Data.

14.5 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in these Master Terms and Conditions that, by its nature, should survive termination or expiration of an Order incorporating such Master Terms and Conditions, will survive any expiration or termination of any applicable Subscription Agreement: Section 3.1, Section 9, Section 11.3, Section 12, Section 13, Section 14.4, this Section 14.5, and Section 15.

15. Miscellaneous.

15.1 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in these Master Terms and Conditions shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

15.2 Public Announcements. Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to any Order for the Products or otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided, however, that Provider may, without Customer's consent, include Customer's name and other indicia in its lists of Provider's current or former customers of Provider in promotional and marketing materials.

15.3 Notices. Any notice, request, consent, claim, demand, waiver, or other communications under these Master Terms and Conditions will have legal effect only if in writing and addressed to a party as specified in the applicable Order (or to such other address or such other person that such party may designate from time to time in accordance with this Section 15.3). Notices sent in accordance with this Section 15.3 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or email, in each case, with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business; and (d) on the 2nd day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

15.4 Interpretation. The parties intend these Master Terms and Conditions to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of any applicable Subscription Agreement to the same extent as if they were set forth verbatim herein.

15.5 Headings. The headings in these Master Terms and Conditions are for reference only and do not affect the interpretation of these Master Terms and Conditions.

15.6 Entire Agreement. These Master Terms and Conditions, together with any Order(s) incorporating these Master Terms and Conditions by reference, constitute the sole and entire agreement of the parties with respect to Customer's access to and use of the Products and supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect thereto.

15.7 Assignment. Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under any Order or these Master Terms and Conditions, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Provider's prior written consent. Provider may assign any or all Customer Orders as part of a merger sale of all or substantially all of its assets. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under any applicable Order or these Master Terms and Conditions. Any purported assignment, delegation, or transfer in violation of this Section is void.

15.8 Force Majeure.

(a) No Breach or Default. In no event will Provider be liable or responsible to Customer, or be deemed to have defaulted under or breached its obligations under these Master Terms and Conditions or any applicable Order, for any failure or delay in fulfilling or performing any term of any applicable Subscription Agreement, when and to the extent such failure or delay is caused by any circumstances beyond Provider's reasonable control (a "**Force Majeure Event**"), including (i) acts of God; (ii) flood, fire, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of any applicable Subscription Agreement; and (vi) national or regional emergency; and (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortage of adequate power or transportation facilities. Either party may terminate any applicable Subscription Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of thirty (30) days or more.

(b) Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, Provider shall give prompt written notice to Customer stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.9 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination, or discharge of these Master Terms and Conditions is effective unless

it is in writing, identified as an amendment to or rescission, termination, or discharge of these Master Terms and Conditions and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Master Terms and Conditions will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

15.10 Severability. If any term or provision of these Master Terms and Conditions is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of any applicable Subscription Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify any applicable Subscription Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15.11 Governing Law; Submission to Jurisdiction. These Master Terms and Conditions and any Order incorporating these Master Terms and Conditions are governed by and construed in accordance with the internal laws of the State of Montana without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Montana. Any legal suit, action, or proceeding arising out of or related to these Master Terms and Conditions, Subscription Agreement, or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Montana in each case located in the city of Bozeman and County of Gallatin, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

15.12 Waiver of Jury Trial. Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this these Master Terms and Conditions, any Subscription Agreement, or the transactions contemplated hereby.

15.13 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 9 or, in the case of Customer, Section 3.1, Section 4.3, or Section 7.5, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

15.14 Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to these Master Terms and Conditions, any Subscription Agreement, or the transactions contemplated therein, the prevailing party is entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

EXHIBIT A

SERVICE LEVELS

Availability and Service Availability Credits

Required Availability Service Level	Calculation Formula	Service Availability Credits
<p>The Products will be Available 99.5% of the time during each Service Period excluding periods of Scheduled Downtime.</p>	<p>"Percentage Uptime" means the percentage of time during a Service Period that the Products are Available, calculated as follows:</p> $\frac{\text{(Total Minutes in Service Period – Scheduled Downtime – Unscheduled Downtime)}}{\text{(Total Minutes in Service Period – Scheduled Downtime)}} \times 100$ <p>Where:</p> <p>"Scheduled Downtime" means maintenance performed pursuant to Section 5.2(c);</p> <p>"Unscheduled Downtime" means any period during which the Products are unavailable other than Scheduled Downtime or downtime excluded under [force majeure/Customer breach provisions].</p>	<p>No Service Availability Credits will be given for any Service Period in which Percentage Uptime equals or exceeds the Availability Requirement.</p> <p>Customer shall be entitled to a Service Availability Credit of 10% of the Fees payable to Provider under the applicable Subscription Agreement during the impacted Service Period for each 1% by which Percentage Uptime is less than the Availability Requirement, such credit not to exceed 100%.</p>

Service Error Classification

Service Error Classification	Description: Any Service Error Comprising or Causing any of the Following Events or Effects
Critical Service Error	<ul style="list-style-type: none"> • Issue affecting entire system or single critical production function; • System down or operating in materially degraded state; • Data integrity at risk; • Material financial impact; • Declared a Critical Support Request by the Customer; or • Widespread access interruptions.
High Service Error	<ul style="list-style-type: none"> • Primary component failure that materially impairs its performance; or • Data entry or access is materially impaired on a limited basis.
Medium Service Error	<ul style="list-style-type: none"> • Subscription Service is operating with minor issues that can be addressed with a work around.
Low Service Error	<ul style="list-style-type: none"> • Request for assistance, information, or services that are routine in nature.

Support Service Level Requirements and Credits

Service Error Classification	Service Level Metric (Required Response Time)	Service Level Metric (Required Resolution Time)	Service Level Credits (For Failure to Respond to any Support Request Within the Corresponding Response Time)	Service Level Credits (For Failure to Resolve any Support Request Within the Corresponding Required Resolution Time)
Critical Service Error	1 hours	4 hours	10% of the Fees for the month in which the initial Service Level Failure begins and 5% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	10% of the Fees for the month in which the initial Service Level Failure begins and 5% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error remains un-Resolved.
High Service Error	2 hours	24 hours	8% of the Fees for the month in which the initial Service Level Failure begins and 5% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	8% of the Fees for the month in which the initial Service Level Failure begins and 5% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error remains un-Resolved.
Medium Service Error	24 hours	48 hours	5% of the Fees for the month in which the initial Service Level Failure begins and 5% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	5% of the Fees for the month in which the initial Service Level Failure begins and 5% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error remains un-Resolved.
Low Service Error	72 hours	120 hours	5% of the Fees for the month in which the initial Service Level Failure begins and 5%	5% of the Fees for the month in which the initial Service Level

			of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error is not responded to within the required response time.	Failure begins and 5% of such monthly Fees for each additional hour or portion thereof that the corresponding Service Error remains un-Resolved.
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