

## **CODA Intelligence Terms of Service v1.2**

Effective Date 03<sup>rd</sup> of January 2021

CODA Intelligence (US) Inc. ("**CODA**") is willing to provide certain services to you as the company or other legal entity ("**You**" or "**Your**" or "**Customer**") that has entered into an Order Form (as defined below) that incorporates these terms and conditions (the "**Terms of Service**", and together with the Order Form and any SOWs (as defined below), the "**Agreement**").

By using the Service (as defined below) or signing an Order Form, you agree to the terms and conditions of the Agreement.

The parties shall be referred to individually as a "**Party**" and collectively as the "**Parties**".

### **1. DEFINITIONS**

- 1.1 *Affiliate* means any entity that is directly or indirectly controlled by a Party. For purposes of this definition "control" means the direct possession of a majority of the outstanding voting securities of an entity.
- 1.2 *Authorized User* means a person who is authorized by Customer to access and use the Service.
- 1.3 *Customer Data* means all data made available by Customer to CODA for use in connection with the Service.
- 1.4 *Documentation* means the documentation for the Service generally supplied by CODA to assist its customers in their use of the Service, including user and system administrator guides, manuals and the Service functionality specifications.
- 1.5 *Hosting Terms and Conditions* means the terms and conditions of the third party hosting service provider used by CODA to host Customer Data, as set out in Schedule B (Service Level Agreement for Services & Software).
- 1.6 *Open Source Software* means any open source, copyleft or community source code (including any libraries or code, software, technologies or other materials that are licensed or distributed under any General Public License, Lesser General Public License or similar license arrangement or other distribution model described by the Open Source Initiative at [www.opensource.org](http://www.opensource.org)).
- 1.7 *Order Form* means CODA's order form or other ordering document which identifies the specific Service ordered, the Volume Limitations, and the price agreed upon by the parties. The Order Form is an integral part of the Agreement and shall be substantially in the form set out in Schedule A (Template Order Form).
- 1.8 *Service* means the subscription service identified in the Order Form.
- 1.9 *SLA* (or Service Level Agreement) sets out CODA's process for responding to customer support requests within predefined parameters and sets out the applicable Service uptime rates. The SLA (accessible at <https://www.codaintelligence.com/terms/>) is incorporated herein by reference and is an integral part of the Agreement.

1.10 *Subscription Term* means the term identified in the Order Form during which Customer has a subscription to the Service and includes the Initial Term and any Renewal Terms (each as identified in the Order Form).

1.11 *Tax* means any applicable tax chargeable on the sale of goods or supply of services.

1.12 *Volume Limitations* means the capacity indicated in the Order Form, including, as applicable, unique assets, applications, number of scans, gigabytes, or workflows.

## **2. SOFTWARE**

### **2.1 Access to Service.**

(a) During the Subscription Term, and subject to the terms and conditions of this Agreement (including the Hosting Terms and Conditions), CODA grants Customer a non-exclusive, non-transferable, non-sublicensable (other than in accordance with Section 2.1(b) below) right to use and access the Service: (i) solely for Customer's business purposes; (ii) within the Volume Limitations; and (iii) as described in the Agreement, and to white-label the Service under Customer's own name and branding.

(b) Customer may grant Authorized Users a non-exclusive, non-transferable, non-sublicensable right to access and use the Service: (i) solely for the Authorized Users' business purposes; (ii) within the Volume Limitations; (iii) as described in the Agreement; and provided that Customer:

(A) does not make or give any representations, warranties or other promises concerning the Service except as set out in the Agreement or as otherwise agreed by the Parties in writing from time to time;

(B) ensures that all Authorized Users are aware of the terms of the Agreement (including the Hosting Terms and Conditions) and act in compliance with them;

(C) enters into a written agreement with each Authorized User for the Authorized User's access to and use of the Service, and ensures that the written terms protect CODA and its proprietary rights in the Service to the same extent as set out in these Terms of Service, including, in particular, Sections 2.2 and 8 (and Customer will take reasonable steps to enforce such terms at CODA's request) and which prohibit the Authorized User from reselling or otherwise distributing the Service; and

(D) ensures that CODA is not liable to the Authorized Users in any way.

(c) If the Service is used in excess of the Volume Limitations, Customer shall be liable for, and CODA reserves the right to invoice Customer for, the fees for such excess usage at CODA's then current list rates, or as otherwise set forth in the Order Form, notwithstanding the limitation on liability in Section 6.2 of this Agreement.

2.2 Restrictions. Customer will not, and will not permit or authorize third parties (including Authorized Users) to: (i) reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, create derivative works of the Service, or merge the Service into another program; (ii) resell, rent, lease, or sublicense the Service or access to it (except to the extent permitted in accordance with Section 2.1(b) above) including use of the Service for timesharing or service bureau purposes; (iii) circumvent or disable any security or technological features or measures in the Service; nor (iv) access the Service

in order to build a competitive product or service, for competitive analysis, or to copy any ideas, features, functions or graphics of the Service.

- 2.3 Logins and other access to the Service. Where CODA issues Customer with login credentials to access and use the Service and/or the Documentation, Customer shall, and shall procure that all Authorized Users will, protect such credentials against misuse. Customer is responsible for all activities conducted under its logins, and for its employees' and Authorized Users' compliance with the Agreement. If Customer identifies a vulnerability in the Service or any misuse of its login credentials, Customer must immediately notify CODA and provide all information and analysis regarding the vulnerability through the CODA contact form, accessible at [www.codaintelligence.com/contact](http://www.codaintelligence.com/contact). Customer shall be solely responsible for ensuring that its employees and Authorized Users have an Internet connection and suitable software and hardware equipment or configuration as required to access and use the Service.
- 2.4 Responsibility for Authorized Users. Customer shall be responsible for any acts and omissions in connection with the use of the Service by its employees and Authorized Users. Customer shall indemnify and defend CODA, and CODA's agents and contractors, from and against any and all losses, damages, claims, liabilities or expenses (including reasonable lawyer's fees) arising out of a claim brought by an Authorized User or any other third party relating to any Authorized User's use of the Service (except to the extent caused by CODA's negligence). Customer shall immediately end any Authorized User's right to access and use the Service if the Authorized User ceases its employment or other relationship with Customer.
- 2.5 Customer Systems. Customer represents and warrants that it has the appropriate authorizations from the owner of the networks, systems, IP addresses, assets, and/or hardware on which it deploys the Service, or which it targets, scans, monitors, or tests with the Service.
- 2.6 Changes to Services. CODA may, in its sole discretion, make any changes to the Service that it deems necessary or useful, including to (i) maintain or enhance (a) the quality or delivery of CODA's products or services to its customers, (b) the competitive strength of, or market for, CODA's products or services, (c) such Platform's cost efficiency or performance, or (ii) to comply with applicable law; and, in each case, no warranty, representation or other commitment is given in relation to the continuity of any functionality of the Service.
- 2.7 Customer Compliance. Customer shall use, and will ensure that all Authorized Users use, the Service in full compliance with this Agreement and all applicable laws and regulations. Customer represents and warrants that it (i) has accessed and reviewed any terms of use or other policies relating to the Services provided by CODA, (ii) understands the requirements thereof, and (iii) shall comply therewith. Without liability or prejudice to CODA's other rights under the Agreement, CODA may suspend Customer's rights of access to and use of the Services at any time and without notice if CODA believes that Customer is in violation of the Agreement. Although CODA has no obligation to monitor Customer's or any Authorized User's use of the Services, CODA may do so (including for the purposes of ensuring the quality of, and improving, the Service, and verifying

Customer's compliance with the Agreement) and may prohibit any use it believes may be (or alleged to be) in violation of the foregoing.

- 2.8 Cooperation. Customer shall provide all cooperation and assistance as CODA may reasonably request to enable CODA to exercise its rights and perform its obligations under, and in connection with, the Agreement, including providing CODA with remote access to Customer's premises and its information technology infrastructure as is necessary for CODA to perform the Services in accordance with this Agreement.
- 2.9 Restrictions on Export. Customer understands that the Service is or may be subject to export control laws and regulations. Customer may not remove or export from the United States or allow the export or re-export of the Service or any technical or other data provided in connection therewith or any underlying information or technology, or (in each case) any direct product thereof, in violation of any restrictions, laws or regulations of any United States or foreign agency or authority.

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

- 3.1 If Customer wishes to become a CODA authorized reseller, Customer can do so by signing a separate dedicated reseller agreement.
- 3.2 Fees. CODA will invoice Customer, and Customer shall pay, the fees set forth in the Order Form (or such other fees as notified by CODA to Customer from time to time in accordance with Section 3.13 below).
- 3.3 If usage of the Services exceeds the amounts or limits set out in an Order, CODA will invoice Customer, and Customer must pay, for such excess usage, based on CODA's rates set forth in the Order Form through the end of the then-current Initial Term or Renewal Term (as applicable). Except as specifically provided in these Terms of Service or in the Order Form, (a) fees are based on subscriptions purchased and not actual usage; (b) all payment obligations are non-cancellable, and fees paid non-refundable; and (c) quantities purchased cannot be decreased during the Subscription Term. For example, if usage exceeds the limits during month 4 of a 12-month order, CODA will invoice Customer for 9 months of the excess usage amount and the remaining 9 months of Service will increase to include the current amount plus the excess.
- 3.4 Upgrades or Expansions. For any Service upgrades or expansions during the Subscription Term, Customer must pay the additional pro rata Service fee for the upgrade or expansion through the end of the then-current Initial Term or Renewal Term (as applicable). For the following Renewal Term, the upgraded or expanded Service will be invoiced along with the originally-ordered Service and treated in all respects as though it had been part of the original Order Form. A new or amended Order Form is required for each upgrade or expansion.
- 3.5 Taxes. All amounts payable by Customer to CODA hereunder are exclusive of any Taxes. Customer will be solely responsible for payment of any Taxes, except for those taxes based on the income of CODA. Customer may not withhold any Taxes from any amounts due CODA and will pay Taxes properly invoiced by CODA.
- 3.6 Invoices will be issued by CODA (a) on or after the Effective Date; (b) after excess usage has occurred; (c) upon renewal at the commencement of each Renewal Term.

- 3.7 CODA will issue the invoice in advance, which will be sent using one of the methods set out in the Agreement.
- 3.8 Customer will pay the invoice within 10 days of the date of the invoice.
- 3.9 If Customer does not dispute an invoiced amount within 3 days of its receipt, Customer's non-contestation represents an acceptance to pay the amount set out in the invoice.
- 3.10 Overdue Payments. If payment of any fee is not made when due and payable, a late fee will accrue at the rate of 1.5% per month. Customer will pay all reasonable expenses of collection of any overdue fee.
- 3.11 True-up. If during the Subscription Term, Customer exceeds the Volume Limitations by more than the burst allocation set out in the Order Form for more than 10 consecutive days, then a true-up of the fees will occur. CODA will invoice Customer for the excess usage a pro-rata amount of the applicable fees for the duration of the active subscription as part of the true-up process.
- 3.12 All travel expenses of CODA and of its partners/third parties due to the provision of any implementation or upgrade services, and/or any other reason resulting from the performance of the Agreement, will be reimbursed by Customer. All expenses shall be evidenced by supporting documents (for example invoices or receipts).
- 3.13 CODA reserves the right to change the rates, applicable charges, and usage policies and to introduce new charges, listed on such Order Form upon providing Customer written notice thereof (which may be provided by e-mail) at least 60 days prior to the end of the then current Initial Term or Renewal Term (as applicable).

#### 4. CONFIDENTIALITY

- 4.1 Confidential Information. During the Subscription Term of this Agreement, each Party (the "**Receiving Party**") will treat any information provided to it by the other Party (the "**Disclosing Party**") which is either designated in writing as proprietary or confidential, or by the nature of which is clearly confidential or proprietary, as that Party's confidential information ("**Confidential Information**"). A Receiving Party shall not disclose the Disclosing Party's Confidential Information to any third party without the prior written consent of the Disclosing Party, nor make use of any of the Disclosing Party's Confidential Information except in its performance under the Agreement. Each Party accepts responsibility for the actions of its agents or employees and shall protect the other Party's Confidential Information in the same manner as it protects its own Confidential Information, but in no event with less than reasonable care. The Parties expressly agree that the terms and pricing of the Agreement are Confidential Information. A Receiving Party shall promptly notify the Disclosing Party upon becoming aware of a breach or threatened breach hereunder and shall cooperate with any reasonable request of the disclosing Party in enforcing its rights.
- 4.2 Exclusions. Information will not be deemed Confidential Information if such information: (i) is known prior to receipt from the Disclosing Party, without any obligation of confidentiality; (ii) becomes known to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise publicly available, except through a breach of the

Agreement; or (iv) is independently developed by the Receiving Party without use of, reference to, and/or reliance upon, the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process or government regulation, provided that, unless prohibited from doing so by law enforcement or court order, the Receiving Party gives the Disclosing Party reasonable prior written notice, and such disclosure is otherwise limited to the required disclosure.

- 4.3 *Non-use and Non-disclosure.* With respect to Confidential Information of the Disclosing Party, the Receiving Party agrees to: (i) use the same degree of care to protect the confidentiality, and prevent the unauthorized use or disclosure, of such Confidential Information it uses to protect its own proprietary and confidential information of like nature, which shall not be less than a reasonable degree of care, (ii) hold all such Confidential Information in strict confidence and not use, sell, copy, transfer reproduce, or divulge such Confidential Information to any third party, (iii) not use such Confidential Information for any purposes whatsoever other than the performance of, or as otherwise authorized by, the Agreement.
- 4.4 *Remedies for Breach of Obligation of Confidentiality.* The Receiving Party acknowledges that breach of its obligations of confidentiality may cause irreparable harm to the Disclosing Party for which the Disclosing Party may not be fully or adequately compensated by recovery of monetary damages. Accordingly, in the event of any violation, or threatened violation, by the Receiving Party of its obligations under this Section, the Disclosing Party shall be entitled to seek injunctive relief from a court of competent jurisdiction in addition to any other remedy that may be available at law or in equity, without the necessity of posting bond or proving actual damages.

## 5. LIMITED WARRANTY

- 5.1 *Service Warranty.* CODA warrants that, during the Subscription Term: (i) the Service will conform, in all material respects, with the applicable Documentation; and (ii) it will not materially decrease the overall functionality of the Service. CODA makes no warranty regarding third party features or services. For any breach of the above warranty, CODA will, at no additional cost to Customer, use commercially reasonable efforts to provide remedial services necessary to enable the Service to conform to the warranty. Customer will provide CODA with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects. The remedies set out in this subsection are Customer's sole remedies for breach of the above warranty.
- 5.2 *Disclaimer.* **CODA DOES NOT REPRESENT THAT THE SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR WILL MEET CUSTOMER'S REQUIREMENTS. EXCEPT FOR THE WARRANTY STATED IN SECTION 5.1, CODA MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. CODA MAKES NO WARRANTY THAT ALL SECURITY RISKS OR THREATS WILL BE DETECTED BY USE OF THE SERVICE OR THAT FALSE POSITIVES WILL NOT BE FOUND.**
- 5.3 *Artificial Intelligence and Automation Disclaimer.* Customer is responsible for implementing appropriate internal procedures and oversight to the extent it utilizes

the configuration of workflows and processes, including but not limited to containment actions, quarantine actions, kill processes and similar functionalities ("Artificial Intelligence and Automation Functionalities"). EXCEPT FOR THE WARRANTY IN SECTION 5.1, THE ARTIFICIAL INTELLIGENCE AND AUTOMATION FUNCTIONALITIES ARE MADE AVAILABLE BY CODA ON AN "AS-IS" BASIS TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. CODA's Artificial Intelligence and Automation Functionalities are not designed, intended or licensed for use in hazardous environments or other applications where a malfunction could cause property damage or personal injury, and CODA specifically disclaims any liability in connection with any such use. Customer assumes all risks in using third-party products or services in connection with the Artificial Intelligence and Automation Functionalities.

## **6. LIMITATION OF LIABILITY**

- 6.1 Limitation on Indirect Liability. SUBJECT TO SECTION 6.3, NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR PROFIT, GOODWILL, BUSINESS OPPORTUNITY, TURNOVER, REPUTATION, ANTICIPATED SAVING, OR WASTED EXPENDITURE, OR FOR DAMAGE TO OR LOSS OF DATA, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE.
- 6.2 Limitation on Amount of Liability. SUBJECT TO SECTION 6.3, EACH PARTY'S TOTAL LIABILITY IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR RESTITUTION, OR FOR BREACH OF STATUTORY DUTY OR MISREPRESENTATION, OR OTHERWISE, ARISING UNDER OR IN CONNECTION WITH THE AGREEMENT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO AN AMOUNT EQUAL TO THE VALUE OF THE FEES PAID OR PAYABLE BY CUSTOMER IN THE INITIAL 12 MONTHS OF THE SUBSCRIPTION TERM.
- 6.3 Exceptions to Limitations. The limitation of liability in Section 6.2 applies to the fullest extent permitted by applicable law, except that there is no limitation on loss, claims, or damages directly arising out of: (i) violations of CODA's intellectual property rights by Customer; (ii) violations of Customer's confidentiality obligations as set forth in Section 4 of this Agreement; or (iii) Customer's indemnification obligations.

## **7. TERM AND TERMINATION**

- 7.1 Term. The Agreement shall commence on the Commencement Date and shall continue in effect until otherwise terminated in accordance with Section 7.3 below. The Agreement will automatically renew for a Renewal Term at the end of the Initial Term, and at the end of each Renewal Term thereafter, unless (i) otherwise indicated on the Order Form; or (ii) either Party provides the other with written notice of its election not to renew the Agreement for a further Renewal Term at least 30 days prior to the expiry of the Initial Term or the current Renewal Term (as applicable).
- 7.2 Suspension of Service.
- (a) CODA may suspend Customer's and/or any Authorized User's access to the Service upon notice (which may be made by email or telephone) if CODA reasonably concludes that Customer or any Authorized User is using the Service to engage in illegal activity, and/or Customer's or any Authorized User's use of the Service is causing or may cause

immediate, material and ongoing harm to others. In the event that CODA suspends Customer's or any Authorized User's access to the Service, CODA will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and work with Customer to resolve the issues requiring the suspension of Service. CODA shall not be liable to Customer nor to any third party for any suspension of the Service under this Section 7.2.

- (b) In addition to the foregoing provisions of Section 7.2(a), CODA also reserves the right to suspend Customer's and/or any Authorized User's access to the Service upon notification, without having to terminate the Agreement, if Customer is more than thirty days late with respect to any payments due hereunder. Upon such suspension, Customer shall still be liable for all payments that have accrued prior to the date of suspension and that will accrue throughout the remainder of the Subscription Term. CODA will not be obligated to restore access to the Service until Customer has paid all fees owed to CODA.

7.3 Termination. Notwithstanding the foregoing, either Party may terminate the Agreement: (i) immediately in the event of a material breach of the Agreement by the other Party that is not cured within thirty days of written notice thereof from the other Party or, if such breach is incapable of cure, immediately upon written notice; or (ii) immediately if the other Party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty days of filing. Either Party may also terminate this Agreement upon no less than thirty days' prior written notice to the other party for any reason if at such time there are no outstanding Subscription Terms then currently in effect. All rights and obligations of the Parties which by their nature are reasonably intended to survive such termination or expiration (including Sections 3, 4, 6, 8, 9, 11, and 12) will survive termination or expiration of the Agreement. Except as expressly provided herein, termination of the Agreement by either Party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such Party.

7.4 Effect of Termination. Effect of Termination. Upon any termination or expiration of the Agreement, CODA shall no longer provide the applicable Service to Customer and Customer and all Authorized Users must cease using the Service and send no further Customer Data to CODA. Termination of the Agreement shall not relieve Customer of its obligation to pay all fees that have accrued or have become payable by Customer hereunder. Customer agrees that following termination of Customer's account and/or use of the Service, CODA may immediately deactivate Customer's account and that following a reasonable period not to exceed 90 days, shall be entitled to delete Customer's account and all Customer Data from the Service.

## **8. OWNERSHIP; USE OF CONTENT; OBLIGATIONS; INTELLECTUAL PROPERTY RIGHTS**

8.1 Customer Data. As between CODA and Customer, Customer retains ownership of all right, title, and interest in and to all Customer Data, and Customer is solely responsible for all Customer Data. CODA does not guarantee the accuracy, integrity, or quality of such Customer Data. Customer shall be solely responsible for providing, updating, uploading, maintaining and backing-up all Customer Data. CODA may use Customer Data solely as necessary: (i) to provide the Service to Customer; (ii) in anonymized and aggregated form, to generate statistics and produce reports; and (iii) to collect metadata about feature



usage and use such metadata and Customer Data in order to test, improve and alter the functionality, development and delivery of the Service.

- 8.2 **CODA Service.** As between CODA and Customer, CODA retains ownership of all right, title, and interest in and to all intellectual property in and about the Service and the Documentation. CODA shall notify Customer of any Open Source Software incorporated in the Service, or otherwise used by CODA in its provision of the Service, at Customer's written request.
- 8.3 **Customer Obligations.** Customer shall not (and shall ensure that Authorized Users do not): (i) upload or otherwise transmit, display, or distribute any Customer Data to the Service that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person or that is otherwise infringing, unlawful, harmful, threatening, or offensive; (ii) upload or otherwise transmit to the Service any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; or (iii) use any automated system (including "robots", "spiders", or "offline readers") to access the Service in a manner that sends more request messages to the Service than a human can reasonably produce in the same period of time by using a conventional online web browser, or otherwise interfere with or disrupt the Service.

## **9. INDEMNIFICATION**

- 9.1 **By CODA.** CODA will indemnify, defend, and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim that CODA's technology used to provide the Service infringes or misappropriates any U.S. patent, copyright, trade secret, or trademark of such third party. Notwithstanding the foregoing, in no event shall CODA have any obligations or liability under this Section arising from: (i) use of any Service in a manner not anticipated by this Agreement or in combination with materials not furnished by CODA; or (ii) any content, information, or data provided by Customer or other third parties. If the Service is or is likely to become subject to a claim of infringement or misappropriation, then CODA will, at its sole option and expense, either: (i) obtain for Customer the right to continue using the Service; (ii) replace or modify the Service to be non-infringing and substantially equivalent to the infringing Service; or (iii) if options (i) and (ii) above cannot be accomplished despite the reasonable efforts of CODA, then CODA may terminate Customer's rights to use the infringing Service and will refund pro-rata any prepaid fees for the infringing portion of the Service. THE RIGHTS GRANTED TO CUSTOMER UNDER THIS SECTION 9.1 SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT BY THE SERVICE OF ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT.
- 9.2 **By Customer.** Customer will indemnify, defend, and hold harmless CODA from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of: (i) Customer's or any Authorized User's use of the Service in violation of this Agreement or applicable law; (ii) any Authorized User's use of the Service in violation of the agreement entered into by Customer and the relevant Authorized User pursuant to Section 2.1(b), or otherwise not in accordance with this

Agreement or applicable law; (iii) Customer's breach of the representations and warranties made in Sections 2.5 and 11.2 of this Agreement; or (iv) a third party claim that CODA's use of any Customer Data, or other information or materials made available by Customer or any Authorized User for use in connection with the Service, infringes or misappropriates any patent, copyright, trade secret, or trademark of such third party.

## **10. AVAILABILITY; DOWNTIME; SUPPORT**

10.1 Downtime. Subject to this Agreement and the Service Level Agreement, CODA shall use commercially reasonable efforts to provide the Service twenty-four hours a day, seven days a week throughout the Subscription Term. Customer agrees that from time to time the Service may be inaccessible or inoperable for various reasons, including: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which CODA may undertake from time to time; or (iii) causes beyond the control of CODA or which are not reasonably foreseeable by CODA, including interruption or failure of telecommunication or digital transmission links, hostile network attacks or network congestion, or other failures (collectively "**Downtime**"). CODA shall use commercially reasonable efforts to provide twenty-four hour advance notice to Customer in the event of any scheduled Downtime. CODA shall have no obligation during performance of such operations to mirror Customer Data or to transfer Customer Data. CODA shall use commercially reasonable efforts to minimize any disruption, inaccessibility, and/or inoperability of the Service in connection with Downtime, whether scheduled or not.

10.2 Support Services. CODA shall provide support during any Subscription Term, or else as otherwise set forth on the applicable Order Form subject to CODA's support policy, located at <http://partner.codaintelligence.com>.

10.3 Installation and Configuration. Unless otherwise provided on an Order Form or SOW, Customer is responsible for installing and configuring any Service.

10.4 Professional Services. All other implementation services, customization, integration, data import and export, monitoring, technical support, maintenance, training, backup and recovery, and change management ("**Professional Services**") shall be agreed to be the parties in a written statement of work ("**Statement of Work**" or "**SOW**"). Each applicable Statement of Work shall specify and further describe the Professional Services to be provided in accordance with the representations and warranties set forth herein, including (as applicable) details of the Professional Services offered, limitations and/or dependencies on Customer, milestones, fees, term and other applicable terms and conditions. CODA shall have sole discretion in staffing the professional services and may assign the performance of any portion of the professional services to any subcontractor. Customer will have a non-exclusive, non-transferable license to use any deliverables or other work product developed by CODA in the performance of the professional services, which are delivered to Customer, upon Customer's payment in full of all amounts due for such deliverables or work product. CODA retains ownership of all information, software, and other property owned by it prior to this Agreement or which it develops independently of this Agreement and all deliverables and work product compiled or developed by CODA in the performance of the professional services.

10.5 Professional Services Rescheduling. If Customer reschedules the Services, Customer will be responsible for any expenses incurred by CODA due to such rescheduling. If performance of the Services is delayed by Customer's acts or omissions, including

Customer's failure to meet the requirements set forth in an SOW, Customer will forfeit the duration of such delay from its Services time.

## **11. DATA PRIVACY**

- 11.1 Personal Data. To the extent that CODA processes personal data about any individual in the course of providing the Service, the Parties shall comply with CODA's Data Processing Addendum (accessible at [www.codaintelligence.com/terms](http://www.codaintelligence.com/terms)), which is incorporated herein by reference and is an integral part of the Agreement.
- 11.2 Data Privacy. Customer represents and warrants that Customer has obtained all necessary rights to permit CODA to process Customer Data from and about Customer, any Authorized User and any other person to which the Customer Data relates, including, without limitation, data from endpoints, servers, cloud applications, and logs.
- 11.3 Data Security. CODA shall implement appropriate technical and organizational measures to protect Customer Data from accidental or unlawful destruction, loss, or alteration, unauthorized disclosure of or access to Customer Data. Such measures may include, as appropriate (a) the encryption of Customer Data; (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of systems and services; (c) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of Customer Data.

## **12. GENERAL PROVISIONS**

- 12.1 Miscellaneous. (a) This Agreement shall be construed in accordance with and governed for all purposes by the laws of the State of Delaware, excluding its choice of law provisions and each Party consents and submits to the jurisdiction and forum of the state and federal courts in the State of Delaware all questions and controversies arising out of this Agreement and waives all objections to venue and personal jurisdiction in these forums for such disputes; (b) the Agreement constitutes the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and supersedes all prior agreements and undertakings, both written and oral; (c) the Agreement may not be modified except by a writing signed by each of the Parties; (d) in case any one or more of the provisions contained in the Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of the Agreement but rather the Agreement shall be construed as if such invalid, illegal, or other unenforceable provision had never been contained herein; (e) Customer shall not assign or otherwise transfer its rights or obligations hereunder without CODA's advance written consent; (f) subject to the foregoing subsection (e), this Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their successors and permitted assigns; (g) no waiver of any right or remedy hereunder with respect to any occurrence or event on one occasion shall be deemed a waiver of such right or remedy with respect to such occurrence or event on any other occasion; (h) nothing in the Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement, including but not limited to any of Customer's own clients, customers, or employees; (i) the headings to the sections of the Agreement are for ease of reference only and shall not affect the interpretation or

construction of the Agreement; and (j) in the event of a conflict between the terms of these Terms of Service and the terms of an Order Form, the terms in the Order Form shall take precedence to the extent of the conflict.

12.2 Injunctive Relief. Notwithstanding any other provision of this Agreement, both Parties acknowledge that any breach of the Agreement may cause the other Party irreparable and immediate damage for which remedies other than injunctive relief may be inadequate. Therefore, the Parties agree that, in addition to any other remedy to which a Party may be entitled hereunder, at law or equity, that party shall be entitled to seek an injunction to restrain such use in addition to other appropriate remedies available under applicable law.

12.3 Relationship of the Parties. CODA and Customer are independent contractors, and nothing in the Agreement shall be construed as making them partners or creating the relationships of principal and agent between them, for any purpose whatsoever. Neither party shall make any contracts, warranties, or representations or assume or create any obligations, express or implied, in the other Party's name or on its behalf.

12.4 US Government Restricted Rights. US Government Restricted Rights. This Section applies to all acquisitions of the Service by or for the US federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement, or other activity with the federal government for the Government's end use. The Service are "commercial items" as that term is defined at FAR 2.101. If Customer is an Executive Agency (as defined in FAR 2.101) of the U.S. Federal Government ("Government"), CODA provides the Service, including any related technical data and/or professional services in accordance with the following: If a right to access the Service is procured by or on behalf of any Executive Agency (other than an Executive Agency within the Department of Defense (DoD)), the Government is granted, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to CODA's customers as such rights are described in this Agreement. If a right to access the Service is procured by or on behalf of any Executive Agency within the DoD, the Government is granted, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software that are customarily provided to CODA's customers as such rights are described in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data provided by CODA to an Executive Agency within the DoD. Note, however, that Subpart 227.72 does not apply to computer software or computer Service documentation acquired under GSA schedule contracts. Except as expressly permitted under this Agreement, no other rights or licenses are granted to the Government. Any rights requested by the Government and not granted under this Agreement must be separately agreed in writing with CODA. This Section 12.4 of the Agreement is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in the Service.

12.5 Force Majeure. Other than payment obligations hereunder, neither Party will be liable for any inadequate performance to the extent caused by a condition that was beyond the Party's reasonable control (including, but not limited to, natural disaster, act of war or terrorism, riot, global health crisis, acts of God, or government intervention), except for

mere economic hardship, so long as the Party continues to use commercially reasonable efforts to resume performance.

- 12.6 No Reliance. Customer represents that it has not relied on the availability of any future version of the Service or any future product or service in executing the Agreement or purchasing any Service hereunder.
- 12.7 Notices. Unless specified otherwise herein, (i) all notices must be in writing and addressed to the attention of the other Party's legal department and primary point of contact and (ii) notice will be deemed given: (a) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (b) when verified by automated receipt or electronic logs if sent by email. When sent by email, notices must be sent to CODA at [office@codaintelligence.com](mailto:office@codaintelligence.com).
- 12.8 Publicity. Customer acknowledges that CODA may use Customer's name and logo for the purpose of identifying Customer as a customer of CODA products and/or services (including in CODA's marketing and promotional materials). CODA will cease using Customer's name and logo upon Customer's written request.
- 12.9 Compliance with Law. Each Party agrees to comply with all federal, state, and local laws and regulations including but not limited to export law, and those governing the use of network scanners, vulnerability assessment software products, encryption devices, user monitoring, and related software in all jurisdictions in which systems are scanned, scanning is controlled, or users are monitored.
- 12.10 Links and Third Party Content. Customer agrees that CODA shall not be responsible for applications, services, software, or other products supplied by a third party (excluding those delivered as part of the Service) that Customer chooses to use with or integrate with the Service, even if such third-party service interoperates with a Service.
- 12.11 Rights to Audit. [CODA may, on reasonable notice to Customer, during normal business hours, access Customer's business premises in order to audit its use of the Service and its compliance with the Agreement.] If any unauthorized access to, or use of, the Service is discovered (including any access to and/or use of the Service by any person who does not have a right to access and/or use the Service under the Agreement), Customer agrees to immediately cease such use, upon receipt of a written notice. In the event that Customer does not comply with the request it shall be liable for any damages arising out of the continued access to and/or use of the Service, subject to the terms and conditions of the Agreement.
- 12.12 Security. CODA may, from time to time, host and/or maintain the Services using a third party technology service provider and Customer acknowledges that CODA cannot offer any additional or modified procedures other than those put in place by such technology provider with respect to such technology service.
- 12.13 Assignment. Neither Party may assign or otherwise transfer this Agreement to any third party without the prior written consent of the other Party; provided that no consent is required in connection with an assignment to an Affiliate or in connection with any merger, reorganization, consolidation, sale of assets or similar transaction. CODA may sublicense any or all of its obligations hereunder. For the avoidance of doubt, a third-

party technology provider that provides features or functionality in connection with a Service shall not be deemed a sublicensee under the Agreement.

[END]

