

SaaS Passport Base Terms

Version 1.0.0-pre.2

Provider and Customer agree:

1. *Deal Packet.*
 - (a) *Documents.* These **Base Terms**, together with an **Order Form** and **Rider** referencing them, make up a **Deal Packet** for software as a service. The Deal Packet may also include one or more **Add-On** documents referenced by the Rider.
 - (b) *Conflicts.* Where documents in the Deal Packet conflict, the Rider takes precedence over any Add-On, and any Add-On takes precedence over these Base Terms. The Order Form may only provide terms referenced by the Rider, an Add-On, or these Base Terms. Any other terms in the Order Form have no effect.
2. *Provider's Obligations.*
 - (a) *Provide the Service.* Provider agrees to run the Service so that Users can use the Feature Set, within the Use Limits, by accessing the Service with systems meeting the requirements in the Documentation.
 - (b) *Provide Hosting Equipment.* Provider agrees to provide for itself, at its own expense, all the computers, software, and other equipment needed to provide the Service.
 - (c) *Keep Customer Data Confidential.* Provider agrees not to access, use, or disclose Customer Data without Permission, except:
 - (i) Provider may access, use, and disclose Customer Data as needed to provide the Service.
 - (ii) Provider may monitor use of the Service to prevent, detect, and mitigate breach of this agreement.
 - (iii) Provider may analyze Customer Data to improve the Service.
 - (iv) Provider may access Customer Data, and disclose Customer Data to Customer Personnel, to respond to Support Requests.
 - (d) *Provide Access to Customer Data.* Provider agrees to make Customer Data available for Customer to download, via self-service features of the Service, within 7 calendar days after Notice from Customer, or both, in standardized, machine-readable data-interchange formats.
 - (e) *Take Security Precautions.* Provider agrees to take industry-standard security precautions to defend the Service from malicious technical attack and Data Compromise. Provider does not agree to make sure the Service is completely free of software bugs or configuration errors affecting security, or completely secure from all possible technical attack.
 - (f) *Prepare for Disasters.* Provider agrees to:

- (i) adopt, maintain, and periodically review a written plan to recover from any Disaster affecting the systems used to provide the Service or the integrity of Customer Data
 - (ii) share the plan with relevant Provider personnel
 - (iii) give Customer a copy of the current plan on request
 - (iv) follow the plan if a Disaster happens
- (g) *Provide Basic Support.* Provider agrees to respond to **Support Requests** from Customer Personnel via e-mail about configuration of, use of, and problems with the Service. Provider does not agree to any specific service levels for response to Support Requests. Provider may agree to provide more assurances about Support Requests through an Add-On.
- (h) *Enforce Rules About Providing the Service.* Provider agrees to make sure Provider Personnel abide by *Section 2(c) (Keep Customer Data Confidential)*, *Section 2(e) (Take Security Precautions)*, *Section 2(f) (Prepare for Disasters)*, and *Section 2(k) (Keep Malicious Code Out of the Service)*. Provider may contract with others to provide computer systems used to provide the Service to Customer.
- (i) *Publish Documentation.* Provider agrees to host the Documentation so Customer personnel can read it on the World Wide Web.
- (j) *Refund Prepaid Fees for Removed Features.* If Provider changes or removes Software Features from the Service that were part of the Feature Set, substantially reducing how useful the Service is to Customer, and Customer ends this agreement in the same Billing Period as the change or the next Billing Period, citing the change, then Provider agrees to refund any Prepaid Fees on Request.
- (k) *Keep Malicious Code Out of the Service.* Provider agrees to make sure the Service itself is free of computer viruses, Trojans, worms, and other malicious code. Provider does not agree to ensure that content from others that is accessible through the Service is free of malicious code.
- (l) *Limit Validation Code in the Software.* Provider agrees not to include any code that automatically disables Software Features based on monitoring of Use Limits. Provider may include code that monitors Use Limits, validates administrative Access Credentials, and reports results back to Provider systems.
- (m) *Publish a Privacy Notice.* Provider agrees to publish notice of Provider's privacy policies meeting all legal requirements of Provider's Country and Provider's National Subdivision, except any Special Data Regulations, at a stable World Wide Web address.
- (n) *Bill Customer.* Provider agrees to bill Customer as agreed on the Order Form.
- (o) *Give Customer Tax-Compliance Information.* Provider agrees to give Customer information that Customer needs to comply with tax laws that apply to payments under the agreement.
- (p) *Follow Customer Policies.* Provider agrees to comply with company-wide Customer policies, such as anticorruption, antiharassment, and equal opportunity

policies, attached to the Order Form at the time of signing, to the extent they do not conflict with any terms of the Deal Packet. If Customer gives Provider notice of updates to those policies, Provider agrees to comply with the updates, to the extent the changes do not impose substantial new compliance costs.

- (q) *Protect Customer from Liability.* So long as Customer has paid all fees as required by this agreement:
 - (i) *Indemnify Customer.* Subject to *Section 7(a) (Indemnification Process)*, Provider agrees to give Customer Indemnification for:
 - (A) Legal Claims by others alleging that Permitted Use of the Service infringes any copyright, trademark, or trade secret right, or breaks any law
 - (B) Legal Claims by others resulting from Provider's breach of *Section 8(i) (Independence)*
 - (ii) *Provide Assurance about Patents.* As of the day Provider signs this agreement, Provider employees are not aware of any patent that Provider would infringe by licensing or providing the Service under this agreement, or that Customer would infringe by Permitted Use of the Service.
 - (iii) *Give Notice of Infringement and Noncompliance Claims.* Provider agrees to give Customer prompt Notice of any Infringement or Noncompliance Claim.
- (r) *Protect Customer After this Agreement Ends.* The following Provider obligations continue after this agreement ends:
 - (i) *Section 2(c) (Keep Customer Data Confidential)*, indefinitely
 - (ii) *Section 2(h) (Enforce Rules About Providing the Service)*, indefinitely
 - (iii) *Section 2(q)(i) (Indemnify Customer)*, indefinitely
 - (iv) *Section 2(d) (Provide Access to Customer Data)*, for 30 calendar days

3. *Customer's Obligations.*

- (a) *Pay Fees.* Customer agrees to pay all fees agreed on the Order Form.
- (b) *Pay on Time.* Customer agrees to pay each Provider bill as agreed on the Order Form. If the Order Form does not say, Customer agrees to pay each Provider bill within 30 calendar days.
- (c) *Use the Agreed Payment Method.* Customer agrees to pay all fees under this agreement via the payment method agreed on the Order Form. If the Order Form does not say, Customer agrees to pay via bank-to-bank transfer, such as FedWire, ACH, SEPA, or SWIFT, if possible, and otherwise via common electronic payment system, such as by credit card or PayPal.
- (d) *Cover Payment Method Fees.* Customer agrees to increase the amount of each payment to Provider so that Provider receives the full amount owed, net of any fees for use of the payment method.

- (e) *Pay Taxes on Fees.* Customer agrees to pay all tax on fees under this agreement, except tax Provider owes on its own income.
- (f) *Handle Tax Withholding.* If the law requires withhold of taxes on fees paid under this agreement:
 - (i) Customer agrees to make the required tax withholding payments for Provider by deducting the right amounts from payments to Provider and paying them to the proper tax authorities.
 - (ii) Customer agrees to increase the amount of each payment made under this agreement, to offset withholding, so that Provider receives the full amount owed.
 - (iii) Customer agrees to provide Provider relevant official tax documentation and tax receipts showing that withholding was required, and that proper withholding payment has been made, as soon as possible after making any withholding payment.
- (g) *Give Provider Tax-Compliance Information.* Customer agrees to give Provider information that Provider needs to comply with tax laws that apply payments under the agreement.
- (h) *Provide User Equipment.* Provider agrees to provide for itself and its Users, at its own expense, all the computers, software, and other equipment needed to access the Service.
- (i) *Follow Rules About Use.* Customer agrees not to:
 - (i) infringe anyone's Intellectual Property Right using the Service
 - (ii) violate anyone's rights using the Service
 - (iii) breach any agreement using the Service
 - (iv) break the law using the Service
 - (v) furnish or solicit Customer Data in any way that infringes any Intellectual Property Right, breaks any law, or breaches any other agreement
 - (vi) furnish or solicit Customer Data subject to Special Data Regulations
 - (vii) remove proprietary notices from the Service or Documentation
 - (viii) strain the technical infrastructure of the Service with an unreasonable volume or rate of requests, or requests designed to impose an unreasonable load, except with Permission to conduct a specific technical or security test
 - (ix) use the Service to assess whether or how to create a competitive offering, or to assess the competitive strengths or weaknesses of the Service in comparison to a current or potential Customer offering
 - (x) publish data about the performance of the Service
- (j) *Enforce Rules About Using the Service.* Customer agrees to make sure Customer Personnel abide by *Section 3(i) (Follow Rules About Use)*.

- (k) *Update Account Details.* Customer agrees to keep its contact, payment, and other administrative details complete, accurate, and up-to-date. Customer agrees to do so through the Account Dashboard whenever possible, and otherwise by Notice.
- (l) *Respond to Support Follow-Ups.* Customer agrees to make sure that relevant Customer Personnel respond quickly to follow-up questions about Support Requests.
- (m) *Indemnify Provider.* Subject to *Section 7(a) (Indemnification Process)*, Customer agrees to give Provider Indemnification from Legal Claims by others based on:
 - (i) Customer's breach of this agreement
 - (ii) Customer Data
 - (iii) Use of the Service at Customer's Own Risk
 - (iv) misuse of Customer's Access Credentials
- (n) *Protect Provider After this Agreement Ends.* The following Customer obligations continue after this agreement ends:
 - (i) *Section 3(a) (Pay Fees)*, indefinitely
 - (ii) *Section 3(m) (Indemnify Provider)*, indefinitely

4. *Intellectual Property.*

- (a) *Existing and Outside IP.* This agreement does not change ownership of any Intellectual Property Right held by either side before entering this agreement, or created outside the scope of this agreement.
- (b) *Copyright License.* Provider grants Customer and each of the Users a Standard License, for any copyrights Provider can license, as needed to make Permitted Use of the Service and to read the Documentation.
- (c) *Patent License.* Provider grants Customer and each of the Users a Standard License, for any patents Provider can license, as needed to make Permitted Use of the Service.
- (d) *No Other Licenses.* Except for the licenses in *Section 4 (Intellectual Property)*, this agreement does not license or assign any Intellectual Property Right.
- (e) *Public Licenses.* The terms of this agreement are separate from, and independent of, the terms of any public licenses that Provider grants for software or other material that is part of the Service.

5. *Changes.*

- (a) *Changes Customer May Make.*
 - (i) Customer may end this agreement at the end of a Billing Period by giving Notice at least one full Billing Period in advance.
 - (ii) If the Order Form describes a pricing structure for higher Use Limits, Customer may increase its Use Limits within that pricing structure at any

time, by Notice. Customer increases to Use Limits take effect as soon as Customer pays any added fees.

- (iii) Customer may end this agreement by Notice if Provider becomes Insolvent.

(b) *Changes Provider May Make.*

- (i) Provider may end this agreement at the end of the thirty-sixth or any later Billing Period by giving Notice at least three full Billing Periods in advance.
- (ii) Provider may end this agreement immediately if Customer breaches this agreement and fails to cure the breach within fourteen calendar days of Notice.
- (iii) Provider may add, remove, and change Software Features in the Service.
- (iv) Provider may add to, remove from, and change the functionality of the Account Dashboard and Documentation.
- (v) Provider may take any of these steps in response to an Infringement or Noncompliance Claim:
 - (A) Provider may update the Service so that use of the Service as provided will no longer infringe or break the law.
 - (B) Provider may change how it provides the Service so that use of the Service as provided will no longer infringe or break the law.
 - (C) If the problem is infringement, Provider may get a license for Customer so that use of the Service will no longer infringe.
 - (D) If the problem is illegality, Provider may get the government approvals, licenses, or other requirements needed to abide by the law.
 - (E) Provider may end this agreement and refund any Prepaid Fees.
- (vi) Provider may end this agreement by Notice if Customer becomes Insolvent.

6. *Liability.*

(a) *Agreed Legal Remedies.*

- (i) Each side's only legal remedy for Legal Claims covered by Indemnification will be Indemnification.
- (ii) Customer's only legal remedy for changes to Software Features in the Service will be a refund under *Section 2(j) (Refund Prepaid Fees for Removed Features)*.

- (b) *Valid Excuses.* Neither side will be liable for any failure or delay in meeting any service level or other obligation under this agreement caused by a Disaster, failure of the other side or its personnel to meet their obligations under this agreement, or actions done or delayed on written request of the other side.

- (c) ***Only Express Warranties. Except for its obligations in Section 2 (Provider's Obligations), Provider provides the Service "as is", without any warranty at all. Provider disclaims any warranties the law might otherwise imply, like warranties of merchantability, fitness for any particular purpose, title, or noninfringement.***
- (d) ***Limited Damages.***
 - (i) ***Damages Cap. Subject to Section 6(d)(iii) (Damages Limit Exceptions), neither side's total liability for breach of this agreement will exceed the amount of fees Provider received from Customer under this agreement during the twelve months before the first claim is filed. This limit applies even if the side liable is advised that the other may suffer damages, and even if Customer paid no fees at all.***
 - (ii) ***Unforeseen Damages. Neither side will be liable for breach-of-contract damages they could not have reasonably foreseen when entering into this agreement.***
 - (iii) ***Damages Limit Exceptions. Section 6(d) (Limited Damages) does not limit damages for breach of:***
 - (A) *Section 3(a) (Pay Fees)*
 - (B) *Section 2(c) (Keep Customer Data Confidential)*
 - (C) *Section 3(i) (Follow Rules About Use)*
 - (D) *Section 3(j) (Enforce Rules About Using the Service)*
 - (E) *Section 2(q)(ii) (Provide Assurance about Patents)*
 - (F) *Section 2(q)(i) (Indemnify Customer)*
 - (G) *Section 3(m) (Indemnify Provider)*

7. ***Process.***

- (a) ***Indemnification Process.*** Both sides agree that to receive Indemnification under this agreement, they must give Notice of any covered Legal Claims quickly, allow the other side to control investigation, defense, and settlement, and cooperate with those efforts. Both sides agree that if they fail to give Notice of any covered Legal Claims quickly, Indemnification will not cover amounts that could have been defended against or mitigated if Notice had been given quickly. Both sides agree that if they take control of the defense and settlement of any Legal Claims covered by Indemnification, they will not agree to any settlements that admit fault or impose obligations on the other side without their Permission.
- (b) ***Notice Process.*** Both sides agree that to give Notice under this agreement, the side giving Notice must send by e-mail to the address the recipient gave with its signature, or to a different address given later for Notice going forward. If either side finds that e-mail can't be delivered to the e-mail address given, it may give Notice by registered mail to the address on file for the recipient with the state under whose laws it is organized.

8. *General Contract Terms.*

- (a) *Governing Law.* The law of the state of California will govern this agreement.
- (b) *English Language.* Both sides agree to give Notice, correspond, and conduct all other business related to this agreement in the English language.
- (c) *Government Procurement.* The Service is commercial computer software, and the Documentation is commercial computer software documentation. All were developed exclusively at private expense. If Customer's procurement is subject to Federal Acquisition Regulation 12.212 or Defense Federal Acquisition Regulation Supplement 227.7202, Customer's rights will be only those stated in this agreement.
- (d) *Currency.* Unless otherwise noted, all money amounts, throughout the Deal Packet, are United States dollars.
- (e) *Whole Agreement.* Both sides intend the Deal Packet and these terms as the final, complete, and only expression of their terms about use of the Service and related support services. However, this agreement does not affect the terms of any separate nondisclosure or confidentiality agreement Provider and Customer may have.
- (f) *Enforcement.* Only Provider and Customer may enforce this agreement.
- (g) *Assignment.* Each side may assign all its rights, licenses, and obligations under this agreement, as a whole, to a new legal entity created to change its jurisdiction or legal form of organization, or to an entity that acquires substantially all of its assets or enough securities to control its management. Otherwise, each side needs Permission to assign any right or license under this agreement. Attempts to assign against these terms will have no legal effect.
- (h) *Lawsuits.*
 - (i) *Forum.* Both sides agree to bring any Lawsuit in Provider's Local Courts.
 - (ii) *Exclusive Jurisdiction.* Both sides consent to the exclusive jurisdiction of Provider's Local Courts. Both sides may enforce judgments from Provider's Local Courts in other jurisdictions.
 - (iii) *Inconvenient Forum Waiver.* Both sides waive any objection to venue for any Lawsuit in Provider's Local Courts and any claim that the other brought any Lawsuit in Provider's Local Courts in an inconvenient forum.
- (i) *Independence.*
 - (i) *Discretion.* The parties agree that Provider will decide when, where, and how to provide the Service, with the discretion of an independent contractor.
 - (ii) *No Authority.* Neither side may enter agreements or take any other legal action on the other side's behalf.
 - (iii) *No Benefits.* Neither Provider nor any Provider Personnel will receive any employee benefits from Customer.

- (iv) *Compliance.* Each side agrees to do its part for tax, labor, employment, and immigration law compliance, consistent with their relationship as independent contractors.

9. *Definitions.*

- (a) **Access Credentials** means a user name and password, license key, or other secret that affords use of the Service or systems providing the Service.
- (b) **Account Dashboard** means the account management section of the administration interface of the Service.
- (c) **Billing Period** means a successive, month-long period. The first Billing Period starts on the date of this agreement. The plural is **Billing Periods**.
- (d) **Customer Data** means data that:
 - (i) Users furnish to the Service, such as by entering it or configuring the Service to gather or receive it, if doing so doesn't breach this agreement
 - (ii) the Service collects about Users and how they use the Service
- (e) **Customer Personnel** means Customer's employees and each Customer subsidiary's employees, as well as independent contractors providing services to Customer.
- (f) **Data Compromise** means malicious technical compromise or unauthorized disclosure of Customer Data.
- (g) **Disaster** means:
 - (i) fire, flood, earthquake, pandemic, and other natural disasters
 - (ii) declared and undeclared wars, acts of terrorism, sabotage, riots, civil disorders, rebellions, and revolutions
 - (iii) extraordinary malfunction of Internet infrastructure, data centers, or communications utilities
 - (iv) malicious technical attack on systems providing the Service
 - (v) government actions taken in response to any of these causes
- (h) **Documentation** means the documentation that Provider publishes for the Service.
- (i) **Fees** means all fees agreed in the Order Form.
- (j) **Feature Set** means all Software Features described in the Documentation on the date of this agreement.
- (k) **Indemnification** means indemnifying and holding harmless for all liability, expenses, damages, and costs.
- (l) **Infringement or Noncompliance Claim** means a court order against use of the Service based on a claim that it infringes any Intellectual Property Right, or breaks any law, or a threat of that kind of claim that Provider believes credible.

- (m) **Intellectual Property Right** means any patent, copyright, trademark, or trade secret right, or any other legal right typically referred to as an intellectual property right.
- (n) **Insolvent** means:
 - (i) having fairly stated liabilities that exceed fairly stated assets
 - (ii) failing to pay obligations on time
 - (iii) adjudicated bankrupt
 - (iv) filed a voluntary bankruptcy petition
 - (v) made an assignment for the benefit of creditors
- (o) **Lawsuit** means a lawsuit brought by one side against the other, related to this agreement or the Service.
- (p) **Legal Claims** means claims, demands, lawsuits, and other legal actions.
- (q) **Notice** means a written communication from one side to the other per *Section 7(b) (Notice Process)*.
- (r) **Permission** means prior Notice of consent.
- (s) **Permitted Use of the Service** means Customer's use of the Service, other than Use of the Service at Customer's Own Risk.
- (t) **Prepaid Fees** means fees Customer prepaid for Billing Periods yet to begin.
- (u) **Provider Personnel** means Provider personnel involved in the Service to Customer under this agreement, be they employees or independent contractors or Provider or any Provider subsidiary.
- (v) **Provider's Given Address** means the address Provider gives with its signature to the Order Form.
- (w) **Provider's Country** means the country of Provider's Given Address.
- (x) **Provider's National Subdivision** means the state or other national subdivision of Provider's Given Address, if any.
- (y) **Provider's Local Courts** means the courts of Provider's Country, as well as the courts of Provider's National Subdivision, if any, that are located nearest Provider's Given Address.
- (z) **Request** means Notice of a request.
- (aa) **Service** means the service identified on the Order Form.
- (ab) **Software Features** means functions of the Service described in the Documentation.
- (ac) **Special Data Regulations** means laws and regulations that impose special requirements on the collection, storage, processing, or transmission of particular kinds of data about individuals. The Gramm-Leach-Bliley Act, Health Insurance Portability and Accountability Act, Children's Online Privacy Protection Act, and

Fair Credit Reporting Act are some Special Data Regulations. Laws that apply to data just because they may identify specific individuals are not Special Data Regulations.

- (ad) **Standard License** means a nonexclusive license during the term of the agreement, without rights to sublicense, that is conditional on payment of all fees as required by this agreement and limited by the Use Limits.
- (ae) **Use of the Service at Customer's Own Risk** means:
 - (i) use of the Service in breach of this agreement
 - (ii) use of the Service with changes, additions, or in combination with other software, systems, or data, in a way that infringes someone else's Intellectual Property Right or breaks the law, if use of the Service as provided, as described by the Documentation, would not
 - (iii) unauthorized use of the Service with Customer Access Credentials
- (af) **Use Limits** means numeric limits on technical aspects of the Service, such as amount of data storage space and visitors per Billing Period.
- (ag) **Users** means users of the Service, both Customer Personnel and others.

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