Terms of Service - Nitro PDF, Nitro Sign & Nitro Smart Redact

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Nitro Terms of Service

These Nitro Terms of Service (the "**Terms of Service**") are a binding contract by and between Nitro (as defined in Section 2 below) and the legal entity or natural person identified in the Order Form as the customer ("**Customer**") and apply to all Services (as defined in Section 2 below) made available by Nitro. Nitro and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**".

Depending on the Services Customer is signing up for or accesses and uses, additional Product Specific Terms (as defined in Section 2 below) may apply (e.g., Nitro Sign Product Specific Terms apply to 'Nitro Sign', Nitro PDF Product Specific Terms apply to Nitro PDF', etc.). No terms or provisions of any Customer purchase order, agreement, statement of work or other document provided by Customer shall have any effect on the rights, duties or obligations of the Parties and are hereby rejected by Nitro.

NITRO PROVIDES THE SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THE AGREEMENT (AS DEFINED IN SECTION 2) AND ON THE CONDITION THAT CUSTOMER ACCEPTS AND COMPLIES WITH THEM. BY CLICKING THE "ACCEPT" OR "BUY NOW" BUTTON OR WHEN CHECKING THE "ACCEPT" BOX ON THE ORDER FORM OR BY ACCESSING OR USING THE SERVICES OR BY SIGNING THE ORDER FORM, YOU: (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) ACCEPT THIS AGREEMENT AND AGREE THAT CUSTOMER IS LEGALLY BOUND BY ITS TERMS; AND (C) REPRESENT AND WARRANT THAT: (I) YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (II) IF THE CUSTOMER IS A CORPORATION, GOVERNMENTAL ORGANIZATION, OR OTHER LEGAL ENTITY, YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO ITS TERMS. IF CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, NITRO WILL NOT AND DOES NOT LICENCE THE SERVICES TO CUSTOMER AND YOU MUST NOT DOWNLOAD, INSTALL OR USE THE DOWNLOADABLE SOFTWARE OR DOCUMENTATION OR ACCESS OR USE THE CLOUD SERVICES.

1. INTRODUCTION

1.1. Who is Nitro. Nitro is an on-premise software and cloud services provider that makes available tools to its customers which enhance document productivity and workflow management. Nitro offers the Services which consists of Cloud Services (as defined in Section 2) which can be accessed remotely, via the Internet, as well as Downloadable Software (as defined in Section 2) deployed on-premise on the Customers' computers and/or servers. Nitro may also provide Implementation and Activation Services (as defined in Section 2).

2. DEFINITIONS

For purposes of the Agreement, the following terms have the following meanings:

"**Affiliate**" of a Party means any other entity that, directly or indirectly, controls, is controlled by, or under common control with, that Party. For the purposes of this definition, the term "control" means the direct or indirect power to direct the business of the other entity through ownership of at least 50% of the shares, voting rights, participation, or economic interest in the other entity;

"**Aggregated Statistics**" has the meaning given in Section 4.3;

"**Agreement**" means the entire agreement between Nitro and Customer, including the Nitro Order Form and its annexes and schedules, these Terms of Service, the Product Specific Terms (if applicable) and the Data Processing Addendum;

"**Authorized Reseller**" means an entity duly authorized by Nitro to resell or provide service with respect to, all or part of the Services in such geographic area where such party is so authorized to do so by Nitro;

"**Authorized Reseller Agreement**" means the agreement between an Authorized Reseller and Customer, if applicable;

"**Beneficiaries**" means the third party(ies) legal entity(ies) (e.g., Affiliates of Customer) explicitly listed on the Order Form as a 'Beneficiary', having the right to use the Services under the Agreement;

"**Business Day**" means a normal working day from 9.00 a.m. to 5.00 p.m. Pacific Time (PT) from Monday to Friday, excluding United States federal holidays;

"**Cloud Services**" means such elements of the Services Nitro is hosting (via its hosting partner) and which are: (i) being managed by Nitro for the Customer as reflected in the Customer's Order Form; and (ii) accessible for the Customer and Users when using a web browser or API over the internet. Cloud Services may also include hosted Module Extensions, (where applicable);

"**Confidential Information**" of a Party means any information disclosed by a Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**"), whether before or after the Effective Date and, whether in written, oral, electronic or in any other form, and which: (i) is explicitly marked as confidential or proprietary or similar marking; (ii) should reasonably be considered confidential given the nature of the information and/or the circumstances surrounding its disclosure; or (iii) is traditionally recognized to be of a confidential nature, regardless of whether or not it is expressly marked as confidential, including but not limited to, information and facts concerning business plans, customers, prospects, personnel, suppliers, partners, investors, affiliates or others, training methods and materials, financial information, marketing plans, sales prospects, customer lists, inventions, program devices, discoveries, ideas, concepts, know-how, techniques, formulas, blueprints, software (in object and source code form), documentation, designs, prototypes, methods, processes, procedures, codes, and any technical or trade secrets, including all copies of any of the foregoing or any analyses, notes, studies or reports that contain, are based on, or reflect any of the foregoing. The Confidential Information of Nitro shall include, without limitation, the Services and the Documentation;

"**Customer**" has the meaning given in the preamble;

"**Customer Data**" means information, data, and other content that is submitted, posted, or otherwise transmitted by or on behalf of Customer, a Beneficiary or a User to, and processed by, the Services. For example, Customer Data may include Customer generated documents, documents uploaded for signature and contact details uploaded into the Services. Customer Data does however not include payment records, credit cards or other information Customer uses to pay Nitro, other information and records related to Customer's account and Aggregated Statistics;

"**Data Processing Addendum**" means the most recent version of the applicable Data Processing Addendum as may be amended from time to time and as published online: https://www.gonitro.com/legal/pdf-sign/data-processing-addendum/overview;

"**Designated Nationals**" has the meaning given in Section 15.12;

"**Documentation**" means the most recent version of the official technical and functional product information for the Services that Nitro generally makes available from time to time to its Customers as published online at: https://www.gonitro.com/product-details/downloads;

"**Downloadable Software**" means Nitro's software application (in object code form) licensed by Nitro to the Customer for on-premise deployment on the Customer's computers and/or servers (or other devices as the case may be) and if applicable any Module Extensions provided for on-premise deployment, as further set out in the Order Form;

"**Effective Date**" means the effective date as set out in the Order Form, representing the start date of the Agreement;

"**Embargoed Countries**" has the meaning given in Section 15.12;

"**Feedback**" has the meaning given in Section 4.2;

"**Force Majeure**" means a temporary or permanent inability of a Party to fulfill its obligations, resulting from unavoidable, unforeseeable and external facts and circumstances reasonably beyond the control of that Party. Force Majeure shall include without limiting the foregoing: acts of god, tsunami, war or war risk, insurrection or public revolt, fire caused by an outside calamity, an import or export embargo imposed by the government, internet failure, hosting failure, cyberattacks or DDOS attacks, floods, explosion, fire, earthquake, weather conditions, epidemics or pandemics, strike or social action, or any other circumstances mutually agreed by both Parties to be a Force Majeure;

"**Freeware License**" means a non-exclusive, limited, fully revocable by Nitro (without notice and at Nitro's sole discretion) license the Customer is granted to access and use the Services with limited features and functionalities (at Nitro's sole discretion) solely for Customer's internal business purposes and for the Services' intended purpose in accordance with the applicable Documentation, made available when Customer does not opt for a paid license after the Trial License has expired or when Customer chooses not to renew its paid subscription, as applicable. For the avoidance of doubt,

a Freeware License is subject to all of the same license restrictions and prohibited uses as the Services, as stated in these Terms of Service;

"**HIPAA**" has the meaning given in Section 15.21(a);

"**Implementation and Activation Services**" means such implementation and activation services offered by Nitro, to its Authorized Reseller as applicable to Customer as further set out in an Order Form, where applicable;

"**Initial Term**" has the meaning given in Section 9.1 and represents the initial period for which the Agreement is concluded as set out in the Order Form. The Initial Term starts on the Effective Date and constitutes the minimal commitment taken by Customer;

"**Intellectual Property Rights**" means any intellectual property rights including but not limited to: (i) copyright, moral rights, patents, database rights and rights in trademarks, designs, know-how and trade secrets (whether registered or unregistered); (ii) applications for registration, and the right to apply for registration, renewals, extensions, continuations, divisions, reissues, or improvements for or relating to any of these rights; and, (iii) all other intellectual or industrial property rights and equivalent or similar forms of protection existing anywhere in the world;

"**Invoice Dispute Period**" has the meaning given in Section 8.2;

"**Losses**" means any losses, damages, liabilities, costs (including reasonable legal fees).

"**Module Extension**" means an addition to the Services which provides one or more significant new functionalities or architectures which none of the existing modules of the Services already contained before, or only contained in a limited form before, and therefore cannot be considered as a New Version.

"**New Version**" means any new improved, modified, revised, corrected, upgraded, enhanced or updated version of the Downloadable Software or Cloud Services that Nitro may from time to time introduce that is not a Module Extension;

"**Nitro**" means Nitro Software Inc., a company incorporated under the laws of the United States, with offices at 447 Sutter St, STE 405 #1015, San Francisco, CA 94108, United States;

"**Nitro IP**" means the Services (including Cloud Services and Downloadable Software), Documentation, Module Extensions, New Version(s), Results, Aggregated Statistics and any and all Intellectual Property Rights therein and thereto. For the avoidance of doubt, Nitro IP does not include Customer Data.

"**Notification Email Address**" means the email address(es) designated by Customer in the Order Form, or as communicated to the Authorized Reseller (as the case may be). Any changes to the Notification

Email Address may be notified in writing to Nitro's relationship manager (or as updated by the Customer in the Customer admin account);

"**Order Form**" means Nitro's or, where applicable, an Authorized Resellers', ordering document describing the offer as agreed between Customer and Nitro (which may be in electronic form, including as generated online through Nitro's eCommerce channels) for use of the Services. The Order Form contains a description of the Services ordered, Implementation and Activation Services as applicable, the fees associated with such Services and Implementation and Activation Services, and other applicable commercial terms and is governed by these Terms of Service;

"**Over-Deployment**" has the meaning given in Section 8.8;

"**Party**" and "**Parties**" has the meaning given in the preamble;

"**PHI**" has the meaning given in Section 15.21(a);

"**Product Specific Terms**" means Nitro's then-current product specific terms which are incorporated herein by reference and that only apply to specific Services or particular functionalities within the Services in addition to these Terms of Service. These Product Specific Terms apply by default to the extent the Customer or its Users access and use the specific Services they reference. The Product Specific Terms are located at: https://www.gonitro.com/legal/pdf-sign/product-specific-terms/overview, as may be amended from time to time;

"**Renewal Term**" has the meaning given in Section 9.1;

"**Results**" means any results offered by Nitro to Customer as a result of the Implementation and Activation Services;

"**Sales Tax**" has the meaning given in Section 8.5;

"**Sensitive Data**" has the meaning given in Section 15.21(b);

"**Services**" means the Cloud Services, Downloadable Software and Module Extensions thereto (where applicable) as reflected on Customer's Order Form;

"**Service Suspension**" has the meaning given in Section 9.5;

"**Subscription Fee**" means the recurring subscription fee to be paid by Customer to Nitro (or an Authorized Reseller, as applicable) as specified in the Order Form related to the right to use the Services and the provision of Support;

"**Sunset Policy**" means the sunset policy available online via https://www.gonitro.com/legal/sunset-policy, as amended from time to time;

"**Support**" means the support services related to the Services provided by Nitro to Customer as described in Nitro's then-current Service Level Agreement located at https://www.gonitro.com/legal/pdf-sign/service-level-agreement/overview, as may be amended from time to time, which are incorporated herein by reference;

"**Term**" has the meaning given in Section 9.1;

"**Terms of Service**" has the meaning given in the preamble and to the extent there are revisions thereto refers to the then-current Terms of Service as located on https://www.gonitro.com/legal/pdf-sign/terms-of-service;

"**Terms of Use**" refers to Terms of Use which may apply to an individual User using the Services. The Terms of Use do not replace or affect these Terms of Service since they represent terms to accept by individual Users only;

"**Third-Party Claim**" means any third-party claim, suit, action, or proceeding;

"**Trial License**" has the meaning ascribed thereto in Section 3.9(a);

"**User**" means Customer's (or its Beneficiaries' as applicable) employees, consultants, contractors, and agents: (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and, (ii) for whom access to the Services has been purchased in an Order Form. Each User shall be an individual person. Depending on the Services, a User might be required to accept Terms of Use before having the right to use and access the Services.

3. RIGHT TO USE THE SERVICES

3.1. Right to use Cloud Services. Subject to the terms of the Agreement, including but not limited to the payment of the Subscription Fees and any limitations set out in the Order Form, Nitro grants to Customer (and the Beneficiaries, if they are explicitly indicated in the Order Form) a personal, limited, non-exclusive, non-transferrable, revocable, and non-assignable right, during the Term, for Users to access and use the Cloud Services, in accordance with the applicable Documentation and in accordance with the terms and conditions herein and subject to any Terms of Use which may apply to individual Users, in each case, solely for Customer's internal business purposes and for the Cloud Services' intended purpose. The Customer's use shall be limited to the number of Users for whom the Customer has paid the corresponding fees as indicated in the relevant Order Form (if applicable).

3.2. License to Downloadable Software. Subject to the Agreement, including but not limited to payment of the Subscription Fees and any limitations set out in the Order Form, Nitro grants to Customer (and the Beneficiaries, if they are explicitly indicated in the Order Form) a personal, limited, non-exclusive, non-transferrable, revocable, and non-assignable license, during the Term, solely for

Customer's internal business purposes and for the Downloadable Software's intended purpose in accordance with the applicable Documentation, to: (i) install and use the Downloadable Software, in object code format, solely for Customer's internal business use in connection with its use of the Services, and, (ii) use and make a reasonable number of copies of the Documentation solely for Customer's internal business purposes in connection with Customer's permitted use of the Downloadable Software; in each case solely in accordance with the terms and conditions herein and subject to any Terms of Use which may apply to individual Users. Such internal business purposes do not include use by any parent, subsidiary, or Affiliate of Customer, or any other third party unless specifically authorized in this Agreement, and Customer shall not permit any such use. Customer is responsible to install and administer the Downloadable Software.

3.3. **Use Restrictions**. Customer shall not use the Nitro IP for any purposes beyond the scope granted in the Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Users or third parties to: (i) copy, modify, or create derivative works of the Nitro IP, in whole or in part; (ii) rent, lease, lend, (re)sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Nitro IP; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any source code or other trade secrets of the Nitro IP, in whole or in part; (iv) remove any proprietary notices from the Nitro IP; (v) use the Nitro IP in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person, or that violates any applicable law; (vi) create any "links" to or "frame" or "mirror" of the Services, or any portion thereof; (vii) make the Services available on a server that can be accessed via a public network, such as, for example and without limitation, the internet or an intranet, in a manner that allows the Services to be copied by or used in violation of the Agreement or to circumvent any restrictions herein; (viii) exceed the number of Users for whom the Customer has paid the corresponding fees as indicated in Order Form; or (ix) share any User credentials in violation of these Terms of Service.

3.4. **Unauthorized Sharing of Licenses.** Customer acknowledges that each license ordered by Customer is assigned to a specific User and may only be used by the individual User to whom it is assigned provided however if a licensed User leaves the Customer, the license assigned to that User may be transferred to a new individual and licenses are otherwise non-transferable. Customer agrees to take reasonable measures to prevent unauthorized sharing of licenses and to ensure compliance with the terms of this Agreement.

3.5. **Onboarding, Activation and Delivery.** Nitro shall use reasonable efforts to make the Services available to Customer within ten (10) Business Days after the Effective Date depending on the onboarding specifications.

3.6. **Integration of the Services.** Unless explicitly otherwise described in the Order Form or any other agreement executed between both Parties, it shall be Customer's responsibility to integrate the Services within Customer's infrastructure or software (if applicable).

3.7. **Evolution of the Services.** Nitro offers Cloud Services as a Software-as-a-Service, which means Nitro is continuously working on updating and improving the Services. New Versions of the Services will be made available to Customer as generally available to Nitro customers during the Term. Nitro reserves the right (but shall not be obligated to) to make operational or technical changes to the Services in order for the Services to keep up with market standards. Nitro shall inform Customer of any modifications, additions or enhancement of any feature of the Services within a reasonable time.

3.8. Reservation of Rights. Nitro reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any Intellectual Property Rights or other right, title, or interest in or to the Nitro IP. Customer recognizes that the Nitro IP is protected by copyright and other laws.

3.9. Trial License and Freeware License. Notwithstanding anything to the contrary in these Terms of Service, this Section 3.9 only applies to Customers: (i) onboarded via Nitro's online subscription portal and a trial or evaluation period has been explicitly accepted by Nitro in the Order Form, (ii) onboarded by signing an Order Form with Nitro (or its Authorized Reseller) where a trial or evaluation period has been explicitly accepted by Nitro (or its Authorized Reseller) in the Order Form or (iii) where Nitro has otherwise agreed in writing to provide Customer with a software key to trial or evaluate the Services:

a) if Customer is evaluating the Services, Nitro hereby grants to Customer a non-exclusive, non-transferable, revocable, limited-term license to access and use the Cloud Services and install and use the Downloadable Software solely for internal testing and evaluation purposes and subject to all of the same license restrictions and prohibited uses as otherwise stated for the relevant Services in these Terms of Service (the "**Trial License**");

b) This subsection 3.9(b) shall only applies where Customer is onboarded via Nitro's online subscription portal:

i. By default, and unless otherwise set out in the Order Form, the Trial License will automatically transition after a period of fourteen (14) days into a Freeware License which gives the Customer and Users the right to continue to access and use the Cloud Services and a right to continue to use Downloadable Software with limited features and functionalities; and,

ii. Customers having an active paid subscription but choosing not to renew will automatically transition into the Freeware License upon the expiration of their paid subscription. In such case and without prejudice to Nitro's right to terminate a Trial License and Freeware License at any moment in time as per Section 3.9(d), the Agreement remains applicable until Customer terminates the Agreement by giving notice of termination to Nitro.

c) Either Party has the right to terminate for convenience the Trial License and Freeware License at any moment in time without prior notification and without any liability to the other Party;

d) Customer shall not publish any results of benchmark tests run on the Services or disclose its features, errors or bugs to a third party without Nitro's prior written consent. During the term of the Trial License or Freeware License, Nitro shall be under no obligation to provide any Support; provided however, that Nitro may in its sole discretion fix reported errors and provide Customer with Support and consultation concerning the Services at its sole discretion;

e) Unless an Order Form specifically states otherwise, the Parties agree that no fees will be payable under the Agreement in exchange for the access granted under the Trial License or Freeware License (where applicable). Customer acknowledges and agrees that this fee

arrangement is made in consideration of the mutual covenants set forth in this Agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein;

f) NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THE NITRO IP PROVIDED UNDER A TRIAL LICENSE OR A FREEWARE LICENSE SHALL NOT BE SUBJECT TO THE WARRANTIES IN SECTION 12.1(A) AND INDEMNIFICATION OBLIGATIONS IN SECTION 13.1 AND ONLY THE WARRANTY DISCLAIMER IN SECTION 12.1(B) SHALL APPLY; and,

g) THE LIMITATION OF LIABILITY AS SET OUT IN SECTION 14 SHALL APPLY EXCEPT THAT NITRO'S AGGREGATE LIABILITY IN CONNECTION WITH A TRIAL LICENSE OR A FREEWARE LICENSE SHALL NOT EXCEED FIVE HUNDRED UNITED STATES DOLLARS ($500 US).

4. INTELLECTUAL PROPERTY RIGHTS

4.1. Intellectual Property Rights in Nitro IP. Customer acknowledges that, as between Customer and Nitro, Nitro (and where applicable its licensor(s)) is and remains the sole and exclusive proprietary owner of all Nitro IP. Nothing in the Agreement shall convey any title or proprietary right in Nitro IP to Customer or any third party other than as explicitly granted in Sections 3.1, 3.2 and 3.9(a). The Customer shall not in any way acquire any title, rights of ownership, Intellectual Property Rights or other proprietary rights of whatever nature in the Nitro IP. Customer recognizes that the Nitro IP are protected by copyright, trademark and other laws.

4.2. Feedback. If Customer or any User provides feedback or suggestions about any aspect(s) of the Nitro IP or any other Nitro goods or services, by mail, email, telephone, or otherwise, including without limitation, suggesting new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**") then Customer hereby grants Nitro a non-exclusive, royalty-free, transferable, sub-licensable, irrevocable and perpetual worldwide license to use, profit from, disclose, publish, keep secret and/or otherwise exploit such Feedback in any medium without further obligation or compensation to Customer or any User. Feedback will not constitute Customer's Confidential Information.

4.3. Usage Data. Customer acknowledges and agrees that Nitro generates, compiles, stores and uses aggregated data and system usage, analytics and diagnostic information ("**Aggregated Statistics**") to monitor and improve the Services, assist in the delivery of Support, and for the creation of new products and services. As between Nitro and Customer, all right, title and interest in the Aggregated Statistics and all Intellectual Property Rights therein, belong to and are retained solely by Nitro. Customer acknowledges that Nitro will be compiling Aggregated Statistics based on Customer's and other users' use of the Services and Customer agrees that Nitro may: (a) make such Aggregated Statistics publicly available; (b) use such information to the extent and in the manner required by applicable law or regulation and for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify Customer or its Confidential Information; and, (c) use such information for industry benchmarking, to understand usage, improve the Services and Support, develop new products and services, and for any other business purpose. The Aggregated Statistics are not considered Customer Data.

5. CUSTOMER DATA

5.1. Nitro acknowledges that, as between Nitro and Customer, Customer owns all right, title, and interest, including all Intellectual Property Rights, in and to the Customer Data. The Customer hereby grants to Nitro a non-exclusive, royalty-free, worldwide license, license to copy, reproduce, store, distribute, publish, export, adapt, edit and translate the Customer Data and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data to the extent reasonably required to provide the Services and Support to Customer and for the performance of Nitro's obligations and the exercise of Nitro's rights under the Agreement. Customer also grants to Nitro the right to sub-license these rights to its subcontractors (such as for example hosting, connectivity and telecommunications service providers) to the extent reasonably required for the performance of Nitro's obligations and the exercise of Nitro's rights under this Agreement.

5.2. Customer acknowledges and agrees that for the performance of the Agreement and in order to use the functionalities of the Services, specific Customer Data may be disclosed to recipients and third parties (e.g., for processing PDF documents, for the creation and signing of documents or for the identification of Users). Notwithstanding Section 11 (Confidential Information), such disclosure shall explicitly not constitute a breach of confidentiality and is permitted.

5.3. Customer warrants to Nitro that Customer Data when used by Nitro in accordance with the Agreement will not infringe the Intellectual Property Rights or any other legal rights of any person or third party and will not breach the provisions of any applicable law, statute or regulation, in any applicable jurisdiction.

6. DATA PROTECTION

6.1. **Data Protection and Data Processing.** Nitro will process personal data on behalf of Customer in order to provide the Services, to offer Support and in general to fulfill its rights and obligations under the Agreement. If the Customer is a business signing up with its legal entity, the relevant Data Processing Addendum applies to such processing of personal data and is considered part of the Agreement. If the Customer is a natural person signing up in its personal name, Nitro's privacy policy as published online (https://www.gonitro.com/legal/privacy-policy) applies and Customer acknowledges to have received it.

7. USAGE VERIFICATION

7.1. Customer acknowledges and agrees the Services may include real-time built-in volume counters and other reporting tools which are necessary for Nitro to monitor the exact (volume) usage of the Services by Customer, its Beneficiaries and Users. Such usage controls/tools enable Nitro to invoice the relevant Subscription Fees and additional fees (if applicable).

7.2. If remote usage monitoring is impossible (for example related to Downloadable Software), Nitro has the right to inspect the usage of the Customer, its Beneficiaries and Users by: (a) requesting Customer's records for the purposes of verifying Customer's compliance with this Agreement; and/or (b) by conducting an on-site audit at Customer's relevant places of business upon seven (7) Business Days' notice, unless fraud is expected in which case Nitro has the right to conduct the audit without prior written notice. Any such audit will happen during Customer's regular business hours and will not unreasonably interfere with Customer's business activities. Customer shall cooperate fully with Nitro

with respect to Nitro's request for records and/or Nitro conducting an on-site audit and Customer shall provide reasonable assistance in each circumstance.

7.3. If such usage control or audit shows that Customer, its Beneficiaries or Users are using the Services beyond the quantity or scope that was legitimately licensed under the Agreement and therefore Customer has underpaid the amount of fees due to Nitro, without prejudice to any other rights and remedies available to Nitro, Customer shall promptly pay the amount of such underpayment to Nitro, together with interest in accordance with Section 8.4. If such underpayment exceeds five percent (5%) of that which is payable under the Agreement, Customer shall pay Nitro's reasonable costs of conducting the verification and audit, in addition to paying the additional fees due. This Section 7.3 does not apply in the event of an Over-Deployment subject to Section 8.8.

8. FEES AND PAYMENT TERMS

8.1. Fees. Customer shall pay Nitro all amounts owning in the currency set out in the Order Form. For specific services (including Implementation and Activation Services), additional fees may apply if set forth in the Order Form.

8.2. Invoices, No Refunds. All undisputed amounts in Nitro's invoices are due within thirty (30) days of issuance. Invoices are to be disputed within ten (10) days as from the date of invoice in writing or by email sent to Nitro's via email to ar@gonitro.com specifying in reasonable detail the nature of the dispute, together with any appropriate information supporting Customer's position ("**Invoice Dispute Period**"). Beyond this Invoice Dispute Period, invoices shall be deemed accepted. Unless prohibited by applicable law or if explicitly mentioned in the Order Form, all payments of invoices issued by Nitro to Customer shall be final and non-refundable. In the event Customer is declared to be in a state of bankruptcy, applies for a suspension of payments, is subjected to a general seizure of assets, goes into liquidation or is dissolved, the full amounts payable under the Agreement will become due immediately.

8.3. Electronic Invoicing. Customer explicitly accepts electronic invoicing which will be sent in PDF-format to the Customer's invoicing email address, as specified in the Order Form. The Customer may request Nitro to send a hard copy of the invoices to its physical address.

8.4. Late Payment. If Nitro does not receive payment by the applicable due date, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of one percent (1%) per month/twelve percent (12%) per annum or the highest rate permissible under applicable law. In addition, Customer shall pay all reasonable costs incurred by Nitro as a result of the enforcement of Customer's payment obligations. If Customer fails to pay any undisputed outstanding amounts within ten (10) days from receipt of a written default notice, Nitro shall be entitled to suspend its obligations (e.g., by suspending access to the Services) and Customer's rights hereunder without further notice to Customer or liability to Nitro until receipt of payment of such outstanding amounts. In the event of such suspension, as a condition of reinstating Customer's access to the Services, Nitro may require Customer to pay in advance for the remainder of then-current Initial Term or Renewal Term (as applicable).

8.5. No Setoff; Taxes. Amounts due under the Agreement are payable to Nitro without set off or counterclaim and without deduction, and are net of any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source

(collectively, "**Sales Tax**"). Except as forbidden by applicable law, Nitro may require that Customer submits applicable Sales Taxes to Nitro. However, the preceding sentence does not apply to the extent that Customer is tax exempt, provided it gives Nitro a valid tax exemption certificate within thirty (30) days of the Effective Date. Nitro's failure to include any applicable tax in an invoice will not waive or dismiss the Parties' rights or obligations pursuant to this Section 8.5. If applicable law requires withholding or deduction of Sales Taxes or any other tax or duty, Customer shall separately pay Nitro the withheld or deducted amount, over and above fees due. For the avoidance of doubt, this Section 8.5 does not govern taxes based on Nitro's net income.

8.6. Price increase. Notwithstanding anything to the contrary in the Agreement, Nitro may during the Term and as from the first anniversary date of the Effective Date automatically increase all Subscription Fees (even if they are expressly itemized in the Order Form for a particular year or period), by five percent (5%) per year unless Parties have agreed upon different Subscription Fees in an Order Form upon renewal. Price increases shall be calculated based upon the official list prices and any discounts or pricing incentives granted earlier shall not be taken into account.

8.7. Module Extensions and Upgrade Subscription Plan. Customer may upgrade its subscription plan by ordering Module Extension(s) which might result in additional Subscription Fees being due. Such Module Extensions can be ordered by signing a new Order Form or addendum or via an online ordering procedure made available within the Customer's admin account (if applicable) or via the Authorized Reseller (if applicable). Module Extensions apply by default for the remaining part of the Term, but will only be activated upon Customer's explicit request.

8.8. True Up. If a true up is explicitly accepted by Nitro (or its Authorized Reseller) in the Order Form, Customer may during the Term of the Agreement, increase the number of Users beyond the initial count specified in the Order Form (an "**Over-Deployment**"). Over-Deployment shall be calculated by Nitro based on the metric 'Total Users' as shown by Nitro Analytics for the period 'last 12 weeks', considering the initial count specified in the Order Form. If Nitro Analytics is unavailable for such purpose, Nitro may request a report from the Customer detailing, at a minimum, an accurate accounting of the total number of additional User licenses that make up the Over-Deployment in a particular period or quarter. Customer will provide such report within fifteen (15) days as from Nitro's request. In case the Services Customer is using are set up to invoice Over-Deployment automatically, the Over-Deployment will automatically be invoiced by Nitro on the moment of Over-Deployment and the metric 'last 12 weeks' will not be used. Customer shall be responsible for the payment of any fees (including retroactive fees) for such Over-Deployment until the end of the Term as invoiced by Nitro (or its Authorized Reseller). Over-Deployment fees shall be calculated based upon the prices in the Order Form and any discounts or pricing incentives thereto will not be taken into account.

9. TERM AND TERMINATION

9.1. Term. The initial term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue in effect for the period set out in the Order Form (the "**Initial Term**"). Upon expiration of the Initial Term or any subsequent Renewal Term (as defined below), this Agreement will automatically and tacitly renew for additional successive one (1) year terms (each a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least three (3) months prior to the expiration of the then-current Term.

9.2. Termination for Cause. Either Party may without prejudice to its rights to damages and any other rights, remedies and/or claims to which it may be entitled by law, terminate the Agreement effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (a) is incapable of cure; or (b) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such material breach. The Customer acknowledges and agrees that following circumstances shall be considered a material breach by Customer: (i) any use of the Services outside the scope of the right of use or license granted to Customer as set out in the Agreement, any applicable Terms of Use, and the applicable Order Form; (ii) any breach by Customer of applicable data protection legislation; (iii) any breach by Customer of Section 11 (Confidentiality); and, (iv) any violation or misappropriation by Customer of Nitro IP. The foregoing (i) through (iv) shall apply also to Customer's Beneficiaries and Users' acts or omissions which cause the material breach to occur.

9.3. Termination in case of Bankruptcy. Subject to applicable bankruptcy law, either Party may terminate immediately the whole or any portion of the Agreement without any judicial intervention, without being liable for compensation and without prejudice to its rights to damages and any other rights, remedies and/or claims to which it may be entitled by law, upon providing the other Party with written notice of termination if the other Party becomes insolvent, is subject to voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise liquidates or ceases to do business.

9.4. Termination for online Customers. Notwithstanding anything to the contrary in these Terms of Service, a Customer signed up via Nitro's online self-service portal and having access to an admin portal is able to turn off the auto-renewal of the Agreement within the admin portal provided that turning off such auto-renewal should be done before the start of the Renewal Term.

9.5. Suspension or Termination of Access. Without limiting Nitro's other rights and remedies, and notwithstanding anything to the contrary in this Agreement, Nitro may suspend or terminate a Customer's or other User's access to any portion or all of the Services at any time if: (i) Nitro reasonably determines that: (a) there is a threat or attack on any of the Nitro IP; (b) Customer's or any User's use of the Nitro IP disrupts or poses a security risk to the Nitro IP or to any other customer or vendor of Nitro; (c) Customer, or any User, is using the Nitro IP for fraudulent or illegal activities; (d) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or, (e) Nitro's provision of the Services to Customer or any User is prohibited by applicable law; (ii) any vendor of Nitro has suspended or terminated Nitro's access to or use of any third-party services or products required to enable Customer to access the Services; (iii) Customer fails to pay to Nitro any undisputed amount due hereunder and Customer fails to cure such failure to pay within ten (10) days from the date of a written notice of default from Nitro to Customer; or, (iv) Nitro ceases to be able to own/operate the Services for any legal or regulatory reason(s) (collectively, a "**Service Suspension**"). Nitro will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any User may incur as a result of a Service Suspension. In the event Nitro is entitled to terminate the Agreement for cause as per Section 9.2, Nitro may alternatively, at Nitro's option, suspend the right of use and licenses granted hereunder instead of immediately terminating the Agreement, without any formalities or indemnities being required and without prejudice to any other right or remedy available to Nitro pursuant to the Agreement or under applicable law.

9.6. Effects of Termination. Upon termination of the Agreement for whatever reason:

a) Customer's rights to the Services will automatically cease and all rights and licenses granted to Customer pursuant to these Terms of Service shall automatically terminate;

b) Customer, its Beneficiaries and Users shall immediately cease all use of the Services and delete, destroy, or return all copies of the Downloadable Software and the Documentation in its possession or control;

c) Nitro will delete (or return upon explicit written request of Customer received within thirty (30) days of the effective date of termination) all Customer Data stored in the Services and will decommission Customer's active environment and/or accounts where the Services are operated. Customer however acknowledges the Services may include functionalities to download such Customer Data directly from the Services (e.g., download functionalities or API calls) which Customer shall in the first instance use to obtain the Customer Data;

d) Subject to Section 9.6(c), each Party shall return or destroy all copies of the other Party's Confidential Information (except as required to comply with any applicable law provided the confidentiality obligations herein shall apply until for the duration set out in Section 11.4) and upon written request from the Disclosing Party certify, in writing, the destruction thereof;

e) Customer shall promptly pay Nitro all fees and other amounts earned by or due to Nitro up to and including the effective date of termination, including (but not limited to) the full Subscription Fee, and any additional fees (as applicable) which shall become automatically payable in full by Customer (except in case of termination for cause by Customer triggered by a material breach proven attributable to Nitro).

10. CUSTOMER'S RESPONSIBILITIES AND RESTRICTIONS

10.1. Acceptable Use. Unless otherwise agreed in a particular Order Form, Customer shall not: (a) use the Services for service bureau or time-sharing or purposes or in any other way allow third parties to exploit or use the Services; (b) share passwords or other log-in credentials to any third party or person; (c) share non-public features of the Services with any third party; (d) access or use the Services in order to build a competitive product or service, to build a product or service using similar ideas, features, functions or graphics of the Services, or to copy any ideas, features, functions or graphics of the Services.

Customer shall also not: (a) engage in web scraping or data scraping on or related to the Services, including without limitation collection of information through any software that simulates human activity or any bot or web crawler; or (b) use the Services for: (i) any activity that is in breach of the law, public order or public morality; (ii) unsolicited commercial communications (e.g. spam); (iii) collecting or harvesting personal information in breach of the law (e.g., phishing); or, (iv) any activity that is offensive, defamatory, harmful to minors, indecent, illegal, in breach of third-party rights or otherwise objectionable.

If Nitro suspects any breach of the requirements of this Section 10.1, including without limitation by Users, Nitro may suspend Customer's access to the Services without advance notice, in addition to such other remedies Nitro may have. These Terms of Service do not require that Nitro takes any action against Customer or any User or other third party for violating this Section 10.1, or these Terms of Service, but Nitro is free to take any such action in its sole discretion.

10.2. **Unauthorized Access**. Customer shall prevent unauthorized access to the Service, including without limitation by protecting its passwords and other log-in information. Customer shall notify Nitro immediately of any known or suspected unauthorized use of the Services or breach of its security and shall use best efforts to stop said breach.

10.3. **Compliance with Laws**. In its use of the Service, Customer and Users shall comply with all applicable laws, including without limitation applicable data protection legislation.

10.4. **Customer's Users.** Customer shall use reasonable efforts to make all Users aware of this Agreement's provisions as applicable to such User's use of the Nitro IP and shall cause Users to comply with such provisions. Customer is responsible and liable for: (a) all Users and Beneficiaries using the Service, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of the Agreement applicable to Customer; and, (b) any use of the Services through Customer's account, whether authorized or unauthorized. Any act or omission by a Beneficiary or by a User that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer.

11. CONFIDENTIAL INFORMATION

11.1. **Confidentiality**. From time to time during the Term, either Party may disclose or make available to the other Party Confidential Information. Each Receiving Party shall treat all Confidential Information received from Disclosing Party as confidential, keep secret and protect such Confidential Information with not less than a reasonable degree of care and shall not disclose it to any third party other than its Affiliates, agents, employees, advisors or consultants (or with respect to Nitro its suppliers and licensors and, where applicable, the Authorized Reseller working with Customer), and only where: (a) such disclosure is necessary for the performance of Services or with respect to the Agreement; and, (b) such Affiliates, agents, employees, advisors or consultants (or with respect to Nitro its suppliers and licensors and, where applicable, the Authorized Reseller working with Customer) are bound by a confidentiality obligation at least as strict as included in this Section 11. Confidential Information disclosed under the Agreement shall not be used by the Receiving Party for any purpose other than as required for the performance of its obligations under the Agreement. The Receiving Party shall take precautions to maintain the confidentiality of the Disclosing Party's Confidential Information.

11.2. **Exclusions**. Confidential Information shall not include information which:

a) is published or comes into the public domain other than by a breach of the Agreement;

b) can be proven to have been known by the Receiving Party before disclosure by the Disclosing Party;

c) is lawfully obtained from a third party other than by a confidentiality breach of such third party; or,

d) can be shown to have been created by the Receiving Party independently of the disclosure and without use of the Disclosing Party's Confidential Information.

11.3. Judicial or Governmental Order. A Party that receives Confidential Information may disclose such Confidential Information to the extent required in accordance with a judicial or other governmental order, provided that the Receiving Party:

a) gives the Disclosing Party reasonable notice prior to such disclosure to allow it a reasonable opportunity to seek a protective order or equivalent, unless the Receiving Party is legally prohibited from doing so;

b) reasonably cooperates with the Disclosing Party in its reasonable efforts to obtain a protective order or other appropriate remedy;

c) discloses only that portion of the Confidential Information that is legally required to disclose; and,

d) uses reasonable efforts to obtain reliable written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available under applicable law or regulation.

11.4. Duration. The obligations in this Section 11 shall replace any prior non-disclosure agreement signed between the Parties (if applicable) and shall survive during the Term and for five (5) years after the termination or expiration of the Agreement; provided however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

12. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

12.1. Mutual Representations and Warranties.

(a) Each Party represents, warrants and covenants that: (i) it has the full power and authority to enter into this Agreement and to perform its obligations hereunder; and, (ii) its acceptance of and performance under this Agreement shall not breach any oral or written agreement with any third party or any obligation owed by it to any third party to keep any information or materials in confidence or in trust.

(b) EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 12.1(a), THE SERVICES, THE NITRO IP AND ANY IMPLEMENTATION AND ACTIVATION SERVICES ARE PROVIDED “AS IS” AND “AS AVAILABLE”. NITRO HEREBY DISCLAIMS ALL CONDITIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. NITRO SPECIFICALLY DISCLAIMS ALL IMPLIED CONDITIONS AND WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 12.1(a), NITRO MAKES NO WARRANTY OF ANY KIND THAT THE NITRO IP, OR ANY IMPLEMENTATION AND ACTIVATION SERVICES OR 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 OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-

FREE OR THAT THE SERVICES ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

12.2. Customer's Warranties.

Customer represents, warrants and covenants that:

(a) no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by the Agreement;

(b) it has accurately identified itself, its Beneficiaries (where applicable) and it has not provided any inaccurate information about itself to Nitro or through the Services;

(c) it is a legal entity authorized to do business pursuant to applicable law;

(d) it shall accurately identify each User and shall not provide any inaccurate information about such User to Nitro or its Authorized Resellers or through the Services; and,

(e) 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 Nitro and processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

13. INDEMNIFICATION

13.1. Nitro Indemnification.

(a) Nitro shall indemnify, defend, and hold harmless Customer from and against any and all Losses incurred by Customer resulting from any Third-Party Claim that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party's patents, copyrights, or trade secrets, provided that Customer promptly notifies Nitro in writing of the claim, cooperates with Nitro, and allows Nitro sole authority to control the defense and settlement of such claim.

(b) If a Third-Party Claim is made, or in Nitro's determination is likely to be made, Customer agrees that Nitro may, at Nitro's sole discretion: (i) modify or replace the Services, or component or part thereof, to make it non-infringing; or (ii) obtain the right for Customer to continue to use the Services. If Nitro determines that neither alternative is reasonably available, Nitro may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer and Nitro will provide Customer with a pro-rata refund of any Subscription Fees pre-paid by Customer that are related to that specific infringing part of the Services for the period during which Customer was not able to use the Services due to such termination by Nitro.

(c) This Section 13.1 will not apply to the extent that the alleged infringement arises from: (i) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Nitro or authorized by Nitro in writing; (ii) misuse of the Services by Customer, Beneficiaries or Users; (iii) modifications to the Services not made by Nitro; or (iv) arises from

Customer's, its Beneficiaries' or Users' failure to use the latest New Version; or, (v) any breach of this Agreement by Customer.

13.2. Sole Remedy.

SECTION 13.1 AND 13.2 SETS FORTH CUSTOMER'S SOLE REMEDIES AND NITRO'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE NITRO IP INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. THE EXCLUSIONS AND LIMITATIONS AS SET OUT IN SECTION 14 (LIMITATION OF LIABILITY) APPLY TO NITRO'S LIABILITY FOR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 13.1.

13.3. Customer Indemnification.

Customer shall indemnify, hold harmless, and, at Nitro's option, defend Nitro, its Affiliates and each of their respective directors, officers, employees and consultants from and against any Losses resulting from any Third-Party Claim that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's Intellectual Property Rights, other rights or applicable law and any Third-Party Claims based on Customer's or any User's: (i) negligence or willful misconduct; (ii) use of the Nitro IP in a manner not authorized by this Agreement; (iii) use of the Nitro IP in combination with data, software, hardware, equipment, or technology not provided by Nitro or authorized by Nitro in writing; or, (iv) modifications to the Nitro IP not made by Nitro; (v) Customer's material breach of this Agreement; (vi) Customer's failure to make required updates to the Services; or, (vii) Customer's, its Beneficiaries' or User's violation of any applicable laws, rules or regulations through or related to the use of the Services; provided that Customer may not settle any Third-Party Claim against Nitro unless Nitro consents to such settlement, and further provided that Nitro will have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

14. LIMITATION OF LIABILITY

14.1. LIABILITY CAP. TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL NITRO'S AGGREGATE LIABILITY (PER EVENT OR SERIES OF CONNECTED EVENTS) ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED (I) THE TOTAL AMOUNTS ACTUALLY PAID BY CUSTOMER TO NITRO (OR THE AUTHORIZED RESELLER, AS APPLICABLE) UNDER THIS AGREEMENT FOR THE SERVICES IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (II) ONE HUNDRED UNITED STATES DOLLARS ($100 USD), WHICHEVER IS GREATER.

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS (OR ITS AGENT'S OR SUBCONTRACTOR'S) NEGLIGENCE, OR FOR THEFT OR MISAPPROPRIATION OF FUNDS OR FOR FRAUD OR FRAUDULENT MISREPRESENTATION.

14.2. EXCLUDED DAMAGES. TO THE FULL EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT

WILL NITRO BE LIABLE UNDER OR IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY INDIRECT, PUNITIVE, SPECIAL CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING BUT WITHOUT LIMITATION DAMAGES FOR LOST PROFITS OR LOSS OF BUSINESS, LOST REVENUE, LOSS OR CORRUPTION OF DATA, LOSS OF CUSTOMERS AND CONTRACTS, LOSS OF GOODWILL, THE COSTS OF PROCURING REPLACEMENT GOODS OR SERVICES OR OTHERWISE HOWSOEVER, AND THIRD PARTIES' CLAIMS, IN EACH CASE ARISING OUT OF OR RELATED TO THE AGREEMENT, REGARDLESS OF WHETHER NITRO WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE OR EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. NITRO SHALL ALSO NOT BE LIABLE FOR DAMAGES CONNECTED TO OR AS A RESULT OF OUT OF SCOPE USE OF THE SERVICES BY THE CUSTOMER, ITS BENEFICIARIES AND/OR USERS.

14.3. APPLICATION. THE LIABILITIES LIMITED BY THIS SECTION 14 APPLY TO THE BENEFIT OF NITRO AND ITS AFFILIATES AND EACH OF THEIR RESPECTIVE LICENSORS, SUPPLIERS, ADVERTISERS, AGENTS, SPONSORS, DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, OTHER REPRESENTATIVES, OFFICERS, AND THIRD PARTY CONTRACTORS.

14.4. LIABILITY ACKNOWLEDGEMENT. CUSTOMER ACKNOWLEDGES AND AGREES THAT NITRO HAS BASED ITS PRICING ON AND ENTERED INTO THE AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND DISCLAIMERS OF WARRANTIES AND DAMAGES AS SET OUT IN THIS AGREEMENT AND THAT SUCH TERMS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. IF APPLICABLE LAW LIMITS THE APPLICATION OF THE PROVISIONS OF THIS SECTION 14, NITRO'S LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMISSIBLE.

15. MISCELLANEOUS

15.1. Independent Contractors. The Parties are independent contractors and shall represent themselves in all regards as such. Neither Party is the agent of the other, and neither may make commitments on the other's behalf.

15.2. Notices. Nitro may send notices pursuant to this Agreement to Customer's Notification Email Address provided by Customer. In case no Notification Email Address of Customer is known, notices will be served to Customer's registered address. Customer may send notices to Nitro pursuant to the Agreement to legalnotices@gonitro.com. All notices shall be deemed to have been given either: (a) if by email, on the first Business Day after the email was sent; or, (b) if sent by commercial courier (e.g., FedEx), on the first Business Day after delivery, or if sent by registered or certified mail, on the fifth (5th) Business Day following the day such mailing is made.

15.3. Force Majeure. Except for Customer's payment obligations, neither Party will be responsible or liable for any failure or delay in the performance of its obligations under the Agreement arising out of or caused by Force Majeure.

15.4. Assignment and Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Nitro's explicit written consent, which shall not be unreasonably withheld. Nitro may assign or transfer its rights, obligations and duties under the Agreement to any third party. Except to the extent forbidden in this Section 15.4, this Agreement will be binding upon and inure to the benefit of the Parties' respective permitted successors and assigns.

15.5. **Severability**. To the extent permitted by applicable law, the Parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. If a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

15.6. **No Waiver.** The Agreement may be modified or amended only by written agreement executed by a duly authorized representative of both Parties hereto. Any term or condition of the Agreement may be waived only by a written document signed by the Party entitled to the benefits of such term or condition. Each such waiver or consent shall be effective only in the specific instance and for the purpose for which it was given, and shall not constitute a continuing waiver or consent. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

15.7. **Governing Law and Jurisdiction.** The Agreement shall be governed by and construed in accordance with the laws of California and any applicable federal laws of the United States and the Parties hereto submit to the exclusive jurisdiction of the courts of San Francisco, California. The United Nations Convention for the International Sale of Goods shall not apply to the Agreement. The Parties further agree to waive and opt-out of any application of the Uniform Computer Information Transactions Act (UCITA), or any version thereof, adopted by any state of the United States in any form. This Section 15.7 governs all claims arising out of or related to this Agreement, including without limitation tort claims.

15.8. **Conflicts**. In case of a conflict among the attachments to this Agreement and this main body, the following order of precedence will govern, with lower numbers governing over higher ones: (i) any Order Form (with more recent Order Forms that expressly state they take precedence over earlier ones); (ii) the Data Processing Addendum; (iii) the Product Specific Terms (if applicable); (iv) the main body of these Terms of Service; (v) Nitro's Service Level Agreement; and, (vi) any other Nitro policies published online and incorporated by reference in the Agreement.

15.9. **Subcontracting**. The Customer acknowledges and agrees the Services may contain functionalities provided by Nitro's third party subcontractors which are engaged by Nitro to perform specific parts of Nitro's contractual obligations under the Agreement (for example hosting providers, SMS-sending providers, etc.).

15.10. **Publicity**. Nitro shall have the right to use any trademarks, logos or other marks of Customer (including Customer's corporate name) for client references on Nitro's website, social media announcements, sales presentations and general business development purposes.

15.11. **Interpretation**. In this Agreement, unless a contrary intention appears: (a) the terms, "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular portion hereof and include any Agreement supplemental hereto; (b) words importing a singular number only shall include the plural and vice versa; (c) the term "including" means "including without limitation"; (d) other grammatical forms of defined words or expressions have corresponding meanings; (e) a reference to an article, section, document or Agreement, including this Agreement, includes a reference to that section, document or Agreement as amended from time to time, as permitted hereunder; and, (f) the division of this Agreement into sections and the insertion of headings are for convenient reference only, and shall affect neither the construction nor the interpretation of this Agreement. The Parties agree that the terms of this Agreement result from negotiations between them.

This Agreement will not be construed in favor of or against either Party by reason of authorship.

15.12. Technology Export. The Services utilize software and technology that may be subject to export controls. Customer acknowledges and agrees that the Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States or the European Union maintains an embargo (collectively, "**Embargoed Countries**"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "**Designated Nationals**"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Services, Customer represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Services may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. Customer agrees to comply strictly with all applicable US and other foreign export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

15.13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, representations or understandings between the Parties relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express clauses of the Agreement.

15.14. Execution in Counterparts. This Agreement may be executed in one or more counterparts and may be signed by means of an electronic signature or accepted by Customer via a click-through acceptance procedure. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

15.15. Language. The Agreement is in the English language only which language shall be controlling in all respects. Furthermore, all communications and notices made or given pursuant to the Agreement shall be in the English.

15.16. Survival. Expiration, termination or cancellation of the Agreement shall be without prejudice to the rights and liabilities of each Party which have accrued prior to the date of termination, and shall not affect the continuance in force of the provisions of the Agreement which are expressly or by implication intended to continue in force, including, without limitation, any Sections relating to Customer payment obligations, Section 4 (Intellectual Property Rights), Section 8 (Fees and Payment Terms), Section 11 (Confidential Information), Section 12.1(b) Nitro's disclaimer and Section 14 (Limitation of Liability).

15.17. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each Party. Notwithstanding the foregoing provisions of this Section 15.17, Customer acknowledges and agrees that for Customers onboarded via Nitro's online subscription portal Nitro has the right, in Nitro's sole discretion, to modify the Agreement from time to time, and that modified terms become effective upon notification of the changes (by email or other appropriate communication) to Customer. Customer is responsible for reviewing and becoming familiar with any such modifications and Customer's continued use of the Services after the effective date of the modifications will be deemed acceptance of the modified terms, unless (a) Customer has

a right under applicable law to terminate the Agreement due to such changes; or (b) Customer terminates the Agreement upon providing Nitro with written notice of termination within a time period of thirty (30) days as from Nitro's notification related to the modification of the Agreement's terms.

15.18. Time for Claims. Where permitted by applicable law, Customer hereby agrees that any claim by Customer in connection to the Services or this Agreement must be brought within six (6) months of the act giving rise to the claim.

15.19. Relationship to Authorized Resellers. Notwithstanding anything to the contrary in these Terms of Service, the below shall apply if Customer purchased a right to use the Services from an Authorized Reseller:

(a) in addition to the Authorized Reseller Agreement (in which case the Authorized Reseller, and not Nitro shall be liable to Customer for any such terms and conditions contained therein), the terms and conditions of these Terms of Service govern as between Customer and Nitro, Customer's, its Beneficiaries and Users use and Nitro's provision of the Services. Customer expressly acknowledges and agrees that Nitro, Authorized Resellers, suppliers, licensors, and/or each of the forgoing's respective agents and contractors may transfer Customer Data amongst themselves as necessary for the purpose of the provision and management of the Services;

(b) an Authorized Reseller may charge, bill, and collect fees from Customer in the amounts stated in and in accordance with the Authorized Reseller Agreement and, if Customer is billed by an Authorized Reseller for some or all of the fees associated with the Service or Implementation and Activation Services or other services Customer shall pay the Authorized Reseller in accordance with the Authorized Reseller Agreement. For the avoidance of doubt, in such cases where an Authorized Reseller is charging, billing (and collecting fees directly from) Customer, Sections 8.2 to 8.5 of these Terms of Service shall not apply and the relevant payment terms in the Authorized Reseller Agreement should govern;

(c) if Nitro receives notice from such Authorized Reseller that it has terminated or suspended its relationship with Customer, Nitro may suspend and/or terminate Customer's right to access and use the Services, the Implementation and Activation Services, any other services provided by Nitro and/or these Terms of Service without notice and without any liability to Customer. In addition, Nitro may suspend and/or terminate the Services, the Implementation and Activation Services, any other services provided by Nitro and/or this Agreement without notice and without liability upon receipt of notice from Authorized Reseller that Customer has failed to pay amounts due, or is otherwise is in default to the Authorized Reseller and/or Nitro with respect to any manner pertaining to the Services, the Implementation and Activation Services, any other services provided by Nitro, or this Agreement or the terms and conditions of the Authorized Reseller Agreement.

15.20. Equitable Relief. Customer agrees that: (a) no adequate remedy exists at law if it breaches any of its obligations in Section 11 or for Customer's violation or misappropriation of Nitro IP; (b) it would be difficult to determine the damages resulting from its breach of 11 or for Customer's violation or misappropriation of Nitro IP, and such breach would cause irreparable harm to Nitro; and, therefore, (c) Nitro will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without any requirement that Nitro prove actual monetary damage post a bond or other security. This Section 15.20 does not limit either Party's right to injunctive relief for breaches

not listed.

15.21. Prohibited Information.

(a) Customer represents, warrants and covenants that it will not (and it will cause its Users to not) provide, disclose to Nitro, or allow Nitro to collect or access, any protected health information ("**PHI**") as defined by applicable law (e.g., including to the extent applicable law, the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and its implementing regulations), unless Nitro has expressly agreed to receive such information in writing beforehand and the Parties have entered into a written agreement where required by applicable law (e.g., a business associate agreement under HIPAA). Customer represents, warrants and covenants that is it is not 'covered entity' or a 'business associate' and acknowledges Nitro will not act as a 'business associate' under HIPAA and that Nitro does not have any obligations or liabilities with respect to the protection, use, or disclosure of PHI with respect to Customer; and,

(b) Customer represents, and covenants to Nitro that Customer will not (and it will cause its Users to not), without Nitro's prior written consent, contain any social security numbers or other government-issued identification numbers; biometric information; passwords for online accounts; credentials to any financial accounts; tax return data; credit reports or consumer reports; any payment card information subject to the Payment Card Industry Data Security Standard; information subject to the Gramm-Leach-Bliley Act, Fair Credit Reporting Act or the regulations promulgated under either such law; special categories of personal data as defined under the General Data Protection Regulation or information subject to restrictions under applicable data protection laws governing personally identifiable information of children, including, without limitation, all information about children under 13 years of age or of children otherwise protected under any child data protection laws ("**Sensitive Data**").

(c) Customer further agrees to defend, indemnify and hold harmless Nitro its Affiliates and each of their respective directors, officers, employees and consultants from and against any Losses arising from or related to Customer's provision or disclosure of PHI and/or Sensitive Data to Nitro or any violation of Customer's obligations in this Section 15.21.

15.22. No Reliance on Future Functionality. Customer acknowledges and agrees that, in entering into this Agreement, Customer is not relying on any future enhancements, updates, or additional functionalities related to the Nitro IP that may be provided by Nitro or any third-party licensor. Unless otherwise expressly stated in this Agreement, any obligations undertaken by Nitro to provide such enhancements or updates to the Nitro IP are at their sole discretion and may be subject to separate agreements or fees.

15.23. Government Users. If the Customer is a branch or agency of the U.S. Government ("Government"), the Customer agrees that the Services, Downloadable Software and associated documentation are "commercial items," as defined at Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software) and Defense Federal Acquisition Regulation Supplement ("DFAR") 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which these Terms of Service may be incorporated, Government end users will use the Services, Downloadable Software, Software and associated documentation with only those rights set forth in this Agreement. If greater rights are needed, a

mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

[END OF TERMS OF SERVICE]