

Tray.io Master Subscription Agreement

IMPORTANT – PLEASE READ CAREFULLY: THIS TRAY.IO MASTER SUBSCRIPTION AGREEMENT (“AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN TRAY.IO, INC. (“TRAY”) AND YOU OR THE ENTITY THAT YOU REPRESENT (YOU OR ANY SUCH ENTITY, “CUSTOMER”). BY USING OR ACCESSING THE TRAY SERVICE (1) YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT AND (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT AND TO BIND CUSTOMER TO THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, DO NOT ACCESS OR USE THE SERVICE IN ANY WAY. THIS AGREEMENT GOVERNS YOUR INITIAL PURCHASE OF THE SERVICE AND RELATED SUPPORT SERVICES, AS WELL AS ANY FUTURE PURCHASES MADE BY YOU THAT REFERENCE THIS AGREEMENT. Tray, with its principal place of business located at 25 Stillman Street, San Francisco, CA 94107, is willing to grant you access to the Service on the condition that you accept all the terms of this Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1. **“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means either:
 - Ownership or control of more than 50% of the voting interests of the subject entity; or
 - The power to direct or cause the direction of the management and policies of an entity, whether through ownership, by contract, or otherwise.
2. **“Connected Application”** means Customer’s or a third party’s web-based, mobile, or other software application that is made available by Customer or its Users.

3. **“Customer Data”** means any data in electronic form that Customer or Users make available through the Tray Service.
4. **“Documentation”** means Tray's user guides and other end user documentation for the Tray Service made available by Tray to its customers generally.
5. **“Order Form”** means an ordering document executed by the parties that specifies the Tray Service and certain Professional Services purchased by Customer under this Agreement. Each Order Form shall be subject solely to and incorporate by reference the terms of this Agreement. An Affiliate may purchase services under this Agreement by entering into an Order Form that incorporates by reference the terms of this Agreement, and in each such case, all references in this Agreement to the Customer shall be deemed to refer to the applicable Affiliate for purposes of that Order Form.
6. **“Professional Services”** means certain consulting services, technical services and Support Services provided by Tray under this Agreement, as described more fully in an Order Form or Statement of Work.
7. **“Statement of Work”** or **“SOW”** means a document executed by Customer and Tray that describes certain Professional Services purchased by Customer under this Agreement. Each SOW shall be subject solely to and incorporate by reference the terms of this Agreement.
8. **“Subscription Term”** means the period during which Customer is authorised to use the Tray Service as identified in the Order Form, unless earlier terminated as set forth in Section 10.
9. **“Support Services”** means the support services provided by Tray as identified on an Order Form.
10. **“Tray Service”** means Tray's proprietary online web-based platform designed for implementing and sharing integrations for software, SaaS and mobile applications, offered on a SaaS basis, and specified in the applicable Order Form. The Tray Service includes the Documentation and access to the **“Tray Platform”** and/or the **“Tray Embedded”** product offerings (the **“Tray Application”**) as specified in the applicable Order Form. For purposes of this Agreement and for avoidance of doubt, the Tray Service shall include the Tray

Application. The Tray Service as defined in this Agreement shall not include the Professional Services.

11. **“User”** means any individual who is authorised by Customer to use or access the Tray Service. A “User” may include Customer’s and its Affiliates’ employees, consultants, representatives or agents.

2. USE OF THE TRAY SERVICE

1. **Access to the Tray Service.** In exchange for payment of the fees listed on the Order Form, and subject to the terms of this Agreement and any applicable Order Form, including any limitations specified therein, Tray grants to Customer a worldwide, limited, royalty-free, non-exclusive, non-sublicenseable, non-transferable (except as specifically permitted in this Agreement) right to (i) access and use the Tray Service, solely during the Subscription Term and solely in the form provided by Tray and as permitted by the functionalities provided by Tray therein, to implement integrations with Connected Applications, and (ii) use the Documentation solely in conjunction with Customer’s authorised use of the Tray Service.
2. **User Compliance.** Customer is responsible for use of the Tray Service by its Users and for its Users’ compliance with this Agreement. Customer shall take reasonable steps to prevent unauthorised access to the Tray Service, including without limitation by protecting its passwords and other log-in information. Customer shall not provide passwords or other login information to any third party other than Users. Customer shall notify Tray promptly of any known or suspected unauthorised use of the Tray Service.
3. **Restrictions.** Customer shall not, and shall not permit its Users or any third party to: (i) modify, copy, display, republish or create derivative works based on the Tray Service or the underlying software; (ii) license, sublicense, sell, resell, rent, lease, transfer, assign (except as permitted in Section 12.4), or distribute the Tray Service, or use the Tray Service for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Tray Service; (iii) decompile, disassemble, or otherwise reverse engineer the Tray Service or the underlying software or otherwise attempt to obtain the source code of the Tray Service (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); (iv) use the

Tray Service in a manner that interferes with the use of the Tray Service by Tray or its other customers; (v) alter or remove any proprietary trademark or copyright markings incorporated in, marked on, or affixed to the Tray Service; (vi) access the Tray Service in order to build a competitive product or service, or to copy any ideas, features, functions or graphics of the Tray Service; or (vii) access or use the Tray Service: (a) to send or store infringing, obscene, threatening, or otherwise unlawful material, including material violative of third-party privacy rights; (b) in violation of applicable laws; or (c) to send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, or scripts. In the event that Tray suspects any breach of the restrictions set forth in this Section 2.3, including without limitation by Users, Tray reserves the right to suspend access to the Tray Service without advance notice, in addition to any other remedies Tray may have at law or equity.

3. CUSTOMER DATA AND CONNECTED APPLICATIONS

1. **Customer Data.** Except for the limited rights expressly granted to Tray hereunder, Customer retains all rights, title and interest in and to all Customer Data, including without limitation all related intellectual property rights inherent therein. Customer is solely responsible for the accuracy, quality, legality, reliability, and appropriateness of all Customer Data. Customer shall ensure that it is entitled to transfer the relevant Customer Data to Tray so that Tray and its service providers may lawfully use, process, and transfer the Customer Data in accordance with this Agreement on Customer's behalf. Customer grants Tray a nonexclusive, worldwide, royalty-free right to reproduce, display, adapt, modify, transmit, distribute and otherwise use the Customer Data (a) to maintain, provide, and improve the Tray Service and provide the Tray Service and Professional Services under this Agreement; (b) to prevent or address technical or security issues and resolve support requests; (c) at Customer's direction or request, including processing initiated by Users of the Tray Service in their use of the Tray Service, such as by implementing integrations between Customer's Connected Applications; and (d) as otherwise required by applicable law. No rights to the Customer Data are granted to Tray hereunder other than as expressly set forth in this Agreement.

2. **Protection of Customer Data.** Tray shall maintain administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. If Tray detects or becomes aware of a breach of its obligations under this Agreement resulting in unauthorised access to Customer Data, Tray shall promptly report such breach to Customer and remedy such breach in a timely manner.
3. **Processing.** When and as required by applicable law from time to time, Tray will execute supplemental privacy and security terms, including but not limited to those required under Article 28 of Regulation (EU) 2016/679 (“GDPR”), with Customer or Customer’s Affiliates that purchase the Tray Service under this Agreement.
4. **Compliance with CCPA.** In order for Tray to provide the Tray Service to Customer, Customer may disclose Personal Information to Tray. The parties agree that to provide the Tray Service to Customer, Tray is acting as a “Service Provider” pursuant to §1798.140 of the California Consumer Protection Act (“CCPA”). Tray shall not retain, use, or disclose Personal Information provided by Customer pursuant to this Agreement except as necessary for the specific purpose of providing the Tray Service and the Professional Services, as applicable, pursuant to this Agreement or as otherwise set forth in this Agreement or as permitted by CCPA. Tray will not sell Personal Information. Customer is responsible for responding to Consumer requests using Customer’s own access to the relevant Personal Information. Upon Customer’s written request, and subject to and in accordance with all applicable laws, Tray will provide assistance, as required under CCPA, to Customer for the fulfillment of Customer’s obligations to respond to requests to exercise Consumer’s rights under CCPA with respect to Personal Information provided by Customer pursuant to this Agreement, to the extent Customer is unable to access the relevant Personal Information itself. To the extent legally permitted, Customer shall be responsible for any costs arising from Tray’s provision of such assistance. For purposes of this Section 3.4, “Consumer,” “Personal Information,” and “sell” are used as defined in §1798.140 of CCPA.
5. **Excluded Data.** Customer shall not provide Tray with any Customer Data that is subject to heightened security requirements by law or regulation or contract

(examples include but are not limited to the Gramm–Leach–Bliley Act (GLBA), Family Educational Rights and Privacy Act (FERPA), the Child’s Online Privacy Protection Act (COPPA), the standards promulgated by the PCI Security Standards Council (PCI-DSS), and their international equivalents (such Customer Data collectively, “Excluded Data”). Tray shall have no responsibility or liability for the Excluded Data.

6. **Connected Applications.** The Tray Service contains features designed to interoperate with Connected Applications. To use such features, Customer or its Users may be required to obtain access to such Connected Applications from their providers, and grant Tray access to Customer’s or its Users’ account(s) on such Connected Applications. If Customer uses a Connected Application with the Tray Service, Customer grants Tray permission to allow the Connected Application and its provider to access Customer Data solely as required for the interoperation of that Connected Application with the Tray Service. Any acquisition by Customer of Connected Applications, and any exchange of Customer Data between Customer and any Connected Application provider, product or service, is solely between Customer and the applicable Connected Application provider. Tray does not warrant or support Connected Applications. Tray is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by any Connected Application or its provider.

4. FEES AND PAYMENTS

1. **Fees.** Customer shall pay to Tray the fees specified in all Order Forms and SOWs executed by the parties. Except as otherwise specified herein, or in an Order Form or SOW, payment obligations are non-cancelable and fees paid are non-refundable. Fees for the Tray Service are based on the Tray Service purchased and not actual usage. Customer agrees that its purchase of the Tray Service or the Professional Services is not contingent upon the delivery of any future functionality or features.
2. **Invoicing and Payment.** Unless otherwise stated in an Order Form or a SOW, all fees and charges under this Agreement will be invoiced in advance and are due net thirty (30) days from the invoice date. Customer is responsible for providing a complete and accurate billing address and billing contact to

Tray. If Customer believes a particular invoice is incorrect, Customer must contact Tray in writing within sixty (60) days of such invoice date to be eligible to receive an adjustment or credit.

3. **Overdue Payments.** Any invoiced amount not received by Tray by the due date and not subject to a reasonable and good faith dispute may accrue late interest at the lower of (i) the rate of 1.5% of the outstanding balance per month, or (ii) the maximum rate permitted by law.
4. **Suspension of Tray Service.** If Customer's account is thirty (30) days or more overdue (except for charges then under reasonable and good faith dispute), then Tray may, without limiting its other rights and remedies, following five (5) days written notice and an opportunity to cure, suspend Customer's access to the Tray Service until such amounts are paid in full. Written notice may be provided via email.
5. **Taxes.** Tray's fees do not include any local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on Tray's net income or property. If Tray has the legal obligation to pay or collected Taxes for which Customer is responsible under this Agreement, Tray will invoice Customer and Customer will pay that amount unless Customer provides Tray with a valid tax exemption certificate authorised by the appropriate taxing authority.

5. PROPRIETARY RIGHTS

1. **Reservation of Rights.** Except for the limited rights expressly granted to Customer hereunder, Tray reserves all rights, title, and interest in and to the Tray Service, the underlying software, the Tray Materials and any and all improvements, modifications and updates thereto, including without limitation all related intellectual property rights inherent therein. Where Customer purchases Professional Services hereunder, Tray grants to Customer a non-sublicensable, non-exclusive license to use any materials provided by Tray as a result of the Professional Services (the "**Tray Materials**") solely in conjunction with Customer's authorised use of the Tray Service and in accordance with this Agreement. No rights are granted to Customer hereunder

other than as expressly set forth in this Agreement. Nothing in this Agreement will impair Tray's right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with, any products, software or technologies that Customer may develop, produce, market, or distribute.

2. **Anonymised Tray Application Data.** Tray may collect, use and store data concerning the usage and operation of the Tray Application to improve its service offerings provided that such data is anonymised and does not include information that identifies or provides a reasonable basis to identify a company or an individual. For clarity, Tray Application data shall not incorporate any Customer Data.
3. **Feedback.** Customer shall, and hereby does, grant to Tray a non-exclusive, royalty-free, fully paid up, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Tray Service any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or its Users relating to the features, functionality or operation of the Tray Service or the Professional Services ("Feedback"). Feedback does not include Customer Data. Notwithstanding anything to the contrary, Feedback shall not create any confidentiality obligation for Tray.

6. CONFIDENTIAL INFORMATION

1. **Definition of Confidential Information.** "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure. Confidential Information shall include, without limitation, (a) of both parties, the terms and conditions of this Agreement (including pricing), provided that either party may disclose the terms and conditions of this Agreement to its potential investors and acquirers on a confidential basis in connection with bona fide due diligence, (b) of Customer, the Customer Data, and (c) of Tray, the Tray Service, Documentation and the Tray Materials. The Receiving Party's nondisclosure obligation shall not apply to information which

the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

2. **Confidentiality; Protection.** The Receiving Party agrees not to use Confidential Information or disclose, distribute or disseminate such Confidential Information except as allowed hereunder or as otherwise expressly agreed in writing by the Disclosing Party. The Receiving Party agrees to restrict access to such Confidential Information to those employees and service providers of the Receiving Party who need to know such information for performing as contemplated hereunder and have agreed to be bound by a confidentiality obligation not less protective than that contained in this Agreement. The Receiving Party shall exercise the same degree of care to prevent unauthorized use or disclosure of the Confidential Information to others as it takes to preserve and safeguard its own confidential information of like importance, but in no event less than reasonable care. At any time upon written request, the Receiving Party shall destroy or return to the Disclosing Party all copies of Confidential Information.
3. **Remedies.** The Receiving Party acknowledges that breach of the confidentiality obligations would cause irreparable harm to the Disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the Receiving Party agrees that, in addition to any other remedies available to it, the Disclosing Party is entitled to seek immediate injunctive relief in the event of breach of an obligation of confidentiality by the Receiving Party, and that the Disclosing Party shall not be required to post a bond or show irreparable harm in order to obtain such injunctive relief.
4. **Compelled Disclosure.** The Receiving Party may access and disclose Confidential Information of the Disclosing Party if legally required to do so in connection with any legal or regulatory proceeding; provided, however, that in such event the Receiving Party will, if lawfully permitted to do so, notify the Disclosing Party prior to such access or disclosure so as to allow the

Disclosing Party an opportunity to seek appropriate protective measures. Receiving Party will furnish only that portion of the Confidential Information that is legally required to be disclosed, and any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

7. WARRANTIES; DISCLAIMERS

- 1. Mutual Warranties.** Each party represents and warrants that (i) it has the power and authority to enter into and fully perform this Agreement; and (ii) the performance by such party of its obligations and duties hereunder will not violate any agreement to which such party is bound.
- 2. Tray Warranties and Remedies.** Tray warrants that (i) the Tray Service will perform materially in accordance with the Documentation under normal use and circumstances; and (ii) it will perform all Professional Services in a good and workmanlike manner. Customer's exclusive remedy and Tray's entire liability for a breach of the warranties set forth in this Section 7.2 shall be as follows: (a) in the event of a breach of the warranty in subsection 7.2(i), Tray will promptly correct any material reproducible errors so that the Tray Service materially conforms to the Documentation and if Tray is unable to provide the Tray Service as warranted within a commercially reasonable time following receipt of written notice of breach, Customer shall be entitled to terminate the applicable Order Form and receive a refund of any prepaid, unused fees Customer paid for the Tray Service applicable to the remaining portion of the Subscription Term following the effective date of termination; and (b) in the event of a breach of the warranty in subsection 7.2(ii), Tray will promptly re-perform the applicable Professional Services and if Tray is unable to provide the Professional Services as warranted within a commercially reasonable time following receipt of written notice of breach, Customer shall be entitled to terminate the applicable SOW and recover the fees paid for the nonconforming Professional Services.
- 3. Warranty Disclaimers.** Except as EXPRESSLY provided in THIS AGREEMENT, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TRAY SERVICE AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS." Except as EXPRESSLY provided in THIS SECTION 7, TRAY, ITS

AFFILIATES, SUPPLIERS, AND ITS LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TRAY DOES NOT REPRESENT OR WARRANT THAT THE TRAY SERVICE (A) WILL PERFORM WITHOUT INTERRUPTION OR ERROR, OR (B) IS SECURE FROM HACKING OR OTHER UNAUTHORISED INTRUSION. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

8. INDEMNIFICATION

1. **Indemnification by Tray.** Subject to Section 8.3, Tray shall defend Customer, at Tray's expense, from and against any and all third-party claims, suits, actions, or proceedings ("**Third Party Claims**") made or brought against Customer by a third party alleging that the Tray Service infringes a U.S. patent, copyright or trademark of such third party or misappropriates such third party's trade secrets. Further, Tray shall indemnify and hold Customer harmless against all damages, costs and reasonable attorneys' fees ("**Losses**") awarded against Customer by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by Tray, in connection with such Third Party Claims. Tray shall have no indemnification obligation for infringement claims arising from (i) the combination of the Tray Service with any services, hardware, data or business processes not provided by Tray, (ii) modifications to the Tray Service by Customer or its agents, or (iii) for use of the Tray Service by Customer other than in accordance with this Agreement.
 - In addition to Tray's indemnity obligations, if a Third Party Claim is made or appears possible, Tray may, at Tray's sole expense, (a) modify or replace the Tray Service or component or part thereof, to make it non-infringing, (b) obtain the right for Customer to continue

use of the Tray Service, or (c) if determines neither of the foregoing alternatives are commercially reasonable, Tray may terminate this Agreement and refund to Customer all prepaid, unused fees for the Tray Service applicable to the remaining portion of the Subscription Term following the effective date of termination. This Section 8.1 states Tray's entire liability and Customer's exclusive remedy for any claim of intellectual property infringement.

2. **Indemnification by Customer.** Subject to Section 8.3, Customer shall defend Tray, at Customer's expense, from and against any Third Party Claims made or brought against Tray alleging that the Customer Data, or Customer's use of the Tray Service in violation of this Agreement, infringes or otherwise violates a third party's property, privacy or other rights, or violates any applicable law. Further, Customer shall indemnify and hold Tray harmless against all Losses awarded against Customer by a court of competent jurisdiction or an arbitrator, or agreed to in a written settlement agreement signed by Customer, in connection with such Third Party Claims.
3. **Procedure.** The foregoing obligations of the indemnifying party are conditioned upon the party seeking indemnification (a) promptly providing notice to the indemnifying party concerning the existence of an indemnifiable claim (provided that failure to give prompt notice shall not constitute a waiver of a party's right to indemnification and shall affect the indemnifying party's obligations under this Agreement only to the extent that the indemnifying party's rights are materially prejudiced by such failure or delay), and (b) promptly providing all information and assistance reasonably requested and otherwise full cooperation with the indemnifying party in defending the claim, and (c) giving the indemnifying party sole control and authority of the defence and settlement of any indemnifiable claim (provided, however, that any settlement requiring the party seeking indemnification to admit liability or make any financial payment shall require such party's prior written consent, not to be unreasonably withheld or delayed).

9. LIMITATION OF LIABILITY

1. **Limitation of Liability.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 AND CUSTOMER'S BREACH OF ITS

OBLIGATIONS PURSUANT TO SECTION 2.3, IN NO EVENT SHALL EITHER PARTY'S OR ITS AFFILIATES' AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY ORDER FORM OR SOW UNDER THIS AGREEMENT EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER TO TRAY DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

2. **Exclusion of Consequential Damages.** EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 AND CUSTOMER'S BREACH OF ITS OBLIGATIONS PURSUANT TO SECTION 2.3, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER FOR ANY LOST PROFITS, REVENUES, OR GOODWILL, OR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE LIABILITIES LIMITED BY THIS SECTION 9 APPLY: (i) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, NEGLIGENCE OR OTHERWISE; (ii) EVEN IF A PARTY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iii) EVEN IF A PARTY'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.
3. The provisions of this Section 9 allocate the risks under this Agreement between the parties, and the parties have relied on these limitations in determining whether to enter into this Agreement.

10. TERM AND TERMINATION

1. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and continue until all Order Forms and SOWs entered into hereunder have expired or been terminated. Except as otherwise specified in the applicable Order Form, Subscription Terms shall automatically renew for successive one (1) year periods, unless either party gives notice to the other party of non-renewal at least thirty (30) days prior to the expiration of the then-current Subscription Term.

2. **Termination for Cause.** Either party may terminate this Agreement or any Order Form or SOW for cause if the other party: (i) fails to cure any material breach of this Agreement within thirty (30) days after receipt of written notice of such breach; or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
3. **Effect of Termination.** Upon expiration or termination of this Agreement for any reason, the rights and licenses granted to Customer shall terminate immediately. Upon any termination by Customer pursuant to Section 10.2, Tray shall refund to Customer any prepaid, unused fees applicable to the remaining portion of the Subscription Term following the effective date of termination. Upon any termination by Tray pursuant to Section 10.2, Customer shall pay any unpaid fees covering the remainder of the Subscription Term. In no event will any termination relieve Customer of its obligation to pay any fees accrued or payable to Tray during the period prior to the effective date of termination. The following provisions will survive termination or expiration of this Agreement: Sections 4 (Fees and Payments), 5 (Proprietary Rights), 6 (Confidential Information), 7.3 (Warranties; Disclaimers), 8 (Indemnification), 9 (Limitation of Liability), 10.3 (Effect of Termination) and 12 (Miscellaneous).

11. PUBLICITY

1. Either party may reference the other party's name and logo in lists of customers or vendors, including on each other's respective websites. All other uses of each other's name and any publicity shall require the prior written approval and consent of the other party.

12. MISCELLANEOUS

1. **Independent Contractors.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.
2. **Notices.** Tray may give general notices related to the Tray Service that are applicable to all customers by email or through the Tray Service. All other notices required to be sent hereunder will be in writing and will be effective upon (i) personal delivery, or (ii) the second business day after mailing, in each case addressed as follows: if to Tray at its principal office indicated above to

the attention of Finance Department, and, if to Customer, to Customer's address on record in Tray's account information, or to such other address or individual as the parties may specify from time to time by written notice to the other party.

3. **Force Majeure.** Except with respect to payment obligations hereunder, if a party is prevented or delayed in performance of its obligations hereunder as a result of circumstances beyond such party's reasonable control, including, by way of example, acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots, or embargoes, such failure or delay will not be deemed to constitute a breach of this Agreement, but such obligation will remain in full force and effect, and will be performed or satisfied as soon as reasonably practicable after the termination of the relevant circumstances causing such failure or delay, provided that if such party is prevented or delayed from performing for more than ninety (90) days, the other party may terminate this Agreement upon thirty (30) days' written notice.
4. **Assignment & Successors.** Neither party may assign this Agreement nor any of its rights or obligations hereunder without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without the consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
5. **Severability and Waiver.** In the event that a provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be invalid or otherwise unenforceable, such provision shall be limited or eliminated to the maximum extent permitted by applicable law so that this Agreement shall otherwise remain in full force and effect and enforceable. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and a party's failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision.

6. **Governing Law and Venue.** This Agreement and any disputes arising out of or related hereto shall be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of law rules or the United Nations Convention on the International Sale of Goods, or the Uniform Computer Informational Transactions Act. The parties each consent to the personal and exclusive jurisdiction of the federal and state courts located in San Francisco, California. In any action to enforce this Agreement the prevailing party will be entitled to costs and attorneys' fees.
7. **No Third Party Beneficiaries.** The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity, other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.
8. **Export Control.** The Tray Service, any other Tray technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not, and shall not permit Users to, access or use the Tray Service in violation of any U.S. export law or regulation.
9. **Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms and SOWs, sets forth the entire agreement of the parties and supersedes and replaces all prior or contemporaneous writings, negotiations and discussions, whether written or oral, with respect to its subject matter. Neither party has relied upon any representations or warranties whatsoever regarding the subject matter of this Agreement, express or implied, except for the representations and warranties set forth in this Agreement. Tray reserves the right to modify the terms and conditions of this Agreement, at its sole discretion, effective upon the commencement of any renewal Subscription Term. You are responsible for regularly reviewing this Agreement. CONTINUED USE OF THE SERVICE AFTER ANY SUCH CHANGES SHALL CONSTITUTE YOUR CONSENT TO SUCH CHANGES. If Tray modifies this Agreement during Customer's Subscription Term, and

Customer objects to the updated agreement, as Customer's exclusive remedy, Customer may choose to terminate this Agreement and cease using the Service. Notwithstanding any language to the contrary therein, no terms or conditions set forth on any Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

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