

Serverless Customer Agreement

Summary of Key Points

- Includes Licenses for both the On-Premise and SaaS software.
- On-Premise Software License
 - Free Users: Organizations earning \$2 million USD or less in the last fiscal year can use the software free of charge, subject to terms.
 - Professional Users: Organizations earning more than \$2 million USD must execute an Order Form after a 45-day free trial to continue using the software.
 - Usage Restrictions: Software is for internal business purposes only; public distribution or commercial use of modified versions requires written consent.
- SaaS Software License
 - Provides additional features as an extension of the On-Premise Software.
 - Free Tier: Includes a certain amount of Subscription Credits as listed on serverless.com/pricing.
 - Paid Subscription: Exceeding Free Tier limits requires purchasing additional Subscription Credits via an Order Form.
- Fees & Payment
 - Fees are based on the number of Subscription Credits used.
 - Invoices issued monthly; payment due within 30 days.
- Support Services
 - Available to all customers on a reasonable-effort basis.
 - Premium Support is available for an additional fee, 24x5 support.
- The agreement also incorporates standard legal provisions, including a Mutual Non-Disclosure Agreement and Data Processing Terms

CUSTOMER AGREEMENT

Last updated: September 23rd, 2024

This Customer Agreement (this “Agreement”) is a legal agreement between you (“Customer”) and Serverless Inc., with a business address at 558 San Anselmo Avenue, Suite A, San Anselmo, CA 94960, United States (“Serverless”), effective as of the last date of acceptance (the “Effective Date”). Customer and Serverless are each referred to herein individually as a “Party” and collectively as the “Parties.” This Agreement specifies the terms under which Customer may access and use the Services (as defined below).

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. BY CLICKING “I AGREE” BELOW OR OTHERWISE MANIFESTING YOUR ASSENT TO THESE TERMS OF USE, CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU ACCEPT THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU WARRANT AND REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THIS AGREEMENT.

1. **DEFINITIONS**. The definitions for some of the defined terms used in this Agreement are set forth below. The definitions for other defined terms are set forth elsewhere in this Agreement.

1.1 “Affiliate” means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such entity. The term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise.

1.2 “Applicable Law” means, with respect to any Party, any federal, state, or local statute, law, ordinance, rule, administrative interpretation, regulation, order, writ, injunction, directive, judgment, decree, or other requirement of any international, federal, state, or local court, administrative agency, or commission or other governmental or regulatory authority or instrumentality, domestic or foreign, applicable to such Party or any of its properties, assets, or business operations.

1.3 “Applications” means applications developed by Customer using the Services.

1.4 “Authorized User” means Customer’s employees, contractors, or agents authorized by Customer to access and use the Services pursuant to the terms and conditions of this Agreement; provided, however, that any contractors’ or agents’ access to and use of the Services will be limited to their provision of services to Customer. Customer is responsible for the acts and omissions of its Authorized Users and any

other person who accesses and uses the Services using any Authorized Users' access credentials.

1.5 "Confidential Information" means: (i) with respect to Serverless, the Services, and any and all source code relating thereto and any other non-public information or material regarding Serverless's or any of its Affiliate's legal or business affairs, financing, organizations, properties, pricing, or data; (ii) with respect to Customer, the Customer Data and any non-public information or material regarding Customer's legal or business affairs, financing, employees, organizations, properties, or data; and (iii) with respect to each Party, the terms and conditions of this Agreement. Notwithstanding any of the foregoing, Confidential Information does not include information which: (a) is or becomes public knowledge without any action by, or involvement of, the Party to which the Confidential Information is disclosed (the "Receiving Party"); (b) is documented as being known to the Receiving Party prior to its disclosure by the other Party (the "Disclosing Party"); (c) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (d) is obtained by the Receiving Party without restrictions on use or disclosure from a third party.

1.6 "Customer Data" means any data that Customer or any Authorized Users provide to Serverless or submit through the SaaS Software.

1.7 "Data Subject" means an individual whose Personal Data is processed under this Agreement.

1.8 "Documentation" means the manuals, specifications, and other materials describing the functionality, features, and operating characteristics, and use of the Services, as provided or made available by Serverless to Customer, whether in a written or electronic form.

1.9 "Free User" means an organization that has earned \$2 million USD or less in its last fiscal year, or an individual not conducting work on behalf of an organization that has earned more than \$2 million USD in the same period. "Free User" does not include (i) an organization having a parent organization with over 75% ownership of it that has earned more than \$2M USD in the parent organization's last fiscal year; or (ii) any government, governmental subdivision, regulatory or administrative body, entity owned or controlled by the government, entity created by law or decree, entity funded by the government, or any department, agency, or instrumentality of a public international organization; or (iii) non-profits; or (iv) academic institutions, except when the Services are used directly by students for educational purposes. Free User status is determined at the time of use, purchase or renewal and must be reassessed by the Customer on a monthly basis, with the Customer responsible for honoring this classification. Serverless reserves the right to determine if an individual or organization is considered a Free User.

1.10 "Harmful Code" means computer code, programs, or programming devices that are intentionally designed to disrupt, modify, access, delete, damage,

deactivate, disable, harm, or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of the SaaS Software or On-Premise Software, or any other associated software, firmware, hardware, computer system, or network (including, without limitation, “Trojan horses,” “viruses,” “worms,” “time bombs,” “time locks,” “devices,” “traps,” “access codes,” or “drop dead” or “trap door” devices) or any other harmful, malicious, or hidden procedures, routines or mechanisms that would cause the SaaS Software or On-Premise Software to cease functioning or to damage or corrupt data, storage media, programs, equipment, or communications, or otherwise interfere with the operations of the SaaS Software or On-Premise Software.

1.11 “On-Premise Software” means the Serverless Framework Command Line Interface (CLI), and all other software owned by Serverless hosted by the Customer.

1.12 “Order Form” means an order form for the Services mutually executed by the Parties that references this Agreement and sets forth, among other things, the term of the Order Form, the applicable fees, and any special terms agreed upon by the Parties. By default, an Order Form is available within the SaaS Software user interface for the Customer's organization. However, an Order Form can also be a separate signed agreement between the Parties.

1.13 “Order Form Term” means the duration of time during which Customer is permitted to access and use the Services, as set forth in this Agreement or applicable Order Form.

1.14 “Personal Data” means any information relating to an identified or identifiable natural person as defined under Applicable Law.

1.15 “Processing” means any operation or set of operations performed on Personal Data, as defined under Applicable Law, including collection, recording, organization, structuring, storage, adaptation, alteration, retrieval, consultation, use, disclosure, dissemination, alignment, combination, restriction, erasure, or destruction.

1.16 “Professional User” means any organization that does not meet the definition of Free User.

1.17 “SaaS Software” means the Serverless Framework Dashboard and all other software offered as a service owned and hosted by Serverless.

1.18 “Services” means the SaaS Software, On-Premise Software, and any other services or products provided by Serverless as specified in this Agreement or an Order Form.

1.19 “Subscription Credits” mean a unit of value that can be applied to the On-Premise Software or SaaS Software, as set forth in Section 3.3 and Section 5 below.

1.20 "Sub-processor" means any third party engaged by Serverless to process Personal Data on behalf of Customer in connection with the Services.

2. ON-PREMISE SOFTWARE LICENSE

2.1 Acceptance: By utilizing the On-Premise Software, the Customer agrees to all provisions set forth in this Agreement. If you are accessing the Software on behalf of an organization, you confirm you have the authority to bind that organization to this Agreement, and references to "Customer" will apply to the organization.

2.2 License Grant: Subject to the terms of this Agreement, Serverless grants Customer a non-exclusive, non-transferable, non-sublicensable right to use, copy, and distribute the On-Premise Software solely for internal business purposes, and to create derivative works or modifications ("Modified Versions") of the On-Premise Software, provided such modifications are made for internal testing, evaluation, and integration purposes. Modified Versions may not be publicly distributed or used for commercial purposes without express written consent from Serverless.

- **Free Users:** Free Users are permitted to use the On-Premise Software without charge, subject to the restrictions, limitations and other terms and conditions of this Agreement.
- **Professional Users:** Professional Users are required to execute an Order Form to use the On-Premise Software. However, they are granted a 45-day trial period during which they may use the On-Premise Software without charge. After the trial period, continued use requires payment of applicable fees as outlined in the Order Form.

2.3 Limitations and Obligations: Customer will not use the On-Premise Software or any Modified Versions without either (i) a valid license key provided by Serverless (the "License Key"), or (ii) authorization through Serverless's SaaS Software. Customer agrees to adhere to any limitations specified by Serverless regarding the use of the License Key or SaaS authorization. All information provided to obtain a License Key or SaaS authorization must be accurate and complete at the time of submission.

License Keys and SaaS authorization credentials must be kept confidential and may only be shared with Customer's affiliates, contractors, or agents who agree to abide by the confidentiality obligations in this Agreement and use the License Key or SaaS credentials solely on Customer's behalf. Customer will be responsible for any actions taken by such parties as if they were performed by Customer.

Customer acknowledges that the On-Premise Software may be subject to export or import control laws and agrees to comply with all such applicable laws and regulations.

2.4 Telemetry and Compliance: Customer acknowledges that the On-Premise Software and any Modified Versions may collect and share telemetry data

with Serverless. Customer agrees not to operate the On-Premise Software without sharing telemetry data unless Serverless has provided a License Key that permits disabling telemetry, and Customer chooses to disable it.

The On-Premise Software may include technical measures designed to enforce the terms of this Agreement, such as License Key validation and telemetry requirements ("Protective Measures"). Customer agrees not to circumvent, disable, or modify these Protective Measures, and must include all such measures in any Modified Versions.

2.5 Third-Party Software: The On-Premise Software may include or be bundled with third-party software, each of which is subject to its own license terms. Customer must comply with all such third-party license terms, as specified in the accompanying documentation or within the software itself.

2.6 No Other Rights: Except for the specific licenses expressly granted in this Agreement, Serverless grants no other rights or licenses to Customer in relation to the On-Premise Software.

2.7 Termination: Customer's license to the On-Premise Software will automatically terminate if Customer breaches any term or condition of this Agreement. If the breach is curable and Customer remedies it within 15 days to Serverless's satisfaction, the license may be reinstated retroactively. However, intentional or repeated breaches will result in the permanent termination of the license.

3. SAAS SOFTWARE LICENSE.

3.1 SaaS Software Overview. The SaaS Software is an extension of the On-Premise Software and provides additional features and functionalities hosted by Serverless. The SaaS Software is made available through a Free Tier and a Paid Subscription plan, based on the usage and features accessed by the Customer, and as further described in Section 3.3 below.

The Free Users and Professional Users classifications, as defined elsewhere in this Agreement, do not apply to the SaaS Software. Instead, the SaaS Software is governed by the terms of the Free Tier and Paid Subscription plan described in Section 3.3 below.

3.2 License Grant. Subject to the terms and conditions of this Agreement, Serverless grants Customer a non-exclusive, non-sublicensable, non-transferable license, during the Subscription Term, to access and use the SaaS Software for internal business purposes. The SaaS Software may only be used in conjunction with the On-Premise Software and is not available as a standalone product. Customers who utilize the SaaS Software beyond the Free Tier will be charged according to the applicable Order Form.

3.3 Free Tier.

The “Free Tier” includes a certain amount of Subscription Credits, as listed on the pricing page at serverless.com/pricing which Customer can use at no cost. Usage beyond these included Subscription Credits or other limitations will require a paid subscription as set forth in an Order Form (the “Paid Subscription”).

Serverless reserves the right to modify the terms of the Free Tier at any time, including Subscription Credit limits, usage limits and feature availability.

3.4 Restrictions on Use. Customer agrees that neither it nor its Authorized Users will:

- Allow anyone other than Authorized Users to access or use the SaaS Software;
- Allow an Authorized User to share their Credentials (as defined below) with any third party;
- Reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code of the SaaS Software;
- Modify or adapt the SaaS Software or create derivative works based on it;
- Resell, distribute, or sublicense the SaaS Software for the benefit of any third party;
- Remove or modify any proprietary markings or restrictive legends on the SaaS Software;
- Use the SaaS Software in violation of any Applicable Law.

Serverless reserves the right to monitor compliance with these restrictions and to take appropriate action, including the suspension or termination of the Customer’s access to the SaaS Software.

3.5 Onboarding of Authorized Users. Authorized Users must register for access to the SaaS Software under the Customer’s account. During registration, each Authorized User will create a Sign-In Name, Password, and provide any additional required information (the “Credentials”). Customer is responsible for ensuring that Authorized Users maintain the confidentiality of their Credentials and for any use or misuse of the SaaS Software via those Credentials.

Serverless reserves the right to delete or change any Authorized User's Credentials at any time, for any reason, including but not limited to security concerns or violations of this Agreement.

3.6 Modifications. Serverless reserves the right to modify the Services by adding, deleting, or adjusting features and functionalities to improve the user experience or for other business purposes. Serverless may also discontinue certain features at any time during the Term, provided that such modifications do not materially reduce the overall functionality of the Services. Any such modifications to the Services may be subject to new terms and conditions, which will be communicated to the Customer.

3.7 Beta Features. From time to time, Serverless may invite Customers to try, at no charge, certain “beta” or “unstable” features or functionalities of the Services

that are not yet generally available for production use. These beta features are provided for evaluation purposes only, and Serverless makes no warranties related to their performance or availability. Serverless may discontinue beta features at any time, and will not be liable for any harm or damages resulting from their use.

4. PROHIBITED CONTENT AND ACTIONS.

4.1 Prohibited Content. Customer agrees that neither it nor its Authorized Users will display, process, or transmit any content through the Services that:

- Infringes or misappropriates any third-party rights, including intellectual property rights.
- Contains excessively profane, hate-related, or violent material.
- Advocates or promotes racial or ethnic intolerance, hacking, or cracking.
- Relates to gambling, illegal activities, drug paraphernalia, phishing, or malicious content.
- Violates any Applicable Law.

4.2 Prohibited Actions. Customer agrees that neither it nor its Authorized Users will:

- Generate or facilitate unsolicited commercial emails ("spam").
- Distribute viruses, worms, or any other harmful code.
- Conduct or promote pyramid schemes, phishing, or transmit malicious content.
- Impersonate others or misrepresent the source of any communication.
- Violate the legal rights of others or promote illegal activities.
- Interfere with other users' enjoyment of the Services.
- Perform significant load testing of the Services without Serverless's prior written consent.
- Exploit the Services for unauthorized commercial purposes.
- Reverse engineer any portion of the Services or remove any proprietary rights notices.
- Use the Services for peer-to-peer file sharing or cryptocurrency mining.
- Display any hate-related or violent content or modify Serverless's logos or branding.
- Use the Services as an open proxy or for unauthorized web scraping.

Customer is solely responsible for the content and applications it creates, transmits, or displays while using the Services, and for the consequences of its actions (including any loss or damage which Serverless may suffer) by doing so. Serverless reserves the right to remove any content that it reasonably believes violates the terms of this Agreement, including, without limitation, the terms of this Section 4.

5. FEES AND PAYMENT.

5.1 Fees. The Services are made available in accordance with the terms of this Agreement and an applicable Order Form. Order Forms are priced via Subscription Credits, which the Customer must purchase to cover metered usage of the On-Premise Software and the SaaS Software. A Subscription Credit for the On-Premise Software License can be redeemed for one Serverless Framework Service Instance as defined by a serverless.yml configuration file in a deployed state for more than 5 days in a current month within a specific "stage" and "region". A Subscription Credit for the SaaS Software License can be redeemed for a single Serverless Framework Instance with the same definition above that is shown within the Dashboard, or 50 thousand Traces, or 4 million Metrics. Additional fees may apply for additional services or features specified in an Order Form.

5.2 On-Premise Software Fees. Free Users are permitted to use the On-Premise Software without charge, subject to the restrictions, limitations and other terms and conditions of this Agreement. Professional Users are required to execute an Order Form to use the On-Premise Software. However, Professional Users are granted a 45-day trial period during which they may use the On-Premise Software without charge. After the trial period, continued use requires payment by Professional Users of the applicable fees as outlined in the Order Form. If a Free User no longer meets the requirements of a "Free User" as defined in this Agreement, they will be reclassified as a Professional User, and applicable fees will apply from the date of reclassification.

5.3 SaaS Software Fees. For the SaaS Software, the Free User and Professional User classifications do not apply. If a Customer has exceeded the Free Tier, they can increase their usage by purchasing a Paid Subscription via an Order Form and shall pay the applicable fees for the Paid Subscription.

5.4 Taxes. Fees and other charges described in the Order Form are in addition to and do not include any federal, provincial, or local sales, PST, GST, HST, VAT, foreign withholding, use, property, excise, service, or similar transaction taxes ("Taxes") now or hereafter levied, all of which will be for Customer's account. Any applicable direct pay permits or valid tax-exempt certificates must be provided to Serverless prior to the execution of this Agreement. If Serverless is required to collect and remit Taxes on Customer's behalf, Serverless will invoice Customer for such Taxes, and Customer will pay Serverless for such amounts in accordance with the payment terms set forth in the Order Form. For the avoidance of doubt, Serverless will be responsible for taxes related to Serverless's income, property, franchise, and employees.

5.5 Payment Terms. Serverless will invoice Customer within a reasonable time following the end of each calendar month during the Order Form Term, for the Services provided during such calendar month, or per the terms defined within an applicable Order Form. Invoices shall be sent electronically (via email and/or through the SaaS Software). All invoices shall be paid within thirty (30) days of the date of the invoice. If Customer has provided valid credit card information, then payments will be charged automatically via Customer's credit card on file or through a Partner or Reseller.

5.6 Late Payments. In the event that any invoiced amount remains unpaid by the payment due date, and Customer fails to cure such default within thirty (30) days of such due date, then, unless otherwise set forth in the Order Form, without limiting Serverless's rights and remedies, Serverless may: (i) charge interest at 1.5% per month (or the highest rate permitted by law, if lower) on the outstanding balance (ii) condition future subscription renewals and additional Order Forms on payment terms shorter than those specified in the applicable Order Form; (iii) suspend the Services until such payment is received; and/or (iv) terminate this Agreement in accordance with Section 4.2.

5.7 Non-Refundable. Unless otherwise expressly provided for in this Agreement or the applicable Order Form, (i) all fees are based on Services purchased and not on actual use; and (ii) all fees paid under this Agreement are non-refundable.

5.8 Purchases through Marketplace or Reseller. If Customer purchases the Services through a marketplace or reseller, Customer agrees to pay all fees according to the standard Services price list at the marketplace or reseller, including any charges for usage in excess of authorizations. The price list excludes customs, duties, taxes, and similar levies imposed by any authority. Customer will pay the applicable marketplace or reseller instead of paying Serverless directly. Customer's acceptance of the marketplace or reseller pricing and terms binds Customer to the obligations of this Agreement and any applicable Order Form. If purchasing through a marketplace or reseller, Customer is responsible for full payment of the fees, regardless of usage, payment, or billing terms between Customer and the marketplace or reseller.

6. SUPPORT

6.1 Standard Support. Standard support is available to all Customers. Support is provided on a commercially reasonable-effort basis, and while Serverless endeavors to respond to requests typically within a few hours and no longer than a few days, responses are not guaranteed. Issues and feature requests submitted by Customers within public repositories of the Serverless Framework are treated with priority. Support requests should be directed to support@serverless.com or through the in-app chat feature in the SaaS Software.

6.2 Premium Support. Premium Support is available for an additional fee, and must be specified in an applicable Order Form. For On-Premise Software, Premium Support is only applicable to On-Premise Software versions no older than 9 months.

Premium Support includes 24x5 business-level support, priority case routing, proactive monitoring, and increased Service Level Agreements, as defined in an applicable Order Form.

7. TERMINATION AND SUSPENSION.

7.1 Term. The term of this Agreement commences on the Effective Date, and will continue in effect thereafter until terminated in accordance with Section 7.2 below. Each Order Form Term will be set forth in the applicable Order Form.

7.2 Termination. Either Party may terminate this Agreement on written notice to the other Party at any time when there are no Order Forms then in effect. Customer may terminate any Order Form on written notice to Serverless at any time; however, if such termination occurs before the end of the Order Form Term, Customer will owe the remaining balance for the entire Order Form Term immediately, and no refunds shall be issued for pre-paid fees. Serverless may terminate this Agreement or any Order Form (i) upon Customer's breach of this Agreement or any Order Form if such breach is not cured within five (5) days after Serverless notifies Customer of such breach; (ii) immediately upon notice, if Customer becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors, or (iii) as otherwise expressly set forth herein. Serverless reserves the right to disable or suspend Customer's and its Users' access to the Serverless Services for any failure to pay due invoices. All payment inquiries should be directed to support@serverless.com.

7.3 Effect of Termination. Upon termination of this Agreement as set forth in Section 7.2, Serverless will stop providing the applicable Services, and Customer will immediately cease, and cause its Authorized Users to cease, all access to and use of the SaaS Software and On-Premise Software. The following provisions will survive termination of this Agreement: Section 1 ("Definitions"), Section 5 ("Fees and Payment") until Customer has paid all fees and applicable Taxes due, this Section 7.3 ("Effect of Termination"), Section 8 ("Confidentiality"), Section 10 ("Intellectual Property"), Section 11.3 ("Disclaimers"), Section 12 ("Limitation of Liability"), Section 13 ("Indemnification"), and Section 14 ("Miscellaneous").

8. CONFIDENTIALITY.

8.1 Confidentiality. At all times the Receiving Party will protect and preserve the Confidential Information of the Disclosing Party as confidential, using no less care than that with which it protects and preserves its own confidential and proprietary information (but in no event less than a reasonable degree of care), and will not use the Confidential Information for any purpose except to perform its obligations and exercise its rights under this Agreement or as otherwise expressly permitted in this Agreement. The Receiving Party may disclose, distribute, or disseminate the Disclosing Party's Confidential Information to any of its officers, directors, members, managers, partners, employees, contractors or agents (its "Representatives"), provided that the Receiving Party reasonably believes that its Representatives have a need to know and such

Representatives are bound by confidentiality obligations at least as restrictive as those contained herein. The Receiving Party will not disclose, distribute, or disseminate the Confidential Information to any third party, other than its Representatives, without the prior written consent of the Disclosing Party. The Receiving Party will at all times remain responsible for any violations of this Agreement by any of its Representatives. If the Receiving Party is legally compelled to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will provide the Disclosing Party prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section. If such protective order or other remedy is not obtained or the Disclosing Party waives compliance with the provisions of this Section, the Receiving Party may furnish only that portion of the Confidential Information which it is advised by its counsel is legally required to be disclosed, and will use its best efforts to insure that confidential treatment will be afforded such disclosed portion of the Confidential Information.

8.2 Specific Performance and Injunctive Relief. The Receiving Party acknowledges that in the event of a breach of Section 5.1 by the Receiving Party or its Representatives, substantial injury could result to the Disclosing Party and money damages will not be a sufficient remedy for such breach. Therefore, in the event that the Receiving Party or its Representatives engage in, or threaten to engage in any act which violates Section 5.1, the Disclosing Party will be entitled to seek, in addition to all other remedies which may be available to it under law, injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the terms of Section 5.1. The Disclosing Party will not be required to post a bond or other security in connection with the granting of any such relief.

9. DATA PROTECTION AND PRIVACY

9.1 Compliance with Data Protection Laws. Each Party shall comply with all Applicable Laws relating to data protection and privacy in connection with its Processing of Personal Data under this Agreement.

9.2 Roles of the Parties. With respect to the Processing of Personal Data under this Agreement, Customer is the Data Controller and Serverless is the Data Processor.

9.3 Processing of Personal Data.

(a) **Instructions.** Serverless shall Process Personal Data only on documented instructions from Customer, including with regard to transfers of Personal Data to a third country or an international organization, unless required to do otherwise by Applicable Law.

(b) **Purpose Limitation.** Serverless shall not Process Personal Data in a manner that is incompatible with the purposes outlined in this Agreement or as otherwise instructed by Customer.

9.4 Obligations of Serverless as Processor.

(a) **Confidentiality.** Serverless shall ensure that persons authorized to Process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(b) **Security Measures.** Serverless shall implement and maintain appropriate technical and organizational measures to protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. These measures include, but are not limited to:

- **Encryption:** Personal Data shall be encrypted in transit over public networks using industry-standard encryption protocols. Data stored with our cloud hosting providers shall use industry-standard encryption at rest.
- **Access Control:** Systems containing Personal Data shall be protected by user ID and passwords. Access to systems shall be granted on a need-to-know basis and promptly terminated when no longer required.
- **Logging and Monitoring:** All access to systems containing Personal Data shall be logged and monitored for suspicious activity.
- **Regular Security Assessments:** Serverless shall conduct regular assessments of its security measures to ensure their continued effectiveness.

(c) **Data Breach Notification.** Serverless shall notify Customer without undue delay, and in any event within 72 hours after becoming aware of a Personal Data breach affecting Customer's Personal Data. Such notification shall include:

- A description of the nature of the breach, including, where possible, the categories and approximate number of Data Subjects concerned.
- The name and contact details of the data protection officer or other contact point where more information can be obtained.
- A description of the likely consequences of the breach.
- A description of the measures taken or proposed to address the breach, including measures to mitigate its possible adverse effects.

9.5 Sub-processors.

(a) **Authorization.** Customer authorizes Serverless to engage Sub-processors to Process Personal Data, provided that Serverless shall ensure that any Sub-processors comply with the same data protection obligations as set out in this Agreement.

(b) **List of Sub-processors.** Serverless shall maintain an up-to-date list of Sub-processors, which includes their identities and countries of location, available upon Customer's request.

(c) **Changes to Sub-processors.** Serverless shall inform Customer of any intended changes concerning the addition or replacement of Sub-processors, giving Customer the opportunity to object to such changes.

9.6 Assistance to Customer.

(a) **Data Subject Rights.** Serverless shall assist Customer, at Customer's expense, by appropriate technical and organizational measures, insofar as possible, in fulfilling Customer's obligations to respond to requests from Data Subjects exercising their rights under Applicable Law.

(b) **Data Protection Impact Assessments.** Upon Customer's request, Serverless shall provide assistance to Customer in relation to data protection impact assessments and prior consultations with supervisory authorities, where required by Applicable Law.

9.7 International Data Transfers.

(a) **Acknowledgment.** Customer acknowledges and agrees that Personal Data may be transferred to and processed in the United States and other countries where Serverless or its Sub-processors operate.

(b) **Compliance with Transfer Mechanisms.** Serverless shall ensure that such transfers are made in compliance with Applicable Laws and that appropriate safeguards are in place, such as Standard Contractual Clauses or other approved transfer mechanisms.

9.8 Return and Deletion of Personal Data.

(a) **Obligation upon Termination.** Upon termination of this Agreement, Serverless shall, at Customer's choice, delete or return all Personal Data to Customer, unless retention is required by Applicable Law.

(b) **Retention Required by Law.** If retention is required by Applicable Law, Serverless shall notify Customer of such requirement.

10. INTELLECTUAL PROPERTY

10.1 Serverless Intellectual Property. As between the Parties, all right, title, and interest in and to the Services, the Usage Data (as defined below), and the Aggregate Data (as defined below), and all intellectual property rights therein, are and will remain the sole and exclusive property of Serverless.

10.2 Customer Intellectual Property. As between the Parties, all right, title, and interest in and to Customer Data, and all intellectual property rights therein, are and will remain the sole and exclusive property Customer. Customer hereby grants Serverless a non-exclusive, worldwide, fully paid-up, royalty-free right and license, with the right to grant sublicenses through multiple tiers to vendors providing services to Serverless (such as hosting providers), to reproduce, execute, use, store, archive, modify, perform, display, and distribute the Customer Data only for the purpose of

providing the Services hereunder. Upon expiration or termination of the Agreement, Serverless may retain an archival copy of the Customer Data kept in the normal course of business or for purposes of complying with Applicable Law.

10.3 Aggregated Data. Serverless monitors the performance and use of the Services by Customer and Authorized Users, and Serverless collects data in connection therewith, including, without limitation, date and time that Customer and Authorized Users access the SaaS Software or On-Premise Software, the portions or pages of the SaaS Software or On-Premise Software visited or used, the frequency and number of times such pages are accessed, and other usage data (the “Usage Data”). Serverless may combine this Usage Data with other data (including Customer Data), and use such combined data, or a subset thereof, in an aggregate and anonymous manner (the “Aggregate Data”). Aggregate Data does not identify Customer or any Authorized User. Customer hereby agrees that Serverless and its successors and assigns may collect, use, publish, disseminate, sell, transfer, and otherwise exploit such Aggregate Data in any way that Serverless (or its successors or assigns) sees fit. Serverless’s collection, processing, storage, transfer, and use of Customer Data, Usage Data and Aggregate Data shall at all times comply with Applicable Laws.

11. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS.

11.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that: (i) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; (ii) the execution, delivery, and performance of this Agreement, and the consummation of the transactions contemplated hereby, are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party; (iii) it has the full power, authority, and right to perform its obligations and grant the rights it grants hereunder; and (iv) its performance under this Agreement shall comply with all Applicable Laws.

11.2 Customer’s Representations and Warranties. In addition to the above, Customer represents and warrants to Serverless that it has the full right, power, and authority to collect, process, store, and transmit the Customer Data, and to grant the licenses and rights to use Customer Data as set forth herein. Without limiting the generality of the foregoing, Customer represents and warrants that it has obtained all necessary consents from the individuals to whom any Customer Data relates to collect, process, store, transmit, and sublicense the Customer Data, as required under Applicable Laws, including, without limitation applicable privacy and data protection laws, rules, and regulations.

11.3 Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 AND SECTION 8.2 ABOVE, THE SERVICES, ANY BETA FEATURES, THEIR COMPONENTS, ANY DOCUMENTATION, AND ANY OTHER MATERIALS PROVIDED BY SERVERLESS HEREUNDER ARE PROVIDED “AS IS” AND “AS AVAILABLE,” AND SERVERLESS DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES

WITH RESPECT TO THE SAME OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, AND SERVERLESS HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT SERVERLESS MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

12. LIMITATION OF LIABILITY.

12.1 EXCEPT IN CONNECTION WITH SUBSCRIBER'S FAILURE TO PAY ANY AMOUNTS DUE AND OWING HEREUNDER, OR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT: (I) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOST REVENUES OR PROFITS) ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER SUCH PARTY WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF; AND (II) EACH PARTY'S AGGREGATE LIABILITY FOR DIRECT DAMAGES UNDER THIS AGREEMENT WILL NOT EXCEED THE FEES PAID BY CUSTOMER HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

13. INDEMNIFICATION.

13.1 Indemnification by Customer. Customer will indemnify, defend, and hold Serverless and its Affiliates, and its and their respective Representatives harmless from and against any and all losses, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") incurred by any of the foregoing in connection with any action, claim, or proceeding brought by a third party (each, a "Claim") against any of the foregoing arising from (i) any Customer Data, when used by Serverless as permitted in this Agreement; (ii) any Applications; or (iii) the gross negligence or willful misconduct of Customer or any Authorized User.

13.2 Indemnification by Serverless. Serverless will indemnify, defend, and hold Customer and its Affiliates, and its and their respective Representatives harmless from and against any and Losses incurred by any of the foregoing in connection with any Claim arising from (i) Serverless's gross negligence or willful misconduct, or (ii) the infringement or misappropriation of any third-party intellectual property rights by the SaaS Software or the On-Premise Software. In the event that the SaaS Software or On-Premise Software is subject to a Claim under subsection (ii) above, or if Serverless reasonably determines that the SaaS Software or On-Premise Software is likely to be the subject of such a Claim, Serverless shall, at its own expense: (a) procure for Customer the right to continue to use the SaaS Software or On-Premise Software as

provided in this Agreement; (b) replace the infringing components of the SaaS Software or On-Premise Software with other components with equivalent functionality; or (c) suitably modify the SaaS Software or On-Premise Software so that it is non-infringing and functionally equivalent. If none of the foregoing options are available to Serverless on commercially reasonable terms, Serverless may terminate the applicable Order Form(s) or this Agreement without further liability to Customer, and Serverless will provide Customer with a pro-rata refund of any pre-paid but unearned fees. Notwithstanding the foregoing, Serverless is excused from its indemnity obligations to the extent that any Claim arises from or is based upon (1) use of the SaaS Software or On-Premise Software other than in accordance with this Agreement; (2) any Customer Data or Applications; (3) any modifications, alterations, or implementations of the SaaS Software or On-Premise Software made by or on behalf of Customer (other than by Serverless), including, without limitation, Modified Versions; (4) breach by Customer of the terms this Agreement; or (5) use of the SaaS Software or On-Premise Software in combination with unauthorized modules, apparatus, hardware, software, or services not supplied or specified in writing by Serverless. This Section 10.2 states Customer's sole and exclusive remedy, and Serverless's sole and exclusive liability, regarding any intellectual property infringement Claim.

13.3 Procedure. The indemnification obligations set forth in Section 10.1 and Section 10.2 above are subject to the indemnified Party: (i) promptly notifying the indemnifying Party of the Claim, provided, however, that failure to provide such notice will not relieve the indemnifying Party of its indemnity obligations hereunder unless it is materially prejudiced by such failure; (ii) providing the indemnifying Party, at its sole cost and expense, with reasonable cooperation in the defense of the Claim; and (iii) providing the indemnifying Party with sole control over the defense and negotiations for a settlement or compromise of the Claim, provided that the indemnifying Party may not make any admission of liability on behalf of the indemnified Party without the indemnified Party's approval.

14. MISCELLANEOUS.

14.1 Feedback. During the Term, Customer may elect to provide Serverless with feedback, comments, and suggestions with respect to the SaaS Software, or the Services ("Feedback"). Customer agrees that Serverless may, and hereby grants Serverless the right to, use, reproduce, disclose, and otherwise exploit any and all such Feedback without compensation or attribution to Customer or any third party.

14.2 Third-Party Content. The Services may include hyperlinks to other websites or content or resources provided by third parties. Serverless has no control over any such external sites or resources. Customer acknowledges and agrees that Serverless is not responsible for the availability of any such external sites or resources and does not endorse any advertising, products, or other materials on or available from such websites or resources. Customer acknowledges and agrees that Serverless is not liable for any loss or damage which may be incurred by Customer or its Authorized Users as a result of the availability of those external sites or resources or as a result of any reliance placed by Customer on the completeness, accuracy, or existence of any

advertising, products, or other materials on or available from such websites or resources.

14.3 Relationship of the Parties. The relationship of the Parties is one of independent contractors. This Agreement does not create, between Serverless and Customer, the relationship of principal and agent, employer and employee, joint venturers, co-partners, or any such other relationship, the existence of which is expressly denied. Neither Party has the authority to hold itself out as having the authority to speak for, represent, obligate or legally bind the other Party in any way.

14.4 Severability. If and to the extent that any court or tribunal of competent jurisdiction holds any provision of this Agreement to be unenforceable in a final non-appealable order, such unenforceable provision shall be stricken and the remainder of this Agreement shall not be affected thereby. The Parties shall in good faith attempt to replace any unenforceable provision of this Agreement with a provision that is enforceable and that comes as close as possible to expressing the intention of the original provision.

14.5 Waiver; Remedies. A waiver of rights under this Agreement will not be effective unless it is in writing and signed by an authorized representative of the Party that is waiving the rights. Except as expressly stated herein, all remedies specified in this Agreement shall be cumulative and in addition to any other rights or remedies available at law or in equity.

14.6 Headings. Headings are for convenience of reference only and shall in no way affect interpretation of the Agreement.

14.7 Assignment. Neither Party may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of the other Party; provided, however, that a Serverless may, upon written notice to Customer and without the consent of Customer, assign or otherwise transfer this Agreement: (i) to any of its Affiliates; or (ii) in connection with a change of control transaction (whether by merger, consolidation, sale of equity interests, sale of all or substantially all assets, or otherwise). Any assignment or other transfer in violation of this Section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

14.8 Notices. Any notices to be provided pursuant to this Agreement shall be made by either (i) registered mail, (ii) hand delivery or (iii) e-mail transmission, as long as, in the case of (iii), accompanied by regular mail. The notice shall be effective five (5) days after posting in regular mail, if accompanied by e-mail, or the day delivered, if by hand delivery or registered mail, as the case may be. Such notices are to be sent to the Parties' respective addresses set forth above, or to such other address as notified by a Party in accordance with this section. Alternatively, Serverless may send notices to Customer through the SaaS Software, which notices will be deemed received within 1 business day from the date sent by Serverless.

14.9 Governing Law. This Agreement, and any and all disputes directly or indirectly arising out of or relating to this Agreement, will be governed by and construed in accordance with the laws of the State of New California, without reference to the choice of law rules thereof. Each of the Parties hereby irrevocably consents and submits to the exclusive jurisdiction of the state and federal courts located in San Francisco, California for any such disputes, and waives any objections to the laying of venue in such courts.

14.10 Entire Agreement. This Agreement, together with the Order Forms, sets forth the entire agreement of the Parties as to its subject matter and supersedes all prior agreements, negotiations, representations, and promises between the Parties with respect to the subject matter hereof. Unless there is a signed Order Form, Serverless may modify this Agreement at any time by providing notice to the Customer, including by posting a revised version on the Serverless website or through the Services. By continuing to access or use the Services after the effective date, the Customer agrees to be bound by the modified Agreement.