

**LAVA.AI**  
**GENERAL TERMS OF SERVICE**

*Last Modified: December, 2024*

These General Terms of Service (these “**Terms**”) describe your rights and responsibilities when using the mobile and/or web-based software platform and related services, including any technology consulting or professional development services (the “**Services**”) offered by Lava.ai, Inc (or its successors or assigns) (“**LAVA**”, “**we**”, “**our**”, or “**us**”). If you are a Customer (defined below), these Terms govern your access and use of our Services. These Terms (or, if applicable, your written agreement with us) together with all documents referenced herein form the “**Agreement**” between Customer and LAVA.

***Please read these Terms carefully to ensure you understand each provision.***

**1. Definitions**

**1.1 “Affiliate” means, for a Party, any entity that controls, is controlled by, or is under common control with the Party, where “control” means the direct or indirect power to direct the affairs of an entity through voting power, economic or contractual interest, or otherwise.**

**1.2 “Agreement” means these Online General Terms of Service, the associated Order Form, any applicable Product & Services License and/or Statement of Work, and any applicable Data Processing Addendum.**

**1.3 “Authorized User” means individuals authorized by Customer to access the Products and Services (“Products and Services”)**

**1.4 “Claim” means a claim, action, complaint, or legal regulatory body, administrative or judicial proceeding filed against a Party.**

**1.5 “Cloud Services Platform” means LAVA’s hosted software system and Managed Services, as described in more detail on the Order Form, and including any deliverables prepared as part of LAVA’s performance of the Services.**

**1.6 “Confidential Information” means any non-public or proprietary information about a disclosing Party’s business related to technical, commercial, financial, employee, or planning information that is disclosed to the other Party in connection with their business relationship, and (A) is identified in writing as confidential at the time of disclosure; or (B) is by its nature confidential or the receiving Party knows, or should reasonably know, is confidential. Any LAVA Technology and the terms and conditions of this Agreement shall be deemed to be Confidential Information of LAVA, and all Customer Data shall be deemed Confidential Information of Customer. “Confidential Information” does not include information that: (1) has become public knowledge through no fault of the receiving Party; (2) was known to the receiving Party, free of any confidentiality obligations, prior to disclosure by the disclosing Party; (3) becomes known to the receiving Party, free of any confidentiality obligations, from a source other than the disclosing Party; (4) is independently developed by the receiving Party without the use of Confidential Information.**

**1.7 “Customer” means the entity identified in the Order Form as “Customer” or otherwise identified in the Order Form as the customer.**

**1.8 “Customer Data” means all data provided by Customer for use in connection with the Platform, that are imported into the Cloud Services by or on behalf of Customer, Customer’s Authorized Users, Customer’s internal data stores, third-party data providers, or is collected via the Distributed code, and is used in connection with Customer’s use of the Products and**

**Services.**

**1.9 “Customer Site” means any current or future website or mobile application that is owned and operated by Customer or is hosted or operated by a third-party on Customer’s behalf, and that contains a privacy policy or terms of use governing data collection practices that Customer controls.**

**1.10 “Data Privacy Claim” means a Claim arising from (a) a Party’s failure to comply with the applicable data security and privacy laws as clarified by the roles, responsibilities, and obligations set forth in the applicable Data Processing Addendum, or (b) Customer’s failure to comply with section 2.41 (e) (Third-Party Providers) or section 3.4, Customer Responsibilities with respect Customer’s terms of use and privacy policy.**

**1.11 “Data Processing Addendum”, “DPA” means the Data Processing Addendum found at <https://www.lava.ai/dpa>, incorporated by reference, except where explicitly agreed otherwise between the Parties.**

**1.12 “Distributed Code” means HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by LAVA for Customer to deploy and as required for use of the applicable Cloud Services.**

**1.13 “Documentation” means the applicable technical specification and usage documentation for the Products and Services as such materials are made generally available by LAVA employees or via the LAVA website.**

**1.14 “Indemnified Party” means (i) Customer when LAVA is the Indemnifying Party and (ii) LAVA when Customer is the Indemnifying Party.**

**1.15 “Indemnified Technology” means the Cloud Services Platform paid for by Customer.**

**1.16 “Indemnifying Party” means (i) LAVA with respect to Claims (a) arising from LAVA’s failure to comply with the applicable data security and privacy laws as clarified by the roles, responsibilities and obligations set forth in the applicable Data Processing Addendum; and (ii) Customer with respect to Claims arising from Customer’s failure to comply with (a) the applicable data security and privacy laws as clarified by the roles, responsibilities and obligations set forth in the applicable Data Processing Addendum, (b) section 2.41 (e) (Third-Party Providers) or section 3.4, Customer Responsibilities; or (c) Customer’s terms of use and privacy policy.**

**1.17 “Intellectual Property” means inventions, works of authorship, documents, diagrams, drawings, concepts, designs, algorithms, software, data, methodologies, specifications, ideas, know-how, processes, protocols and other technology and materials.**

**1.18 “Intellectual Property Rights” means all patent rights, copyrights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights, rights in know-how, design rights, and other proprietary or other rights in Intellectual Property, as may now exist or hereafter come into existence, and all applications therefor and registrations, renewals and extensions thereof, under the laws of any jurisdiction worldwide.**

**1.19 “LAVA Technology” means technology owned by LAVA or licensed to LAVA by a third-party (including the Products and Services, Reports, software tools, algorithms, software (in source and object forms), user interface designs, architecture, toolkits, plug-ins, objects and Documentation, network designs, processes, know-how, methodologies, trade secrets, and any related intellectual property rights throughout the world), and feedback made to LAVA that is incorporated into any of the foregoing (which are hereby irrevocably assigned to LAVA), as well as any of the modifications, or extensions of the above, whenever or wherever developed.**

**1.20 “License Term” means the earlier of the duration of the license for Products and Services as stated in the Order Form, or any shorter term arising from a termination or expiration of this Agreement.**

**1.21 “Managed Services” means the technology services hosted by or on behalf of LAVA and provided to Customer as a dedicated instance, as set out in the Order Form.**

**1.22 “Party” or “Parties” means LAVA, Customer, or both, as applicable.**

**1.23 “Personal Information” means information relating to identified or identifiable natural persons that may be included within Customer Data.**

**1.24 “Products and Services” means the Cloud Services Platform components or Professional Services, as set out in the Order Form, and covered by the Products and Services License found within the Order Form.**

**1.25 “Professional Services” means any consulting, training, implementation, or technical services provided by LAVA to Customer, as set out in the Order Form.**

**1.26 “Report” means any graphical or numerical display of Customer Data that contains LAVA’s proprietary design, look and feel, and is generated by the Cloud Services.**

**1.27 “Order Form” means the sales order form, products and services license, statement of work, or other written document for the Products and Services that is executed between LAVA and Customer.**

**1.28 “Sensitive Personal Data” means an individual’s financial information, sexual preferences, medical or health information protected under any health data protection laws, biometric data (for purposes of uniquely identifying an individual), personal information of children protected under any child protection laws (such as the personal information defined under the US Children’s Online Privacy Protection Act (“COPPA”)), and any additional types of information included within this term or any similar term (such as “sensitive personal information” or “special categories of personal information”), as used in applicable data protection or privacy laws.**

**1.29 “User” means an individual (either an employee or temporary worker of Customer) who may use or access the Products and Services on behalf of Customer.**

## **2. General Provisions**

## 2.1 Authorized Users

Authorized Users may provide content that consists of text, logos, images, information, documents, spreadsheets, rebates, coupons, discounts and any other content or promotional offers submitted, posted, or otherwise made available by Customer and its Authorized Users through the Services (“**Customer Materials**”) to be provided to or for Customer’s end-recipients, and Customer will have the sole right and responsibility for managing use of it. Customer will be solely responsible for all of the acts and omissions of its Authorized Users in relation to the Services and the Agreement.

Customer will (i) inform Authorized Users of all Customer policies and practices that are relevant to their use of the Services and of any settings that may impact the processing of Customer Data; and (ii) obtain all rights, permissions or consents from Authorized Users and other Customer personnel that are necessary to grant the rights and licenses in the Agreement and for the lawful use and transmission of Customer Data and the operation of the Services.

## 2.2 Product and Services

A subscription allows Customer and its Authorized Users to access the Product and Services. A subscription may be procured through an Order Form entered into between Customer and LAVA. Subscriptions commence when we make them available to Customer and continue for the term specified in the Order Form, as applicable (the “**Subscription Period**”). Additionally, for any Professional Services or customer development work to be performed by LAVA for Customer, the terms and conditions of any such services shall be covered separately in an SOW attached to the Order Form.

## 2.3 Feedback

Customer and its Authorized Users may choose to, or we may invite them to, submit comments or ideas about the Products and Services, including without limitation about how to improve the Services or our products (“**Feedback**”). By submitting any Feedback, Customer agrees that its disclosure is gratuitous, unsolicited and without restriction and will not place LAVA under any fiduciary or other obligation, and Customer hereby assigns to LAVA all right, title, and interest in and to the Feedback without any additional compensation by LAVA, whether to Customer, the Authorized User, or anyone else, and/or to disclose the Feedback on a non-confidential basis or otherwise to anyone. Customer further acknowledges that, by acceptance of the submission, we do not waive any rights to use similar or related ideas previously known to LAVA, or developed by our personnel, or obtained from sources other than Customer or its Authorized Users.

## 2.4 Services Usage and Restrictions

### 2.4.1 Our License to Customer

#### (a) Ownership of the Services, Documentation, and Company Data

We own and will continue to own our Product and Services and Documentation and the LAVA Technology, including all related intellectual property and other proprietary rights related thereto. Further, Customer acknowledges and agrees that we may collect data relating to Customer’s and its Authorized Users’ usage of the Services, including but not limited to log-in activity, log-in duration, Services component usage, data exports, etc. (“**Usage Data**”) and collect, analyze, and use data derived from Customer Data that has been aggregated and/or anonymized such that it does not identify Customer or any identifiable individual person (“**Derivative Data**” and, collectively with Usage Data, “**Company Data**”). All Company Data will be owned solely and exclusively by LAVA and, for purposes of clarity, you agree that we may use the Company Data in perpetuity for any purpose permitted by applicable law.

We may, from time to time, make available certain third-party products and services, including but not limited to open source software (“**Third-Party Products**”) for use in connection with the Services. Such Third-Party Products may be made available under separate or additional terms and conditions, including but not limited to open source licenses, which we will make available to you as necessary.

**(b) Licenses to the Services and Documentation**

During the Subscription Period, we grant the Customer a non-exclusive, non-transferable license to access and use, and to permit Authorized Users to access and use the Product and Services, in accordance with the Agreement, for the Customer’s own internal business purposes.

To the extent that we may make downloadable software components available, via app stores or other channels, as part of the Product and Services, during the Subscription Period, we grant to Customer a non-sublicensable, non-transferable, non-exclusive, limited license for Customer and its Authorized Users to use the object code version of these components, but solely as necessary to use the Services. Minor updates, bug fixes, and the like to such downloadable software components will be included under this license for the duration of the subscription.

From time to time we may make available product documentation for the Services (the **Documentation**) via a method of our choosing (e.g., via the Services). During the Subscription Period, we grant to Customer a non-sublicensable, non-transferable, non-exclusive, limited license for Customer and its Authorized Users to use the Documentation to support Customer’s and its Authorized Users’ use of the Services.

All rights and licenses granted herein are subject to you and your Authorized Users’ full compliance with all of the terms and conditions of the Agreement. All rights in the Services and Documentation not expressly granted herein are expressly reserved by Lava.

**(c) SDK**

Subject to the terms and conditions of this Agreement, during the Subscription Term, LAVA hereby grants to Customer a nonexclusive, limited, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicensable (except to contractors performing services for or on behalf of Customer) right to use any LAVA software development kit LAVA provides to Customer (each an “**SDK**”) for the sole purpose of integrating the SDK with Customer’s various data sources pursuant to the SOW.

**(d) Restrictions**

The foregoing rights shall be subject to each of the following restrictions: (1) Customer may exercise the foregoing rights solely for its internal business purposes; (2) Customer may not market, sell, license, sublicense, distribute, publish, publicly display or perform, rent, lease, loan, assign, or otherwise transfer to a third party (other than its own contractors performing work for Customer in accordance with clause (1) above) any Platform or SDKs (or any copy or part thereof) except as expressly set forth herein; (3) Customer may not decompile or otherwise reverse engineer the, Platform or SDKs; (4) Customer may not interfere with any proprietary notices provided on or with the Platform or SDKs; and (5) Customer may not make copies of the Platform or SDKs (or any part thereof) except as necessary to exercise the rights granted above.

**(e) Third-Party Providers.** Customer is responsible for complying with any applicable terms and conditions of any third-party data, products, services, and platforms used by Customer in conjunction with the Products and Services. Customer acknowledges that at Customer’s request, Adobe may send Customer Data to such third- party providers.

### **3.0 Customer Data**

**3.1 Rights & License.** By submitting Customer Data to LAVA, Customer hereby grants, and represents and warrants that it has all rights necessary to grant, all rights and licenses to the Customer Data required for LAVA to provide the Services. LAVA shall have no right to sell, resell, license, or assign or otherwise transfer (except in connection with an assignment of this Agreement) any Customer Data without Customer's prior written consent. Notwithstanding the foregoing, Customer agrees that LAVA may anonymize, aggregate, and otherwise commingle Customer Data with LAVA's own or third-party data for the purposes of operating, analyzing, improving, and/or marketing the Services and any related products and services in perpetuity, both during and after the term of this Agreement. If LAVA publishes, shares, or discloses any such data derived from Customer Data, LAVA will assure such data is aggregated and anonymized to reasonably avoid and prevent identification of Customer or any other individual.

**3.2 Personal Information and DPA.** To the extent LAVA processes any Personal Information, LAVA will process such Personal Information solely under the instruction of and on behalf of Customer. LAVA will process any such Personal Information in accordance with LAVA's data processing addendum (DPA), found here: <https://www.lava.ai/dpa>, which will be, and is hereby, incorporated by reference into this Agreement.

**3.3 Data Security Controls.** In conjunction with the DPA, during the term of the Agreement and at any time that LAVA provides services to Customer, and continuing until such time that all Customer Data is returned and/or securely destroyed, LAVA shall implement and maintain commercially reasonable administrative, physical and technical safeguards to protect Customer Data. LAVA shall implement such safeguards, including the manner in which information and data is collected, accessed, used, stored, processed, disposed of and disclosed, so that they comply in all material respects with applicable data protection and privacy laws, and the terms and conditions of this Agreement. LAVA shall notify Customer in writing as soon as practicable but no later than forty-eight (48) hours after LAVA is aware of any actual breach involving Customer data (hereinafter a "Data Breach"). LAVA shall investigate or reasonably cooperate with Customer in order for Customer to investigate, notify, respond or comply with applicable law, or regulation or as may otherwise be reasonably requested or required by Customer or by Customer's compliance committee. LAVA shall not provide any third party with information regarding any Data Breach without Customer's prior written consent. LAVA shall have a commercially reasonable security program, which shall include, at a minimum, reasonable and appropriate policies and procedures in compliance with industry standards and all applicable legal requirements. LAVA shall encrypt authentication credentials and Customer data while in transit. LAVA shall utilize and keep up to date anti-virus software, anti-malware software, firewalls, application updates, and security and software patches. LAVA shall utilize a system that allows for network intrusion detection. LAVA shall routinely perform vulnerability assessments, and shall promptly remediate any identified material issues.

### **3.4 Customer Responsibility**

(a) Customer will conspicuously display a privacy policy that discloses Customer's privacy practices, identifies the collection, use, and sharing of information gathered in connection with the Products and Services, including types of data collected, and offers an opportunity to opt out of (or opt-in if applicable law requires) the collection, use, and sharing of data gathered in connection with the Products and Services.

(b) Customer retains complete control over the installation and configuration of Distributed Code, and all Customer Sites and Customer Data. In connection with Customer's use of the Products and Services (including Customer Sites used with the Cloud Services and collection and use of all

Customer Data), Customer must comply with its privacy policy and all applicable laws and regulations. Customer will take reasonable steps to identify and promptly remove any Customer Data that violates unlawful content, in accordance with applicable laws and regulations. If there is Unlawful Content, LAVA may suspend services and remove the unlawful content.

(c) **Sensitive Personal Data.** Unless specifically agreed to by LAVA in writing, Customer agrees not to collect, process, or store any Sensitive Personal Data using the Cloud Services or otherwise make Sensitive Personal Data available to LAVA or LAVA's third-party providers.

#### **4. Payment.**

In consideration of LAVA's performance of the Services, Customer will pay to LAVA the fees described on the Order Form (the "**Fees**") in accordance with the schedule described thereon. Overdue payments will be subject to interest at the rate of one and one-half percent (1.5%) per month, or the highest interest rate permitted by applicable law, whichever is less. The Fees are nonrefundable except as expressly set forth herein and unless required by applicable law.

**4.1 Consequences of Late Payment.** Should appropriate payment not be received within 30 days of the due date, LAVA reserves the right to suspend usage and access of the LAVA system until sufficient payment is received. Notification of pending suspension of services will be provided by email 5 days prior to the suspension date. The system will be reactivated in full within 24 hours of receipt of sufficient payment. Programming will resume as scheduled upon system reactivation. LAVA is not liable for any delays, incurred expenses or loss of revenues during such time due to the suspension of any or all campaigns.

**4.2 Disputes.** If Customer believes in good faith that LAVA has incorrectly billed Customer, Customer must contact LAVA in writing within 30 days of the invoice date, specifying the error. Unless Customer has correctly notified LAVA of the dispute, Customer must pay the undisputed portions of LAVA's invoice as required by this Agreement.

**4.3 Taxes.** Customer will, in addition to the other amounts payable under this Agreement, pay any and all applicable customs, duties, sales, use, value added or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement (excluding taxes based on LAVA's net income).

#### **5.0 Term and Termination**

**5.1 Subscription Term.** Unless earlier terminated as provided in this Section 8, this Agreement will be effective as of the Effective Date in the Order Form, and will continue thereafter for the Subscription Term described above on the Order Form. The parties may agree to extend or renew the Subscription Term by a mutual written agreement signed by both parties.

**5.2 Termination for Cause.** Either party may terminate this Agreement upon written notice in the event the other party: (a) fails to perform or observe any material term or condition of this Agreement, or materially breaches this Agreement; (b) terminates or suspends its business; (c) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute; (d) becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or (e) has wound up or liquidated, voluntarily or otherwise; and in each case, such breach or default has not been cured within thirty (30) days after written notice of such breach or default to the other party.

**5.3 Effect of Termination.** The rights and obligations of LAVA and Customer in Sections 2.4.1 (a), (b), (c), (d), 4, 7, 8, and 9 will survive any termination of this Agreement. Upon the disclosing party's request or within thirty (30) days after termination of this Agreement, the receiving party will return to the disclosing party or, on the disclosing party's request, destroy all of the disclosing party's Confidential Information and materials containing any Confidential Information of the disclosing party in the receiving party's possession, including all copies thereof except as required by law, any applicable rule of any regulatory or government body or organization or customer document retention policy (in which case the party retaining such copies will remain bound by its confidentiality obligations hereunder with respect to such copies for so long as such copies remain in its possession or control), and deliver to the disclosing party a certification, in writing signed by an officer of the receiving party, that such Confidential Information, and all copies thereof have been returned or destroyed, and their use discontinued. Nothing contained herein will limit any other remedies that the disclosing party may have for the default of the receiving party under this Agreement nor relieve the receiving party of any of its obligations incurred prior to such termination.

## **6. Additional Terms for Particular Types of Customers**

### **6.1 U.S. Government Customers**

If Customer is a U.S. government or U.S. public entity (or use of the Services is for the U.S. Government), the terms in this section apply.

(a) **Use By or For the U.S. Government.** The Services are a "commercial item," as defined at 48 C.F.R. §2.101, and constitute "commercial computer software" and "commercial computer software documentation," as used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202 to §227.7204. This commercial computer software and related Documentation is provided to end users for use, by and on behalf of the U.S. Government, with only those rights as are granted to all other end users pursuant to the terms and conditions herein.

(b) **Indemnification, Auto-Renewal, Venue, Legal Fees.** The sections in the contract titled "Governing Law," "Auto-renewal," "Venue; Waiver of Jury Trial; Fees," and "Customer's Indemnification of Us" are hereby waived to the extent they are inconsistent with federal law.

(c) **No Endorsement.** We agree that Customer's seals, trademarks, logos, service marks, trade names, and the fact that Customer has a presence on one of our sites and uses our Services, will not be used by Lava in such a manner as to state or imply that our products or services are endorsed, sponsored or recommended by Customer or by any other element of the U.S. Government, or are considered by Customer or the U.S. Government to be superior to any other products or services. Except for pages whose design and content is under the control of the Customer, or for links to or promotion of such pages, we agree not to display any Customer or government seals, trademarks, logos, service marks, and trade names on our homepage or elsewhere on one of our hosted sites unless permission to do so has been granted by Customer or by other relevant federal government authority. We may list Customer's name in a publicly available customer list on a site or elsewhere so long as the name is not displayed in a more prominent fashion than that of any other third party name.

### **6.2 State or Local Government Customers**

If Customer is a state or local government, the terms in this section apply, but only to the extent the Services are being used in an Authorized User's official capacity as a state or local government official. The sections in the contract titled "Governing Law," "Venue; Waiver of Jury Trial; Fees," and



“Customer’s Indemnification of Us” will not apply to Customer only to the extent Customer’s jurisdiction’s laws prohibit Customer from accepting the requirements in those sections.

## **7. Representations; Disclaimer of Warranties**

LAVA represents and warrants that the Platform and Services will materially conform to the applicable specifications or documentation described in the Order Form and/or in any SOWs. Customer must notify LAVA of a claim under this warranty within 45 days of the date on which the condition giving rise to the claim first appeared. To the extent permitted by law, Customer’s sole and exclusive remedy and LAVA’s sole liability under or in connection with this warranty will be a replacement of the Distributed Code (as applicable), or if replacement is not commercially reasonable, a termination of the applicable Services and release from any subsequent payment obligations.

Customer represents and warrants that it has validly entered into the Agreement and has the legal power to do so. Customer further represents and warrants that it is responsible for the conduct of its Authorized Users and their compliance with the terms of the Agreement. EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, THE SERVICES AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY ADDITIONAL WARRANTIES, AND WE EXPRESSLY DISCLAIM ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF LAVA. CUSTOMER ACKNOWLEDGES THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; OR THAT OUR SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR MOBILE DEVICE OR LOSS OF DATA THAT RESULTS FROM YOUR USE OF OUR SERVICE OR ANY DOWNLOAD OF CONTENT THROUGH THE USE OF OUR SERVICE.

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN TYPES OF WARRANTIES, SO THE ABOVE DISCLAIMERS MAY NOT APPLY TO YOU. THE AGREEMENT GRANTS SPECIFIC LEGAL RIGHTS, AND CUSTOMER AND AUTHORIZED USERS MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. THE FOREGOING DISCLAIMERS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **8. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR AFFILIATES, AGENTS, SUPPLIERS OR LICENSORS (OR OUR OR THEIR EMPLOYEES, CONTRACTORS, AGENTS, OFFICERS OR DIRECTORS) AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE TWELVE (12) MONTHS PRECEDING THE LAST EVENT GIVING RISE TO LIABILITY. THE FOREGOING WILL NOT LIMIT CUSTOMER’S PAYMENT OBLIGATIONS UNDER THE “PAYMENT TERMS” SECTION ABOVE.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR OUR AFFILIATES, AGENTS, SUPPLIERS OR LICENSORS (OR OUR OR THEIR EMPLOYEES, CONTRACTORS, AGENTS, OFFICERS OR DIRECTORS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, ARISING OUT OF OR RELATING TO THE USE OF, OR INABILITY TO USE, OUR SERVICE. UNDER NO CIRCUMSTANCES WILL WE BE RESPONSIBLE FOR ANY DAMAGE,

LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF OUR SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

Customer is responsible for all login credentials, including usernames and passwords, for administrator accounts as well the accounts of your Authorized Users. We will not be responsible for any damages, losses or liability to Customer, Authorized Users, or anyone else, if such information is not kept confidential by Customer or its Authorized Users, or if such information is correctly provided by an unauthorized third party logging into and accessing the Services.

The limitations under this "Limitation of Liability" section apply with respect to all legal theories, whether in contract, tort or otherwise, and to the extent permitted by law. The provisions of this "Limitation of Liability" section allocate the risks under the Agreement between the parties, and the parties have relied on these limitations in determining whether to enter into the Agreement and the pricing for the Services.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES, SUCH AS INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU. THE AGREEMENT GRANTS SPECIFIC LEGAL RIGHTS, AND CUSTOMER AND AUTHORIZED USERS MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION. THE FOREGOING DISCLAIMERS AND LIMITATIONS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

## **9. Indemnification**

**Intellectual Property Indemnification.** LAVA will defend or settle, at its own expense, any third-party action against Customer or its officers, directors, employees, agents, successors, or assigns to the extent based on a claim that any component of the Platform or Service infringes such third-party's U.S. copyrights or misappropriates such third-party's U.S. trade secrets, and will pay such damages or costs as are finally awarded against Customer attributable to such claim. Should any component of the Platform or Service become, or in LAVA's opinion be likely to become, the subject of such an infringement claim, LAVA may, at its option, (a) procure for Customer the right to use the Platform or Service at no cost to Customer; (b) replace or modify, in whole or in part, the Platform or Service component to make it non-infringing; or (c) accept return of the Platform or Service component (or credentials therefor, as appropriate) and refund the fees paid for such Platform or Service component, less an amount determined by multiplying such fees by a fraction, the numerator of which is the number of months elapsed since delivery of the component and the denominator of which is the total number of months in the then-current term. LAVA assumes no liability hereunder for damages proximately caused by: (i) any method or process intentionally undertaken by Customer in which the Platform may be used in a manner contrary to LAVA's directions; (ii) LAVA's compliance with Customer's specifications (if such damages would not have arisen but for such compliance); or (iii) the combination, operation, or use of the Platform with non-LAVA programs or data (if such damages would not have arisen but for such combination, operation, or use); and Customer will indemnify, defend, and hold harmless LAVA and its officers, directors, employees, agents, successors, and assigns against any damages, losses, and expenses (including reasonable attorneys' fees) arising from any third-party action to the extent based on a claim that the Platform infringes or otherwise violates such third-party's intellectual property or other proprietary rights due to any of (i) through (iii) (inclusive). THIS SECTION 10 SETS FORTH LAVA'S ENTIRE LIABILITY AND OBLIGATION, AND CUSTOMER'S SOLE REMEDY, FOR ANY CLAIM OF INFRINGEMENT OR VIOLATION OF ANY THIRD-PARTY'S INTELLECTUAL PROPERTY RIGHTS HEREUNDER.

**Customer Indemnifications.** Customer agrees to defend, indemnify and hold harmless LAVA and our

affiliates, licensors, and suppliers, and our and their respective employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) Customer's and any Authorized User's use of and access to the Services, including any Customer Content or other content transmitted or received by Customer or any Authorized User or any platform, integration, application or other services that is combined with or that the Services are embedded on or in by Customer; (ii) your violation of any term of the Agreement, including without limitation any breach of Customer's representations and warranties above; (iii) Customer's or any Authorized User's violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (iv) Customer's or any Authorized User's violation of any applicable law, rule or regulation; (v) Customer Content or any content that is submitted via Customer's or any Authorized User's account, including without limitation misleading, false, or inaccurate information; (vi) Customer's or any Authorized User's gross negligence, fraud, or willful misconduct; or (vii) any other party's access and use of the Services with Customer's or any Authorized User's unique username, password or other appropriate security code (provided that such access and use was not our fault).

**10. Confidentiality.** The receiving party will treat Confidential Information with reasonable care and disclose only on a need-to-know basis or as permitted under this Agreement. The receiving party will only use Confidential Information for the purposes of performing its obligations or as permitted under this Agreement. However, a receiving party may disclose Confidential Information: (a) if approved by the other party in writing; (b) if required by law or regulation; (c) in the event of dispute between the parties, as necessary to establish the rights of either party; or (d) as necessary to provide the Products and Services licensed by Customer. In the case of (b) and (c), the receiving party will provide reasonable advance notice to the other party and provide reasonable assistance to limit the scope of the disclosure, unless prohibited by law or regulation.

For the purpose of this section 7 (Confidentiality) and the definition of "Confidential Information," a reference to a "party" means a Party and its Affiliates. The receiving party is responsible for ensuring that its representatives and Affiliates fully comply with the obligations of the receiving party under this section.

## **11. Export Controls.**

You understand and acknowledge that our Service may be subject to export control laws and regulations. You agree to comply with all applicable export and re-export control and trade and economic sanctions laws, including the Export Administration Regulations maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC), and the International Traffic in Arms Regulations maintained by the U.S. State Department. Neither you, nor any person to which you make our Service available or that is acting on your behalf, or, if you are an organization, any of your subsidiaries, or any of your or their directors, officers or employees, or any person owning 50% or more of your equity securities or other equivalent voting interests, is (a) a person on the List of Specially Designated Nationals and Blocked Persons or any other list of sanctioned persons administered by OFAC or any other governmental entity, or (b) a national or resident of, or a segment of the government of, any country or territory for which the United States maintains trade and economic sanctions or embargoes.

## **12. Miscellaneous**

### **12.1 Publicity**

Lava may identify you as a Customer in our promotional materials, including on Lava's website, and

may reach out to you for additional marketing or promotional opportunities. Customer may request that Lava cease the use of Customer's name, mark and logo by contacting Lava at [support@LAVA.com](mailto:support@LAVA.com).

## **12.2 Third Party Products, Links, and Information**

The Services may integrate with, or contain, third party products, services, materials, or information, or links thereto that are not owned or controlled by Lava ("**Third Party Materials**"). We do not endorse or assume any responsibility for any such Third Party Materials. If Customer or any Authorized User accesses any third party website or service, it does so at its own risk, and Customer acknowledges and agrees that the Agreement and our Privacy Policy at <https://www.lava.ai/privacypolicy> do not apply to Customer or any Authorized User's use of such sites or services. Customer expressly relieves Lava from any and all liability arising from its or its Authorized User's use of any Third Party Materials. Additionally, your dealings with or participation in promotions of advertisers found on our Service, including payment and delivery of goods, and any other terms (such as warranties) are solely between you and such advertisers. You agree that we shall not be responsible for any loss or damage of any sort relating to your dealings with such advertisers.

ALL OR SOME PORTIONS OF THE SERVICE, INCLUDING THE DOWNLOADABLE SOFTWARE, MAY PROVIDE LINKS TO OR INCORPORATE THIRD PARTY SOFTWARE SUBJECT TO ADDITIONAL AND/OR SEPARATE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO OPEN-SOURCE SOFTWARE LICENSES AND OTHER THIRD-PARTY SOFTWARE LICENSE TERMS AND CONDITIONS ("**THIRD-PARTY COMPONENTS**"). TO THE EXTENT ANY THIRD-PARTY COMPONENT MAY BE OFFERED UNDER AN OPEN-SOURCE SOFTWARE LICENSE, WE WILL MAKE THAT LICENSE AVAILABLE TO YOU. IF THERE IS A CONFLICT BETWEEN THE TERMS AND CONDITIONS APPLICABLE TO ANY SUCH THIRD-PARTY COMPONENTS AND THIS AGREEMENT, THE THIRD-PARTY COMPONENTS TERMS AND CONDITIONS SHALL CONTROL. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, ALL THIRD-PARTY COMPONENTS ARE MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTY OF ANY KIND.

## **12.3 Force Majeure**

Neither Lava nor Customer will be liable by reason of any failure or delay in the performance of its obligations on account of events beyond the reasonable control of a party, which may include denial-of-service attacks, a failure by a third party hosting provider or utility provider, strikes, shortages, riots, fires, acts of God, war, terrorism, and governmental action.

## **12.4 Relationship of the Parties; No Third-Party Beneficiaries**

The parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third party beneficiaries to the Agreement; a person who is not a party to the Agreement may not enforce any of its terms under any applicable law.

## **12.5 Email Communications**

Except as otherwise set forth herein, all notices under the Agreement will be by email, although we may instead choose to provide notice to Customer through the Services. Notices to Lava must be sent to [support@LAVA.com](mailto:support@LAVA.com). Notices will be deemed to have been duly given (i) the business day after it is sent, in the case of notices through email; and (ii) the same day, in the case of notices through the Services.

## **12.6 Modifications**

We may change these Terms and the other components of the Agreement in accordance with this Section. If we make a material change to the Agreement, we will provide Customer with reasonable notice prior to the change taking effect, either by emailing the email address associated with Customer's account or by messaging Customer through the Services. Customer can review the most current version of the Terms at any time by visiting this page and by visiting the most current versions of the other pages that are referenced in the Agreement. The materially revised Agreement will become effective on the date set forth in our notice, and all other changes will become effective upon posting of the change. If Customer (or any Authorized User) accesses or uses the Services after the effective date, that use will constitute Customer's acceptance of any revised terms and conditions.

## **12.7 Waivers**

No failure or delay by either party in exercising any right under the Agreement will constitute a waiver of that right. No waiver under the Agreement will be effective unless made in writing and signed by an authorized representative of the party being deemed to have granted the waiver.

## **12.8 Severability**

The Agreement will be enforced to the fullest extent permitted under applicable law. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement will remain in effect.

## **12.9 Assignment**

Neither party may assign or delegate any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign the Agreement in its entirety, without consent of Customer, to a corporate affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Any purported assignment in violation of this section is void. Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

## **12.10 Order of Precedence.**

To the extent of any conflict or inconsistency, the following order of precedence will apply: the Order Form (including any Products and Services License Terms, and if applicable, the SOW), the Data Processing Addendum, followed by these General Terms.

## **12.11 Entire Agreement.**

This Agreement contains the entire understanding of the Parties relating to the subject matter and supersedes all earlier agreements, understandings, proposals, discussions, negotiations, representations and warranties, both written and oral, regarding the subject matter.

## **12.12 Governing Law**

The Agreement, and any disputes arising out of or related hereto, will be governed exclusively by the internal laws of the State of California, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The parties acknowledge that the Agreement evidences a transaction involving interstate commerce. Notwithstanding the preceding sentences with respect to the substantive law of the Agreement, any arbitration conducted hereunder shall be governed by the Federal Arbitration Act (9 U.S.C. §§ 1-16).

### **12.13 Venue; Waiver of Jury Trial; Fees**

The state and federal courts located in San Francisco County, California will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the Agreement or its formation, interpretation or enforcement, including any appeal of an arbitration award or for trial court proceedings if the arbitration provision below is found to be unenforceable. Each party hereby consents and submits to the exclusive jurisdiction of such courts. ***Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement.*** In any action or proceeding to enforce rights under the Agreement, the prevailing party will be entitled to recover its reasonable costs and attorney's fees.

### **12.14 Arbitration**

***Read this section carefully because it requires the parties to arbitrate their disputes and limits the manner in which you may seek relief from Lava.*** For any dispute with Lava, you agree to first contact Lava at [support@LAVA.com](mailto:support@LAVA.com) and attempt to resolve the dispute informally. If we have not been able to resolve a dispute within sixty (60) days of your first contact, we each agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief as provided below) arising out of or in connection with or relating to the Agreement, or the breach or alleged breach thereof by binding arbitration by JAMS, under the Optional Expedited Arbitration Procedures then in effect for JAMS, except as provided herein. The arbitration will be conducted in San Francisco County, California, unless we agree otherwise. If you are using the Service for commercial purposes, each party will be responsible for paying any JAMS filing, administrative and arbitrator fees in accordance with JAMS rules, and the award rendered by the arbitrator shall include costs of arbitration, reasonable attorneys' fees and reasonable costs for expert and other witnesses. If you are an individual using the Services for non-commercial purposes: (i) JAMS may require you to pay a fee for the initiation of your case, unless you apply for and successfully obtain a fee waiver from JAMS; (ii) the award rendered by the arbitrator may include your costs of arbitration, your reasonable attorney's fees, and your reasonable costs for expert and other witnesses; and (iii) you may sue in a small claims court of competent jurisdiction without first engaging in arbitration, but this does not absolve you of your commitment to engage in the informal dispute resolution process. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. Nothing in this Section shall be deemed as preventing Lava from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of our data security, intellectual property rights or other proprietary rights.

NOTHING IN THIS SECTION WILL BE DEEMED AS: PREVENTING LAVA FROM SEEKING INJUNCTIVE OR OTHER EQUITABLE RELIEF FROM THE COURTS AS NECESSARY TO PREVENT THE ACTUAL OR THREATENED INFRINGEMENT, MISAPPROPRIATION, OR VIOLATION OF OUR DATA, INTELLECTUAL PROPERTY RIGHTS OR OTHER PROPRIETARY RIGHTS.

### **12.15 Survival**

Any section of the Agreement that, by its terms or its nature, should survive the termination or expiration of the Agreement shall so survive, including but not limited to Sections 1.4, 2.2, 2.3, 3, 4.5, and 5 through 11.

### **12.16 Contacting Us**

Please also feel free to contact Lava if you have any questions about the Terms or any other part of the Agreement. You may contact Lava through your client success lead, at [support@LAVA.com](mailto:support@LAVA.com) generally, or at our mailing address: 1517 Northpoint, #482, San Francisco, CA 94123.