

CR8 ONLINE TERMS

PLEASE READ THESE TERMS CAREFULLY BEFORE USING THE SERVICE.

BY CHECKING THE "I ACCEPT" BOX, CLICKING "ACCEPT," OR OTHERWISE ACCESSING OR USING THE SERVICE, YOU ("CUSTOMER") AGREE TO BE BOUND BY THIS [MASTER SERVICES AGREEMENT](#) ("AGREEMENT") WITH CR8, INC. ("CR8"). THIS AGREEMENT BECOMES EFFECTIVE ON THE DATE YOU FIRST ACCEPT THESE TERMS OR USE THE SERVICE ("EFFECTIVE DATE"). IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MAY NOT ACCESS OR USE THE SERVICE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, AND "CUSTOMER" WILL REFER TO SUCH ENTITY.

THIS AGREEMENT CONSISTS OF THE TERMS AND CONDITIONS SET FORTH BELOW, ANY ATTACHMENTS OR EXHIBITS IDENTIFIED BELOW, AND ANY ORDER FORMS THAT REFERENCE THIS AGREEMENT. IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS CONTAINED HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

- a. **"Affiliate(s)"** means any entity that now or hereafter Controls, is Controlled by, or is under common Control with, a specified entity. Such entity shall be deemed to be an Affiliate only so long as such Control exists.
- b. **"Authorized User"** means one individual (no concurrent usage with other users is permitted), whether for themselves or on behalf of their entity, that are authorized by Customer to use the Service.
- c. **"Beta Features"** means any features, functionality or services which CR8 may make available to Customer to try at no additional cost, and which is designated as beta, trial, non-production or another similar designation.
- d. **"Confidential Information"** means any information of a confidential or proprietary nature provided by a party to the other party, which includes any information that should be reasonably understood as confidential under the circumstances, including the terms of this Agreement and each Order Form, and: (i) with respect to CR8 the Usage Data; and (ii) with respect to Customer, the Customer Data. Confidential Information does not include information that: (A) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed; (B) is documented as being known to the Receiving Party prior to its disclosure by the Disclosing Party; (C) is independently developed by Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (D) is obtained by Receiving Party without restrictions on use or disclosure from a third party.
- e. **"Control"** means: (i) direct or indirect ownership or control (now or hereafter) of more than fifty percent (50%) of the outstanding shares or securities (representing the right to vote for the election of directors or other managing authority); or (ii) in the case of a company or other entity which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, direct or indirect ownership or control of more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity.
- f. **"Customer Data"** means all data provided by, or on behalf of, Customer in connection with or by means of the Service, including any Personal Data as that term is defined under the DPA or as otherwise set under applicable laws. Notwithstanding anything to the contrary in this Agreement, Customer Data does not include Usage Data.
- g. **"Data Processing Agreement"** or **"DPA"** means CR8's [Data Processing Agreement](#).
- h. **"Documentation"** means the manuals, specifications, and other materials describing the functionality, features, and operating characteristics, and use of the Service, as may be provided or made available by CR8 to Customer, whether in written or electronic form, including all modifications, updates, upgrades thereto and derivative works thereof.
- i. **"Malicious Code"** means any harmful, malicious, or hidden code, programs, procedures, routines, or mechanisms that would: (i) cause the Service to cease functioning; (ii) damage or corrupt any CR8 owned or controlled data, programs, equipment, systems, servers or communications; or (iii) interfere with the operations of the Service (e.g., Trojan horses, viruses, worms, time bombs, time locks, devices, traps, access codes, or drop dead or trap door devices).
- j. **"Order Form"** means: (i) each order document executed in writing between the parties for the purchase of a Page 1 of 8 subscription to the Service; and/or (ii) the purchase of a subscription to the Service by means of the Service dashboard.
- k. **"Prohibited Content"** means content that: (i) is illegal under any applicable law; (ii) violates any third-party rights including, but not limited to, privacy, intellectual property rights and trade secrets; (iii) contains false, misleading, or

deceptive statements, depictions, or practices; (iv) contains Malicious Code; or (v) is otherwise objectionable to CR8 in its sole, but reasonable, discretion.

- l. **"Service"** means the Amplify open source generative AI platform developed by Vanderbilt University.
- m. **"Subscription Period"** is the length of the subscription specified in the Order Form.
- n. **"Support"** means the support terms for the Service set forth in Section 3(b) below.
- o. **"Taxes"** means any and all customs, duties, sales, use, value added, withholding, or other taxes, federal, state or otherwise, however designated, which are levied or imposed because of the transactions contemplated by this Agreement.
- p. **"Token(s)"** means unit of text processing used by large language models to analyze and generate content. Tokens represent discrete pieces of text that may include whole words, parts of words, punctuation, or spaces. As a general approximation, one token equals approximately four (4) characters of English text, though the actual number of tokens for any given text may vary depending on the specific model, language, and content complexity. Token consumption occurs for both input text (prompts and uploaded content) and output text (generated responses) processed through the Services.
- q. **"Usage Data"** means data collected by CR8 pertaining to Customer's interaction with the Service which includes, but is not limited to, performance of the Service, metrics and other measures of Customer's use of the Service and its operation. Usage Data are not Customer Data and do not consist of Customer Personal Data (as defined in the DPA).

2. Grant of License to the Service; Restrictions.

- a. *Grant of License to the Service.* Subject to the terms of this Agreement and the applicable Order Form, CR8 grants Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as otherwise provided herein) license during the Subscription Period, solely for Customer's internal business operations up to the number of Tokens specified on the Order Form, to use the Service solely in accordance with the Documentation, this Agreement and the applicable Order Form. Token usage is measured and reported by the applicable third-party LLM provider. Customer acknowledges that token counts are determined by the third-party LLM providers and may vary between different models and providers. Customer may permit its Affiliates' employees and authorized contractors to serve as Authorized Users, subject to the terms of this Agreement and the applicable Order Forms, and provided any use of the Service by such individuals will be for the sole benefit of Customer.
- b. *Service Restrictions.* Customer will not (and will not authorize or permit any third party to): (i) allow anyone other than Authorized Users to access and use the Service; (ii) share any CR8 issued access credentials with any third party; (iii) reverse engineer, decompile, disassemble, or otherwise attempt to discern the source code or interface protocols of the Service; (iv) modify, adapt, or translate the Service or remove or modify any proprietary markings or restrictive legends placed on or within the Service; (v) make copies, store, or archive, any portion of the Service without the prior written permission of CR8; (vi) use the Service in violation of any applicable law; (vii) introduce, any Malicious Code into the Service; or (viii) exploit the Service in any unauthorized manner including by circumventing any process CR8 has put in place to safeguard the Service or by using flood pings, denial-of-service attacks, or by deploying spiders, web-bots, screen-scrappers, or web crawlers, that may damage or adversely affect server or network capacity or Service infrastructure (together, (i) through (viii) the **"Restrictions"**). The foregoing Restrictions will be inapplicable to the extent prohibited by applicable law.
- c. *Geographic Restrictions and Non-US Personal Data Prohibition.* Customer agrees that: (i) the Service may only be accessed and used from within the United States and its territories; (ii) Customer will not access or use the Service from any location outside the United States; (iii) Customer will not submit, upload, or otherwise provide to the Service any personally identifiable information, personal data, or other information subject to non-US privacy laws relating to any individual who is not a United States person or resident; and (iv) Customer will implement appropriate technical and administrative measures to ensure compliance with these geographic and data restrictions. Customer acknowledges that the Service is not designed or intended for use outside the United States and that CR8 makes no representations regarding compliance with non-US laws or regulations. Customer will be solely responsible for any violations of this subsection and will indemnify CR8 in accordance with Section 12 for any claims arising from such violations.

- d. *Age Restriction.* Customer agrees that each Authorized User will be at least eighteen (18) years of age to use the Service. By accessing or using the Service, Customer represents and warrants that each Authorized User is at least eighteen (18) years of age. CR8 reserves the right to request proof of age at any time, and CR8 may immediately suspend or terminate the Customer account if CR8 determines that an Authorized User is under eighteen (18) years of age.

- e. *Trial Period*. Subject to the terms of the Agreement and Order Form, including payment of all Trial Period fees (if any), commencing on the Effective Date and for the period set forth on the Order Form, Customer will have the right to use the Service for evaluation purposes ("**Trial Period**"). Prior to the end of the Trial Period, Customer may terminate this Agreement without further obligation upon written notice to CR8 ("**Trial Termination Notice**"). If CR8 does not receive a Trial Termination Notice prior to the end of the Trial Period, the Subscription Period commences upon the expiration of the Trial Period, and CR8 will invoice Customer in accordance with Section 6.
- f. *Beta Features*. Beta Features made available by CR8 are provided to Customer for testing purposes only. CR8 makes no commitments to provide Beta Features in any future versions of the Service. Customer is not obligated to use Beta Features. CR8 may immediately and without notice remove Beta Features for any reason without liability to Customer. Notwithstanding anything to the contrary in this Agreement, CR8 does not provide Support for Beta Features. For clarity, all Beta Features are provided "AS IS" without warranty of any kind.
- g. *Amplify Service*. Customer acknowledges that the Service is licensed by CR8 from Vanderbilt University and made available pursuant to the terms of the open-source MIT License. The MIT License permits commercial use, modification, distribution, and sublicensing but requires that the original copyright notice and permission notice be included in all copies or substantial portions of the software associated with the Service. This acknowledgment serves as notice of the MIT License application to the open-source components of the Service. Customer further acknowledges that the Service may incorporate or interoperate with large language models (LLMs) provided by third parties, which are governed solely by those third parties' respective terms and licenses. CR8 does not develop, own, or control the LLMs used in conjunction with the Service and disclaims all responsibility and liability for the functionality, content, accuracy, or performance of any such LLMs. Use of LLM functionality may produce outputs that are incorrect, misleading, offensive, or otherwise undesirable ('hallucinations'), and Customer assumes all risks associated with reliance on any such outputs. CR8 does not monitor or validate the outputs of LLMs and disclaims any warranty or liability arising therefrom. CR8 hosts the Service on Amazon Web Services (AWS) infrastructure and is not responsible for any outages or performance issues caused by AWS or third-party LLM providers.
- h. *Third-Party Applications*. The Service may integrate with third party products, services, tools or applications that are not owned or controlled by CR8 ("**Third-Party Application(s)**"). CR8 does not license or endorse any Third-Party Applications. This Agreement does not apply to such Third-Party Applications including Customer's use thereof. CR8 HAS NO LIABILITY OR OBLIGATION OF ANY KIND RELATED TO ANY THIRD-PARTY APPLICATIONS USED BY CUSTOMER.

3. CR8 Obligations.

- a. *Service*. CR8 will provide the Service in conformance with this Agreement, the Order Form(s) and applicable Documentation. CR8 will be responsible for hosting the Service as necessary to deliver the subscription to the Service specified in the Order Form.
- b. *Support*. Unless stated otherwise in the applicable Order Form, if Customer experiences any errors, bugs, or other issues in its use of the Service, CR8 will use commercially reasonable efforts to respond as soon as possible ("**Support**") in order to resolve the issue or provide a suitable workaround. The fee for Standard Support is included in the cost of the subscription set forth on the Order Form.
- c. *Service Changes*. Customer acknowledges that the Service is an on-line, subscription-based service, and that in order to provide improved experience, CR8 may make changes to the Service provided CR8 will not materially decrease the overall functionality of the Service.

4. Customer Obligations.

- a. *Internet Connections*. Customer will be responsible for obtaining Internet connections necessary for Customer to access the Service.
- b. *Export*. The Service and Documentation are subject to export control laws and regulations. Customer may not access or use the Service or Documentation or any underlying information or technology except in full compliance with all applicable United States export control laws. Neither the Service or Documentation nor any underlying information or technology may be accessed or used: (i) by any individual or entity in any country to which the United States has embargoed goods; or (ii) by anyone on the U.S. Treasury Department's list of specially designated

- c. *External-Facing Services*. Customer may use the Services to develop applications or services for use by external users ("External-Facing Services"), provided that: (i) Customer does not misrepresent or embellish the relationship between CR8 and Customer (including by expressing or implying that CR8 supports, sponsors, endorses, or contributes to Customer or its External-Facing Services); (ii) Customer's External-Facing Services comply with these

Terms; (iii) Customer is solely responsible for providing all support and technical assistance for its External-Facing Services; and (iv) Customer defends, indemnifies, and holds CR8 harmless against any claim related to Customer's External-Facing Services.

5. Data License & Protections.

a. *Data License.* In connection with its use of the Service, Customer (including its Authorized Users) may transfer Customer Data to CR8. CR8 uses Customer Data to provide the Service and to create and develop Usage Data. Customer grants CR8 a limited license during each Subscription Period to use Customer Data as provided for in this Section 5(a) and in accordance with this Agreement and the DPA.

b. *Usage Data.* While Customer uses the Service, CR8 will generate Usage Data. CR8 will use Usage Data to improve and develop the Service.

c. *DPA.* CR8 will process all Customer Data for the purposes set forth in this Agreement and in accordance with the DPA.

d. *Security & Privacy.* CR8 maintains industry-standard physical, technical, and administrative safeguards in order to protect Customer Data in accordance with CR8's "**Security Protocols**" set forth in Annex II to the DPA.

6. Fees.

a. *Fees.* Customer will pay all fees set forth in the applicable Order Form. Unless otherwise provided for in an Order Form: (i) all amounts are due and payable to CR8 within thirty (30) days from the date of the Order Form; and (ii) all payments are non-cancellable and non-refundable.

b. *Taxes.* Customer will pay all applicable Taxes excluding only those based on CR8's net income. If Customer is compelled to make a deduction or set-off for any such Taxes, Customer will pay CR8 such additional amounts as necessary to ensure receipt by CR8 of the full amount CR8 would have received but for the deduction. Any applicable direct pay permits or valid Tax-exempt certificates must be provided to CR8 prior to the execution of this Agreement. If CR8 is required to collect and remit Taxes on Customer's behalf, CR8 will invoice Customer for such Taxes, and Customer will pay CR8 for such Taxes in accordance with Section 6(a).

c. *Late Payments.* In the event that CR8 does not receive any invoiced amount by the due date as set forth in Section 6(a), without limiting its rights and remedies, CR8 may: (i) charge interest on the outstanding balance (at a rate not to exceed the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by law); (ii) condition future Service renewals and additional Order Forms on payment terms shorter than those specified in Section 6(a); and/or (iii) suspend access to and terminate for failure to pay (if applicable) the Service pursuant to Section 7(b).

7. Term & Termination.

a. *Term.* The "**Term**" of the Agreement commences on the Effective Date and will continue in effect thereafter so long as there is an active Subscription Period under an Order Form, or until terminated earlier in accordance with Section 7(b). For clarity, each Subscription Period will be set forth in the applicable Order Form.

b. *Suspension Rights & Termination.* CR8 may suspend Customer's access to, or use of, the Service if: (i) any amount due to CR8 under any invoice is past due and such amount is not paid within 10 days of written notice from CR8; and (ii) any use of the Service by Customer or Authorized Users that in CR8's reasonable judgment threatens the security, integrity or availability of the Service. CR8 will: (x) provide Customer with written notice and an opportunity to remedy such violation or threat prior to any such suspension; (y) where practicable limit the suspension based on the circumstances leading to the suspension; and (z) remove the suspension as quickly as reasonably practicable after the circumstances leading to the suspension have been resolved.

c. *Termination.* Either party may terminate this Agreement and/or any Order Form: (i) upon thirty (30) days' notice to the other party if the other party materially breaches this Agreement and such breach remains uncured at the expiration of such thirty (30) day period; or (ii) immediately, if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, liquidation, or assignment for the benefit of creditors.

d. *Effect of Termination.* If Customer terminates this Agreement in accordance with Section 7(c)(i), CR8 will

reimburse Page 4 of 8

Customer on a pro-rata basis for any pre-paid fees allocable to the remaining Subscription Period as of the date of such termination. Upon termination or expiration of this Agreement for any reason, CR8 will, upon written request and within 30 days of such request, delete all Customer Data processed on behalf of Customer during the

Subscription Period as specified in the DPA.

- e. *Survival*. The following provisions will survive any expiration or termination of the Agreement: Sections 8 (Confidentiality), 10 (Ownership), 12 (Indemnification), 13 (Limitation on Liability), and 16 (Miscellaneous, as applicable).

8. Confidentiality.

- a. Each party that receives ("**Receiving Party**") Confidential Information of the other party ("**Disclosing Party**") will protect and preserve such Confidential Information 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 or disclose the Confidential Information for any purpose except to perform its obligations and exercise its rights under this Agreement and applicable Order Forms.
- b. Receiving Party may disclose, distribute, or disseminate Disclosing Party's Confidential Information to any of its officers, directors, members, managers, partners, employees, including to the same with respect to its Affiliates, contractors, or agents (its "**Representatives**"), provided 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 at all times remain responsible for any violations of this Agreement by any of its Representatives.
- c. A Receiving Party will not violate its confidentiality obligations if it discloses Disclosing Party's Confidential Information if required by applicable laws, including by court subpoena or similar instrument so long as the Receiving Party provides the Disclosing Party with written notice of the required disclosure so as to allow the Disclosing Party to contest or seek to limit the disclosure or obtain a protective order. If no protective order or other remedy is obtained, the Receiving Party will furnish only that portion of the Confidential Information that is legally required, and agrees to exercise reasonable efforts to ensure that confidential treatment will be accorded to the Confidential Information so disclosed.
- d. CR8 shall not disclose Customer Data to third-party LLM providers for the purpose of training, improving, or developing their LLMs. Customer acknowledges that when using the Services, content inputs provided to the Services may be processed by third-party LLMs in order to generate outputs, but CR8 will take commercially reasonable measures to ensure that Customer Data is not retained by such third parties for training purposes.
- e. Each party acknowledges that any violation or threatened violation of this Section 8 may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.

9. Artificial Intelligence.

- a. *Risks and Limitations*. Artificial intelligence and machine learning technologies use emerging technology that may provide output that is inaccurate, is offensive, or is not designed or intended to meet Customer's needs, expectations, or legal, regulatory, or compliance obligations. Customer acknowledges that with respect to its use of the AI functionality in the Service, Customer is solely responsible for (i) developing its own internal policies on the appropriate use of these technologies and training users on these policies, (ii) providing transparency and notices and obtaining all necessary consents required by applicable laws, and (iii) implementing sufficient human oversight for the use of the AI features of the Service. Due to the nature of artificial intelligence and machine learning technology, output may not be unique, and the Service may generate the same or similar output for other customers. CR8 does not guarantee the generation of output by any AI functionality in the Service. By using the Service, Customer acknowledges and agrees that CR8 is not responsible for (a) any inaccuracies or errors in the output, (b) any biases, lack of fairness, or limitations of the underlying algorithms or data, or (c) any output that the Customer or its users may find unsafe, harmful or offensive.
- b. *No Professional Advice*. Customer acknowledges that outputs generated by the Service do not constitute legal, financial, medical, or professional advice, and should not be relied upon as such. Customer should consult with qualified professionals for advice in these areas.
- c. *Fair Use of Content*. Customer is responsible for ensuring that its use of the Service, including any content generated through the Service, complies with applicable copyright and intellectual property laws, including fair use principles. CR8 does not guarantee that content generated by the Services will not infringe third-party intellectual property rights.
- e. *Usage Monitoring*. Newco reserves the right to monitor usage of the Service to ensure compliance with this Page 5 of 8

Agreement and to prevent abuse, fraud, or other harmful activities. Such monitoring may include automated systems that detect patterns suggestive of misuse or violations of this Agreement.

10. Ownership.

- a. *CR8 Property*. As between the parties, CR8 and its licensors retains all right, title, and interest in and to the Service, Documentation, Usage Data and Feedback. Except for the limited license granted to Customer in Sections 2(a), CR8 does not by means of this Agreement or otherwise transfer any other rights to Customer.
- b. *Customer Property*. As between the parties, Customer owns and retains all right, title, and interest in and to the Customer Data. Except for the licenses granted to CR8 in Section 5(a), Customer does not by means of this Agreement or otherwise transfer any other rights to CR8.
- c. *Feedback*. Customer may provide comments, suggestions and recommendations to CR8 with respect to the Service (including, without limitation, comments, suggestions and recommendations with respect to modifications, enhancements, improvements and other changes to each of the foregoing) (collectively, "**Feedback**"). CR8 may freely use and exploit any such Feedback without any obligation to Customer, unless otherwise agreed upon by the parties in writing. Customer assigns to CR8 any proprietary right that Customer may have in or to the Feedback.

11. Representations & Warranties; Disclaimer.

- a. *Mutual Representations and Warranties*. Each party represents and warrants it has validly entered into this Agreement and has the legal power to do so.
- b. *Customer Representations and Warranties*. Customer represents and warrants it: (i) is entitled to transfer, or enable the transfer of, all Customer Data to CR8; (ii) has all rights necessary to grant CR8 the licenses set forth in this Agreement; and (iii) will not transmit any Prohibited Content to CR8 by means of the Service or as required for CR8's provision of Support hereunder.
- c. *Disclaimer*. WITH THE EXCEPTION OF THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 11, THE SERVICE AND BETA FEATURES ARE PROVIDED "AS IS" TO THE FULLEST EXTENT PERMITTED BY LAW. CR8 AND ITS LICENSORS EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSES, AND NON-INFRINGEMENT. CR8 DOES NOT WARRANT THAT THE SERVICE OR BETA FEATURES: (I) ARE ERROR-FREE; (II) WILL PERFORM UNINTERRUPTED; OR (III) WILL MEET CUSTOMER'S REQUIREMENTS.
- d. *Third Party LLM Disclaimer*. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES USE THIRD-PARTY LLM PROVIDERS, INCLUDING BUT NOT LIMITED TO OPENAI, ANTHROPIC, MISTRAL, AND OTHERS. CR8 DOES NOT CONTROL THE OPERATION, AVAILABILITY, CONTENT, OR OUTPUTS OF THESE THIRD-PARTY LLMS. ACCORDINGLY, CR8 EXPRESSLY DISCLAIMS ALL WARRANTIES RELATED TO THE PERFORMANCE, ACCURACY, RELIABILITY, APPROPRIATENESS, OR QUALITY OF THE OUTPUTS FROM THESE THIRD-PARTY LLMS. CUSTOMER USES SUCH THIRD-PARTY LLMS AT ITS OWN RISK.

12. Indemnification.

- a. *By Customer*. Customer will defend CR8, and its Affiliates, including each of the foregoing's officers, directors, employees and agents (collectively, "**CR8 Indemnified Parties**"), from any third-party claim, demand, dispute, suit or proceeding, and Customer will indemnify the CR8 Indemnified Parties from and against any related losses, liabilities, damages, costs or expenses (including, without limitation, attorneys' fees), finally awarded against the CR8 Indemnified Parties related to: (i) Customer or an Authorized User violating a Restriction; (ii) Customer's breach of Section 11(b) (Customer Representations & Warranties); and (iii) any allegation by a governmental body that use of Customer Data, as permitted by CR8 under this Agreement or at Customer's request or direction, has violated any applicable law.
- b. *Indemnification Process*. The indemnified parties will: (i) give the indemnifying party prompt written notice of any claim, action or demand for which indemnity is claimed; (ii) give the indemnifying party sole control over the defense and settlement of the claim, provided that the indemnifying party will not settle any claim that involves the payment of money or acknowledgement of wrongdoing on the part of the indemnified parties without indemnified parties' prior written approval such approval not to be unreasonably withheld, conditioned or delayed; and (iii) provide the indemnifying party with reasonable cooperation, at the indemnified parties' expense, in connection with the defense and settlement of the claim.

13. Limitation on Liability.

- a. NEITHER PARTY, NOR ITS AFFILIATES, NOR THE OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, OR REPRESENTATIVES OF ANY OF THEM, WILL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT,

SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, THAT MAY ARISE OUT OF THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD AND WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, SERVICES LIABILITY OR OTHERWISE.

- b. EXCEPT WITH RESPECT TO EXCLUDED CLAIMS (BUT AS FURTHER LIMITED BELOW) AND UNCAPPED CLAIMS, EACH AS DEFINED BELOW, IN NO EVENT WILL THE COLLECTIVE LIABILITY OF EITHER PARTY, OR THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS AND REPRESENTATIVES, TO THE OTHER PARTY FOR ANY AND ALL DAMAGES, INJURIES, AND LOSSES ARISING FROM ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING OUT OF, BASED ON, RESULTING FROM, OR IN ANY WAY RELATED TO THIS AGREEMENT, EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER FOR USE OF THE SERVICE DURING THE PERIOD TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES WHICH WILL BE THE CLAIMANT'S SOLE AND EXCLUSIVE REMEDY.

- c. "**Excluded Claims**" means any claim and/or liability associated with any breach by CR8 of Sections 5(c) (DPA) and Section 5(d) (Security & Privacy), including for clarity with respect to any claim of liability associated with the DPA and Security Protocols. CR8's total, cumulative liability for all Excluded Claims will not exceed the greater of [(i) \$500,000 or (ii) three (3) times the total amount of fees paid by Customer for use of the Service under this Agreement].
- d. "**Uncapped Claims**" means any claim or liability associated with: (i) either party's breach of Section 8 (Confidentiality) but not relating to any liability associated with CR8's privacy and/or security obligations with respect to Customer Data which remains subject to the Excluded Claims cap; (ii) Customer's indemnification obligations under Section 12; or (iii) any liability of a party which cannot be limited under applicable law, including gross negligence, recklessness, intentional misconduct, or violation of the other party's intellectual property rights.

14. Insurance. CR8 will maintain in full force and effect during the Term:

- a. Commercial general liability insurance on an occurrence basis for bodily injury, death, property damage, and personal injury, with coverage limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage;
- b. Worker's compensation insurance as required by applicable law; and
- c. Technology Errors & Omissions and Cyber-risk on an occurrence or claims-made form, for limits of not less than \$1,000,000 annual aggregate covering liabilities for financial loss resulting or arising from acts, errors or omissions in the rendering of the Service, or from data damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, virus transmission, denial of service, and violation of privacy from network security failures in connection with the Service.

Insurance carriers will be rated A-VII or better by A.M. Best Provider. CR8's coverage will be considered primary without right of contribution of Customer's insurance policies. In no event will the foregoing coverage limits affect or limit in any manner CR8's contractual liability for indemnification or any other liability of CR8 under this Agreement.]

15. Force Majeure. Except for Customer's payment obligations hereunder, neither CR8 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 (each, a "**Force Majeure Event**"). For clarification, events caused by a party's own action are not Force Majeure Events. If a Force Majeure Event prevents CR8 from providing the Service for at least thirty (30) consecutive days, either of the parties may immediately terminate this Agreement and any Order Forms, by providing written notice to the other.

16. Miscellaneous. This Agreement is the entire agreement between the parties and supersedes all prior agreements and understandings concerning the subject matter hereof and may not be amended or modified except by a writing signed by both parties. The parties are independent contractors, and this Agreement will not establish any relationship of partnership, joint venture, or agency between the parties. Failure to exercise any right under this Agreement will not constitute a waiver. There are no third-party beneficiaries to this Agreement. This Agreement is governed by the laws of Tennessee without reference to conflicts of law rules. For any dispute relating to this Agreement, the parties consent to personal jurisdiction and the exclusive venue of the courts in [Davidson County, Tennessee]. Any notice provided by one

party to the other under this Agreement will be in writing and sent by overnight courier or certified mail (receipt requested) to the address above. If any provision of this Agreement is found unenforceable, this Agreement will be construed as if it had not been included. Neither party may assign this Agreement without the prior, written consent of

the other party, except that either party may assign this Agreement without such consent in connection with an acquisition of the assigning party or a sale of all or substantially all of its assets. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Facsimile or other electronic copies of such signed copies will be deemed to be binding originals. To the extent there is an inconsistency between the terms of the Agreement, an Order Form and the DPA, such documents and their terms will be controlled in the following order of precedence: (i) Order Form; (ii) Agreement; and (iii) DPA.