

# Termes et Conditions

Last Updated: March 3, 2016

PLEASE READ THESE SERVICE TERMS AND CONDITIONS (THE 'AGREEMENT') IN THEIR ENTIRETY BEFORE USING OR RECEIVING ANY SERVICES (AS DEFINED BELOW) FROM EUREKA24. (THE 'COMPANY'). For purposes of this Agreement, 'you' and 'your' means each individual end-user of the Company's Services.

By registering for, using or receiving any of the Company's Services, you:

- represent that you are 18 years of age or older;
- represent that you have the legal capacity and authority to bind yourself and/or the person or entity for whom you are entering into this Agreement;
- represent that you read and understand English and have read and understand this Agreement;
- represent, warrant and covenant that the information and data that you have provided or will provide to the Company is or will be correct and complete in all respects, and that you have the right to provide such information and data to the Company;
- acknowledge that the Company has and will rely upon the information and data that you provide and that any incorrect or incomplete information that you provide to the Company may result in the Company withholding, suspending or terminating the Services and/or terminating this Agreement; and
- agree to be bound by this Agreement, as it may be updated by the Company from time to time in its sole discretion.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR CANNOT MAKE ANY OF THE FOREGOING REPRESENTATIONS, YOU ARE NOT PERMITTED TO USE OR RECEIVE ANY SERVICES FROM THE COMPANY.

This Agreement sets forth the terms and conditions upon which the Company agrees to provide the Services to you and the terms and conditions upon which you agree to use or receive the Services. You acknowledge and agree that (a) this Agreement (including, without limitation, any of the fees set forth in this Agreement) may be amended by the Company from time to time in its sole discretion with or without notice to you by amending the then current version of this Agreement, and (b) you will be bound by any such amendments immediately upon posting. You should therefore visit this page from time to time to read the current version of this Agreement.

You acknowledge that portions of the Services may be subject to third party licenses, which may further affect your rights in the Services.

## 1. RIGHT TO ACCESS AND MODIFY YOUR COMPUTER SYSTEMS AND PERIPHERALS

You hereby (a) give the Company, through one or more of its employees, agents or affiliates or through any third party service provider, the right to remotely access your computer systems, computers, software, network devices, servers, phones, tablets, mobile devices,

peripherals and/or any other hardware, systems or devices (collectively 'Computer Systems and Devices') covered by the Services; (b) grant to the Company, through one or more of its employees, agents or affiliates or through any third party service provider, necessary and reasonable access to your Computer Systems and Devices covered by the Services on your premises; (c) give the Company, through one or more of its employees, agents or affiliates or through any third party service provider, the right to open, view, modify, edit, delete, or otherwise manipulate your computer software, applications, data, and data storage media including, without limitation, the computer operating system, word processing, spreadsheets, databases, workflow, graphics, audio, video, system drivers and libraries, and any other type of software or data that may be contained on your Computer Systems and Devices covered by the Services; and (d) give the Company, through one or more of its employees, agents or affiliates or through any third party service provider, the right to download and/or install software or other products on your Computer Systems and Devices covered by the Services, including without limitation, memory chips, processor chips, cooling fans, batteries, hard drives, tape drives, storage devices, modem and communication devices, audio and video cards, network interface cards, hubs, routers, switches, printers, scanners, cables, and any other hardware which the Company may elect to install.

## 2. SERVICES DEFINED

For purposes of this Agreement, the term 'Services' means this website and any services that you may receive from the Company from time to time, including, without limitation, those Services identified on documentation (including, without limitation, documentation provided via email) provided by the Company from time to time in connection with such purchase and/or as set forth in greater detail on the Company's website at <http://www.eureka24.fr/what-we-do/>. You hereby acknowledge and agree that the Services provided to you by the Company will only cover the users and Computer Systems and Devices specifically registered with or otherwise authorized by the Company for use in connection with the Services and that the Company may discontinue any of the Services from time to time in its sole discretion.

## 3. YOUR RESPONSIBILITIES

**3.1 Certain Obligations.** In addition to your other obligations under this Agreement, you:

- agree to promptly notify the Company whenever your personal or billing information changes;
- are solely responsible for all acts, omissions and use under, and charges incurred with, all of your accounts with the Company (including any secondary accounts or sub-accounts registered to one or more of your primary accounts), including, without limitation, all acts, omissions and use by persons other than you, with or without your permission;
- acknowledge that you may be required to install certain software on your Computer Systems and Devices covered by the Services to assist the Company in providing the Services, that you may install and use the software in executable form only, and that the Company has the right to terminate this Agreement and the Services if you (i) do not install all of the required software on your Computer Systems and Devices covered by the Services (as applicable and as directed by the Company) or (ii) alter, modify or disable any of the required software or its settings or configurations;
- shall not resell the Services, use them for high volume purposes, use them as a virtual support center, as determined solely by Company, or engage in similar activities;

- shall only use the Services for the users and Computer Systems and Devices specifically registered with or otherwise authorized by the Company for use in connection with the Services;
- acknowledge that, depending on the type of Services purchased, Services provided for each additional user and/or Computer System and Device may incur separate and additional fees as identified on documentation (including, without limitation, documentation provided via email) provided by the Company from time to time and/or set forth on the Company's website at <http://www.eureka24.fr/what-we-do/>;
- shall at all times comply with the Company's minimum system and hardware requirements, which the Company may change from time to time, and you acknowledge that the Company has the right to terminate this Agreement and the Services if you do not comply with the Company's minimum system and hardware requirements or are abusive, mistreat Company agents and/or have commercially unreasonable/excessive requests for support; and
- agree that, in connection with your use of the Services and other activities related to this Agreement, you will (i) comply with all applicable local, state, national and international laws and regulations, (ii) not infringe the intellectual property or other rights of third parties, and (iii) not submit or otherwise transmit any material that is abusive, defamatory, obscene, infringing, threatening, repetitive or otherwise inappropriate, or that contains viruses or other harmful computer code or files such as Trojan horses, worms or time bombs.

**3.2 User Data.** In the course of using the Services, you may submit or otherwise provide data and other content ('Content') to the Company and/or any person or entity upon which the Company relies to host or provide any Licensed IP (as defined below), computer server, website or services on behalf of the Company ('Third Party Provider'). You acknowledge and agree that you are responsible for any Content you submit or otherwise provide to the Company and/or a Third Party Provider. You also represent and warrant that you have obtained all necessary rights and licenses to any such Content. You hereby grant the Company and its Third Party Providers a worldwide, royalty-free, non-exclusive, irrevocable, perpetual, transferable, sub-licensable right and license to use, copy, store, transmit and disclose your Content to fulfill its obligations and provide the Services described in this Agreement. The Company reserves, on behalf of itself and its Third Party Providers, the right to delete any such content at any time in its sole discretion without notice or liability.

**3.3 Export.** The Services, the Licensed IP and any related technical data or underlying information (collectively, the 'Controlled Technology') are subject to the export and import laws of the United States and other countries. You agree to comply with all export and import laws and regulations, including the U.S. Export Administration Act and its associated regulations. None of the Controlled Technology may be downloaded or otherwise exported or re-exported (a) into (or to a national or resident of) Cuba, North Korea, Iran, Sudan, Syria or any other country subject to U.S. sanctions applicable to the export or re-export of goods; or (b) to anyone on the U.S. Treasury Department's List of Specially Designated Nationals and Blocked Persons List, or the U.S. Commerce Department's Denied Persons List, Unverified List, Entity List, or Nonproliferation Sanctions List. By accessing, using or receiving the Controlled Technology, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list, and that you acknowledge you are responsible to obtain any necessary U.S. government authorization to ensure compliance with U.S. law.

## 4. AVAILABILITY OF SERVICES

**4.1 General Availability.** You acknowledge that the Services may not be available at all times, and may not be available in the format generally marketed, and some Computer Systems and Devices may not be able to receive the Services even if initial testing shows that your connection was qualified or your computer environment was suitable. In order for you to receive the Services, which will be provided remotely, the Company will qualify your Internet connection for the minimum line rate (speed) available for support based on the Company's standard line qualification procedures. You acknowledge that the Services require high-speed Internet access and that it is your responsibility to ensure that you have adequate connectivity to the Internet.

**4.2 Restrictions and Suspensions.** You acknowledge and agree that the Company, its Third Party Providers and/or its licensors or other third parties may, at any time, without notice or liability, take actions which restrict the use of the Services or other Licensed IP or limit the time of availability of the Services or other Licensed IP (a) if your use of the Services puts an excessive burden on the Services or the Company's network (as determined by the Company in its sole discretion); (b) in order to perform maintenance activities, make modifications to the Services or other Licensed IP, and to maintain session control; or (c) in the event of a denial of service attack or other attack on the Services or other Licensed IP or other event that the Company determines, in its sole discretion, may create a risk to the Services or other Licensed IP, to you, to any of our other customers, or to others.

**4.3 Scheduling.** For all Services that require scheduling a session with the Company, the Company will use commercially reasonable efforts to schedule a mutually convenient Service session within a reasonable period of time. However, you acknowledge that circumstances outside of the Company's control (for example, a large scale outbreak of a new computer virus), scheduling conflicts and/or other unforeseen circumstances may cause significant delays in the Company's ability to schedule a Service session and/or to otherwise attend a scheduled Service session. In the event that such circumstances cause the Company to miss a scheduled Service Session, the Company will use commercially reasonable efforts to re-schedule a mutually convenient Service session within a reasonable period of time.

## 5. FEES FOR SERVICES

**5.1 Plans and Fees.** You agree to pay the fees for the Services identified by the Company, including without limitation on documentation (including documentation provided via email) provided by the Company from time to time in connection with your purchase thereof and/or as set forth on the Company's website at <http://www.eureka24.fr/what-we-do/>, which fees are subject to change by the Company at any time in its sole discretion. You are responsible for all charges related to accessing the applicable Services, including all telephone and Internet access charges. Without in any way limiting the foregoing, you agree to pay: (a) in the event you purchase the Platinum Plan subscription and terminate this Agreement other than in accordance with Section 10.2 below, a cancellation fee of \$150.00 and any unpaid/unused fees for Services as determined by the Company; and (b) the following fees for on-site support Services (if applicable):

- **On-Site Support.** The Company offers on-site support Services for Company member plans through a third party service provider. Pricing for on-site support Services covers only the on-site Services based on the required scope of work as determined by the Company in its sole discretion. You agree to pay for the on-site support Services prior to the service provider arriving on site. You acknowledge and agree to pay any additional

charges for any hardware or software that may be required. You agree to pay the Company directly and not to provide compensation of any kind, including tips, to any service provider who provides the on-site support Services. You will be required to pay a cancellation fee for any appointment for on-site support Services that you cancel.

- **Rescheduling Fee.** Rescheduling a confirmed appointment for on-site support Services less than two (2) hours prior to such appointment will be subject to a rescheduling fee, which will be charged to you.
- **Cancellation Fee.** If you cancel on-site support Services at any time, you may be required to pay a cancellation fee of up to 50% of the applicable work order for such on-site support Services, which will be charged to you.

The list of fees for the Services set forth above is not exhaustive, and the Company may modify it at any time. The Company reserves the right to charge an additional fee to perform Services that you request that are not covered by the fees above or the fees initially identified by the Company, including without limitation on documentation (including documentation provided via email) provided by the Company from time to time in connection with a purchase of Services and/or as set forth on the Company's website at <http://www.eureka24.fr/what-we-do/>, or to refuse to perform such Services.

**5.2 Provision of Services.** The Company will exercise reasonable judgment in the manner with which it provides the Services. The Company does not guarantee that the Services will meet your business needs. You acknowledge and agree that you are authorizing the Company to provide the Services in a manner the Company reasonably sees fit. If you need more specifics on how the Company's provision of the Services aligns with your business needs, you must contact the Company.

**5.3 BackUp, Security & TuneUp Services.** Eureka24 Data BackUp automatically backs up the selected data on your computer. It is your responsibility to select the data you desire to be backed up on your computer. You understand and agree that the Company shall under no circumstance be responsible for any lost or corrupted data or software.

The Eureka24 Security Suite is an anti-virus and Internet security solution included in specified plans to help protect the computer from infections such as viruses, spyware and malware. The Security Suite is installed on your computer, continually checking for computer threats.

Eureka24 TuneUp Services are provided on a regularly scheduled basis (performed approximately every three (3) months). The Company will send reminder emails for your scheduled TuneUp, but you are required to confirm your regular TuneUp service, by responding to the email or using the scheduling link through Eureka24 Connect.

## 6. PRIVACY AND SECURITY; CONFIDENTIALITY

**6.1 Privacy Statement.** The Company will treat your personal information in accordance with the Company's current Privacy Statement, which may be amended by the Company from time to time at its sole discretion, which is incorporated into this Agreement by this reference. The Privacy Statement is located at <http://www.eureka24.fr/privacy-policy/>. By accepting the terms and conditions of this Agreement, you agree to be bound by the terms and conditions of the Privacy Statement.

**6.2 Password Security.** You are responsible to keep your password(s) secure, and you agree not to disclose your passwords to any third party. You are solely responsible for any activity

that occurs under your user names and accounts, including any sub-accounts. The Company may request temporary use of your password(s), and may otherwise retain your password(s) in a secure electronic file related to your account, to facilitate routine support and maintenance services. If you lose your password(s) or the encryption keys for any of your Company products or Services, the Company may not be able to assist you in recovering any associated data or information. You must notify the Company immediately of any suspected unauthorized use of your accounts or any other security breach related to the Services. If the Company determines that a security breach or suspected fraudulent activity has occurred or is likely to occur on your account, the Company may suspend your account until the applicable account activity has been verified.

**6.3 Confidential Information.** You acknowledge that, in connection with the performance of this Agreement, you may receive certain Confidential Information of Company. You hereby agree: (a) to hold and maintain in strict confidence all Confidential Information of the other party and not to disclose it to any third party; and (b) not to use any Confidential Information of Company except as permitted by this Agreement or as may be necessary to exercise rights or perform obligations under this Agreement. 'Confidential Information' means, collectively, (i) any information disclosed by Company, either directly or indirectly, whether written, verbal, magnetic, photographic, optical, or other form, or by inspection of tangible objects, which has been, or will be, furnished or disclosed by a party, or its employees, representatives, consultants or agents, including, without limitation, algorithms, business plans, customer data, customer lists, customer names, supplier and installer names and data, designs documents, drawings, engineering information, financial analysis, forecasts, formulas, hardware configuration information, know-how, ideas, inventions, market information, marketing plans, processes, products, product plans, research, specifications, software, source code, trade secrets or any other information which is designated as 'confidential,' 'proprietary' or some similar designation, and which has been designated as being confidential, or which is otherwise disclosed in such a manner or is of such a character as would put a reasonable person on notice as to the confidential and proprietary nature of the information (collectively, the 'Disclosed Materials'); (ii) any information otherwise obtained, directly or indirectly, by a receiving party through inspection, review or analysis of the Disclosed Materials; and (iii) information of a third party that is in the possession of Company and is disclosed to you under this Agreement.

**6.4 Disclosure Under Compulsion of Law.** In the event you are the recipient of any court order, subpoena or other governmental authority which purports to require the disclosure of any of the Company's Confidential Information, or in the event such disclosure is required by applicable law, regulation or stock exchange rule, you shall use commercially reasonable efforts to provide the Company with prompt notice of the same prior to any disclosure and with such advance notice so as to afford a reasonable opportunity to protect the Confidential Information from public disclosure, and shall construe any such court order, subpoena or other governmental authority requesting such information in the narrowest permissible manner and shall seek to obtain and cooperate with the Company to obtain a proper protective order, a court ruling quashing any such subpoena, or any other governmental or private mechanism for retention of the confidential status of the information sought.

## 7. PAYMENTS

**7.1 Payment Method.** You authorize the Company to permit its third party credit payment processing vendor to process all amounts owed to the Company under this Agreement. You will at all times maintain valid and current credit card information. If you terminate your

credit card or elect to pay for the Services with a different credit card, or if you receive a new account number for your credit card, you shall immediately notify Company's third party credit payment processing vendor of such termination or change. If for any reason fees owed cannot be billed to your credit card for any amount owed under this Agreement, you authorize the Company to bill you directly for such amount, which amount, together with any late fees, chargeback (defined below) or other fees set forth in this Agreement, shall be immediately due and payable.

**7.2 Payment Obligations.** You agree to pay all amounts owed to the Company under this Agreement, as well as any applicable taxes and other charges, when due.

**7.3 Charges.** The Company reserves the right to charge any amounts owed by you under this Agreement to your credit card or bill you directly for such amounts at any time after the conclusion of the Services.

**7.4 Late/Chargeback Fees; Attorneys' Fees.** For any amount (a) not paid to the Company when due; or (b) paid by you via credit card which (i) the credit card issuer (the 'issuer') later rejects or refuses to pay, or (ii) the Company is later required to reimburse the issuer (each, a 'chargeback'), then in each case, the Company reserves the right to charge and you agree to pay, in addition to the amount not paid, rejected or refused, a fee of 10% of such amount, or the highest rate allowed under applicable law, whichever is lower, and to pay interest on the overdue amount at the rate of 1.5% per month, or the highest rate allowed by applicable law, whichever is lower, until paid in full. In addition, you agree to pay all collection costs, including reasonable attorney's fees, incurred by the Company in collecting any amounts that you owe to the Company, whether incurred before or after civil litigation is commenced.

## 8. PERFORMANCE OF THE SERVICES

With respect to any claim that any of the Services were deficient, you must notify the Company within five (5) calendar days following the Company's performance of such Services. If you fail to give the Company written notice of such deficiency within such 5-day period, the Company will not be required to remedy such deficiency. Provided that you give Company notice in accordance with this paragraph, the Company agrees to use commercially reasonable efforts to remedy such deficiency and, in connection therewith, you agree to give the Company reasonable access to your Computer Systems and Devices covered by the Services, as well as access to your home or office premises if necessary to enable such efforts. If the Company, using commercially reasonable efforts, is unable to remedy any deficiency in Services provided, then the Company, in its sole discretion, may elect to issue you a refund for the deficiencies on Services provided, as specified in Section 9 below. Notwithstanding the foregoing, the Company's liability to you shall be limited as specified in this Agreement.

## 9. REFUND POLICY

Fees for prior months of Services are nonrefundable. If the Company is unable to remedy a deficiency in the Services pursuant to Section 8 above or Section 17.2 below, the Company may elect to issue you a refund for the applicable deficiency based on the Services provided, in the Company's sole discretion. If it is deemed that a refund is due, a credit will be issued to the credit card that was used to purchase Company's Services.

## 10. TERM AND TERMINATION

**10.1 Effective Date and Term.** The initial term for all Services continues for one (1) year from the date that you first register for such Services (the 'Initial Term'). Thereafter, this

Agreement shall automatically renew for additional one (1) year terms (each a 'Renewal Term' and together with the Initial Term, the 'Term'), subject to earlier termination pursuant to Section 10.2 or Section 10.3 below, until such time as the Company or you provide written notice of termination to the other party at least thirty (30) days prior to the expiration of the Initial Term or then-current Renewal Term, as applicable.

**10.2 Termination by You.** In the event that the Company breaches any provision of this Agreement, you agree to provide the Company with a right to cure the breach. The Company shall have the right to cure any breach within thirty (30) days following its receipt of written notice from you of such breach. If the Company is unable to reasonably remedy any breach of this Agreement and such breach substantially impairs your use of the Computer Systems and Devices specifically registered with or otherwise authorized by the Company for use in connection with the Services covered under this Agreement, you may terminate this Agreement upon written notice to the Company. In any such case, the Company's liability to you shall be limited as specified in this Agreement.

**10.3 Termination and/or Suspension by the Company.** If, as determined by the Company in its sole discretion: (a) you breach any provision of this Agreement or any license for Third Party Software (as defined below); (b) your use of any of the Services is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to any of the Services, the Company's network, or the use and enjoyment of the Services by third parties; (c) the Company receives an order from a court to terminate the Services provided to you; (d) the Company for any reason ceases to offer any of the Services previously made available to you under this Agreement; or (e) you are abusing or otherwise misusing any of the Services, then, in any such case, the Company at its sole election may terminate this Agreement or suspend one or more of the Services immediately without notice.

**10.4 Terminated Account.** The Company, in its sole discretion, may refuse to accept your request for Service, renewal or re-subscription following a termination or suspension of your use of any of the Services. In the event you purchase the Platinum Plan subscription and terminate this Agreement other than in accordance with Section 10.2 above, you agree to pay to the Company a cancellation fee of \$150.00 and any unpaid/unused fees for Services as determined by the Company.

**10.5 Effect of Termination.** Upon the termination or expiration of your account or this Agreement for any reason, your right to use the Services and the Licensed IP (defined below) and your access to the Services (including any content you submit) shall immediately terminate, and you must immediately return all Licensed IP to the Company. You acknowledge that the Company is not obligated to provide a copy of your Content or data to you or to any third party, and that upon termination or expiration of this Agreement for any reason, the Company may purge your content and data from its systems without notice to you.

**10.6 Survival.** The rights and obligations of the parties set forth in this Section 10.6 and Sections 3, 5.1, 6.3, 6.4, 6.5, 7, 10.4, 10.5, 11, 12, and 14 — 23 of this Agreement, and any right or obligation of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

## **11. GOVERNING LAW, JURISDICTION AND VENUE; JURY WAIVER; CLAIM LIMITATIONS**

**11.1 Governing Law, Jurisdiction and Venue.** This Agreement is governed by and construed in accordance with the laws of France, without regard to or application of conflicts



of law rules or principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any legal action brought under or in connection with the subject matter of this Agreement shall be brought only in the courts in France; except that the Company may seek relief in any court of competent jurisdiction to protect or enforce its intellectual property and proprietary rights. You and the Company hereby submit to the exclusive jurisdiction of these courts and agree not to commence any legal action under or in connection with the subject matter of this Agreement in any other court or forum. You and the Company waive any objection to the laying of the venue of any legal action brought under or in connection with the subject matter of this Agreement in the courts sitting France, and agree not to plead or claim in such courts that any such action has been brought in an inconvenient forum.

**11.2 Waiver of Jury Trial.** IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES THAT THEY EACH WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ANY OF THEM AGAINST THE OTHER PARTY ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

**11.3 Giving Up Right of Class Action.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU GIVE UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST COMPANY INCLUDING, WITHOUT LIMITATION, ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. WITHOUT LIMITATION, THIS INCLUDES GIVING UP YOUR RIGHTS TO BRING OR PARTICIPATE IN A CLASS ACTION AS SET FORTH IN ANY STATE STATUTE. If you are a California resident, to the extent permitted by California law, you waive California Civil Code Section 1542, which states: 'A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor' as well as any other unknown claims under California Civil Code Section 1542 or any statute or common law principle of similar effect.

**11.4 Limitation on Time to File Claims.** ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR USE OF THE SERVICES AND/OR LICENSED IP MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

## 12. LICENSE TO ACCESS SOFTWARE AND THIRD PARTY SERVICES

**12.1 Licensed IP.** The Services (and all copyright and other proprietary or intellectual property rights), all software, CDs, programs, documentation and other intellectual property which is owned by the Company and/or which the Company makes available or furnishes to you pursuant to this Agreement, via download, other media, or other delivery method, and/or in connection with the provision of the Services, and all other rights and derivative works related thereto are referred to as the 'Licensed IP.' The Licensed IP may be accompanied by an end-user access license agreement or similar agreement from the Company. Your use of the Licensed IP is governed by the terms of such agreement and by this Agreement, where applicable. You may not install or use any Licensed IP that is accompanied by or includes an end-user access license agreement unless you first agree to the terms and conditions of the end-user access license agreement. With regard to any Licensed IP for which your acceptance of a separate license agreement is not required, the Company hereby grants to you one limited, non-exclusive, non-transferable, non-sub-licensable license to access and use the same, only during the term of this Agreement, solely for your own personal or internal business purposes with respect to the Computer Systems and Devices specifically registered with or otherwise authorized by the Company for use in

connection with the Services subject to this Agreement, and only as part of or for use with the Services and for no other purpose. You agree not to copy, modify, publish, transmit, rent, license, re-sell, sublicense, transfer, trade, reverse engineer, decompile, disassemble, or attempt to derive source code or other intellectual property from the Company or allow others to use or benefit from any of the Licensed IP. You acknowledge and agree that you are not granted any title or rights of ownership in any of the Licensed IP. The Company reserves the right to update or change the Licensed IP from time to time and you agree to cooperate in performing such steps as may be necessary to install any updates or upgrades to the Licensed IP. All rights not expressly granted to you pursuant to this Section 12.1 are expressly reserved by the Company and any Third Party Providers, licensors, and suppliers, as applicable. If any software included within the Licensed IP is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), then the U.S. Government's rights in the software and accompanying documentation will be only as set forth in this Agreement; this is in accordance with 48 C.F.R. 227.7201 through 227.7202-4 (for Department of Defense (DOD) acquisitions) and with 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions). All software included within the Licensed IP is either a commercial product, produced entirely at private expense, copyrighted and owned by the Company or a third party provider or supplier, licensed to the Company or is otherwise proprietary to the Company.

**12.2 Licensed IP Confidentiality and Ownership.** You agree that the Licensed IP is confidential information of the Company or its Third Party Providers, licensors, or suppliers, and that you will not disclose the Licensed IP or any other confidential information of the Company to others or use the Licensed IP or any other confidential information except as expressly permitted herein. The Licensed IP contains copyrighted material, trade secrets, patents, and proprietary information owned by the Company or its Third Party Providers, licensors, or suppliers. You agree not to remove or alter any trademark, trade name, copyright or other proprietary notices, legends, symbols, or labels appearing on or in copies of any of the Licensed IP. You acknowledge that the license in Section 12.1 above, is not a sale of intellectual property and that the Company or its Third Party Providers, licensors, or suppliers will continue to own all right, title and interest, including but not limited to all copyright, patent, trademark, trade secret, and moral rights, to the Licensed IP and related documentation, as well as any corrections, updates and upgrades.

**12.3 Third Party Software.** As part of the Services, the Company may sublicense to you or suggest the acquisition, installation and use of certain Licensed IP that is third party software (the 'Third Party Software'). You acknowledge that any Third Party Software will be sublicensed to you by the Company or licensed to you by the Third Party Provider that is the owner or licensee of the Third Party Software. You agree to be bound by and subject to the terms and conditions set forth by such Third Party Providers before installing Third Party Software, regardless of whether the Company sublicenses to you or assists you in the acquisition, installation, and/or use of Third Party Software. The Company has no rights to the Third Party Software and does not license Third Party Software to you except to the extent that the Company is a reseller or licensee of the Third Party Software. The Company does not make any representation or warranty regarding the Third Party Software.

**12.4 Assistance and Support.** The Company will provide technical assistance and support for the Licensed IP in accordance with its then current policies, which the Company may change from time to time in its sole discretion. To the extent that the Company provides technical assistance and support for any Third Party Software or equipment, you agree to comply with the terms and conditions under which you licensed such Third Party Software or purchased such equipment. The Company makes no representation or warranty that it is an authorized service provider for any Third Party Software or for any equipment, and you

acknowledge and agree that it is your sole responsibility to determine if you require additional rights for the Company to provide such support and, if so, to acquire such rights. You acknowledge that support of Third Party Software or equipment by an unauthorized service provider may void any warranty made by the supplier of such Third Party Software or equipment.

### 13. INDEPENDENT CONTRACTOR

You acknowledge that the Company is an independent contractor and neither the Company nor any of its directors, officers, agents, employees, or affiliates is or shall be deemed employed by you. The Company reserves the right to determine the method, manner and means by which the Services will be performed. The Company and its directors, officers, agents, employees, and affiliates are not required to perform the Services for you during any particular hour of the day or night, and the time spent accessing your Computer Systems and Devices covered by the Services is at the Company's discretion, subject to your access times and security requirements. You further acknowledge that the Company is not required to devote its full time or the full time of any of its directors, officers, agents, employees, or affiliates to the performance of the Services, and you acknowledge that the Company has other clients and that it offers Services to the general public. The order and sequence in which the Services are to be performed shall be under the control of the Company and its agents, employees and affiliates, and not under your control.

#### 14. LIMITATIONS AND RISKS

**14.1 Limitations of Liability.** IN NO EVENT SHALL THE COMPANY OR ITS AGENTS, EMPLOYEES, AFFILIATES, DIRECTORS OR OFFICERS OR ANY THIRD PARTY PROVIDERS, LICENSORS OR SUPPLIERS HAVE ANY LIABILITY TO YOU OR ANY OTHER THIRD PARTY, AND YOU AGREE TO RELEASE AND HOLD THE COMPANY AND ITS AGENTS, EMPLOYEES, AFFILIATES, DIRECTORS AND OFFICERS AND ANY THIRD PARTY PROVIDERS, LICENSORS AND SUPPLIERS HARMLESS FROM, ANY LIABILITY ARISING FROM (A) ANY DELAYS IN THE PERFORMANCE OF THE SERVICES; (B) ANY THIRD PARTY SOFTWARE; (C) THE PERFORMANCE OF THE SERVICES, EXCEPT AND ONLY TO THE EXTENT THAT THE COMPANY IS GROSSLY NEGLIGENT IN PERFORMING THE SERVICES; OR (D) CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. SOME STATE STATUTES MAY APPLY RESTRICTIONS REGARDING LIMITATIONS ON LIABILITY. THE SOLE AND MAXIMUM LIABILITY OF THE COMPANY AND ITS AGENTS, EMPLOYEES, AFFILIATES, DIRECTORS, OFFICERS AND THIRD PARTY PROVIDERS, LICENSORS AND SUPPLIERS, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY AND ALL CLAIMS WHATSOEVER, WHETHER BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT, INCLUDING NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT THAT YOU PAID FOR THE SERVICES WITHIN THE THREE MONTHS IMMEDIATELY PRECEDING THE INITIAL CLAIM MADE BY YOU IN WHICH THE COMPANY IS LIABLE TO YOU FOR SUCH CLAIM. YOU ACKNOWLEDGE THAT THE COMPANY HAS SET ITS FEES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT AND THAT THESE PROVISIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF PORTIONS OF THIS AGREEMENT ARE FOUND TO HAVE FAILED IN THEIR ESSENTIAL PURPOSE.

**14.2 Risk of Loss.** You agree that your use of the Services is your sole responsibility and is solely at your own risk. You acknowledge and agree that the Internet, over which many of

the Services are delivered, is not owned, operated or managed by, or in any way affiliated with the Company, and you agree that the Company is not responsible for and has no control over the information, content or other materials, some of which may be offensive, malicious or destructive in nature, which may be accessed on the Internet through use of the Services. You acknowledge and agree that the Internet is not a secure network and that third parties may be able to intercept, access, use, or corrupt the information that you transmit or receive over the Internet, whether in connection with the Company's provision of the Services or otherwise. The Company is not responsible for invalid destinations, transmission errors, or corruption or security of your data. You further acknowledge and agree that the Company does not own or control all of the various facilities and communications lines through which Services may be provided and that the Company does not guarantee access to or through websites, servers or other facilities on or connected to the Internet, whether or not such websites, servers or facilities are owned or controlled by the Company. You acknowledge and agree that remotely accessing your Computer Systems and Devices covered by the Services may expose the same and the data contained therein to certain security risks and that you, and not the Company, shall be responsible for such security risks. You acknowledge that due to the nature of the Services being performed, you are exposed to some potential risk of damage or loss including, without limitation, damage to your computer hardware, cabling, hubs, routers, switches, peripherals, accessories, furniture, home, and office, as well as potential risk of damage, corruption, loss of business or time, loss of computer software, applications, data, and data storage media. You acknowledge that it is your responsibility to take proper and adequate measures to preserve, protect and safeguard critical data by backing up such data in appropriate ways prior to any Services being performed by the Company. Unless specifically requested and provided to you as a paid Service by the Company, you acknowledge and agree that you are exclusively responsible for providing all backup, archiving, and protective storage as well as restoration, if required, of your data.

## 15. WARRANTY LIMITATIONS

THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE) ARE PROVIDED ON AN 'AS IS' BASIS, AND YOUR USE OF THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE) IS AT YOUR OWN RISK. THE COMPANY WILL USE COMMERCIALY REASONABLE EFFORTS TO PERFORM AND MAINTAIN ACCEPTABLE PERFORMANCE OF THE SERVICES. HOWEVER, THE COMPANY PROVIDES NO WARRANTIES WHATSOEVER AND THE COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS AND IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE), INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. THE COMPANY DOES NOT WARRANT THAT THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE) WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. THE COMPANY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY REGARDING THE USE OR THE RESULTS OF THE USE OF THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE) IN TERMS OF ACCURACY, RELIABILITY, SATISFACTION OR OTHERWISE, AND THE COMPANY DOES NOT GUARANTEE RESOLUTION OF ANY PROBLEM. YOU ASSUME SOLE RESPONSIBILITY FOR YOUR USE OF THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE) TO ACHIEVE YOUR INTENDED RESULTS. THE COMPANY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE LINE RATE, ACCESS OR AVAILABILITY OF THE SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE).

WITHOUT IN ANY WAY LIMITING SECTION 14 OF THIS AGREEMENT, YOU SPECIFICALLY AGREE THAT THE COMPANY, ITS AFFILIATES, DIRECTORS, STOCKHOLDERS, OFFICERS, AGENTS AND EMPLOYEES, AND THE COMPANY'S SUPPLIERS, RESELLERS, PARTNERS AND THEIR RESPECTIVE AFFILIATES, WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY KIND AND/OR ARISING UNDER ANY LEGAL THEORY, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSSES (EVEN IF ANY OF THE FOREGOING PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM THE USE OR INABILITY TO USE THE COMPANY'S PRODUCTS OR SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE) OR IN ANY WAY RELATING TO THE COMPANY'S PRODUCTS OR SERVICES (INCLUDING, WITHOUT LIMITATION, ANY THIRD PARTY SOFTWARE).

## 16. COMPLETE CONTRACT

This Agreement (including any other documents incorporated herein by reference) constitutes the entire agreement between the parties with regard to the subject matter hereof, and integrates all prior understandings and agreements between the parties with respect thereto, whether oral or written. You agree to accept the terms and conditions set forth in this Agreement to the exclusion of any standard terms you may customarily have for the purchase of services. No other agreement, representations, warranties or other matters, oral or written, purportedly agreed to or represented by or on behalf of the Company or any of its agents, employees and affiliates, or contained in any sales materials or brochures, shall be deemed to bind the parties hereto with respect to the subject matter of this Agreement. You acknowledge that you are entering into this Agreement based solely on the basis of the terms contained herein.

## 17. INDEMNIFICATION; INFRINGEMENT REMEDY

**17.1 Indemnification Obligations.** You agree to defend, indemnify and hold harmless the Company and its directors, stockholders, officers, agents and employees from and against all liabilities, costs and expenses, including reasonable attorney's fees, related to or arising from: (a) your violation of any applicable laws or regulations, this Agreement, the Privacy Statement or the terms of any agreement governing your use of Third Party Software (or any of the foregoing by parties who use your account, with or without your permission, to access the Service); (b) the use of the Services or the Internet or the placement or transmission of any message, information, software or other materials on the Internet by you (or any parties who use your account, with or without your permission, to access the Services); (c) acts, errors, or omissions by you (or any parties who use your account, with or without your permission, to access the Services); (d) any and all claims for damage or injury to persons or property or for loss of life or limb whereby you have been found liable to any third party under any product liability, tort liability or similar action that may in any way arise out of or result from or in connection with this Agreement, except to the extent that such liabilities arise from the gross negligence or willful misconduct of the Company; or (e) claims for infringement of any intellectual property rights arising from the use of the Services, Third Party Software, the Content, or the Internet, except with respect to the Licensed IP, subject to Section 17.2 below.

**17.2 Infringement Remedy.** In the event that any portion of the Licensed IP is, in the Company's sole opinion, likely to or does become the subject of a claim of infringement of any intellectual property rights arising from the use of the Services, the Company may, at its option and expense, procure for you the right to continue using the Services or modify the

Services to make them non-infringing. If, in the Company's sole opinion, neither of the foregoing options is reasonably available to the Company, then the Company may (a) terminate this Agreement immediately upon written notice to you, and in no event shall such termination be considered a breach of this Agreement; and (b) in its sole discretion, elect to issue you a refund for all or a portion of the Services provided, as specified in Section 9 above. THIS SECTION 17.2 SETS FORTH THE COMPANY'S SOLE LIABILITY AND ENTIRE OBLIGATION AND YOUR EXCLUSIVE REMEDY FOR ANY CLAIMS THAT THE SERVICES OR YOUR USE THEREOF INFRINGES ANY INTELLECTUAL PROPERTY RIGHTS.

## 18. TAXES

Any and all taxes, except income taxes of the Company, imposed or assessed by reason of this Agreement or its performance, including, but not limited to, sales or use taxes, shall be paid by you.

## 19. ASSIGNMENT

You may not assign your rights or obligations under this Agreement without the Company's prior written consent. Subject to this limitation, this Agreement shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto.

## 20. FORCE MAJEURE

The Company shall be excused for the period of any delay in the performance of any of its obligations under this Agreement when the same is due (in whole or in part) to a cause reasonably beyond the Company's control, including, without limitation, labor disputes, traffic congestion, delivery failures, product shortages, civil commotion, war, governmental regulations or controls, government action, fire or other casualty, weather, and/or acts of God.

## 21. WAIVER

The waiver by either party of a breach or a default by the other party shall not be construed as a waiver of any succeeding breach, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege operate as a waiver of any right, power or privilege by such party. No waiver, consent, modification, alteration, addition, or change of terms of this Agreement shall bind either party unless in writing and signed by an authorized signatory of the party against whom enforcement is sought, and then such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. The Company shall not be required to give notice to you to enforce strict adherence to all terms of this Agreement.

## 22. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not render the entire Agreement invalid and all remaining provisions of this Agreement shall remain in full force and effect. In such event, (a) the Agreement shall be construed as if not containing the particular invalid or unenforceable provision, and the rights and obligations of each party shall be construed and enforced accordingly or (b) to the extent the scope of any provision is too broad in any respect to permit enforcement, the parties hereto agree that such scope may be judicially modified accordingly.

## 23. NOTICES

Except as explicitly stated otherwise, any notice to the Company shall be given by email to: support@eureka24.com. Any notice to you shall be sent to the email address that you provide to the Company during the registration process. Notice shall be deemed given twenty-four (24) hours after an email is sent, unless the sending party is notified that the email address is invalid. Alternatively, the Company may give you notice by certified mail, postage prepaid and return receipt requested, to the address provided by you to the Company during the registration process. In such case, notice shall be deemed given three (3) days after the date of mailing. You may also send notices to the Company by certified mail, postage prepaid and return receipt requested, to the following address: Eureka24, 105 Route des Pommiers #1 1803, F-74370 Saint-Martin, France. Alternatively, either party may give notice by overnight courier mail through a nationally recognized courier service, which notice will be effective when actually received.

## 24. THIRD PARTY BENEFICIARY

Each Third Party Provider is a third-party beneficiary of your representations, warranties, and covenants in this Agreement; and each Third Party Provider has all the rights and benefits of the Company under, and the ability to enforce, this Agreement. Except as set forth in the immediately preceding sentence, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than you and the Company.

## 25. CLAIMS OF COPYRIGHT INFRINGEMENT

The Company takes claims of copyright infringement seriously. It is the Company's policy, in appropriate circumstances and at its discretion, to disable and/or terminate the accounts of users who may infringe or repeatedly infringe the copyrights of the Company and/or others. The Company will respond to notices of alleged copyright infringement that comply with applicable law. If you believe any materials stored on or accessible through the Services infringe your copyright, you may request removal of those materials (or access thereto) from the Services by submitting written notification to the Company's Copyright Agent (designated below). In accordance with the Online Copyright Infringement Liability Limitation Act of the Digital Millennium Copyright Act (17 U.S.C. § 512) ('DMCA'), the written notice (the 'DMCA Notice') must include substantially the following:

an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; identification of the copyrighted work you believe to have been infringed or, if the claim involves multiple works, a representative list of such works; a description of where the material you believe to be infringing is located; your address, telephone number and, if available, e-mail address; a statement that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and

a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

If you fail to comply with all of the requirements of Section 512(c)(3) of the DMCA, your DMCA Notice may not be effective.

Please be aware that if you knowingly materially misrepresent that material or activity

accessible on or through the Services is infringing your copyright, you may be held liable for damages (including costs and attorneys' fees) under Section 512(f) of the DMCA.

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