

LITMOS CLOUD TERMS OF SERVICE

THE LITMOS CLOUD TERMS OF SERVICE (THIS “**AGREEMENT**”) CONSTITUTE A BINDING AGREEMENT BETWEEN LITMOS US, L.P. (“**LITMOS**”) AND THE UNDERSIGNED ENTITY OR COMPANY THAT IS THE AUTHORIZED PURCHASER OR USER OF THE CLOUD SERVICES OR SERVICES (“**CUSTOMER**”). ALL REFERENCES TO LITMOS HEREIN SHALL BE INTERPRETED TO INCLUDE AFFILIATES OF LITMOS WHERE THE CONTEXT SO REQUIRES. BY AGREEING TO THIS AGREEMENT, BY EITHER: (1) CLICKING A BOX INDICATING ACCEPTANCE; OR (2) EXECUTING A SALES QUOTE THAT REFERENCES THIS AGREEMENT, CUSTOMER REPRESENTS THAT CUSTOMER HAS FULL POWER, CAPACITY, AND AUTHORITY TO ACCEPT THE TERMS HEREIN. IF CUSTOMER IS ACCEPTING THE TERMS OF THIS AGREEMENT ON BEHALF OF AN EMPLOYER OR ANOTHER ENTITY, CUSTOMER REPRESENTS THAT CUSTOMER HAS FULL LEGAL AUTHORITY TO BIND SUCH EMPLOYER OR SUCH OTHER ENTITY TO THIS AGREEMENT. THIS AGREEMENT IS EFFECTIVE WHEN CUSTOMER CLICKS A BOX INDICATING ACCEPTANCE OR BEGINS USING THE SERVICES, WHICHEVER IS EARLIER (“EFFECTIVE DATE”). UPON THE EFFECTIVE DATE OF THIS AGREEMENT, CUSTOMER AND LITMOS CONSENT TO THIS AGREEMENT AS THE BINDING OBLIGATION OF EACH PARTY. IF CUSTOMER DOES NOT UNCONDITIONALLY AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CUSTOMER IS NOT AUTHORIZED TO AND MAY NOT ACCESS OR USE ANY OF THE CLOUD SERVICES OR SERVICES.

1. DEFINITIONS.

- (a) “**Active User**” means a Named User (as defined below) that logs into the Cloud Services within a contract month.
- (b) “**Active User License Count**” means the maximum allotted number of Active Users that have logged into the Cloud Services within a contract month.
- (c) “**Authorized User**” means each user that is authorized to access the Cloud Services at a point of time or during a period of time, as applicable, as determined using Litmos rules.
- (d) “**Cloud Services**” means, collectively, Litmos’s software-as-a-service offerings, including associated Litmos offline components, that are listed on Litmos’s then-current price list.
- (e) “**Customer Business Use**” means, in connection with the internal commercial, industrial or professional activities of Customer, the use, operation, or incorporation of the Cloud Services, excluding outsourcing, application services, or reselling activities involving the provision or sharing of the Cloud Services by Customer with third parties, or any other activities prohibited elsewhere in this Agreement.
- (f) “**Customer Data**” means all electronic data and information submitted or uploaded by or on behalf of Customer to the Cloud Services, including any content, materials, data and information acquired or created by Customer or its Users or that Customer derives from its use of and stores in the Cloud Services (e.g., Customer-specific reports).
- (g) “**Documentation**” means the then-current written and/or electronic technical documentation pertaining to a Cloud Service that is provided by Litmos together with the delivery of a Cloud Service or otherwise made available by Litmos to all customers, including without limitation the materials located at <https://www.litmos.com/services>.
- (h) “**Named User**” means a unique User who has been marked or showed as active on the Cloud Services and can log into the Cloud Services.
- (i) “**Named User License Count**” means the maximum allotted number of Named Users in the Cloud Services at any point in time.
- (j) “**Order**” means a signed written sales quote or order form that specifies the fees, Subscription Term and other details for Cloud Services products and/or Services that is submitted to Litmos directly (or indirectly through a Partner) and is accepted by Litmos.
- (k) “**Professional Services**” means the training, consulting, installation and other professional services made available by Litmos, if any, located at <https://www.litmos.com/termsandconditions>.
- (l) “**Services**” means Support and Professional Services, collectively.
- (m) “**Subscription Term**” means the subscription period for the Cloud Services and/or Services (as applicable) as set forth in the applicable Order.
- (n) “**Support**” means Litmos’s then-current generally available end user maintenance and support services as described in the Documentation.

(o) **"User"** means each uniquely identified individual associated with Customer or Customer's affiliates, including Customer or Customer affiliates employees, consultants, contractors, and agents, who access or are authorized to access the Cloud Services acting for or with the permission of Customer for exercise of the Customer Business Use. For the avoidance of doubt, unless otherwise provided in Litmos rules, "User" is determined per individual and not per log-on or account.

2. CLOUD SERVICES.

(a) **Access and Use.** Subject to the terms and conditions of this Agreement, and provided that Customer has paid the applicable fees, Litmos grants Customer a non-exclusive, non-sublicensable and non-transferable (except as expressly provided in Section 15) right to authorize the quantity of Users (as specified in an associated Order or invoice) to access and use the Cloud Services or Services during the applicable Subscription Term solely for Customer Business Use in accordance with this Agreement and the Documentation. Customer is solely liable and shall be responsible for Users' access and use of the Cloud Services and compliance with this Agreement.

(b) **Administrators.** Customer may specify certain Users as **"Administrators"** through the administrative console of the Cloud Services. Administrators may have the ability to create, de-provision, monitor and modify User accounts, set User access permissions, and manage access to Customer Data, subject to all other terms of this Agreement. Customer is responsible for its internal management and administration of the Cloud Services, including selection of Administrators and any actions taken by them.

(c) **Additional Use and Usage Metrics.** If Customer wishes to add additional Users or increase SMS events ("Additional Use"), Customer should contact Litmos and Litmos will make the Cloud Services available for the Additional Use on the terms set forth in this Agreement. Litmos shall prescribe rules for access and use of the Cloud Services by Users (which may be based on Active Users, Authorized Users, Named Users, SMS events, transactions, or other metrics as agreed upon in this Agreement or an Order), as provided elsewhere in this Agreement or in applicable Documentation. With respect to Additional Use: (i) the term of any additional Users' access to the cloud Services will be coterminous with the preexisting Subscription Term and all other terms of the Agreement, and (ii) Customer shall be responsible for any additional fees for any Additional Use. Any use of the Cloud Services by Customer and/or Users that exceeds the prescribed limitations that is not purchased as set forth herein, may be invoiced by Litmos at the excess use fee set forth in the Order, and if no rate exists in the Order, the amount is calculated by (i) the fee per User license for such product (ii) multiplied by 1.5x (iii) multiplied by the total number of excess subscription User licenses.

(d) **Subscriptions.** Unless otherwise provided in the applicable Order or Documentation, (i) Cloud Services are purchased as subscriptions for the Subscription Term stated in the applicable Order, (ii) subscriptions for Cloud Services may be added during a Subscription Term, upon request by Customer and approval by Litmos, prorated for the portion of the underlying Subscription Term remaining at the time subscriptions are added, and (iii) any added subscriptions will terminate on the same date as the underlying Subscription Term. The specific Cloud Services made available to Customer under this Agreement, including the number of licenses issued and the term of any applicable subscription or license, as applicable, will be identified on the applicable Order.

(e) **Changes to the Cloud Service.** Litmos reserves the right to make updates and enhancements to the Cloud Services, including corrections, bug fixes, and addition or removal of features or functions, provided that such updates and enhancements to the Cloud Services will not materially decrease the overall functionality of the Cloud Services during the Subscription Term. Subject to Litmos's obligation to provide Cloud Services under existing Orders, Litmos reserves the right to discontinue the manufacture or sale of, or otherwise render or treat as obsolete, any Cloud Service, subject to Litmos's end of sale / end of support policy in the Documentation.

(f) **Beta or Tech Preview.** The Cloud Services do not include beta or tech preview services. CUSTOMER ACKNOWLEDGES THAT ANY BETA OR TECH PREVIEW SERVICES ARE OFFERED "AS-IS" FOR INTERNAL DEMONSTRATION, TEST OR EVALUATION PURPOSES AND WITHOUT WARRANTY. SUCH SERVICES MAY CONTAIN BUGS, ERRORS AND OTHER DEFECTS. Litmos does not make any representations, promises or guarantees that such services will be publicly announced or made generally available. Litmos has no obligation to provide technical support or continued availability, and such services can be suspended or terminated at any time by Litmos in its sole discretion with or without notice to Customer.

(g) **Third Party Products, Services, or Content.** The Cloud Services may contain features or functions that enable interoperation with third party products, services or content. Litmos may also provide access to third party products, services or content directly within the Cloud Services. Third party products, services or content, and customer content in third party services, are not part of the Cloud Services and are not warranted or supported by Litmos. Customer's use of such third-party products, services or content is subject to the terms of the third-party provider.

(h) **Support.** The Cloud Services include bundled Support for the duration of the Subscription Term purchased by Customer. Customer may also purchase premium level support if included in an Order. During the Subscription Term, Litmos shall provide Support to Customer in accordance with the terms set forth at Litmos's maintenance and support services description.

3. **RESTRICTIONS.** Except as expressly permitted by this Agreement, Customer shall not, and shall not authorize or permit any other person or entity to, directly or indirectly: (a) copy, modify (except as expressly permitted under the applicable Documentation), distribute, or create derivative works of any Cloud Service, (b) disassemble, decompile or reverse engineer any of the Cloud Services, or otherwise attempt to discover any source code, structure, algorithms, sequence, organization or ideas underlying any of the Cloud Services (except where the foregoing is expressly prohibited by applicable local law, and then only to the

extent so prohibited), (c) market, offer to sell, sell or resell any Cloud Services, (d) sublicense, rent, lease, use for timesharing or service bureau purposes for third parties or otherwise provide temporary access to any Cloud Service or use any Cloud Service for the benefit of any third party, (e) attempt to gain unauthorized access to the Cloud Services or their related systems or networks, (f) publish or disclose any information or results relating to performance, performance comparisons or other "benchmarking" activities relating to any Cloud Service, (g) access or use Cloud Services in a manner that abuses, interferes with or disrupts networks, security systems, user accounts or the integrity or performance of the Cloud Services or third-party data contained therein, or (h) access or use any Cloud Service for purposes of designing or developing a competing product or service. If Customer becomes aware or receives notice of any violations of these restrictions, Customer must take immediate action to suspend the User's access to Cloud Services. Any action of Customer in contravention of this Section 3 may result in the suspension of the Cloud Services and/or the termination of this Agreement. For the avoidance of doubt, affiliates of Customer shall not be considered third parties for the purposes of this Section 3.

4. DATA SECURITY AND PRIVACY.

(a) Security and Certifications.

1. Litmos shall maintain appropriate administrative, physical and technical security measures designed to protect Customer Data from unauthorized access, destruction, use, modification, or disclosure, as described in the Documentation. Litmos shall also maintain a compliance program that includes independent third-party audits and certifications of the Cloud Services. Litmos shall provide a current copy of such audits and/or certifications upon request.

2. Notwithstanding any other provision in this Agreement, Customer may not use the Cloud Services to store, process or use personal information (except for user identification or contact information necessary for operation of the Cloud Services) or personal health information collected or maintained by Customer. Unless otherwise mutually agreed in advance, in writing, Customer Data shall not include and Customer shall not process or submit to the Cloud Services any Customer Data that includes any: (i) special categories of personal data enumerated in European Union Regulation 2016/679, Article 9(1) or any successor legislation; (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act (HIPAA); (iii) credit, debit or other payment card data subject to PCI DSS; (iv) other personal information subject to regulation or protection under specific laws such as the Gramm-Leach-Bliley Act (or related rules or regulations); (v) social security numbers, driver's license numbers or other government ID numbers; or (vi) any data similar to the foregoing that is protected under foreign or domestic laws or regulations. For the avoidance of doubt, Customer shall not provide Litmos any Customer Data, including protected health information, personally identifiable information, or other information that would require Litmos to exercise additional safeguards for protection, for storage or processing. Terms of this Agreement obligating Litmos to protect Customer Data and Personal Data provided by Customer to Litmos or stored or managed by Customer using Litmos systems and services shall be limited to the categories of information that Customer is authorized to provide Litmos under this Section 4(a)(2).

(b) **Personal Data.** To the extent that Customer Data includes any Personal Data (as defined in the DPA), the terms of the data processing addendum at www.litmos.com/dpa ("**DPA**"), as may be updated by Litmos from time to time, shall apply to Litmos's processing of such Personal Data on Customer's behalf.

(c) **Customer's Responsibilities.** Customer shall be responsible for (i) the accuracy, quality and legality of Customer Data and the means by which Customer acquires Customer Data, (ii) any required notices, consents, and/or authorizations related to Customer's provision of, and Litmos's processing of, Customer Data, (iii) using commercially reasonable efforts to prevent unauthorized access to or use of the Cloud Services, and notifying Litmos promptly of any such unauthorized access or use, (iv) the operation, performance, and security of Customer's equipment, networks and other computing resources used to connect to the Cloud Services, (v) ensuring all Users and devices exit or log off from the Cloud Services at the end of each session in accordance with Customer's session policy, (vi) maintaining the confidentiality of Customer's account, user IDs, passwords and/or personal identification number used in conjunction with the Cloud Services, including not sharing login information among Users, and (vii) all uses of the Cloud Services that occur using Customer's password or account.

(d) **Prohibited Activities.** To help ensure the security and integrity of Litmos services, the following activities are prohibited without prior written consent from Litmos: testing, probing, scanning, penetration testing, vulnerability assessments, or any other similar activities aimed at assessing, analyzing, or exploiting mechanisms that control the confidentiality, integrity, or availability of the system. Penetration testing includes any form of penetration testing, vulnerability scanning, or security assessment on Litmos or its providers' applications, networks, or systems. If Customer believes it has a reasonable need to conduct security testing on Litmos applications, networks, or systems, Customer should so notify Litmos and request prior written approval from Litmos before undertaking or authorizing such testing. Litmos agrees, upon Customer's request and subject to reasonable confidentiality requirements, to cooperate with reasonable requests by Customer to assess Litmos's security and integrity of its services using Litmos' own standard procedures and Documentation.

5. SALE AND PURCHASE. Litmos shall sell to Customer and Customer shall purchase from Litmos the Cloud Services and/or Services set forth in Orders. A Litmos-issued valid sales quotation that incorporates this Agreement by reference and is signed by Customer may serve as an Order. The terms and conditions of this Agreement will apply to all Orders and supersede any different or additional terms on Customer's purchase orders. Any purchase orders issued by Customer to Litmos are solely for the purpose of requesting delivery dates and quantities, specifying the bill-to addresses, specifying the identity of Cloud Services and Services purchased along with the number of licenses issued and the term of any applicable license or subscription, and specifying the applicable price for each Cloud Service and Service; all other terms on such purchase order will have no force or effect. All Orders

are subject to acceptance by Litmos (which acceptance may be evidenced by Litmos's issuance of login instructions and/or a license key under the Order).

6. FEES AND PAYMENT.

(a) **Fees.** Customer shall pay to Litmos all fees specified in all Orders hereunder. Except as otherwise expressly provided in the applicable Order or this Agreement, (i) all payment obligations are non-cancelable and all fees non-refundable, and (ii) quantities purchased cannot be decreased during the relevant Subscription Term. A multiyear subscription for any Cloud Service or multiyear renewal is an agreement to purchase the full value of all years of the subscription, even if required payments are annual. In the event that this Agreement is terminated prior to the end of the relevant Subscription Term, then all remaining amounts owed to Litmos shall become immediately due and payable by Customer in accordance with this Section 6 and Section 12.

(b) **Invoicing and Payment.** Fees will be invoiced in advance and otherwise in accordance with the relevant Order. Customer shall pay all amounts invoiced within 30 days after the invoice date. Litmos shall not invoice for any Cloud Services before the issuance of login instructions and/or a license key, as applicable. All sums not paid when due will accrue interest per annum at the lesser of a monthly rate of one percent (1.0%) or the highest rate permissible by law on the unpaid balance until paid in full.

(c) **Suspension of Cloud Services.** Litmos reserves the right to suspend Customer's access to and/or use of the Cloud Services if (i) any payment is due but unpaid but only after Litmos has provided Customer with at least two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice, (ii) Customer or any of its Users use of the Cloud Services are in breach of this Agreement and not cured as required by Section 12(c), (iii) Customer fails to timely address Litmos's request to take action pursuant to Section 3, (iv) Customer use of the Cloud Services poses a security or other risk to the Cloud Services or to other Users, or (v) suspension is required pursuant to a subpoena, court order or other legal process.

(d) **Taxes, No Deduction, Setoff.** Customer is responsible for all taxes, withholding, duties and other governmental assessments (other than Litmos's franchise taxes or taxes based upon Litmos's net income), including goods and services, sales or use tax, value added tax ("VAT") or similar taxes, provided that Litmos shall not invoice Customer for taxes to the extent Customer has provided an appropriate resale certificate, exemption documentation or valid VAT identification number that exempts Customer from paying and/or Litmos from collecting such tax. The location included in any Order shall be the primary location from which Customer will access the Cloud Services. Customer agrees and understands that the calculation of taxes is in accordance with applicable jurisdictional laws of the primary access location. Customer shall pay all amounts payable under this Agreement to Litmos in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason. If Customer is purchasing the Cloud Services for use outside the United States and is required to pay any withholding taxes on payments to Litmos, then Customer shall increase its payments to Litmos such that the net payment to Litmos, after withholding tax, would be the same as if no withholding tax were applicable.

7. PROPRIETARY RIGHTS.

(a) **Reservation of Rights.** Regardless of any references to any sale or purchase in this Agreement, the Cloud Services are licensed to Customer hereunder on a limited basis and for the sole purpose of enabling Customer to exercise its rights under this Agreement, the applicable Order, and the Documentation. As between the parties, all ownership rights with respect to the intellectual property rights in and to the Cloud Services and Services, and any copies or portions thereof, remain with Litmos and its suppliers and licensors. Any of Litmos's Confidential Information or proprietary information included in Customer Data (e.g., Customer-specific reports) will remain property of Litmos. The Cloud Services are protected by the intellectual property laws (including copyright laws) of the United States, foreign jurisdictions and all applicable international treaties. This Agreement does not grant Customer any rights not expressly set forth herein.

(b) **License to Host Customer Data.** Customer grants Litmos and applicable service providers a worldwide, limited-term, revocable, royalty-free license to host, copy, transmit and display Customer Data as reasonably required for Litmos and applicable service providers to provide the Cloud Services in accordance with this Agreement and the applicable Documentation. Subject to the limited licenses granted herein, Litmos acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Data. Customer retains all right, title and interest in and to all Customer Data including Personal Data. Customer is responsible for retaining its own original set of any Customer Data provided to Litmos. Customer Data shall not, without the consent of Customer which shall not be unreasonably withheld, be (i) intentionally disclosed, assigned, or otherwise provided to third parties by Litmos or Litmos personnel, or (ii) used by Litmos for training materials and/or software demonstrations.

(c) **Statistical Data.** Litmos may process, use, and collect data and information (collectively, "Statistical Data") from Users relating to the operation of the Services in connection with use of the Cloud Services to fulfill its obligations under this Agreement, and to manage, analyze and improve the Cloud Services; provided, that all Statistical Data shall be processed and stored in an anonymized format. Statistical Data may include features used, device and application identifiers, operating and system configuration information, location, log files, event files and other diagnostic files, as well as statistical, aggregated, anonymized data. Litmos retains all intellectual property rights in the Statistical Data.

(d) **License to Use Feedback.** Customer grants to Litmos a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Litmos's services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or its Users relating to the operation of the Cloud Services.

8. CONFIDENTIALITY. Each party (the “**Receiving Party**”) agrees that any nonpublic information, software, inventions (whether patentable or not), algorithms, designs, know-how, ideas, product development plans, pricing and discounts, and all customer, business, technical, training and financial information (collectively, “**Confidential Information**”) it obtains from the other (the “**Disclosing Party**”) are the confidential property of the Disclosing Party and its suppliers. Without limiting the foregoing, the Cloud Services (including their design and structure) and all information on Litmos’s customer care website constitute trade secrets and/or Confidential Information of Litmos or its licensors. Except as expressly and unambiguously allowed herein, the Receiving Party will hold the Disclosing Party’s Confidential Information in confidence using the same degree (but no less than a reasonable degree) of care and protection that it uses to protect its own Confidential Information of a similar nature and not use or disclose any Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information to those of its employees and contractors with a need to know such Confidential Information and who have signed a written agreement with nonuse and nondisclosure provisions at least as protective of such Confidential Information as the terms of this Agreement. Confidential Information does not include any information that (a) was publicly known at the time of the Disclosing Party’s communication thereof to the Receiving Party or becomes publicly known thereafter through no fault of the Receiving Party, (b) was in the Receiving Party’s possession free of any obligation of confidentiality at the time of the Disclosing Party’s communication thereof to the Receiving Party, (c) is rightfully obtained by the Receiving Party free of any obligation of confidentiality from a third party authorized to make such disclosure without restriction, or (d) is identified by the Disclosing Party as no longer proprietary or confidential. The Receiving Party may disclose Confidential Information to the minimum extent disclosure is required by court order or as otherwise required by law, on condition that (i) notice of such requirement for such disclosure is given to the Disclosing Party prior to making any such disclosure (if permitted under applicable law), and (ii) the Receiving Party ensures that any Confidential Information disclosed under this provision will still be afforded the protection of this Agreement to the extent it does not become publicly available as a result of such disclosure. Because of the unique and proprietary nature of the Confidential Information, it is understood and agreed that the Disclosing Party’s remedies at law for a breach by the Receiving Party of its obligations under this Section will be inadequate and that the Disclosing Party will be entitled to seek equitable relief (including provisional and permanent injunctive relief) in addition to any other remedies. Customer shall not, without Litmos’s prior written consent, publish or provide to any third party results of any benchmark or comparison tests of any Cloud Services. Upon termination or expiration of this Agreement, the Receiving Party shall return or destroy all Confidential Information of the Disclosing Party in its possession. The obligations set forth in this Section will survive any termination or expiration of this Agreement.

9. WARRANTIES AND DISCLAIMER.

(a) Litmos warrants to Customer that the Services will be provided in a professional manner in accordance with generally accepted industry standards and all applicable laws. Litmos further warrants to Customer that during the applicable Subscription Term, the Cloud Services, upon issuance by Litmos of login instructions and/or a license key, as applicable, will conform in all material respects to the applicable published specifications for such Cloud Services. The foregoing warranty does not extend to any Cloud Service that is modified or altered or is not used in accordance with the applicable Litmos published specifications and/or Documentation. Customer’s sole and exclusive remedy, and Litmos’s sole and exclusive obligation, for any breach of the foregoing warranties will be the repair or replace the non-conforming Cloud Services.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LITMOS’S ENTIRE LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDY UNDER THIS WARRANTY WILL BE TO PROVIDE CONFORMING SERVICES OR TO TERMINATE THE NON-CONFORMING SERVICES AND PROVIDE A PRORATED REFUND OF ANY UNUSED PREPAID FEES FROM THE PERIOD OF NON-CONFORMANCE AND RELIEF FROM ANY SUBSEQUENT ANNUAL PAYMENTS DUE, WITH RESPECT TO SUCH SERVICE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS PROVIDED IN SECTION 9(a) ABOVE, LITMOS AND ITS LICENSORS AND SERVICE PROVIDERS DISCLAIM ALL OTHER REPRESENTATION, WARRANTIES OR CONDITIONS, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES AND CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, ACCURACY, SECURITY, RELIABILITY AND NONINFRINGEMENT. LITMOS ALSO MAKES NO WARRANTY REGARDING NON-INTERRUPTION OF USE OR FREEDOM FROM BUGS OR THAT ANY CLOUD SERVICE, OR SERVICES WILL MEET CUSTOMER’S REQUIREMENTS. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

10. LIMITED LIABILITY.

10.1 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES. NEITHER PARTY NOR ANY OF THEIR AFFILIATES WILL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT OR OTHERWISE), INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, BUSINESS INTERRUPTION, FOR GOODWILL, OR LOSS OF INFORMATION OR CORRUPTION OF DATA, COST OF SUBSTITUTE SERVICE, IN EACH CASE, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.)

10.2 GENERAL LIABILITY CAP. SUBJECT TO SECTION 10.3 BELOW AND EXCEPT WITH RESPECT TO WILLFUL MISCONDUCT, GROSS NEGLIGENCE, FRAUD, OR VIOLATION OF LAW COMMITTED BY EITHER PARTY WITH REGARD TO THE SUBJECT OF THIS AGREEMENT, THE AGGREGATE LIABILITY OF LITMOS, CUSTOMER AND THEIR AFFILIATES WILL NOT EXCEED THE AGGREGATE FEES PAID OR PAYABLE BY CUSTOMER TO LITMOS UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

10.3 HEIGHTENED LIABILITY CAP THE LIABILITY LIMITATIONS OF SECTION 10.2 SHALL NOT APPLY TO INDEMNIFICATION OBLIGATIONS, INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY OR ANY VIOLATION OF SERVICE USAGE RESTRICTIONS. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE AGGREGATE LIABILITY FOR BREACH BY LITMOS OF ITS OBLIGATIONS IN RESPECT OF DATA PROTECTION OR PRIVACY SHALL NOT EXCEED TWO TIMES (2X) THE TOTAL FEES PAID BY CUSTOMER DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

11. INDEMNIFICATION. Litmos shall defend any third party action, suit or proceeding brought against Customer alleging that the Cloud Services infringe any of such third party's patents or copyrights (each, a **"Claim"**), and shall indemnify Customer for any losses, damages, costs, expenses and judgments resulting from a Claim that are agreed to by Litmos in a settlement or that are finally awarded against Customer by a court or a governmental entity with competent jurisdiction. Litmos is not responsible for any settlement it does not approve in writing. The foregoing obligations of Litmos do not apply with respect to any Cloud Service or any portion or component thereof: (a) that is not supplied by Litmos, (b) that is made in whole or in part in accordance with Customer specifications or requests, (c) that is modified, including any modification made using any programming capabilities or scripting languages that are included in or with a Cloud Service or that are otherwise made available for a Cloud Service, if the alleged infringement relates to such modification, (d) that is combined, processed, or used with other products, technologies, processes or materials, if the alleged infringement relates to such combination, process or use, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (f) where Customer's use is not strictly in accordance with this Agreement, or (g) any Claim that resulted from Customer's own decision or action to select and incorporate corresponding third party material for its use with the Cloud Services. In addition, Litmos may (i) procure for Customer the right to continue to use the applicable Cloud Service, (ii) replace the applicable Cloud Service with a noninfringing alternative, (iii) modify the applicable Cloud Service to make it noninfringing, or (iv) terminate access to the applicable Cloud Service and refund any prepaid fees received from or on behalf of Customer for use of the applicable Cloud Service for the remainder of the terminated Subscription Term. This Section states Litmos's sole and exclusive obligation, and Customer's sole and exclusive remedy for claims of infringement of third-party rights, to the maximum extent permitted under applicable law, for any third party claims of infringement. The foregoing obligations are expressly conditioned on Customer providing prompt notice to Litmos of the threats, claims and proceedings related to a Claim and reasonably cooperating with Litmos during the defense and negotiations for a settlement or compromise of such Claim.

12. TERM AND TERMINATION.

(a) **Term of Agreement.** Unless terminated earlier as provided herein, this Agreement begins on the Effective Date continues until all subscriptions hereunder have expired or been terminated. Each party may terminate this Agreement upon written notice to the other party if there are no Orders then in effect.

(b) **Term of Purchased Subscriptions.** Subscriptions begin on the start date specified in the applicable Order and continue for the Subscription Term specified therein. Except as otherwise expressly specified in an Order, subscriptions will automatically renew for another Subscription Term of period equal to one (1) year, unless either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current Subscription Term.

(c) **Termination for Cause.** Either party may terminate a specific Cloud Service or Services (including related Orders) if the other party fails to cure any material breach of its obligations as to the specific Cloud Service or Services within thirty (30) days (or is incapable of curing such breach) after receipt of written notice describing the breach.

(d) **Effects of Termination.** If this Agreement is terminated by Customer in accordance with Section 12(c) above, Litmos will refund Customer any prepaid fees covering the remainder of the term with respect to such Cloud Service or Services after the effective date of termination. If this Agreement is terminated by Litmos in accordance with Section 12(c) above, Customer will pay any unpaid fees and amounts owed to Litmos under this Agreement covering the remainder of the term of all Order subscriptions. In no event will any termination relieve Customer of the obligation to pay any fees payable to Litmos for the Services or Cloud Services period prior to the effective date of termination. Upon expiration or termination of this Agreement, Customer must cease using all Cloud Services. Litmos shall have the right to invoice Customer and Customer agrees to pay for any use of the Cloud Services at the then-current rates past the effective date of termination. Upon request, Litmos shall preserve and retain Customer Data for thirty (30) days following expiration or termination of this Agreement for the limited purpose of allowing Customer to retrieve such Customer Data; provided, that, for the avoidance of doubt, Litmos shall not be obligated to render any services following the expiration or termination of this Agreement.

(e) **Surviving Provisions.** The following provisions will survive any termination or expiration of this Agreement: Sections 1 (Definitions), 3 (Restrictions), 6 (Fees and Payment), 7 (Proprietary Rights), 8 (Confidentiality), 9(b) (Warranty Disclaimer), 10 (Limited Liability), 11 (Indemnity), 12 (Term and Termination), 13 (Compliance with Laws and Export Control), and 15 (General).

13. COMPLIANCE WITH LAWS AND EXPORT CONTROL. Customer shall conduct its business operations in accordance with all applicable U.S., European Union and other foreign laws, ordinances, codes and regulations. Without limiting the foregoing, Customer shall comply with all applicable export laws, restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and any other United States, European Union or other foreign agency or authority and shall not import, export or re-export, or allow the import, export or re-export of, any Cloud Service, technology or information it obtains or learns pursuant to this Agreement (or any direct product thereof) in violation of any such laws, restrictions or regulations. Pursuant to these laws, restrictions, and regulations, Customer shall ensure that no Cloud Service is, in the absence of authorization by U.S. and other applicable law as required, used by or exported, sold or re-exported to (a) any U.S. sanctioned or

embargoed country, or to nationals or residents of such countries, (b) any person, entity, organization or other party identified on the U.S. Department of Commerce's Denied Persons or Entity List, the U.S. Department of Treasury's Specially Designated Nationals or Blocked Persons List, or the Department of State's Debarred Parties List, as published and revised from time to time, or (c) any party who is known or suspected to be involved in relation to any nuclear, biological or chemical weapons, or proliferation-related end-uses restricted by the U.S. Export Administration Regulations, including the design, development, or production of missiles capable of delivering these weapons. Without limiting the foregoing, Customer shall not use any Cloud Service, technology or information it obtains or learns pursuant to this Agreement in relation to any nuclear, biological or chemical weapons, or proliferation-related end-uses restricted by the U.S. Export Administration Regulations, including the design, development or production of missiles capable of delivering these weapons.

14. GOVERNMENT USE. If Customer is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure and transfer of the Cloud Services is restricted in accordance with the Federal Acquisition Regulations (FAR) as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement (DFARS) as applied to military agencies. The Cloud Services qualify as "commercial items" under FAR § 2.101 and all Cloud Services are developed exclusively at private expense. The Documentation is "computer software documentation" as set forth in FAR §52.227-14(a) and DFARS §252.227-7013(a). For purposes of this Agreement, references in this Agreement to "business" use will be deemed references to Government use if Customer is part of the Government. In accordance with such provisions, any use of any Cloud Service by the Government will be governed solely by the terms of this Agreement. All other use by or on behalf of the Government is prohibited.

15. GENERAL.

(a) All notices under this Agreement must be in writing and will be deemed given (i) when personally delivered, (ii) one day after being sent by overnight courier, (iii) upon receipt, if sent by certified or registered mail, return receipt requested, or (iv) the day of sending by email, to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice. Notices to Litmos shall be sent to contracts@litmos.com. Customer is responsible for keeping Litmos apprised of current notice contact information.

(b) If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible consistent with the original intent of the parties, and the other provisions of this Agreement will remain in force. The failure of Litmos to enforce its rights under this Agreement or to act with respect to a breach of this Agreement by Customer or others will not be construed as a waiver of such rights and will not limit Litmos's rights with respect to any such breach or any subsequent breaches.

(c) Customer shall not assign (by operation of law or otherwise), transfer or sublicense any obligation or benefit under this Agreement, without Litmos's prior written consent, except Customer may assign this Agreement, in its entirety, to a successor of all or substantially all of Customer's business; provided, that the relevant assignee shall be required to assume all of Customer's obligations under this Agreement. Litmos may assign this Agreement and/or any Orders, or delegate any of its obligations hereunder, in whole or in part (except that Litmos shall obtain the consent of the Government where the Government is Customer hereunder and such consent is required).

(d) For all purposes under this Agreement, each party shall be and act as an independent contractor of the other and shall not bind nor attempt to bind the other to any contract.

(e) Litmos and Customer agree that any Order (or portion thereof) will be deemed separable from any other Order (or portion thereof). There are no third-party beneficiaries of this Agreement.

(f) Unless otherwise expressly indicated, "including" (and other variations thereof) means, as applicable, "including but not limited to" and "herein" and "hereunder" are references to this Agreement. This Agreement, including all online terms referenced herein, constitutes the entire agreement between the parties with respect to the subject matter hereof, to the exclusion of any pre-printed or contrary terms of any purchase order (or similar document) and supersedes and cancels any prior agreements, proposals, discussions, understandings, negotiations or representations between the parties relating to the subject matter of this Agreement, and all past dealing or industry custom.

(g) This Agreement will not be modified or waived, except by a mutual signed writing, provided that Litmos may update the online product related terms referenced herein from time to time. Litmos may include Customer's name as part of general customer lists and identify Customer as a customer on Litmos' websites and in marketing materials, and grants to Litmos the right to use Customer's name and trademarks solely for the foregoing limited purpose. The parties also may engage in select marketing activities that are approved in writing by both parties, including the issuance of a press release and/or a quote from a Customer representative concerning the parties' relationship within a reasonable time after the Effective Date.

(h) This Agreement may be executed in any number of counterparts, all of which taken together constitute a single instrument. Execution and delivery of this Agreement may be evidenced by facsimile or other electronic transmission. The parties acknowledge and agree that this Agreement is subject to the U.S. Electronic Signatures in Global and National Commerce Act, the U.K. Electronic Communications Act 2000, and any similar law in any other applicable jurisdiction that makes legally effective a contract in electronic form and authorizes acceptance by means of an electronic signature or process.

(i) For purchases from Litmos US, L.P., this Agreement is governed by and construed in accordance with the laws of the State of Delaware, USA (without regard to the conflicts of laws provisions thereof or the UN Convention on the International Sale of Goods). For purchases from any other entity affiliated with Litmos, this agreement is governed by and construed in accordance with the laws of England and Wales. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

(j) Litmos or Customer shall not be required to perform any obligation under this Agreement or be liable to each other for damages so long as performance or non-performance of the obligation, or the availability of services, insurance, or required approvals essential to this Agreement, is disrupted, delayed, caused or prevented by Force Majeure. "**Force Majeure**" means: hurricanes, floods, extreme weather, earthquakes, fire, or other acts of God, unusual transportation delays, or wars, insurrections, or acts of terrorism, which, by exercise of reasonable diligent effort, the non-performing party is unable in whole or in part to prevent or overcome.