



This Subscription Software and Services Agreement (“Agreement”) establishes the general terms and conditions that govern the purchase, use, or trial of Software and Services by Panzura, LLC or its Affiliates (collectively “Panzura”) to the corporation, LLC, partnership, sole proprietorship, or other business entity (“Customer”) executing an Order or Statement of Work with Panzura or a Panzura authorized reseller referencing and incorporating this Agreement. If the Customer has ordered the Software or Services through an authorized reseller, the applicable payment terms between Customer and the reseller will apply to Customer’s use of the Software hereunder, but all other terms of this Agreement, as between Panzura and Customer, will govern the use of the Software and Services. Authorized resellers of Panzura are not authorized to make any representations, commitments, or promises on behalf of Panzura, and Panzura will not be bound to Customer by obligations other than those provided herein. This Agreement is effective as of the date Customer executes an Order or Statement of Work for Software or Services (the “Effective Date”) and supersedes in its entirety any previous agreement for Software and Services. Panzura and Customer may herein be referred to as a “Party” individually, or collectively as the “Parties”.

1.0 DEFINITIONS. The following capitalized terms in this **Section 1** will have the following meanings whenever used in this Agreement.

- 1.1 **“Affiliate”** means, with respect to a Party, an entity controlling, controlled by or under common control with such Party where control means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all the voting power of the shares (or other securities or rights) entitled to vote for the election of directors or other governing authority.
- 1.2 **“Agreement”** means this Subscription Software and Services Agreement, and all documents incorporated by reference herein.
- 1.3 **“Panzura Content”** means information, data, templates, text, software, music, sound, photographs, graphics, video messages or other material to which Customer is provided access by Panzura through the Software. Panzura Content excludes Customer Data.
- 1.4 **“Customer Data”** means all information and data, including Personal Data, in electronic form inputted or otherwise provided by Customer or its Users through use of the Software.
- 1.5 **“Documentation”** means the Software descriptions, specifications, user instructions, release notes, manuals and on-line help files as updated by Panzura from time to time, in the form generally made available by Panzura, regarding the use of the Software. Documentation is available to Customer at <https://know.panzura.com/>.
- 1.6 **“Intellectual Property”** means any and all intellectual property rights, recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded, including without limitation inventions, technology, patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, methodologies, procedures, processes, know-how, tools, utilities, techniques, various concepts, ideas, methods, models, templates, software, source code, algorithms, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, general purpose consulting and software tools, utilities routines, operation of systems, and training methodology and materials, which a Party has created, acquired or otherwise has rights in.
- 1.7 **“Order”** means any document for the provision of Software by Panzura, or an authorized reseller of Panzura, which incorporates by reference this Agreement.
- 1.8 **“Personal Data”** means any information that identifies an individual, including without limitation: a name, address, telephone number, online identifier, social security number, drivers’ license number, account number, location data, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of an individual.
- 1.9 **“Sensitive Personal Data”** means Personal Data that is subject to data breach notification laws or is considered ‘special’ or ‘sensitive’ under any law, regulation, or statute that is applicable to either Panzura or Customer relating to data security, data protection or privacy, including without limitation Personal Data that contains: social security numbers, drivers’ license numbers, passport numbers, taxpayer IDs, biometric data, genetic data, financial account numbers or payment card numbers (and including any username, password, or PIN used to access any of the foregoing).
- 1.10 **“Services”** refers to consulting, integration, installation, data migration, training, configuration or other professional services performed by Panzura under a Statement of Work.
- 1.11 **“Statement of Work” or “SOW”** means the document(s) executed by the Parties that describes an order of Services.
- 1.12 **“Software”** means the proprietary Panzura software or other products identified in an Order and provided to Customer on a subscription basis pursuant to the terms and conditions of this Agreement. Software subscriptions may be licensed to Customer and hosted in a Customer’s environment or its designated third-party provider or provided as a service and hosted by Panzura or its designated third-party provider, in accordance with **Section 2.1** below and as provided in the applicable Order.
- 1.13 **“Third-Party Products”** means products, software, or services not provided to Customers or branded by Panzura.
- 1.14 **“Users”** means those named employees, contractors, and third-party end users authorized by Customer to use the Software in accordance with this Agreement and as specified in the applicable Order.

2.0 THE SOFTWARE.

- 2.1 **Generally.** Panzura will grant Customer and its Users a personal, non-exclusive, non-transferable, license to access and use the Software specified in an Order on a subscription basis, in accordance with the terms of this Agreement and the applicable Order

term, and subject to Customer's timely payment of undisputed fees as provided in the Order.

- 2.2 **Environment.** Certain Software provided by Panzura is accessible via the Internet by use of an approved browser and will be hosted on a server maintained by Panzura or its designated third-party supplier. Other Software provided to Customer is hosted by Customer in Customer's environment or Customer's designated third party. Customer is solely responsible for equipment, infrastructure, and communication means for accessing and utilizing the Software. Customer is solely responsible for obtaining all necessary rights and licenses to the use of any third-party hardware, software, or service that may be required for use of the Software or otherwise interact with the Software.
- 2.3 **Security and Access Control.** As part of the Software, Panzura will implement appropriate security procedures and controls to protect Customer Data from unauthorized access by physical and electronic intrusion as provided in the **Panzura Security Addendum** located at <https://panzura.com/legal/security-addendum>. Panzura will not, under any circumstances, be responsible or liable to Customer or any third party for (i) the removal of Customer Data from the Software by Customer or any third party of Customer; or (ii) any unauthorized access to the Software by third parties caused through illegal or illicit means by way of Customer's network, infrastructure, or through Customer's provisioning of credentials. Panzura will promptly report to Customer any unauthorized access upon discovery.
- 2.4 **Software Support.** Panzura will provide support for the Software as specified in the **Panzura Support Addendum** located at <https://panzura.com/legal/support-addendum> and the **Panzura Software Upgrade Policy** located at <https://panzura.com/legal/software-upgrade-policy>.
- 2.5 **Services.** Services may be provided by Panzura to Customer as mutually agreed in a Statement of Work. All Services will be performed in a professional and workmanlike manner, based on industry standards for such Services.
- 2.6 **Cooperation.** If access to Customer's internal network by Panzura personnel is required as provided in a Statement of Work, Panzura will notify Customer in advance and follow Customer's reasonable policies provided to Panzura in writing prior to accessing any of Customer's internal networks. Customer will cooperate with Panzura and provide access to such information, facilities, personnel and equipment as may be reasonably required in order to provide the Services. Panzura's performance of Services is dependent upon Customer's general cooperation, timely decisions, approvals, and other responsibilities hereunder.

3.0 USING THE SOFTWARE.

- 3.1 **Acceptable Use Policy.** Customer will comply with **Panzura's Acceptable Use Policy** found at <https://panzura.com/legal/acceptable-use-policy>. Panzura does not monitor the content of communications or Customer Data transmitted through the Software by Customer and its Users and will not be responsible for Customer violation of Panzura's Acceptable Use Policy.
- 3.2 **Customer Security Obligations.** Customer and any third party of Customer will not intentionally: (i) breach or attempt to breach the security of the Software or any network, servers, data, computers or other hardware relating to or used in connection with the Software, or any third party that is hosting or interfacing with any part of the Software, including any penetration tests or vulnerability scans not authorized in advance by Panzura; or (ii) use or distribute through the Software any third-party software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the Software or the operations or assets of any other customer of Panzura or any third party.
- 3.3 **Customer Data.** Customer has sole responsibility for the legality, reliability, integrity, and accuracy of Customer Data and Panzura will not be responsible or liable to Customer or any third party for Customer's failure to obtain any required consents or authorizations for such.
- 3.4 **No Liability for Customer's Procedures.** Customer expressly waives all claims and holds Panzura harmless for the implementation of Customer's requirements or procedures in the provision of Software or Services. Panzura makes no attempt to determine or advise as to whether Customer's procedures comply with any statutory or regulatory requirements or violate any third party's intellectual property rights.
- 3.5 **Training.** Customer is responsible to ensure all Users receive training sufficient to enable Customer to effectively use the Software. Support may not be used as a substitute for User training. Panzura may require that Customer obtain additional training in a Statement of Work between the Parties in the event Customer's support requests are excessive, as determined by Panzura in its sole discretion.
- 3.6 **Compliance with Laws.** The Parties will abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the use or provision, as applicable, of the Software, including those related to data privacy, international communications and the transmission of technical or Personal Data.

4.0 LIMITED RIGHTS AND OWNERSHIP.

- 4.1 **Limited Rights.** Customer's right to use the Software is limited to fulfilling Customer's own internal business needs and will terminate automatically upon the termination of the applicable Order. There are no implied licenses and Panzura hereby reserves all rights not expressly granted to Customer under this Agreement. Without limiting the generality of the foregoing, Customer may not itself, or through any Affiliate, employee, or other third party: (i) sell, distribute, license to third parties in

whole or in part, the Software; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Software in whole or in part; (iii) allow access to, provide, divulge or make available the Software to anyone other than authorized Users; (iv) write or develop any derivative works based upon the Software; (v) modify, adapt, tamper with or otherwise make any changes to the Software or any part thereof; (vi), alter or remove any proprietary or Intellectual Property notices from the Software or Documentation; (vii) create Internet links to or from the Software to unaffiliated third-parties; (viii) “frame” or “mirror” any Panzura Content, (ix) use the Software to provide processing services to third parties (other than Customer’s Affiliates), or otherwise use the same on a ‘service bureau’ basis; (x) use the Software in conjunction with third-party software to which Customer does not have the necessary rights; (xi) disclose or publish, without Panzura’s prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Software; or (xii) otherwise use or copy the Software except as expressly permitted by Panzura.

- 4.2 **Panzura Ownership.** The Software, Services, Documentation, and all equipment, infrastructure, websites, Panzura Content and other materials provided by Panzura and all Intellectual Property embodied therein will at all times remain the exclusive property of Panzura, and which Panzura may, in connection with the provision of Software and Services hereunder, create, employ, provide, modify, acquire or otherwise obtain rights in. Unless expressly granted in this Agreement, Customer does not acquire any right, title, or interest in or to such Panzura Software, Services, equipment, infrastructure, websites, materials, or any other Panzura Intellectual Property unless otherwise provided in a separate written agreement executed by officers of each Party. All rights, title and interest in or to any Panzura Intellectual Property not expressly granted to Customer are reserved by Panzura.
- 4.3 **Customer Ownership.** Customer will at all times retain ownership of all Customer Data and all pre-existing Customer Intellectual Property.
- 4.4 **Usage Data.** Panzura may disclose, distribute, transfer or otherwise make publicly available usage data and other information collected from Customer’s use of the Software provided that Panzura will aggregate, anonymize, and de-identify any Customer Data and Confidential Information such that an individual or entity cannot be identified.
- 4.5 **Grant of License.** During the term of the Agreement as provided in an Order, Panzura grants to Customer a personal, nonexclusive, non-transferable, worldwide, royalty-free license to use, execute, reproduce, display, perform and internally distribute the Services work product and prepare for internal use only derivative works based upon such work product. Additionally, during the term of the Agreement as provided in an Order, Panzura grants Customer a personal, nonexclusive, non-transferable, worldwide, royalty-free license to use, execute, reproduce, display, perform, and internally distribute such Panzura Intellectual Property.

5.0 CONFIDENTIALITY.

- 5.1 **Definition.** “Confidential Information” is (i) written information received by the receiving party (“Receiving Party”) from the disclosing party (“Disclosing Party”) which is marked or identified as confidential and (ii) any information which a reasonable person under the circumstances would know the Disclosing Party intended to be treated as Confidential Information. Confidential Information includes, but is not limited to, technical information, information about product plans, strategies, promotions, customers, and related technical, financial or business information, and any information of the Disclosing Party’s third-party contractors, licensors, agents, or suppliers. The Software, Services, Documentation, collateral materials, operating instructions and any other information related to system performance provided by Panzura will be considered Confidential Information of Panzura. All Customer Data will be considered Confidential Information of Customer.
- 5.2 **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care) to protect the Confidential Information of the Disclosing Party. The Receiving Party will: (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its, and its Affiliates’, employees, consultants, contractors and agents who need such access for purposes consistent with permitted use of such Confidential Information under the Agreement and who have confidentiality obligations with the Receiving Party containing protections of the Disclosing Party’s Confidential Information no less stringent than those provided herein. Neither Party will disclose the terms of any Order or Statement of Work to any third party other than its Affiliates and their legal counsel and accountants without the other Party’s prior written consent. The Receiving Party will be liable to the same extent that it would have been had it disclosed or used the Confidential Information itself for the actions of its Affiliates and its and their respective employees, consultants, contractors and agents in violation of this **Section 5.0**.
- 5.3 **Exceptions.** The confidentiality obligations herein will not extend to information that: (i) was already known by or available to the Receiving Party, or rightfully received without obligation of confidentiality prior to disclosure under this Agreement; (ii) is or becomes publicly known without breach by the Receiving Party; (iii) is independently developed or learned by the Receiving Party without use of the Disclosing Party’s Confidential Information; (iv) is disclosed by the Receiving Party with the Disclosing Party’s prior written approval, or (v) is required to be disclosed pursuant to a lawful order of a governmental authority, so long as the Receiving Party provides the Disclosing Party with timely prior notice of such requirement and provided that such

information will remain confidential for all other purposes under this Agreement.

- 5.4 **Privacy.** Customer may provide limited Personal Data through Software hosted by Panzura including User, employee, and customer names and contact information to the extent required for the use and operation of the Software. Panzura collects, stores, uses, protects, and purges such Customer Data as provided in Panzura's Privacy Policy found at <https://panzura.com/privacy-policy/>. In no event will Customer provide to Panzura any Sensitive Personal Data unless first anonymized, encrypted, or masked such that no specific individual can be identified. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY COST OR EXPENSE ASSOCIATED WITH THE REMOVAL OF IDENTIFIABLE SENSITIVE PERSONAL DATA FROM THE SOFTWARE OR WITH ANY SECURITY INCIDENT INVOLVING ANY SENSITIVE PERSONAL DATA. NOTWITHSTANDING ANYTHING TO THE CONTRARY, PANZURA WILL HAVE NO LIABILITY TO CUSTOMER OR ANY OTHER THIRD PARTY FOR ANY COST, LOSS, LIABILITY, DAMAGE OR EXPENSE CAUSED BY, ARISING FROM, OR RELATING TO CUSTOMER'S FAILURE TO COMPLY WITH THIS **SECTION 5.4**.
- 5.5 **Period of Obligation.** The Receiving Party's obligation of confidentiality will be for a period of 3 years after the date of disclosure or the termination of this Agreement, whichever is longer, provided, however, that the Receiving Party's obligation of confidentiality with respect to the trade secrets of the Disclosing Party will continue indefinitely.
- 5.6 **Remedies.** Each Party acknowledges that a Disclosing Party will suffer irreparable damage in the event of any material breach of the provisions of this **Section 5.0**. Accordingly, in such event, a Disclosing Party will be entitled to injunctive relief, as well as any other applicable remedies at law or in equity, against the Party who has breached or threatened to breach this **Section 5.0**.
- 5.7 **Return.** Upon the termination of this Agreement or upon the written request of the Disclosing Party, the Receiving Party will destroy or return to the Disclosing Party all originals or copies of Confidential Information of the Disclosing Party and all derivatives thereof and, in the case of destruction, certify such destruction in writing. Upon termination, provided that Customer has paid all undisputed amounts due under this Agreement for Services, the Customer can request a copy of Customer Data not otherwise accessible to Customer, and Panzura will provide a copy of such Customer Data in an electronically readable format within 30 days of receipt of a written request.
- 5.8 **Location of Customer Data.** The location of all Customer Data for Software hosted by Panzura will be as provided in the Order. Panzura will not change the location of such Customer Data without the prior written consent of Customer.

6.0 FEES AND PAYMENTS.

- 6.1 **Fees.** All fees will be invoiced by, and directly payable to, Panzura or an authorized reseller in accordance with the applicable Order or Statement of Work. Except as otherwise expressly specified in an Order, all payment obligations for recurring fees related to Software start from the date of execution of the applicable Order.
- 6.2 **Currency and Payments.** The amounts payable for Software or Services in an Order or Statement of Work will be paid without setoff or deduction of any kind to any third party. Panzura is not responsible to pay any amount of tax or duty or make any payment to any third party in connection with the provision of Software or Services (excluding taxes based on Panzura's income).
- 6.3 **Suspension and Late Payments.** Without prejudice to its other rights, Panzura reserves the right to suspend or terminate Customer's access to the Software upon not less than 30 days' written notice to Customer if payment is 60 days late for any undisputed amounts due. Delinquent invoices are subject to interest of 1% per month on any outstanding balance, or the maximum permitted by law, whichever is less except as otherwise provided in an Order or through an authorized reseller. Panzura reserves the right to impose a reconnection fee based on actual cost to Panzura in the event Customer's access is suspended due to non-payment.

7.0 WARRANTIES, WARRANTY DISCLAIMERS, AND INDEMNITIES.

- 7.1 **General Warranty.** Each Party hereby represents and warrants to the other Party that: (i) such Party will comply in all material respects with all applicable laws; (ii) such Party will use commercially reasonable virus detection software and procedures to minimize the risk of transmitting any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or information (and Customer acknowledges that Panzura or its hosting service provider may remove any content that violates this **Section 7.1(ii)**); (iii) such Party has the right, power and authority to enter into this Agreement and to fully perform all its obligations hereunder; and (iv) the making of this Agreement does not violate any agreement existing between such Party and any third party. Additional warranties may apply as provided in an Order.
- 7.2 **General Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, PANZURA MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, WITH RESPECT TO THE SOFTWARE OR SERVICES, OR ANYTHING ELSE, AND PANZURA HEREBY DISCLAIMS THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INTEROPERABILITY, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT THERETO. WITHOUT LIMITING THE FOREGOING, PANZURA DOES NOT WARRANT THAT THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. PANZURA DOES NOT WARRANT THAT SOFTWARE OR SERVICES PROVIDED WILL BE COMPATIBLE WITH FUTURE VERSIONS OF THIRD-PARTY PRODUCTS OR SERVICES.
- 7.3 **Additional Disclaimer.** CERTAIN SOFTWARE PURCHASED BY CUSTOMERS MAY DETECT POTENTIAL RANSOMWARE ATTACKS AND NOTIFY A CUSTOMER AND ITS DESIGNATED USERS IN THE EVENT OF ACTIVITY THAT MAY INDICATE SUCH ATTACKS.

PANZURA DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE PREVENTS, DISCOVERS, OR LOCATES RANSOMWARE ATTACKS, OTHER MALICIOUS ATTACKS OR THREATS TO A CUSTOMER'S SYSTEMS, INTERNAL NETWORKS, CUSTOMER DATA, OR INFRASTRUCTURE, OR OTHER DEPLOYMENTS OF MALICIOUS SOFTWARE. ALTHOUGH CERTAIN SOFTWARE IS PROVIDED TO CUSTOMERS TO DETECT AND NOTIFY OF POTENTIAL RANSOMWARE ATTACKS, THE SOFTWARE IS NOT VIRUS-SCANNING SOFTWARE AND IS NOT DESIGNED TO SCAN FOR OR IDENTIFY VIRUSES OR OTHER SIMILAR MALWARE. EXCEPT FOR PANZURA'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL PANZURA BE LIABLE TO CUSTOMERS OR ANY THIRD PARTY FOR ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL COSTS OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DOWNTIME COSTS, LOST BUSINESS, REVENUES OR PROFITS, LOSS OF OR DAMAGE TO DATA, UNAUTHORIZED ACCESS, IMPAIRMENT, DISABLEMENT, OR SOFTWARE RESTORATION) ASSOCIATED WITH THE SOFTWARE AS PROVIDED IN THIS SECTION 7.3, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES.

- 7.4 **Panzura Indemnity.** Panzura will defend or settle any third-party claim against Customer arising out of or resulting from: (i) the gross negligence or willful misconduct of Panzura; or (ii) allegations that the Software or Services infringe a United States of America patent, a copyright in a country that is a signatory to the Berne Convention, or a trademark, or misappropriates a trade secret. Panzura will pay Panzura-negotiated settlement amounts, court-awarded damages, and fines and penalties imposed by any governmental authority. Customer must follow the indemnification procedures set forth in **Section 7.6**. If a claim of Intellectual Property infringement as provided under **Section 7.4 (ii)** appears likely, then Panzura may (1) modify the Panzura Software; (2) procure any necessary license; or (3) provide a replacement of the Software that is at least functionally equivalent. If Panzura determines that none of these alternatives are reasonably available, then Panzura will provide Customer with a refund equal to the Software fees prepaid by Customer. Notwithstanding the foregoing, Panzura has no obligation for any claim of infringement arising from: (A) Panzura's compliance with designs, specifications, requirements, or instructions of Customer or a third party on behalf of Customer; (B) modifications made by Customer or a third party on behalf of Customer; (C) Customer's non-compliance with the Documentation; or (D) Customer's use of the Software with products or services that are not supplied by Panzura or otherwise referenced in the Documentation. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE PROVISIONS OF THIS **SECTION 7.4** STATE PANZURA'S ENTIRE LIABILITY AND OBLIGATION, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, FOR CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT, WHETHER EXPRESS OR IMPLIED.
- 7.5 **Customer Indemnity.** Customer will defend or settle any third-party claim against Panzura arising out of or resulting from: (i) Customer's misuse of the Software in violation of the Agreement; (ii) the gross negligence or willful misconduct of Customer in connection with the performance by Customer of its obligations under this Agreement; or (iii) any breach, loss, misuse, or unauthorized processing of Sensitive Personal Data provided by Customer in accordance with **Section 5.4**, provided that Panzura follows the indemnification procedures set forth in **Section 7.6**. Customer will pay Customer-negotiated settlement amounts, court-awarded damages, fines and penalties imposed by any governmental authority, and any costs of complying with any consumer notification, credit monitoring, privacy audit, remediation, or similar obligation under any data protection or privacy law.
- 7.6 **Indemnification Procedure.** An indemnifying Party's obligations under **Section 7.4** or **Section 7.5**, as applicable, are subject to the indemnified Party (a) promptly notifying the indemnifying Party of the claim in writing; *provided, however* that claims of patent infringement as provided in **Section 7.4 (ii)** must be noticed to Panzura not later than 7 days from receipt of notice by Customer; (b) cooperate fully with the indemnifying Party in the defense of the claim, at the indemnifying Party's expense; and (c) grant the indemnifying Party sole control of the defense and settlement of the claim; provided, that, neither Party, absent the written consent of the indemnified Party (which will not be unreasonably withheld), will consent to the entry of any judgment or the imposition of any fine or penalty or enter into any settlement that: (i) provides for admission of liability on the part of the indemnified Party, or any relief against the indemnified Party other than the payment of monetary damages for which the indemnifying Party will be solely liable; or (ii) does not release the indemnified Party from all liability in respect thereof.

8.0 LIMITATION OF LIABILITY.

- 8.1 **Limitation of Liability.** EXCEPT FOR PANZURA'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PANZURA'S TOTAL AGGREGATE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER IN THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY AROSE.
- 8.2 **Disclaimer of Consequential Damages.** EXCEPT FOR SUCH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL COSTS OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DOWNTIME COSTS, LOST BUSINESS, REVENUES OR PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, ADDITIONAL LICENSE FEES DUE TO CUSTOMER'S USE OF THE SOFTWARE OR SERVICES WITH THIRD-PARTY SOFTWARE OR HARDWARE, LOSS OF OR DAMAGE TO DATA, OR SOFTWARE RESTORATION), WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE AND SERVICES PROVIDED BY PANZURA HEREUNDER, INCLUDING ACCESS TO THE SOFTWARE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS OUTSIDE THE CONTROL OF PANZURA BUT INHERENT IN

THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS AND REMOTE COMPUTING SERVICES. PANZURA IS NOT RESPONSIBLE FOR ANY DAMAGES RESULTING FROM DELAYS, DELIVERY FAILURES OR OTHER SIMILAR PROBLEMS OUTSIDE THE REASONABLE CONTROL OF PANZURA OR PANZURA'S CONTRACTORS, LICENSORS, OR SUPPLIERS.

8.3 Failure of Essential Purpose. THE LIMITATIONS SPECIFIED IN THIS SECTION 8.0 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE AND WHETHER THE CLAIM IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, PRODUCT LIABILITY, OR OTHERWISE.

9.0 TERM AND TERMINATION.

9.1 Agreement Term. The term of this Agreement will commence on the Effective Date as provided in an Order or Statement of Work and will continue in full force and effect until the expiration or termination of all such Orders or Statements of Work.

9.2 Effect of Termination. Upon termination of this Agreement, all rights granted to Customer with respect to Software and Documentation will terminate, and Customer will immediately discontinue use of such Software and Documentation and any of Panzura's Confidential Information. Upon request by Panzura, Customer will certify in writing to Panzura within 30 days that all copies of the Software and any Confidential Information, have either been returned to Panzura or destroyed in accordance with Panzura's instructions. Customer is solely responsible for the removal of any Customer Data from the Software. Panzura has no obligation to keep the Customer Data after termination. Customer will pay to Panzura all fees associated with any continued use of the Software after termination of this Agreement in addition to any other remedies Panzura may have hereunder.

9.3 Default. If either Party defaults in the performance of any of its material obligations hereunder, that Party will use its reasonable efforts to correct the default within 30 days (or such additional time as the Parties may agree) after written notice of default from the other Party. If the default cannot be, or is not, corrected within such 30-day period, then the non-defaulting Party will have the right, in addition to any other remedies, to terminate this Agreement, and any Order or Statement of Work hereunder by giving written notice of termination to the Party in default.

9.4 Termination for Insolvency. If either Party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned for the benefit of creditors, the other Party may terminate this Agreement without notice and may cancel any unfilled obligations.

9.5 Survival. Notwithstanding any other provision of this Agreement, **Sections 1.0, Definitions, 4.0, Limited Rights and Ownership, 5.0, Confidentiality, 6.0, Fees and Payments, 7.0, Warranty, Warranty Disclaimers, and Indemnities, 8.0, Liability Limitations, 9.0, Term and Termination** and **10.0, Miscellaneous** will survive the termination of this Agreement and will continue unless such provisions expire or terminate by their terms. Notwithstanding the foregoing, **Section 10.6, Audits** will not survive the termination of this Agreement.

10.0 MISCELLANEOUS.

10.1 Governing Law. This Agreement and any disputes arising out of or related to this Agreement will be governed by and construed under the laws of the State of Texas without regard to its conflict of law provisions. The federal and state courts in Collin County, Texas will have exclusive jurisdiction and venue to adjudicate any dispute arising out of this Agreement. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

10.2 Notices. Any notice given to a Party will be in writing and deemed received by the Party to whom it is addressed (a) immediately, if delivered personally or by email with proof of successful transmission, (b) one (1) business day after dispatch by nationally recognized courier, or (c) five (5) business days after dispatch by certified U.S. mail, postage prepaid and return receipt requested. All notices will be sent to Panzura at: **Panzura, LLC, 5850 Granite Parkway, Suite 450, Plano, TX 75024, legal@panzura.com.** Panzura may send notices to Customer pursuant to this Agreement at the address and email provided on the most recent active Order or otherwise provided to Panzura through an authorized reseller. The address and email for notice to Panzura may be revised at any time by Panzura by providing the new information to Customer.

10.3 Force Majeure. Neither Party will be liable for any failure, deficiency or delay in the performance of its obligations under this Agreement due to any force majeure, which includes but is not limited to, any storm, flood, fire, explosion, electrical or communication line failure, disturbance, war or military action, pandemic, government act or administrative delay, equipment failure or non-delivery, inability to obtain materials or any cause or matter whatsoever not within the reasonable control of the Parties. In the event of such a force majeure, the affected Party will be entitled to a reasonable extension of time for the performance of its obligations under this Agreement.

10.4 Independent Contractors. The Parties are independent contractors. Nothing contained in this Agreement will constitute either Party the agent of the other Party for any purpose or in any sense whatsoever or constitute the Parties as partners or joint venturers. Neither Party has any authority to bind the other Party or make any representations on behalf of the other Party.

10.5 Assignment. Except where the assignment is to a successor in interest, neither Party may assign this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld. Any attempted assignment without the consent of the other Party will be considered void and of no effect.

- 10.6 **No Third-Party Beneficiaries.** This Agreement is for the benefit of the Parties and their successors and permitted assigns and does not confer any rights or benefits on any third party, including any employee of a Party, any client of a Party, or any employee of a client of a Party.
- 10.7 **Customer Audits and Questionnaires.** No more than once during any 12-month period, upon a mutually agreed time during normal business hours, Panzura will allow Customer reasonable access to audit Panzura's processes and security to determine if Panzura is in compliance with its obligations to Customer under this Agreement. The audit or inspection performed will not unreasonably interfere with the normal conduct of Panzura's business, and any information obtained by Customer will be considered Confidential Information of Panzura. Any expenses or other costs incurred by Customer during the course of any audit or inspection will be the sole responsibility of Customer notwithstanding the conclusion of the audit. Customer will only be permitted to perform audit activities during normal business hours, and upon 30 days prior written notice to Panzura. Any confidential information of any Panzura vendor or other customer will be excluded from the scope of any audit or inspection by Customer. In the event Customer uses a third party to perform the audit, such party must execute a non-disclosure agreement with Panzura before performing any audit activities. Certain Confidential Information of Panzura, at Panzura's sole discretion, will be shown during the audit on a view only basis, with no copies made or recorded. Panzura will reasonably cooperate with the audit or inspection initiated by Customer provided Customer complies with the requirements of this **Section 10.6**. Questionnaires, security reviews, annual vendor assessments, and other similar information or documentation requested by Customer may only be provided as part of a formal audit under this Section 10.6. Panzura will have no obligation to respond to such requests and any information or documentation provided outside of the Customer's annual audit right will be at Panzura's sole discretion.
- 10.8 **No Waiver.** The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either Party to enforce each and every such provision thereafter. The express waiver by either Party of any provision, condition or requirement of this Agreement will not constitute a waiver of any future obligation to comply with such provision, condition, or requirement.
- 10.9 **Severability.** If any provision of this Agreement, or portion thereof, is found to be invalid or unenforceable, such provision of the Agreement will be enforced to the maximum extent permissible to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect.
- 10.10 **Order of Precedence.** In the event of conflict, the terms of this Agreement will prevail over any Order, Statement of Work, or Addendum to this Agreement, unless (i) such Order, Statement of Work, or Addendum specifically references the conflicting section of this Agreement and clearly states that the amending document will have precedence, and (ii) such Order, Statement of Work, or Addendum is signed by both Parties.
- 10.11 **Expenses.** Except as otherwise provided herein, each Party will pay its own expenses in connection with this Agreement; provided, however, that if any suit or proceeding is brought for the enforcement or interpretation of this Agreement or because of any alleged dispute, breach, default or misrepresentation hereunder, the successful or prevailing Party will be entitled to recover from the other Party its reasonable attorneys' fees and other expenses.
- 10.12 **Subcontractors.** Panzura will remain fully liable to Customer for any subcontractors Panzura may use to provide Services hereunder. Panzura will ensure that all subcontractors providing any Services to Customer on behalf of Panzura are under confidentiality obligations as protective as those within this Agreement.
- 10.13 **Additional Documents.** The following documents found at <https://panzura.com/legal/> are incorporated by reference and form part of this Agreement: **Panzura Support Addendum, Panzura Security Addendum, Panzura Acceptable Use Policy, Panzura Software Upgrade Policy, and Panzura Privacy Policy.**
- 10.14 **Cumulative Remedies.** Except as provided in the Agreement that a remedy will be the sole and exclusive remedy, the rights and remedies of the Parties in this Agreement are not exclusive of but are cumulative as to any rights or remedies now existing or subsequently existing in law or equity.
- 10.15 **Entire Agreement.** The Agreement and all other documents referenced herein, including, without limitation, all documents referenced by Uniform Resource Locator ("URL") constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous and contemporaneous agreements and understandings, whether oral or written, between the Parties.