

Master Subscription Agreement

*** IMPORTANT INFORMATION – PLEASE READ CAREFULLY ***

This Service Offering contains proprietary material and information, the use of which is subject to and expressly conditioned upon acceptance of these Agreement.

This Agreement is a legally binding document between you (meaning the individual person or the entity that the individual represents that has purchased the Service Offering for its internal productive use and not for outright resale) (the “Customer”) and Archer (which means (i) Archer Technologies LLC, if Customer is located in the United States, Mexico or South America; or (ii) Archer Technologies Ireland Limited in any countries outside the United States, Mexico or South America (“Archer”). Unless Archer agrees otherwise in writing, this Agreement governs Customer’s use of the Service Offering, except to the extent all or any portion of the Service Offering is: (a) the subject of a separate written agreement set forth in a quotation issued by Archer; or (b) governed by a third party licensor’s terms and conditions. Capitalized terms have meaning stated in the Agreement.

By proceeding with the installation, use or reproduction of this Service Offering, or authorizing any other person to do so, you are representing to Archer that you are (i) authorized to bind the Customer; and (ii) agreeing on behalf of the Customer that the terms of this Agreement shall govern the relationship of the parties with regard to the subject matter in this Agreement and are waiving any rights, to the maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement. If you do not have the authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement on behalf of the Customer, immediately cease any further attempt to use this Service Offering for any purpose.

Definitions. In addition to the terms defined in the Agreement, the terms set forth below shall have the following meanings:

“**Affiliate**” means a legal entity that is, directly or indirectly, controlled by, controls, or is under common control with a Party, respectively, where “control” means more than 50% of the voting power or ownership interests.

“**Agreement**” or “**MSA**” means this Master Subscription Agreement, the Service Level Agreement, as defined below, any schedules, or other documents attached to, or incorporated into, this Agreement, and such other documents, attachments and exhibits that the Parties’ authorized representatives may mutually agree to in writing from time to time.

“**Authorized Users**” means any person who is authorized to access or use the Service Offering directly under Customer’s login credentials, and may include Customer’s employees, contractors, Archer’s, and other third parties.

“**Content**” means any data, including all text, sound, video, or image files, and software (including machine images), or other information.

“**Customer Content**” means any Content uploaded into the Service Offering for processing, storage or hosting, by Customer or by any Authorized User, but does not include (i) Third-Party Content, or (ii) Usage Data and Usage Analyses as specified in Section 1.3 (“Monitoring”).

“**Data Processing Addendum**” means the then-current version of Archer’s Data Processing Addendum, if applicable, available at: <https://www.archerirm.com/company/standard-form-agreements>.

“**Documentation**” means the then-current, generally available, written user manuals and online help and guides provided by Archer for the Service Offering.

“**Information Security Provisions**” means the information security terms, available at: <https://www.archerirm.com/company/standard-form-agreements>.

“**Product Notice**” means the product-specific terms and conditions, and product specific use rights and restrictions.



"Professional Services" means any implementation, training, consulting, data migration, conversion, integration, or other services provided by Archer as set forth in a Statement of Work, Service Brief, or Quote as the case may be.

"Quote" means the Archer issued quotation specifying the Archer Service Offering and / or Services, and associated pricing, and licensing / use right parameters.

"Support and SLA Agreement" means the support and service level agreement for the applicable SaaS Service Offering, available at <https://www.archerirm.com/company/standard-form-agreements>, which is incorporated by reference herein. Archer may make changes to the Support and SLA Agreement without Customer's consent provided such changes do not have a material and adverse impact on Customer.

"Support Services" means the services for the support and maintenance of the Service Offering as provided for in the Support and SLA Agreement.

"Service Offering" means the Software-as-a-Service (SaaS) applications made available to Customer by Archer via a Subscription.

"Statement of Work" or **"SOW"** means an agreement specifying the details for the performance of the Professional Services and signed by both Parties.

"Subscription" means the right of Authorized Users to access and use the Service Offering as set forth in a Quote.

"Subscription Term" means the initial term of Customer's authorized use of the Service Offering, as set forth in the applicable Quote, together with any renewal terms (if applicable).

1. Use of Archer Service Offering.

1.1. Access; Subscription. Subject to the terms and conditions of this Agreement, Archer shall provide Customer's Authorized Users access to the Service Offering via a Subscription as specified in this Agreement. Archer grants Customer non-exclusive, non-transferable right to access the Service Offering solely during the Subscription Term for the internal business purposes of Customer in accordance with the Agreement.

1.2. Use of the Service Offering. Customer is responsible for (i) any use of the Service Offering that occurs under Customer's login credentials, (ii) Customer's Content, and (iii) Customer's Authorized Users' compliance with the Agreement. If Customer becomes aware of any Authorized User's violation of the Agreement, Customer must promptly suspend that Authorized User's access to the Service Offering. If Customer becomes aware that any of Customer's Content, or any Third-Party Content, violates Section 3.1 ("General Restrictions") or Section 3.2 ("Content Restrictions"), Customer must promptly remove that Content or suspend use of that Third-Party Content. If Customer believes Customer's account has been compromised, including any unauthorized access to or use or disclosure of any account information, passwords, usernames, or login credentials, Customer must notify Archer as soon as possible. Customer may not impersonate another Archer user or provide false identity information to gain access to or use the Service Offering. If Archer reasonably believes a problem with the Service Offering may be attributable to Customer's Content or to Customer's use of the Service Offering, Customer must promptly cooperate with Archer to identify the source of the problem and to resolve the problem.

1.3. Monitoring and Collection. Archer monitors and collects configuration, performance, and usage data relating to Customer's use of the Service Offering ("Usage Data") and derives and collates data from Customer's Content and Customer's use of the Service Offering in a manner which removes identifiable attributes relating to Customer ("**Usage Analyses**"). Archer collects such Usage Data and derives and collates such Usage Analyses to: (a) to facilitate delivery of the Service Offering (such as (i) tracking entitlements, (ii) providing support, (iii) monitoring the performance, integrity, and stability of the Service Offering's infrastructure, (iv) preventing or addressing service or technical issues, and (v) benchmarking); (b) to improve Archer's products and services, and Customer's experience; (c) for data analytics purposes; and (d) to train and deploy machine learning and large language models and other artificial intelligence technologies and offerings (whether now known or hereafter developed); provided that in



each of the foregoing, (a)-(d), no identifiable attributes relating to Customer nor any personal data is disclosed at any time to any third parties. Customer must not interfere with that monitoring or collection. Customer hereby consents to the data monitoring, collection and use described in this Section 1.3 and grants to Archer a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable, and transferable license to monitor, collect, use, edit, modify, truncate, aggregate, reproduce, prepare derivative works of, display, store, analyze, process, adapt, publish, distribute, incorporate, perform, and otherwise fully use Usage Data and Usage Analyses solely as described in this Section 1.3.

- 1.4. Open-Source Software.** The Service Offering includes certain free and/or open-source software components ("**Open-Source Software**"). Customer may receive such Open-Source Software when Customer uses the Service Offering, and the Open-Source Software shall be made available to Customer as Archer generally makes available to its customers. Archer shall not use Open-Source Software in any way that imposes obligations on Customer other than as stated in this Agreement. Archer shall comply with all Open-Source Software terms and conditions.
- 1.5. Optional Feedback.** Customer may provide comments and suggestions regarding a Service Offering, but Customer is not required to do so. If Customer provides comments or suggestions, Archer may use that feedback without restriction, and Customer hereby irrevocably assigns to Archer all right, title, and interest in and to that feedback. Subject to the preceding sentence regarding any feedback Customer provides, providing any comments and suggestions does not grant Archer any rights in Customer's Content or Customer's intellectual property.

2. Data Protection and Security.

- 2.1.** Customer is solely responsible for ensuring that the Service Offering and its security is appropriate for Customer's Content and Customer's intended use, and Archer is responsible for providing security for the Service Offering as set out in the applicable Information Security Provisions.
- 2.2.** Customer is responsible for taking and maintaining appropriate steps to protect the confidentiality, integrity, and security of Customer's Content. Those steps include (a) controlling access Customer provides to Customer's Authorized Users, (b) configuring the Service Offering appropriately, (c) ensuring the security of Customer's Content while it is in transit to and from the Service Offering, (d) using encryption technology to protect Customer's Content, and (e) backing up Customer's Content. The foregoing obligations in this Section 2.2 do not in any way negate or reduce Archer's obligations under the Information Security Provisions and the Agreement.
- 2.3.** Customer is responsible for providing any necessary notices to Authorized Users and obtaining any legally required consents from Authorized Users regarding their use of the Service Offering.

3. Acceptable Use.

- 3.1. General Restrictions.** Customer must not: (a) resell or sublicense the Service Offering; (b) reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the software included with the Service offering, or any part thereof; (c) use the Service Offering (i) in a way prohibited by law, (ii) to violate any rights of others, (iii) to try to gain unauthorized access to or disrupt or harm the Service Offering or any other service, device, data, account, or network of Archer or Archer's customers or suppliers, (iv) in a way intended to work around the Service Offering's technical limitations, recurring fees calculation, or usage limits, (v) use the Service Offering to create or enhance a competitive offering or for any purpose which is competitive to Archer; (vi) perform or fail to perform any other act which would result in a misappropriation or infringement of Archer's intellectual property rights in the Service Offering; (vii) to attempt to probe, scan or test the vulnerability of the Service Offering, or a system, account or network of Archer or any of Archer's customers or suppliers; (viii) to transmit unsolicited bulk or commercial messages or intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items; or (ix) to restrict, inhibit, interfere or attempt to interfere with the ability of any other person to use or enjoy the Service Offering or a user's network, or cause a performance degradation to any facilities used to provide the Service Offering.



3.2. Content Restrictions. Customer must not upload into the Service Offering any Content that: (a) may create a risk of harm or any other loss or damage to any person or property; (b) may constitute or contribute to a crime or a tort; (c) includes any data that is illegal, unlawful, harmful, pornographic, defamatory, infringing, or invasive of personal privacy or publicity rights; (d) contains any data that Customer does not have a right to upload into the Service Offering; or (e) is otherwise prohibited as specified in the Agreement.

4. INTELLECTUAL PROPERTY OWNERSHIP.

4.1. Ownership of Service Offering. As between Customer and Archer, Archer owns all right, title, and interest in and to the Service Offering and any related Archer software, including all improvements, enhancements, modifications, and derivative works of them, and all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered ("**Intellectual Property Rights**") in all of them. This includes any information Archer collects and analyzes about Customer's use of the Service Offering pursuant to Section 1.3 ("Monitoring"). Customer's rights to use the Service Offering are limited to those expressly granted in the Agreement. No other rights are implied with respect to the Service Offering, any related Archer Software, or any related Intellectual Property Rights.

4.2. Ownership of Customer's Content. As between Customer and Archer, Customer retains all right, title and interest in and to Customer's Content and all intellectual property rights in Customer's Content. Archer's rights to access and use Customer's Content are limited to those expressly granted in the Agreement. During the Term, without limitation of Section 1.3 of the Terms of Service, Customer grants to Archer a limited, non-exclusive license to use the Customer Content solely for all reasonable and necessary purposes contemplated by this Agreement and for Archer to provide the Service Offering. Customer, not Archer, shall have sole responsibility for the accuracy, quality, integrity, legality, type, category, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Content. Archer shall not be responsible or liable for any deletion, destruction, damage, or loss of any Customer Content that is caused by Customer.

5. Orders; Invoicing; Payment.

5.1. Orders Generally.

5.1.1. The description of the Service Offering, and related pricing are as stated in a Quote to Customer from Archer. Each Quote is valid for the time period specified thereon. Customer may order the items on such Quote by (i) issuing a purchase order to Archer that references such Quote ("Order"); or (ii) with the prior approval of Archer (a) signing such Quote and returning it to Archer; or (b) sending an email or other writing to Archer referencing and ordering the items on such Quote. Customer's Order is accepted by Archer (1) issuing an e-mail or other written communication to Customer accepting such order; or (2) or commencing performance of the applicable Services. Customer must pay all charges Customer incurs for Customer's use of the Service Offering.

5.1.2. All Orders are subject to the terms of the Agreement and are not binding until Archer accepts them. An Order will be deemed accepted when Archer delivers Customer's login credentials to the email address associated with the account, or otherwise as set forth in the Service Description. Archer is not required to provide the Service Offering to Customer until Customer provides to Archer all information Archer requires for processing Customer's Order and provisioning the Service Offering for Customer. All Orders are non-refundable and non-cancellable except as expressly provided in the Agreement.

5.1.3. If Customer pays for a Service Offering through a credit card, where credit card payment is available, Customer may be subject to any additional terms presented to Customer by a third-party credit card payment processor, which may be the merchant of record for that transaction.

5.2. Direct Orders. This Section 5.2 applies only to Orders directly with Archer. If Customer purchases an entitlement to the Service Offering through a Archer authorized reseller, different terms regarding invoicing, payment, and taxes may apply. Unless Customer and Archer agree otherwise, (i) charges



Customer incurs for using the Service Offering will be as stated on the Quote and (ii) Customer must pay all charges no later than 30 days after the date of invoice.

5.3. Taxes. Service Offering fees are exclusive of any sales, VAT (value-added tax), GST (goods and services tax), use, excise, and other similar taxes (other than income taxes), export and import fees, customs duties, and similar charges imposed by any government or other authority ("**Taxes**"). Customer must pay or reimburse Archer for all Taxes arising out of the transactions contemplated by the Agreement, except for taxes based on Archer's net income, gross revenue or employment obligations. Archer shall provide Customer with a valid invoice if VAT is chargeable in respect of any amount payable under this agreement. Customer may qualify for tax exemptions from time to time in which case Archer requests that Customer timely provide it with a valid certificate of exemption or other appropriate documentary proof of exemption. If Customer is required to pay or withhold any Tax for payments due under the Agreement, where Archer is resident in a different country than Customer, Customer must gross up Customer's payments to Archer so that Archer receives the amount it would have received if such deduction or withholding tax were not required where legally permitted. If Customer is required to pay any Taxes to a taxing authority, Customer must also provide documentation to Archer showing that Customer paid those Taxes. Archer will not be responsible to Customer for any penalties, interest or other charges arising from any act or omission by Customer with respect to tax compliance.

6. TEMPORARY SUSPENSION.

6.1. Generally. Archer may, at its option, suspend Customer's use of any Service Offering if: (a) Customer is in breach of the Agreement (including failure to make timely payment) and does not cure that breach within 10 days after Archer notifies Customer of that breach; (b) Archer believes that Customer's use of the Service Offering poses a security risk to the Service Offering or to other users of the Service Offering; or (c) Archer suspects fraud or abuse. Archer will give Customer fifteen-day (15) notice before suspending Customer's use of the Service Offering if permitted by law or unless Archer reasonably determines that providing notice presents a risk of harm to the Service Offering, to other users of the Service Offering, or to any person or property, in which case Archer will notify Customer as soon as feasible or permitted. Archer will suspend Customer's access only to the Service Offering that is the subject of the issue giving rise to the suspension. Archer will promptly reinstate Customer's access to the Service Offering once Archer has determined that the issue causing the suspension has been resolved.

6.2. Effect of Suspension. Customer will remain responsible for all fees incurred before and during any suspension. Customer will not be entitled to any service credits under the applicable Service Level Agreement that Customer might have otherwise accrued during any suspension.

7. Term; Termination.

7.1. Term. This Agreement starts on the Effective Date and remains in effect for the Subscription Term.

7.2. Termination. Either Party may terminate this Agreement immediately: (i) upon written notice if the other Party materially breaches the Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach; or (ii) immediately upon sending the other party notice if that party: (a) becomes insolvent, admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or (b) becomes subject to control of a trustee, receiver, or similar authority, or to any bankruptcy or insolvency proceeding.

7.3. Effect of Termination.

7.3.1. Upon termination of the Agreement for any reason: (a) Customer must stop using the Service Offering, and (b) Customer must return or, if Archer requests, destroy, any Confidential Information of Archer or its suppliers in Customer's possession or under Customer's control (other than information that must be retained pursuant to law). As between Customer and Archer, Customer is responsible for ensuring that Customer has necessary copies of all Customer's Content prior to the effective date of any termination.



7.3.2. Except to the extent Customer is permitted to terminate the Agreement pursuant to Sections 7.2 ("Termination for Cause"), or 11.2 ("Indemnification by Archer"), in which case Customer shall be entitled to a prorated refund of any pre-paid Subscription fees for the remaining number of months left in the Subscription Term following the effective date of termination, any termination of the Agreement will not entitle Customer to any refunds, credits, or exchanges, and Customer will be liable for all fees for the entire Subscription Term. If Archer terminates the Agreement prior to expiration of a Subscription Term pursuant to Section 7.2, Customer will be liable for all fees due with respect to the Service Offering for the remainder of the then-current Subscription Term.

7.3.3. **Data Return.** In the event the Subscription to the Service Offering is terminated (other than by reason of Customer's breach), and if Customer so requests at the time of termination, Archer will make available to Customer an industry standard file of most recent Customer Content in Archer SaaS and/or Archer Insight within Archer's possession within thirty (30) days of termination.

8. Third-Party Content & Applications; Marketplace.

8.1. Background. The Service Offering is interoperable with and can be integrated with third-party software and services solutions that are provided by a third party but that are not embedded in or required for use of the Service Offering (each, a "**Third-Party Solution**"), and that may also be available to be purchased through the Archer marketplace (the "**Marketplace**" and, for Third-Party Solutions purchased through the Marketplace, each third-party software products and/or services provider, a "**Marketplace Vendor**"). In relation to the Marketplace, where Archer offers Third-Party Solutions through the Marketplace, Archer is merely an intermediary, like an app-store.

8.2. Archer Marketplace; Third-Party Solutions. For each Third-Party Solution, of either a Marketplace Vendor, or other provider of Third-Party Solutions (collectively "Third-Party Solution Providers"), because Third-Party Solutions are provided by Third-Party Solution Providers, the licensing of any Third-Party Solution is a direct license and sale between Customer and the Third-Party Solution Provider. Because Third-Party Solutions are provided by Third-Party Solution Providers and such relationship is independent of Archer and Customer: (a) Third-Party Solution Providers are not Archer's agent, subcontractor, or sub-processor, (b) Archer makes no representations or warranties regarding Third-Party Solutions, (c) when Customer purchases Third-Party Solutions, a Third-Party Solution Providers terms and conditions, including their data protection terms, and not this Agreement, apply to Customer and govern Customer's use of Third-Party Solutions. Accordingly, Customer is urged to review any Third-Party Solution Providers terms and conditions before purchasing or otherwise accessing any Third-Party Solutions, (d) Archer is not responsible for the content and the operation of any Third-Party Solutions, (e) Archer has no liability whatsoever to Customer related to Third-Party Solutions, (f) any exchange of data between Customer and any Third-Party Solution Provider is solely between Customer and the Third-Party Solution Provider and Archer is not responsible for any disclosure, modification or deletion of Customer's data resulting from access by a Third-Party Solution Provider, and (g) if a Third-Party Solution Provider ceases to provide, or makes changes to, their product, including the products' interoperation with the Service Offering, Customer is not entitled to any refund, credit, or other compensation from Archer.

9. WARRANTIES.

9.1. Service Offering Warranty. Archer hereby warrants that the Service Offering will operate in substantial conformity with the Service Offering Documentation. If there is a failure of the Service Offering to operate in substantial conformity with the Service Offering Documentation Customer's sole and exclusive remedy for such failure is that Archer will, within a commercially reasonable time, at its option: (1) repair the nonconformity so that the Service Offering performs in accordance with the Service Offering Documentation; or (2) replace the non-conforming portion of the Service Offering so that the Service Offering performs in accordance with the Service Offering Documentation. If Archer determines that none of these alternatives is reasonably available, then, upon Customer's request, Archer shall provide a pro rata refund of prepaid fees that Customer has paid for the affected, non-conforming, part of the Service Offering.



- 9.2. Services Warranty.** Archer warrants that it will perform any Professional and / or Support Services in a workmanlike and professional manner, and in accordance with generally accepted industry standards. Archer's entire liability, and Customer's sole remedy, for Archer's failure to so perform shall be for Archer to re-perform the affected Professional or Support Services, as applicable, free of charge.
- 9.3. Disclaimer.** OTHER THAN THE LIMITED WARRANTY SET FORTH IN SECTIONS 9.1 AND 9.2, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ARCHER, FOR ITSELF AND ON BEHALF OF ITS SUPPLIERS, DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE, RELATING TO THE SERVICE OFFERING AND TO ALL MATERIALS OR SERVICES PROVIDED TO CUSTOMER UNDER THE AGREEMENT, INCLUDING ANY THIRD-PARTY CONTENT. ARCHER AND ARCHER'S SUPPLIERS DO NOT WARRANT THAT THE SERVICE OFFERING WILL BE UNINTERRUPTED OR FREE FROM DEFECTS OR ERRORS, OR THAT THE SERVICE OFFERING WILL MEET (OR IS DESIGNED TO MEET) CUSTOMER'S BUSINESS REQUIREMENTS. FURTHERMORE, ARCHER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER IN RELATION TO THIRD-PARTY SOLUTIONS.

10. INDEMNIFICATION.

- 10.1. Indemnification by Customer.** Subject to the remainder of this Section 10.1, Customer will (a) defend Archer against any third-party claim or demand arising from or relating to (i) Customer's Content, (ii) Customer's use of any Service Offering, including an Evaluation Service, in violation of the Agreement or (iii) Customer's combination of the Service Offering with non-Archer products or content, including any Customer Content and/or any Third-Party Content ("**Third-Party Claim**"); and (b) indemnify Archer from all fines, damages, and other costs resulting from a final award, judgment, or order of a court of competent jurisdiction or a government agency arising out of a Third-Party Claim. Archer will: (i) provide Customer with notice of any Third-Party Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve Customer of Customer's indemnification obligations only to the extent that the delay prejudices Customer), and (ii) reasonably cooperate in response to Customer's requests for assistance. Customer will have sole control over the defense of any Third-Party Claim. Customer may not, without Archer's prior written consent, settle any Third-Party Claim if that settlement obligates Archer to admit any liability to make any monetary payment, or to undertake any material obligation; or if that settlement would affect any Service Offering or Archer business practices or policies.
- 10.2. Indemnification by Archer; Infringement Claims.**
- 10.2.1. Subject to the remainder of this Section 10.2, Archer will: (a) defend Customer against any claims, suits, or proceedings by a third party that the Service Offering infringes any patent, trademark, or copyright of that third party, or misappropriates a trade secret of that third party ("**Infringement Claim**"); and (b) indemnify Customer from all fines, damages, and costs resulting from a final award, judgment, or order of a court of competent jurisdiction or a government agency, with regard to any Infringement Claim. The foregoing obligations are applicable only if Customer: (i) provides Archer with notice of any Infringement Claim within a reasonable period after learning of the claim (provided that any delay in providing the notice will relieve Archer of its indemnification obligations only to the extent that the delay prejudices Archer); (ii) allows Archer to have sole control over the defense of the Infringement Claim; and (iii) reasonably cooperates in response to Archer's requests for assistance with regard to the Infringement Claim. Archer will not, without Customer's prior written consent, enter any settlement of any Infringement Claim that obligates Customer to admit any liability to make any unreimbursed monetary payment, or to undertake any material obligation.
- 10.2.2. If the Service Offering becomes or in Archer's opinion is likely to become the subject of an Infringement Claim, Archer may at its option and expense: (a) procure the rights necessary for Customer to keep using the Service Offering; (b) modify or replace the Service Offering to make it non-infringing without materially reducing its functionality; or (c) terminate the Agreement and refund any prepaid fees, prorated for the remaining portion of the then-current Subscription Term.



10.2.3. Archer will have no obligation under this Section 10.2 or otherwise with respect to any Infringement Claim based on: (a) combination of the Service Offering with non-Archer products or content, including any of Customer's Content and/or any Third-Party Content; (b) use of the Service Offering for a purpose or in a manner not permitted by the Agreement, or use after Archer notifies Customer to cease such use due to a possible or pending Infringement Claim; (c) any modification to the Service Offering made without Archer's express written approval; (d) any modifications Archer makes to the Service Offering pursuant to instructions, designs, specification, or other information Customer provides to Archer; (e) any data or information Customer or a third party records on or utilizes in connection with the Service Offering; (f) any claim that relates to open source software or freeware technology not embedded in the Service Offering, third party products, or any derivative or other adaptation thereof; or (g) any Service Offering provided on a no-charge basis.

10.2.4. This Section 10.2 states Customer's sole and exclusive remedy and Archer's entire liability for any Infringement Claims.

11. LIMITATION OF LIABILITY.

11.1. Disclaimer. TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER PARTY FOR LOST PROFITS OR BUSINESS OPPORTUNITIES, CUSTOMERS LOSS OF USE OF THE SERVICE OFFERING (SUBJECT TO ARCHER'S OBLIGATIONS UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT), LOSS OF CONTENT FOR ANY REASON, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, RESULTING FROM OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. IN ANY EVENT, EXCEPT FOR AMOUNTS OWED TO ARCHER BY CUSTOMER AS SET FORTH IN THE AGREEMENT, EACH PARTY'S AGGREGATE LIABILITY UNDER OR IN RELATION TO THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE THEN-CURRENT SUBSCRIPTION YEAR, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM A MATERIAL BREACH OF CONTRACT, TORT, BREACH OF STATUTORY DUTY, OR OTHERWISE. THE LIMITATIONS OF LIABILITY IN THIS SECTION SHALL NOT APPLY TO: (I) ANY LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE; (II) ANY LIABILITY ARISING FROM FRAUD OR WILLFUL MISCONDUCT; (III) ANY LIABILITY THAT MAY NOT BE EXCLUDED UNDER APPLICABLE LAW: AND (IV) INDEMNIFICATION OBLIGATIONS IN SECTION 11.

12. Confidential Information.

12.1. Definition; Use. "**Confidential Information**" means any non-public or proprietary information or material relating to a Party, whether orally, or in writing disclosed to the receiving Party, in any form, by or on behalf of the disclosing Party, that is marked or designated as confidential or might reasonably be considered as confidential, including without limitation, all know-how, trade secrets, scientific, technical, statistical, strategic, financial or commercial information. Each Party agrees to: (a) use the Confidential Information of the other Party only for the purposes described and as permitted herein; and (b) restrict access to the Confidential Information to such of its affiliates, personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing or are otherwise bound to treat such information in accordance with the terms of this Agreement.

12.2. Exceptions. The foregoing provision will not apply to Confidential Information that (a) is publicly available or in the public domain when disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations before disclosure; (e) is independently developed by the recipient; (f) is approved for release or disclosure by the disclosing party in writing without restriction; or (g) is disclosed pursuant to the order requirement of a court, administrative agency, or other governmental body, provided the receiving party provides reasonable advance notice to enable the disclosing party to obtain a protective order.



12.3. Injunctive Relief. Nothing in the Agreement limits either party's ability to seek equitable relief.

13. Miscellaneous.

- 13.1. Assignment.** Customer may not assign or transfer the Agreement, in whole or in part, by operation of law or otherwise, without Archer's prior written consent. Any attempted assignment or transfer of the Agreement without Archer's consent will be void and will be a breach of the Agreement. Subject to these limitations, the Agreement will bind and inure to the benefit of the Parties and their respective successors and assigns.
- 13.2. Notices.** Any notice by Archer to Customer under the Agreement will be given: (a) by email to the email address associated with Customer's account, if Customer has subscribed to this method of receiving notices, or (b) by posting on either Service Offering portal or Archer's generally available customer access portal. Customer must direct legal notices or other correspondence to Archer's physical address and the legal notices email address identified above (if any).
- 13.3. Waiver.** Waiver of a breach of any provision of the Agreement will not constitute a waiver of any later breach of that provision, or waiver of a breach of any other provision.
- 13.4. Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- 13.5. Compliance with Laws.** Customer and Archer must each comply with all laws applicable to the actions contemplated by the Agreement.
- 13.6. Export Control.** Customer acknowledges that Service Offering is of United States origin, is provided subject to the U.S. Export Administration Regulations (including "deemed export" and "deemed re-export" regulations) and may be subject to the export control laws of any other applicable country. Customer represents and warrants that: (a) Customer, and any Authorized User, are not, and are not acting on behalf of, (i) any person who is a citizen, national, or resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; or (ii) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List, or any similar designated persons list published for the jurisdiction in which the applicable data center is located; (b) Customer, and any Authorized User, will not permit the Service Offering to be used for any purposes prohibited by law, including any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons; (c) no Content will be classified or listed on the United States Munitions list or similar list published for the jurisdiction in which the applicable data center is located, or contain defense articles, defense services, or ITAR-related data; (d) no Content will require an export license or is restricted under applicable export control laws from export to any country where Archer maintains facilities or personnel; and (e) Customer, and any Authorized User, are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, Customer's United States export privileges. Customer must notify Archer promptly if Customer or any Authorized User becomes subject to any order of that type. For purposes of sales to government entities in the United States, any Service Offering and the accompanying Service Offering Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosure of any Service Offering or Service Offering Documentation, by or for the U.S. Government will be governed solely by the terms and conditions of the Agreement, in conjunction with statutes, regulations, and the terms of the GSA Schedule, and in accordance with the provisions of Section 13.11 ("Order of Precedence"). Customer agrees to indemnify and hold Archer harmless for any liability, loss, damage, cost, expense, or penalty arising from Customer's non-compliance with the AECA, ITAR, or the provisions of this Section.
- 13.7. Force Majeure.** Neither Customer nor Archer will be liable for any delay or failure to perform its obligations under the Agreement, except for Customer's payment obligations, due to any cause beyond



Customer's or Archer's reasonable control including labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other acts of nature, embargoes, riots, acts or orders of government, acts of terrorism, or war.

- 13.8. Governing Law.** If the Archer contracting entity to this Agreement is: (1) Archer Technologies LLC, then this Agreement is governed by the laws of the State of Delaware and the federal laws of the United States, (2) Archer Technologies Ireland Limited, then this Agreement is governed by the laws of Ireland and in the jurisdiction of the Irish Courts. Conflict of law rules are expressly disclaimed. The U.N. Convention on Contracts for the International Sale of Goods does not apply.
- 13.9. Third Party Rights.** Other than as expressly provided in the Agreement, the Agreement does not create any rights for any person who is not a party to it, and only persons who are parties to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in the Agreement.
- 13.10. Independent Parties.** Archer and Customer are independent contracting parties, and the Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship between Archer and Customer. Neither Customer nor Archer, nor any of Archer's respective affiliates, officers, directors, or employees, is an agent of the other for any purpose, nor has the authority to bind the other.
- 13.11. Order of Precedence.** Any term or condition specified in Customer's purchase order and/or any of Customer's terms and conditions are void and not applicable to the Agreement, even if signed by Archer. In case of conflict between a Quote and the terms of this Agreement, the Quote shall take precedence.
- 13.12. Entire Agreement.** The Agreement as it may be modified from time to time is the entire agreement between Customer and Archer regarding its subject matter. The Agreement supersedes all prior or contemporaneous communications, understandings, and representations, whether written or oral, between Customer and Archer regarding its subject matter.
- 13.13. Survival.** Any provision of this Agreement that, by its nature and context is intended to survive termination or expiration of the Agreement, will survive including those related to proprietary rights, payment of fees, confidentiality and non-disclosure, indemnification, and limitation of liability.