# Cloud Service Offerings
# TERMS OF SERVICE

*** 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 Terms of Service (the "Terms of Service").**

**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; (ii) Archer Technologies Ireland Limited; or (iii) other authorized Archer entity as identified on the Archer quote or other Archer ordering document) (the "Service Provider"). 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 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.**

These Terms of Service and any Service Offering Documentation together constitute the "Agreement." Customer may purchase the Service Offering from Service Provider under the Terms of Service. Capitalized terms used in these Terms of Service are defined throughout these Terms of Service and in Section 14 ("Definitions").

## 1. THE SERVICE OFFERING.

**1.1 Generally.** Service Provider may deliver the Service Offering with the assistance of Service Provider's affiliates and suppliers. Service Provider will remain responsible to Customer for delivery of the Service Offering.

**1.2 Use of the Service Offering.**

1.2.1 Customer may use the Service Offering only (a) during the Subscription Term, (b) for Customer's own internal use, and (c) in accordance with the Agreement. To use the Service Offering



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Customer may be required to register and set up an authorized account with Login Credentials. Customer must keep Customer registration information accurate and complete during the term of the Agreement.

1.2.2 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 Users' compliance with the Agreement. If Customer becomes aware of any User's violation of the Agreement, Customer must promptly suspend that 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, user names, or Login Credentials, Customer must notify Service Provider 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.

1.2.3 If Service Provider 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 Service Provider to identify the source of the problem and to resolve the problem.

**1.3 Monitoring.** Service Provider monitors and collects configuration, performance, and usage data relating to Customer's use of the Service Offering: (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); and (b) to improve and / or create new Service Provider products and services, and Customer's experience. Customer must not interfere with that monitoring..

**1.4 Third-Party Content.** Where available, Customer may use Third-Party Content, at Customer's option. If Customer chooses to use Third-Party Content, Customer is responsible for complying with any terms that are presented to Customer when Customer accesses that Third-Party Content, including any separate fees or charges imposed by the provider of that Third-Party Content. Third-Party Content is available "AS IS" without indemnification, support (unless otherwise specified), or warranty or condition of any kind. Service Provider may suspend or terminate provision and hosting of any Third-Party Content at any time, and that suspension or termination will not be deemed a material, detrimental change.

**1.5 Evaluation Use.** If Customer uses any Evaluation Service, the terms of this Section 1.5 govern that use, and control over any conflicting provision of these Terms of Service. The term "Service Offering" includes an Evaluation Service in all provisions of these Terms of Service that are not in conflict with the provisions of this Section 1.5.

1.5.1 Customer may use an Evaluation Service only (a) for internal testing and evaluation or trial purposes, and (b) for a period of thirty (30) days (unless Service Provider specifies otherwise) beginning on the date Service Provider provides Customer Login Credentials for or access to the Evaluation Service. Customer will not have access to the Evaluation Service or to any data or Content in the Evaluation Service after Customer's authorized use period ends.

1.5.2 Use of an Evaluation Service may be subject to additional terms from a third-party service provider.

1.5.3 Customer may use the Service Offering Documentation provided with an Evaluation Service solely in support of Customer's authorized use of the Evaluation Service.



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1.5.4 Service Provider will provide the Evaluation Service: (a) free of charge; (b) without support; (c) “AS IS”; and (d) without indemnification, warranty, or condition of any kind. No service level commitment will apply to the Evaluation Service.

1.5.5 The Data Processing Addendum does not apply to Customer’s use of (i) an Evaluation Service or (ii) any feature within an Evaluation Service, that is not generally available to our customers.

1.5.6 Customer must not put production data or data regulated by law or regulation into an Evaluation Service. If Customer puts that data into an Evaluation Service, Customer does so at Customer’s own risk and Service Provider will not be responsible for the consequences of that use.

1.5.7 Certain features or functionality of a Service Offering may not be available in an Evaluation Service. Providing any Evaluation Service, or any feature or functionality in an Evaluation Service, does not constitute our commitment to offer the Evaluation Service or that feature or functionality on a generally available basis.

1.5.8 Service Provider may modify or terminate an Evaluation Service at any time, and any modification or termination will not be deemed a material, detrimental change.

1.5.9 The aggregate liability (excluding indirect damages, for which Service Provider expressly disclaim all liability) of Service Provider, and its affiliates and suppliers, for any claim arising from Customer’s use of an Evaluation Service will not exceed $5,000 USD (or the equivalent in local currency).

**1.6 Open Source Software.**

1.6.1 Customer may receive open source software when Customer uses the Service Offering or any Evaluation Service. The open source software Customer receives, as well as open source software that Customer may interact with when using the Service Offering and that Service Provider is required to disclose to Customer, is made available either (i) accompanying the Service Description, or (ii) as Service Provider may otherwise make generally available to its customers .

1.6.2 Open source software embedded in the Service Offering will not be deemed to be “Third-Party Content”. All provisions in these Terms of Service applicable to the Service Offering (e.g., warranty, liability, indemnification, and other obligations) will control as between Customer and Service Provider over any conflicting terms set forth in any open source software license otherwise applicable to that open source software.

**1.7 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, Service Provider may use that feedback without restriction, and Customer hereby irrevocably assigns to Service Provider 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 us any rights in Customer’s Content or Customer’s intellectual property.

**1.8 Required Disclosures.** If Service Provider is required by a subpoena, court order, agency action, or any other legal or regulatory requirement to disclose any of Customer’s Content, Service Provider will provide Customer with notice and a copy of the demand as soon as practicable, unless Service Provider is prohibited from doing so pursuant to applicable law. If Customer requests, Service Provider will, at Customer’s expense, take reasonable steps to contest any required disclosure. Service Provider will limit the scope of any disclosure to only the information Service Provider is required to disclose.

**2. DATA PROTECTION AND SECURITY.**

**2.1** Service Provider is responsible for providing security for the Service Offering as set out in the applicable Service Description.



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**2.2** Customer is solely responsible for ensuring that the Service Offering and its security is appropriate for Customer's Content and Customer's intended use.

**2.3** 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 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.

**2.4** Customer is responsible for providing any necessary notices to Users and obtaining any legally required consents from 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 Service Provider or Service Provider's customers or suppliers, (iv) , (v) in a way intended to work around the Service Offering's technical limitations, recurring fees calculation, or usage limits, (vi) for High Risk Activities; (vii) to create or enhance a competitive offering or for any purpose which is competitive to Service Provider; (viii) perform or fail to perform any other act which would result in a misappropriation or infringement of Service Provider's intellectual property rights in the Service Offering;; (ix) to attempt to probe, scan or test the vulnerability of the Service Offering, or a system, account or network of Service Provider or any of Service Provider's customers or suppliers; (x) to transmit unsolicited bulk or commercial messages or intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items; (xi) 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 Service Provider, Service Provider owns all right, title, and interest in and to the Service Offering and any related Service Provider Software, including all improvements, enhancements, modifications, and derivative works of them, and all Intellectual Property Rights in all of them. This includes any information Service Provider 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 Service Provider Software, or any related Intellectual Property Rights.

**4.2 Ownership of Customer's Content.** As between Customer and Service Provider, Customer retains all right, title and interest in and to Customer's Content and all Intellectual Property Rights in Customer's Content. Service Provider's rights to access and use Customer's Content are limited to those expressly granted in the Agreement.

## 5. ORDERS, PAYMENT, AND TAXES.

### 5.1 Orders Generally.



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5.1.1 The description of the Service Offering or Service Provider Software, 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; 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 Service Provider accepts them. An Order will be deemed accepted when Service Provider delivers Customer's Login Credentials to the email address associated with the account, or otherwise as set forth in the Service Description. Service Provider is not required to provide the Service Offering to Customer until Customer provides to Service Provider all information Service Provider 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. Any refunds to which Customer is entitled under the Agreement will be remitted to Customer or if Customer purchases the Service Offering through an authorized reseller, to the Service Provider channel partner from which Customer purchased Customer's entitlement to use the Service Offering.

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 Service Provider. If Customer purchases an entitlement to the Service Offering through a Service Provider authorized reseller, different terms regarding invoicing, payment, and taxes may apply.

5.2.1 Unless Customer and Service Provider agree otherwise, (i) charges Customer incurs for using the Service Offering will be as stated on the accepted quote or Order provided by Service Provider, and (ii) Customer must pay all charges no later than thirty (30) days after the date of invoice.

5.2.2 Service Offering fees are exclusive of Taxes. Customer must pay or reimburse Service Provider for all Taxes arising out of the transactions contemplated by the Agreement, except for taxes based on Service Provider's net income, gross revenue or employment obligations. Service Provider 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 Service Provider 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 Service Provider is resident in a different country than Customer, Customer must gross up Customer's payments to Service Provider so that Service Provider 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 Service Provider showing that Customer paid those Taxes. Service Provider 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.** Service Provider 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 ten (10) days after Service Provider notifies Customer of that breach; (b) Service Provider 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) Service Provider suspects fraud or abuse. Service Provider



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will give Customer fifteen day (15) days notice before suspending Customer's use of the Service Offering if permitted by law or unless Service Provider 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 Service Provider will notify Customer as soon as feasible or permitted. Service Provider will suspend Customer's access only to the Service Offering that is the subject of the issue giving rise to the suspension. Service Provider will promptly reinstate Customer's access to the Service Offering once Service Provider 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. TERMINATION.

**7.1 Generally.** Customer has the right to use the Service Offering during the applicable Subscription Term. Customer may stop using a Service Offering at any time, but Customer will remain liable for all fees and charges otherwise due during the applicable Subscription Term.

**7.2 Termination for Cause.**

7.2.1 Service Provider may, at its option, terminate the Agreement effective immediately upon written notice to Customer (i) if Service Provider has the right to suspend under Section 6.1 ("Temporary Suspension; Generally"), (ii) Customer commits a material breach of the Agreement that cannot be cured, or (iii) to comply with applicable law.

7.2.2 Either party may terminate the Agreement for cause if the other breaches the terms and fails to cure within thirty (30) days after receipt of the other party's written notice thereof.

**7.3 Termination for Insolvency.** Either Customer or Service Provider may terminate the Agreement effective 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.

**7.4 Effect of Termination.**

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

7.4.2 Any provision that, by its nature and context is intended to survive termination or expiration of the Agreement, will survive. The Data Processing Addendum (to the extent Service Provider continues to process Personal Data, as defined in the Data Processing Addendum, following any termination of the Agreement) will also survive any termination or expiration of the Agreement.

7.4.3 Except to the extent Customer or Service Provider are permitted to terminate the Agreement pursuant to Sections 7.2 ("Termination for Cause"), or 10.2 ("Indemnification by Service Provider"), 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 Service Provider 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.



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**8. SUPPORT.** Service Provider will provide support to Customer for the Service Offering in accordance with the Support Policy, and as may be further specified in the applicable Service Description. Service Provider will not provide support for Customer's Content to Customer's end users.

**9. WARRANTIES.**

**9.1 Limited Warranty: Duration and Remedy.** Service Provider warrants that the Service Offering will perform substantially in accordance with the applicable Service Level Agreement, if any, during the Subscription Term, provided that the Service Offering has at all times been used in accordance with the Service Level Agreement. If Service Provider fails to meet this limited warranty, Customer's sole and exclusive remedy for that failure is as specified in the Service Level Agreement.

**9.2 Disclaimer.** OTHER THAN THE LIMITED WARRANTY SET FORTH IN SECTION 9.1, TO THE MAXIMUM EXTENT PERMITTED BY LAW, SERVICE PROVIDER, 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. SERVICE PROVIDER AND SERVICE PROVIDER'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.

**10. INDEMNIFICATION.**

**10.1 Indemnification by Customer.** Subject to the remainder of this Section 10.1, Customer will (a) defend Service Provider against any Third-Party Claim; and (b) indemnify Service Provider 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. Service Provider 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 Service Provider's prior written consent, settle any Third-Party Claim if that settlement obligates Service Provider 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 Service Provider business practices or policies.

**10.2 Indemnification by Service Provider; Infringement Claims.**

10.2.1 Subject to the remainder of this Section 10.2, Service Provider will: (a) defend Customer against any 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 Service Provider 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 Service Provider of its indemnification obligations only to the extent that the delay prejudices Service Provider); (ii) allows Service Provider to have sole control over the defense of the Infringement Claim; and (iii) reasonably cooperates in response to Service Provider's requests for assistance with regard to the Infringement Claim. Service Provider will not, without Customer's prior written consent, enter into 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.



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10.2.2 If the Service Offering becomes or in Service Provider's opinion is likely to become the subject of an Infringement Claim, Service Provider 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 Service Provider 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-Service Provider 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 Service Provider notifies Customer to cease such use due to a possible or pending Infringement Claim; (c) any modification to the Service Offering made without Service Provider's express written approval; (d) any modifications Service Provider makes to the Service Offering pursuant to instructions, designs, specification, or other information Customer provides to us; (e) Customer's own services (including Infringement Claims where the damages sought are based on revenues from Customer's own services); (f) any data or information Customer or a third party records on or utilizes in connection with the Service Offering; (g) any claim that relates to open source software or freeware technology, Third Party Products, or any derivative or other adaptation thereof; or (h) any Service Offering provided on a no-charge basis.

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

## 11. LIMITATION OF LIABILITY.

**11.1 Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL SERVICE PROVIDER BE LIABLE FOR ANY LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE OF THE SERVICE OFFERING, OR LOSS OF CONTENT FOR ANY REASON INCLUDING POWER OUTAGES, SYSTEM FAILURES, OR OTHER INTERRUPTIONS (SUBJECT TO SERVICE PROVIDER'S OBLIGATIONS UNDER THE APPLICABLE SERVICE LEVEL AGREEMENT), LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. THIS LIMITATION WILL APPLY REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**11.2 Cap on Monetary Liability**. SERVICE PROVIDER'S LIABILITY FOR ANY CLAIM UNDER THE AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL FEES PAID OR PAYABLE TO SERVICE PROVIDER FOR CUSTOMER'S USE OF THE PARTICULAR SERVICE OFFERING GIVING RISE TO THE CLAIM IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. THE LIMITATION OF LIABILITY IN THIS SECTION 11.2 WILL NOT APPLY TO (i) SERVICE PROVIDER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10.2.1 OF THESE TERMS OF SERVICE OR (ii) ANY LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW.

### 11.3 Further Limitations.

11.3.1 Service Provider's suppliers have no liability of any kind under the Agreement. Customer may not bring a claim directly against any of them under the Agreement. Service Provider's liability with respect to any Third-Party Content used or made available as part of a Service Offering is subject to this Section 11.

11.3.2 Customer may not bring a claim under the Agreement more than eighteen (18) months after the cause of action arises.

## 12. CONFIDENTIAL INFORMATION.



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**12.1 Protection.** Either party (the "**recipient**") may use Confidential Information of the other party (the "**discloser**") disclosed to it in connection with the Agreement solely to exercise its rights and perform its obligations under the Agreement or as otherwise permitted by the Agreement. Customer and Service Provider will each use reasonable care to protect that Confidential Information in the same manner as each party protects its own Confidential Information of a similar nature, but in any event with not less than reasonable care. The recipient may disclose the discloser's Confidential Information only to the recipient's employees, or to third parties, who have a need to know the Confidential Information for purposes of the Agreement, and who are under a duty of confidentiality no less restrictive than as specified in this Section 12. The recipient may also disclose the discloser's Confidential Information in accordance with the procedures set forth in Section 1.8 ("Required Disclosures").

**12.2 Exceptions.** The recipient's obligations under Section 12.1 with respect to any of the discloser's Confidential Information will terminate if the recipient can show by written records that the information: (a) was, at the time of disclosure by the discloser, already rightfully known to the recipient without any obligation of confidentiality; (b) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (c) at the time of disclosure is, or through no fault of the recipient has become, generally available to the public; or (d) was independently developed by the recipient without access to or use of the discloser's Confidential Information.

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

## 13. GENERAL.

**13.1 Assignment.** Customer may not assign or transfer the Agreement, in whole or in part, by operation of law or otherwise, without Service Provider's prior written consent. Any attempted assignment or transfer of the Agreement without Service Provider'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 Service Provider 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 the Service Offering portal or Service Provider's generally available customer access portal. Customer must direct legal notices or other correspondence to Service Provider'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 the Agreement is held to be invalid or unenforceable, the remaining provisions of the Agreement will remain in force to the extent feasible.

**13.5 Compliance with Laws.** Customer and Service Provider must each comply with all laws applicable to the actions contemplated by the Agreement.

**13.6 Export Control.** Customer acknowledges that the 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 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 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



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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 Service Provider's or Service Provider's service providers maintain facilities or personnel; and (e) Customer, and any 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 Service Provider promptly if Customer or any 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 the 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 13.13 ("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 Service Provider 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 Service Provider'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 Construction.** The headings of sections of these Terms of Service are for convenience and are not for use in interpreting these Terms of Service. As used in these Terms of Service, the word "including" means "including but not limited to".

**13.9 Language.** The Agreement is in English, and the English language version governs any conflict with a translation into any other language.

**13.10 Governing Law.** This Agreement is governed by: (i) the laws of the State of Delaware and the federal laws of the United States when Service Provider means Archer Technologies LLC; (ii) the laws of the applicable country in which the applicable Service Provider affiliate is registered to do business when Service Provider means the local Archer affiliate (as applicable), and (iii) the laws of Ireland when Service Provider means Archer Technologies Ireland Limited. In each case, the applicability of laws shall exclude any conflict of law rules. The U.N. Convention on Contracts for the International Sale of Goods shall not apply. In the event of a dispute concerning this Agreement, Customer consents to the sole and exclusive personal jurisdiction of the courts of competency in the location where the applicable Archer entity is domiciled.

**13.11 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.

**13.12 Independent Parties.** Service Provider and Customer are independent contracting parties, and the Agreement will not be construed to create a partnership, joint venture, agency, or employment relationship between Service Provider and Customer. Neither Customer nor Service Provider, nor any of Service Provider's respective affiliates, officers, directors, or employees, is an agent of the other for any purpose, nor has the authority to bind the other.

**13.13 Order of Precedence.** The terms of the Agreement will supersede any conflicting or additional terms and conditions of any purchase order or other purchasing-related document issued by Customer



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relating to any Order for the Service Offering. In case of conflict between a Service Description and the terms of this Agreement, the Service Description shall take precedence.

**13.14 Entire Agreement.** The Agreement as it may be modified from time to time is the entire agreement between Customer and Service Provider regarding its subject matter. The Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between Customer and Service Provider regarding its subject matter.

## 14. DEFINITIONS.

"**Account Information**" means information about Customer that Customer provides to Service Provider in connection with creation or administration of Customer's account, including names, usernames, phone numbers, email addresses, and billing information associated with Customer's account.

"**Confidential Information**" means Customer's Login Credentials, and any non-public technical, business, or other information or materials disclosed or otherwise made available by either Customer or Service Provider to the other party regarding the Agreement or the Service Offering, that are in tangible form and labeled "confidential" or the like, or are provided under circumstances reasonably indicating confidentiality. Customer's Confidential Information does not, for purposes of the Agreement, include Customer's Content. If Customer discloses Customer's Content to Service Provider or if Service Provider accesses Customer's Content as permitted by the Agreement, including for purposes of providing support to Customer, Service Provider will use the same standard of care with respect to that data as Service Provider uses to protect its own Confidential Information.

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

"**Customer's Content**" **or "Customer Content"** means Content uploaded into the Service Offering for processing, storage or hosting, by Customer or by any User, but does not include (i) Third-Party Content, (ii) Account Information, or (iii) data Service Provider collects as specified in Section 1.3 ("Monitoring").

"**Data Processing Addendum**" means the then-current version of the Service Provider's Data Processing Addendum, available at at https://www.archerirm.com/company/standard-form-agreements if applicable.

"**Evaluation Service**" means any Service Offering, or a feature or functionality of a Service Offering, that Service Provider offers on an evaluation or trial basis. If Customer is participating in a separate Service Provider technical preview or beta program, then the terms of that program will apply.

"**High Risk Activities**" means workloads or applications used to control or operate activities with a likelihood of injury or death, including but not limited to controlling aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, weaponry systems, or any similar scenario where failure could lead to personal injury, death, or environmental damage.

"**Infringement Claim**" means any claim by a third party that the Service Offering (excluding Third Party Products and Services, open source software, and Evaluation Services) infringes any patent, trademark, or copyright of that third party, or misappropriates a trade secret of that third party (but only to the extent that the misappropriation is not a result of Customer's actions), under the laws of: (a) the United States, (b) Canada, (c) European Economic Area member states, (d) Australia, (e) New Zealand, (f) Japan, or (g) the People's Republic of China, to the extent that Customer's instance of the Service Offering is provisioned in a data center located in the applicable country (e.g., the laws of Japan would control regarding an Infringement Claim based on a Service Offering instance provisioned in a data center located in Japan).



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"**Intellectual Property Rights**" means 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.

"**Law**" includes any statute, ordinance, regulation, or governmental requirement, order, or decree.

"**Login Credentials**" means any passwords, authentication keys, or security credentials that enable Customer's access to and management of the Service Offering.

"**Order**" means the ordering document, that evidences Customer's purchase of a Service Offering.

**"Product Notice"** means the notice by which Service Provider informs Customer of product-specific use rights and restrictions, warranty periods, warranty upgrades and maintenance (support) terms. Product Notices may be delivered in an Archer quote, otherwise in writing and/or a posting on the applicable Archer website, currently located at: Product Notice .

"**Service Description**" means the then-current version of the Service Description for the particular Service Offering, available at: at https://www.archerirm.com/company/standard-form-agreements.

"**Service Level Agreement**" means the then-current version of the Service Level Agreement for the particular Service Offering, found in the applicable Service Description. Certain Service Offerings may not have a Service Level Agreement.

"**Service Offering**" means the Service Provider cloud service offering specified in Customer's Order. "Service Offering" includes an Evaluation Service.

"**Service Offering Documentation**" means: (i) the Service Provider Data Processing Addendum, which is applicable to all Service Offerings, and (ii) the specific Service Description, Supplemental Terms, Support Policy, any applicable Product Notice, and/or Service Level Agreement (if any) for the Service Offering; all as revised by Service Provider from time to time.

"**Service Provider Software**" means the software programs listed in Service Provider's commercial price list.

"**Subscription Term**" means the initial term of Customer's authorized use of the Service Offering, as set forth in the applicable quote or ordering document, together with any renewal terms (if applicable, as may be set forth in the Service Description). The initial term begins on the earlier of: (i) the date on which Customer starts using the Service Offering or (ii) the date Customer completes the registration process (iii) the date on which Service Provider first provides customer with access to the Service Offering; or as otherwise specified in the Order or in the applicable Service Description. For purposes of any on-demand Service Offering, "Subscription Term" means the period during which Customer is using the Service Offering, for which Customer will be billed, as specified in the applicable Order, and as may be further defined in the Service Description.

"**Support Policy**" means the then-current version of the Support Policy for the particular Service Offering, found: Maintenance and Support Agreement for Archer Cloud Offerings .

"**Taxes**" means 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.

"**Third-Party Claim**" means any third-party claim or demand arising from or relating to (i) Customer's Content, or (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-Service Provider products or content, including any Customer Content and/or any Third-Party Content.



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"**Third-Party Content**" means Content provided by a third party, that interoperates with the Service Offering, including open source software, but that is not embedded in or required for use of the Service Offering. As an example, Third-Party Content may include an application that is listed on a marketplace or in a catalog.

**Third-Party Products and Services"** means products (whether hardware, software, firmware, or otherwise) or services, where such products or services are not branded with a trademark or service mark owned by Supplier or its affiliates.

"**User**" means any person who is authorized to access or use the Service Offering or Customer's Content directly under Customer's Login Credentials, and may include Customer's employees, contractors, service providers, and other third parties.

## 15. Country Specific Terms:

**15.1 United Kingdom**. The terms in this subsection 15.1 apply only when Archer means the Archer sales subsidiary for United Kingdom currently Archer Technologies Ireland Limited:

15.1.1 Section 9.2 (Warranties - Disclaimer) is deleted and replaced with the following:

9.2 Disclaimer. Except as expressly stated in the applicable warranty set forth in this Agreement, Service Provider (including its suppliers) provides the Service Offering "AS IS" and makes no other express or implied warranties, written or oral, and ALL OTHER WARRANTIES AND CONDITIONS (SAVE FOR THE WARRANTIES AND CONDITIONS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979) ARE SPECIFICALLY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE.

15.1.2 Section 11 (LIMITATION OF LIABILITY). This Section is deleted in its entirety and replaced with:

11.1 LIMITATION OF LIABILITY AND PRESERVATION OF DATA. The entire aggregate liability of Service Provider (including its suppliers) under or in connection with the supply the Service Offering, whether in tort (including negligence), for breach of contract, misrepresentation or otherwise, is limited in respect of each event or a series of events: (i) to the amounts actually paid by Customer for the Service Offering which give rise to such liability during the twelve (12) month period immediately preceding the date of the cause of action giving rise to such claim; or (ii) Great British Pounds Sterling one million (£1,000,000), whichever is the greater amount. The limitation of liability in this section 11.1 will not apply to (i) service provider's indemnification obligations under section 10.2.1 of these Terms of Service or (ii) any liability which may not be excluded by law.

11.2 In no event shall Service Provider (including its suppliers) or Customer be liable to the other or any other person or entity for loss of use of the Service Offering, or loss of content for any reason including power outages, system failures, or other interruptions (subject to Service Provider's obligations under the applicable Service Level Agreement), loss of profits, loss of revenue, loss of use or any indirect, special, incidental, consequential or exemplary damages arising out of or in connection with this Agreement, and the use, performance, receipt or disposition of the Service Offering, even if such party has been advised of the possibility of such damages or losses. Nothing in this Agreement shall operate to exclude or restrict Service Provider's liability for: (a) death or personal injury resulting from negligence; (b) breach of obligations arising from section 12 of the Sale of Goods Act 1979; or (c) fraud.



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11.3 CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA. During the Term of the Agreement, the Customer shall: 1) from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site; 2) have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question; 3) use anti-virus software, regularly install updates across all data which is accessible across the network, and protect all storage arrays against power surges and unplanned power outages with Uninterruptible Power Supplies; and 4) ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to Service Provider recommended versions and that any proposed changes thereto shall be communicated to Service Provider in a timely fashion.

11.4 Further Limitations. Service Provider's suppliers have no liability of any kind under the Agreement. Customer may not bring a claim directly against any of them under the Agreement. Service Provider's liability with respect to any Third-Party Content used or made available as part of a Service Offering is subject to this Section 11.

11.5 Limitation period. Customer may not bring a claim under the Agreement more than eighteen (18) months after the cause of action arises.

15.1.3 Section 13 (GENERAL). Add the following as new subsection 13.15:

13.15 Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty. The only remedy available to Customer for a breach of the warranties shall be for breach of contract under the terms of this Agreement. Nothing in Section 11 shall however operate to limit or exclude any liability for fraud. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person that is not a party to this Agreement. If any part of this Agreement is held unenforceable, the validity of the remaining provisions shall not be affected.

**15.2 Ireland**. The terms in this subsection 15.2 apply only when Archer means the Archer sales subsidiary located in Ireland (currently Archer Technologies Ireland Limited):

15.2.1 Section 9.2 (Warranties - Disclaimer) is deleted and replaced with the following:

9.2 Disclaimer. Except as expressly stated in the applicable warranty set forth in this Agreement and the applicable exhibits, Service Provider (including its suppliers) provides the Service Offering “AS IS” and ALL WARRANTIES, TERMS AND CONDITIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED BY LAW, CUSTOMER OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES, TERMS AND CONDITIONS, OF FITNESS FOR PURPOSE, DESCRIPTION, AND QUALITY ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

15.2.2 Section 11 (LIMITATION OF LIABILITY). This section is deleted in its entirety and replaced with the following:

11.1 Service Provider does not exclude or limit its liability to the Customer for death or personal injury, or, breach of obligations implied by Section 12 of the Sale of Goods Act, 1893, as amended



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by the Sale of Goods and Supply of Services Act, 1980, or, due to the fraud or fraudulent misrepresentation of Service Provider, its employees or agents.

11.2 Subject always to subsection 11.1, the liability of Service Provider (including its suppliers) to the Customer under or in connection with an order, whether arising from negligent error or omission, breach of contract, or otherwise ("Defaults") shall be: (i) the aggregate liability of Service Provider for all Defaults resulting in direct loss of or damage to the tangible property of the Customer shall be limited to damages which shall not exceed the greater of two hundred per cent (200%) of the applicable price paid and/or payable for the Service Offering, or one million euros (€1,000,000); or (ii) the aggregate liability of Service Provider for all Defaults, other than those governed by subsection 11.2 (i) shall be limited to damages which shall not exceed the greater of one hundred and fifty per cent (150%) of the applicable price paid and/or payable or five hundred thousand euro (€500,000). The limitation of liability in this section 11.2 will not apply to (i) service provider's indemnification obligations under section 10.2.1 of these Terms of Service or (ii) any liability which may not be excluded by law.

11.3 In no event shall Service Provider (including its suppliers) be liable to Customer for (i) loss of profits, loss of business, loss of revenue, loss of use, wasted management time, cost of substitute services or facilities, loss of goodwill or anticipated savings, loss of or loss of use of any software or data; and/or (ii) indirect, consequential or special loss or damage; and/or (iii) damages, costs and/or expenses due to third party claims; and/or (iv) loss of use of the Service Offering, or loss of content for any reason including power outages, system failures, or other interruptions (subject to Service Provider's obligations under the applicable Service Level Agreement); and/or (v) loss or damage due to the Customer's failure to comply with obligations under this Agreement, failure to do back-ups of data or any other matter under the control of the Customer. For the purposes of this Section 8, the term "loss" shall include a partial loss, as well as a complete or total loss.

11.4 The parties expressly agree that should any limitation or provision contained in this Section 11 be held to be invalid under any applicable statute or rule of law, it shall to that extent be deemed omitted, but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out in this Section 11.

11.5 The parties expressly agree that any order for specific performance made in connection with this Agreement in respect of Service Provider shall be subject to the financial limitations set out in sub-section 11.2.

11.6 CUSTOMER OBLIGATIONS IN RESPECT OF PRESERVATION OF DATA. During the Term of the Agreement the Customer shall:

1) from a point in time prior to the point of failure, (i) make full and/or incremental backups of data which allow recovery in an application consistent form, and (ii) store such back-ups at an off-site location sufficiently distant to avoid being impacted by the event(s) (e.g. including but not limited to flood, fire, power loss, denial of access or air crash) and affect the availability of data at the impacted site;

2) have adequate processes and procedures in place to restore data back to a point in time and prior to point of failure, and in the event of real or perceived data loss, provide the skills/backup and outage windows to restore the data in question;

3) use anti-virus software and regularly install updates across all data which is accessible across the network; and

4) ensure that all operating system, firmware, system utility (e.g. but not limited to, volume management, cluster management and backup) and patch levels are kept to Service Provider recommended versions and that any proposed changes thereto shall be communicated to Service Provider in a timely fashion.



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11.7 WAIVER OF RIGHT TO BRING ACTIONS: The Customer waives the right to bring any claim arising out of or in connection with this Agreement more than twenty-four (24) months after the date of the cause of action giving rise to such claim.

**15.3 Australia.** The terms in this subsection 15.3 apply only when Service Provider means the Service Provider sales subsidiary for Australia Archer Technologies Ireland Limited:

15.3.1 Section 11 (LIMITATION OF LIABILITY). This section is amended by the insertion of the new section 11.4, as follows:

11.4. Fair Trading Legislation. Trade Practices Legislation: Service Provider's liability under any statutory right or any condition or warranty, including any implied by any State Fair Trading Act or the Competition and Consumer Act 2010 is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, Service Provider's liability is limited at the option of Service Provider to any one or more of the following: (i) the replacement thereof or the supply of its equivalent; (ii) the repair thereof; (iii) the payment of the cost of replacement thereof or of acquiring its equivalent; or (iv) the payment of the cost of having such repaired.

**15.4 New Zealand.** The terms in this subsection 15.4 apply only when Archer means the Archer sales subsidiary transacting for New Zealand (currently Archer Technologies Ireland Limited)

15.4.1 Section 11 (LIMITATION OF LIABILITY). This section is amended by the insertion of the new section 11.4, as follows:

11.4. Fair Trading Legislation. Service Provider's liability under any statutory right or any condition or warranty, including any implied by the Fair Trading Act 1986 or Consumer Guarantees Act 1993 ("FTA") or any similar law is, to the maximum extent permitted by law, excluded. To the extent that such liability cannot be excluded, Service Provider's liability is limited at the option of Service Provider to any one or more of the following: (i) the replacement thereof or the supply of its equivalent; (ii) the repair thereof; (iii) the payment of the cost of replacement thereof or of acquiring its equivalent; or (iv) the payment of the cost of having such repaired.

**15.5 France.** The terms in this subsection 15.5 apply only when Archer means a sales subsidiary located for France currently Archer Technologies Ireland Limited:

15.5.1 At Section 5.2.2 of these Terms of Service, the following shall be added to the end of the section:

A forty (40) euro penalty will also be charged in accordance with article L441-3 of the French Commercial Code.

15.5.2 Section 11 (Limitation of Liability). This section is deleted in its entirety and replaced with the following:

11. LIMITATION OF LIABILITY. Limitations on Damages. The limitations, exclusions and disclaimers stated below apply to any and all disputes, claims, or controversies (whether in contract, tort, or otherwise) related to or arising out of the Agreement or any quote or Order (“Dispute”). The terms of this Section are agreed allocations of risk constituting part of the consideration for Service Provider’s sale of the Service Offering to Customer and will apply regardless whether a party has been advised of the possibility of the liabilities.

11.1 Limitation on Direct Damages. Except for Customer’s obligations to pay for Service Offering, Customer’s violation of the restrictions on use of the Service Offering or Service Provider’s or its Affiliates’ intellectual property rights, or a party’s indemnity obligation stated in the Section above titled “Indemnification”, and any other liability that cannot be excluded or limited by the applicable law, each party’s total liability arising out of any Dispute or any matter under this CSA, is limited to the amount Customer paid to Service Provider during the twelve months before the date that the



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matter or Dispute arose for the Service Offering that is the subject of the Dispute, but excluding amounts received as reimbursement of expenses or payment of taxes.

11.2 No Indirect Damages. Except for Customer's payment obligations and violation of Archer's or its Affiliates' intellectual property rights, neither Archer nor Customer has liability to the other for loss of use of the Service Offering, or loss of content for any reason including power outages, system failures, or other interruptions (subject to Service Provider's obligations under the applicable Service Level Agreement), or for special, consequential, exemplary, punitive, incidental, or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, or loss of use, or procurement of substitute products or services.

11.3 Regular Back-ups. Customer is solely responsible for its data. Customer must back up its data before Service Provider performs any remedial, upgrade, or other work on Customer's production systems. If applicable law prohibits exclusion of liability for lost data, then Service Provider will only be liable for the cost of the typical effort to recover the lost data from Customer's last available back-up.

11.4 Limitation Period. Except as stated in this Section 11, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within twelve months after the cause of action accrues.

11.5 Suppliers and Affiliates. The foregoing limitations shall also apply in favor of Archer's Suppliers and Affiliates.

**15.6 Germany**. The terms in this subsection G apply only when Archer means Archer sales affiliate for Germany( currently Archer Technologies Ireland Limited) :

15.6.1 Preamble: The waiver of rights to any claim concerning enforceability shall not apply.

15.6.2 Section 11 (Limitation of liability): shall be replaced in its entirety with:

11. LIMITATION OF LIABILITY. For all claims of Customer for damages under or in connection with this Agreement or any quote or order, whatever the legal basis (including liability for defects, other breaches of contract and tort) may be, the following shall apply:

11.1 Unrestricted liability. In case of death or personal injury, in case of Service Provider's gross negligence or willful misconduct, and in case of claims under the German Product Liability Act (Produkthaftungsgesetz), Service Provider shall be liable to Customer according to statutory law.

11.2 Restricted Liability. In all other cases, the following shall apply:

(i) Service Provider's liability shall be limited to typical, foreseeable damages.

(ii) Unless a differing liability cap is expressly agreed otherwise, the typical foreseeable damages shall, for each damaging event, not exceed the total price paid by Customer to Service Provider for the Service Offering (calculated on an annual basis in case of ongoing Services to be provided for a period of more than one year) in relation to which such claim arises, but in any event not less than 100.000,00 EUR and not more than 1.000.000,00 EUR. The limitation of liability in this section 11.2 (ii) will not apply to (i) service provider's indemnification obligations under section 10.2.1 of these Terms of Service or (ii) any liability which may not be excluded by law.

(iii) Service Provider shall be liable to Customer only if Service Provider has breached a material contractual obligation (i.e. an obligation the performance of which is essential to allow the implementation of the agreement, and the compliance with which Customer usually may rely on).

(iv) Service Provider shall not be liable for any consequential or indirect damages to the extent such damages are untypical or unforeseeable. In no event shall Service Provider (including its suppliers) or Customer be liable to the other or any other person or entity for loss of use of the Service Offering, or loss of content for any reason including power outages, system failures, or other interruptions (subject to Service Provider's obligations under the applicable Service Level Agreement)



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11.3 Guarantees. Service Provider does not give a guarantee in relation to the Service Offering (Beschaffenheitsgarantie) that would entail an unlimited liability of Service Provider or a liability regardless of negligence or fault pursuant to the German Civil Code, except if an unlimited liability and/or liability regardless of negligence or fault has been expressly agreed in writing. The mere use of terms like “to guarantee”, “to ensure” or similar wording shall not be considered sufficient to establish such liability, but a binding contractual commitment of Service Provider that is subject to the agreed limitation of liability.

11.4 Regular Back-ups. As part of its obligation to mitigate damages, Customer shall take reasonable data back-up measures. In particular, Customer shall provide for a daily back-up process and back-up the relevant data before Service Provider performs any remedial, upgrade or other works on Customer’s production systems. To the extent Service Provider’s liability for loss of data is not anyway excluded under this Agreement, Service Provider shall in case of data losses only be liable for the typical effort to recover the data which would have accrued if Customer had appropriately backed up its data.

11.5 Limitation Period. Except for claims relating to cases of unrestricted liability set forth in section 11.1 above (“Restricted Liability”) the following applies: All claims for damages based on defects of the Service Offering shall be time-barred 12 months after delivery, except if the parties have agreed on a shorter warranty period. The limitation period for all other claims for damages shall be eighteen (18) months after the cause of action accrues, unless statutory law provides for a shorter limitation period.

11.6 Suppliers. The foregoing limitations shall also apply in favor of Service Provider’s employees and Suppliers.

15.6.3 Section 13.10 Governing Law: the following sentence shall be added:

To the extent permitted by law, the courts of the city of Frankfurt am Main shall be exclusively competent to rule on disputes arising out of or in connection with this Agreement.



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