

# PROOF OF CONCEPT CLOUD SERVICES SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT

UPDATED: 21 August, 2020

BY SIGNING THE ORDERING DOCUMENT, CUSTOMER AGREES TO BE BOUND BY THIS CLOUD SERVICES SUBSCRIPTION AND PROFESSIONAL SERVICES AGREEMENT (THE "ONLINE TERMS"). THE ONLINE TERMS AND THE ORDERING DOCUMENT INCLUDING THE STATEMENT OF WORK (COLLECTIVELY, THE "AGREEMENT") GOVERN CUSTOMER'S USE, AND BLUE YONDER'S PROVISION, OF THE CLOUD SERVICES AND ANY RELATED SUBSCRIPTION CONTENT AND PROFESSIONAL SERVICES. "BLUE YONDER" OR "JDA" MEANS BLUE YONDER, INC. (FORMERLY KNOWN AS JDA SOFTWARE, INC.), A DELAWARE CORPORATION.

## 1. DEFINITIONS

(a) "Affiliates" means, in respect of a party, any corporation, company or entity that directly or indirectly controls, is controlled by or is under common control of that party (and in respect of the Customer) which is not a competitor of Blue Yonder. For the purposes of this definition, "control" means: (i) holding a majority of the voting rights in it; (ii) being a member of it and having the right to appoint or remove a majority of its board of directors; or (iii) being a member of it and controlling alone, pursuant to an agreement with other members, a majority of the voting rights in it.

(b) "Cloud Services" mean the Subscription Content (including any Third-Party Services) made available as a SaaS or cloud service by subscription as specified in the Ordering Document.

(c) "Customer Data" means the Customer's Confidential Information and the electronic data or information (including any personal data) submitted, provided, uploaded, transmitted, imported, displayed or otherwise made available by Customer through the Cloud Services.

(d) "Data Processing Addendum" means the addendum available at <https://blueyonder.com/legal/general-data-protection-regulation> which sets out additional terms with regard to the processing of personal data in order to meet the requirements of Applicable Laws (as defined in the Data Processing Addendum).

(e) "Data Protection Loss" means any loss, expense, compensation, fine, penalty, liability, damage or cost arising out of or in connection with Blue Yonder's, Blue Yonder's Affiliates, or Suppliers' breach of their respective obligations in the Data Processing Addendum or breach of any other obligations relating to the processing of personal data under the Agreement.

(f) "Deliverables" means the items specifically identified as deliverables under the Statement of Work that are delivered to Customer and any copies, translations, derivations, adaptations or modifications of or to the foregoing, in whole or in part. Deliverables do not include any items delivered as part of the Cloud Services.

(g) "Emergency Regulatory Issue" means any current or future government regulation, requirement or obligation or court rule, verdict, decision or order that: (i) subjects Blue Yonder or its Suppliers to any regulation, requirement or obligation not generally applicable to businesses operating there; (ii) presents a hardship for Blue Yonder or its Suppliers to continue operating the Cloud Services without modification or necessary governmental formalities; or (iii) causes Blue Yonder or its Suppliers to reasonably believe the Cloud Services and/or this Agreement may conflict with such government regulation, requirement or obligation or court rule, verdict, decision or order.

(h) "Emergency Security Issue" means either: (i) Customer's use of the Cloud Services in a way that could disrupt: (a) the Cloud Services; (b) other customers' use of the Cloud Services; or (c) the network or servers used to provide the Cloud Services; or (ii) unauthorized third-party access to the Cloud Services.

(i) "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, tradename, moral rights, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Cloud Services are used or offered.

(j) "IP Claim" means a claim by an unaffiliated third-party against Customer that the Deliverables when used within the scope of the terms set forth under this Agreement, directly infringes a third-party copyright or trademark, directly infringes a patent issued in the Territory or misappropriates a third-party trade secret.

(k) "Number of Subscriptions" means the number of subscriptions for the Subscription Content measured by the applicable UOM, as set forth in the Ordering Document.

(l) "Ordering Document" means the ordering document that references these Online Terms.

(m) "Professional Services" means the implementation, consulting or other services set forth in the Statement of Work (excluding the Cloud Services).

(n) "Services" means any services provided by Blue Yonder, Blue Yonder's Affiliates, the Suppliers or subcontractors under this Agreement to Customer, collectively, including Cloud Services and Professional Services.

(o) "Statement of Work" or "SOW" means the document set out as an Appendix to the Ordering Document which is executed by the parties (including Affiliates), that references these Online Terms and specifies the Professional Services, associated fees, Deliverables, if any, and other agreed upon terms.

(p) "Sub-Processor" has the same meaning as set forth in the Data Processing Addendum.

(q) **"Subscription Content"** means the application and solutions specified in the Ordering Document. Subscription Content does not include new products, features and modules that are separately marketed for an additional fee.

(r) **"Subscription Metrics"** mean subscription metrics and values specified in the Ordering Document, if any.

(s) **"Subscription Term"** means the period of time during which Blue Yonder will provide the Cloud Services, as specified in the Ordering Document.

(t) **"Suppliers"** mean those third-parties who provide Third Party Services.

(u) **"Third Party Services"** means portions of the Cloud Services provided by Suppliers under agreements between Blue Yonder and such Suppliers.

(v) **"Unit of Measure"** or **"UOM"** means the type of subscription, (e.g. named users, users, freight under management (FUM), SKUs, DFUs, customers, order lines, stores, etc.) for the Subscription Content, as set forth in the Ordering Document.

(w) **"User"** means any individual who, pursuant to the terms of this Agreement, is authorized to use the Cloud Services, and who has been provided user identifications and passwords by Customer.

## 2. SERVICES

(a) **Subscription.** Blue Yonder will provide or make available a non-exclusive and non-transferable right to access and use the Cloud Services during the Subscription Term identified in the Ordering Document subject to the Number of Subscriptions and Subscription Metrics set forth in the Ordering Document and the terms and conditions of this Agreement.

(b) **Provision of the Cloud Services.** Blue Yonder and its Suppliers may provide the Cloud Services (including the processing, transfer and storage of Customer Data) from the United States or any country where Blue Yonder, Blue Yonder Affiliates or Suppliers operate or maintain facilities. Customer consents to such processing, transfer and storage of Customer Data. Blue Yonder and its Suppliers may make commercially reasonable changes to the Cloud Services. Blue Yonder shall comply with all local, state, federal and foreign laws and regulations applicable to Blue Yonder's provision of the Cloud Services.

(c) **Provision of the Professional Services.** Blue Yonder, its Affiliates or its subcontractors will perform the Professional Services described in the Statement of Work, at the rates specified therein. Where Blue Yonder uses subcontractors to perform Professional Services, Blue Yonder will be responsible for any breaches of this Agreement by those subcontractors and Blue Yonder will bind those subcontractors to confidentiality (and, where that subcontractor is also a Sub-Processor as defined in the Data Processing Addendum, data protection) obligations that are substantially similar to Blue Yonder's obligations under the Agreement.

(d) **Affiliates.** Portions of the Services may be provided by Blue Yonder's Affiliates, in which case Blue Yonder will be responsible for any breaches of this Agreement by those Blue Yonder Affiliates. Blue Yonder Affiliates may also provide Professional Services directly to Customer (or Customer's Affiliate) by entering into the SOW directly with Customer (or Customer's Affiliate). Any Affiliate executing the SOW which references these Online Terms will stand in the place of Blue Yonder or Customer (as applicable) under these Online Terms for purposes of that SOW. Each SOW will constitute a separate two-party agreement between the entities who executed the same and, except for provisions in these Online Terms that are specifically excluded or modified in the SOW, the terms and conditions of these Online Terms will be incorporated therein. Where an Affiliate enters into the SOW which reference these Online Terms, all references in these Online Terms to "Customer" shall be deemed to be references to the relevant Customer Affiliate and/or all references to "Blue Yonder" or "JDA" shall be deemed to be references to the relevant Blue Yonder Affiliate (if applicable).

(e) **Third-Party Services.** Portions of the Cloud Services may be provided by Suppliers. Blue Yonder will make Customer Data available to Suppliers as part of Suppliers providing Third-Party Services. Blue Yonder will bind Suppliers to confidentiality (and, where that Supplier is also a Sub-Processor as defined in the Data Processing Addendum, data protection) obligations that are substantially similar to Blue Yonder's obligations under this Agreement. Subject to the terms and conditions of this Agreement and the Data Processing Addendum, Blue Yonder will be responsible for any breaches of this Agreement by Suppliers.

(f) **Details of Affiliates and Sub-Processors.** Further information on Blue Yonder's current Affiliates and Sub-Processors is set out in the Data Processing Addendum.

(g) **Security.** Blue Yonder has implemented and shall maintain several appropriate technical and organizational security measures which in certain areas of the organization are either based on the ISO/IEC 27001 framework or are ISO/IEC 27001 certified. In respect of personal data only, such measures are set forth in the Data Processing Addendum, including the Blue Yonder Security Measures referenced and incorporated therein. Upon Customer's reasonable written request, Blue Yonder will provide Customer with copies of the then available ISO/IEC 27001 certificate. Additional information regarding Blue Yonder's security compliance and Customer's right to audit such compliance is set forth in the Data Processing Addendum.

(h) **Security Event.** To the extent permitted by applicable law, Blue Yonder shall notify Customer without delay of any actual unauthorized access, use or disclosure of Customer Data (a **"Security Event"**). If the Security Event was directly caused by Blue Yonder's failure to meet or exceed the technical and organizational security measures set forth in Section 2(g) above, Blue Yonder shall make commercially reasonable efforts to identify and remediate the cause of such Security Event. Additional information regarding Blue Yonder's specific obligations in the event of the unauthorized acquisition of personal data is set out in the Data Processing Addendum.

(i) **Access to Customer Premises.** Customer shall, on reasonable prior notice and at all reasonable times, permit staff of Blue Yonder, its Affiliates or subcontractors to gain access to Customer's premises as is necessary to enable the performance of the Services in accordance with this Agreement. Customer may refuse entry to, or require the removal of, any staff members of Blue Yonder, its Affiliates or subcontractors: (i) who do not comply with the reasonable security and other procedures and policies applicable at Customer's premises (including health and safety), provided those procedures and policies have been provided to Blue Yonder in advance; or (ii) who Customer reasonably believes (acting honestly and in good faith) is unsuitable to be on Customer's premises.

### 3. MACHINE LEARNING

(a) **Machine Learning.** Certain Subscription Content may include machine learning, which are taught and trained largely from Customer's internal data sets. Therefore, the quality of the results and outputs of the machine learning portions of the Subscription Content (such as optimized price proposals and recommended store order quantities, etc.) ("**Machine Learning Outputs**") is heavily reliant on the quality of the Customer Data.

(b) **Cooperation.** Customer acknowledges that its timely provision of (and access to) its assistance, data, information and materials (the "**Cooperation**") is essential to Blue Yonder's provision of the machine learning services and Machine Learning Outputs. Customer shall execute all Cooperation duties reasonably requested by Blue Yonder. If no timeframe is agreed with respect to a Cooperation duty, Customer shall execute the respective Cooperation duty within a timeframe appropriate having regard to the importance of its execution for the continuation of the machine learning-related Cloud Services. Any delays in the performance of machine learning services or providing the Machine Learning Outputs caused by Customer or the late or non-performance of the Cooperation may result in additional charges (based on Blue Yonder's standard rates) for Blue Yonder's resource time.

(c) WITHOUT LIMITING THE WARRANTIES PROVIDED IN THIS AGREEMENT, BLUE YONDER ACCEPTS NO RESPONSIBILITY OR LIABILITY FOR THE QUALITY OF THE MACHINE LEARNING OUTPUTS, OR FOR CUSTOMER'S RELIANCE ON, OR USE OF, THE MACHINE LEARNING OUTPUTS.

### 4. CUSTOMER'S USE OF THE CLOUD SERVICES AND DELIVERABLES

(a) **Grant of Rights.** Blue Yonder grants Customer a non-exclusive, non-assignable, worldwide right (except as otherwise set forth in Section 13(s)) to use the Cloud Services and Subscription Content in a single non-production environment solely for Customer's internal evaluation and testing purposes.

(b) **Usage Limits.** Unless otherwise provided in the Ordering Document, Customer shall not use the Cloud Services in any manner that exceeds the Number of Subscriptions and Subscription Metrics (if any) set forth in the Ordering Document or in any manner intended to avoid incurring fees. Where the Cloud Services are provided on a per User basis, User accounts cannot be shared or used by more than one User, except that User accounts may be reassigned to new Users replacing former Users who no longer use the Cloud Services, and Customer shall not create multiple Users to simulate or act as a single User.

(c) **Customer's Obligations.** Customer is responsible for all activity occurring under it and its User accounts and logins. Customer shall: (i) use the Cloud Services and Deliverables solely for its internal evaluation and testing purposes and not for the benefit of any third parties, except as permitted by the Ordering Document or the SOW; (ii) use Cloud Services and Deliverables only in accordance with the Agreement; (iii) comply, and cause its User's to comply, with the Agreement; (iv) obtain all required consents from third-parties with whom Customer has a business relationship (e.g. network providers or outsourced IT resource providers) necessary for Blue Yonder and its Suppliers to provide the Cloud Services; (v) prior to providing personal data to Blue Yonder, provide to, and obtain and maintain from, third-parties (including Customer's contacts, resellers, distributors, administrators, and employees) all notices and consents required for Blue Yonder and its Suppliers to process personal data under applicable law; (vi) keep a secure password for use of the Cloud Services and require each User to keep the password confidential; (vii) promptly notify Blue Yonder of any unauthorized access or use of the Cloud Services or Deliverables, passwords, authentication credentials, or a Security Event; (viii) comply with all local, state, federal and foreign laws applicable to Customer's use of the Cloud Services or Deliverables; and (ix) select, purchase, configure, operate and maintain its equipment, hardware, websites, network and Internet, data and telephone connections necessary for use and support of the Cloud Services.

(d) **Restrictions.** To the extent permitted by law, Customer shall not and will not permit others to: (i) modify, copy, duplicate, download, reverse engineer, disable, decompile, translate, disassemble, create any derivative work of, or otherwise attempt to extract any or all of the source code, algorithms, proprietary technology, or analytics from, the Cloud Services or Deliverables; (ii) copy any features, functions, integrations, interfaces or graphics of the Cloud Services or Deliverables; (iii) access Cloud Services or Deliverables to build a competitive product or service; (iv) license, sublicense (if a license is granted), sell, resell, rent, lease, lend, transfer, assign, distribute, time share, offer in a service bureau, or commercially exploit the Cloud Services or Deliverables, use the Cloud Services to provide hosting services to third-parties, or otherwise make the Cloud Services or Deliverables available to any third-party other than Users as permitted under this Agreement; (v) disable, interfere with or circumvent any aspect of the Cloud Services; (vi) use any method other than the one approved by Blue Yonder for connection to the Cloud Services; (vii) exceed the Number of Subscriptions or Users for a particular Cloud Service as set forth in the Ordering Document; (viii) interfere with other authorized users use of the Cloud Services; (ix) engage in, promote or encourage illegal activity or the violation of the legal rights of third-parties, including infringement of the Intellectual Property Rights of any third party or any rights of publicity or privacy; (x) infringe or misappropriate Blue Yonder or its licensors' Intellectual Property Rights; (xi) generate, distribute, publish, facilitate or send unsolicited commercial messages ("spam") in violation of applicable law; (xii) send or store known viruses, worms, time bombs, Trojan horses, and other harmful, destructive, deceptive or malicious code, files, scripts, agents or programs; (xiii) send or store infringing, obscene, threatening, defamatory, obscene, racially or ethically offensive, libelous, fraudulent or otherwise unlawful or tortious material, including material that is harmful to children or violates third party rights, including privacy rights; (xiv) interfere with or disrupt the integrity or performance of the Cloud Services, Blue Yonder's networks, any other customer's use of Cloud Services, or third party data contained therein; (xv) gain or attempt to gain, or fail to use commercially reasonable efforts to protect against, the unauthorized access to the Cloud Services or its related systems or networks or to the data of another Blue Yonder customer or (xvi) disclose the results of any performance, functionality or other evaluation or benchmarking of the Cloud Services to a third party without Blue Yonder's express prior written consent. In addition, Customer shall not, without the prior written consent of Blue Yonder, perform any technical, application, or infrastructure security integrity review, penetration test, or vulnerability scan ("**Ethical Hack**"). Upon Blue Yonder's consent, the parties will mutually agree in writing as to the timing, scope and duration of the Ethical Hack, and Blue Yonder will reserve the right to monitor the Ethical Hack and immediately suspend the Ethical Hack at any time for any reason

### 5. CUSTOMER DATA

(a) **Ownership of Customer Data.** Customer is and will remain the exclusive owner of all, right, title and interest in and to the Customer Data, including any Intellectual Property Rights relating thereto. Blue Yonder does not acquire any license or other rights to Customer Data, directly or indirectly, by implication, estoppel or otherwise, other than those expressly specified in this Agreement.

(b) **Customer Data.** Customer grants Blue Yonder the right to process, store, access, use, transmit, copy, display, disclose or modify Customer Data, as reasonably necessary for Blue Yonder to: (i) provide the Services (including to prevent or address service or technical problems); (ii) verify Customer's compliance with the Agreement as per Section 13(r); and (iii) improve and enhance its services and solutions in accordance with this Agreement. Customer is solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness and means by which Customer

acquired the Customer Data and for ensuring that Customer Data complies with Section 4(d). If Customer knows or learns that any Customer Data violates Section 4(d), Customer will immediately remove such Customer Data from the Cloud Services. Customer represents and warrants that it has complied with all relevant laws in collecting, using and disclosing the Customer Data. Customer agrees not to provide any health data or similarly sensitive data. Except as set out in Section 5(e), Customer acknowledges that Blue Yonder does not exercise any control whatsoever over the content of the Customer Data, and Blue Yonder will have no obligation, but reserves the right, to review Customer Data for, without limitation, accuracy, quality, integrity, legality, reliability or appropriateness solely for the purpose of providing the Services.

**(c) Data Protection.** Subject always to Section 5(d), if, in providing the Services Blue Yonder has access to any personal data in respect of which the Customer is the data controller and Blue Yonder is the data processor, then the parties agree that the Data Processing Addendum shall govern Blue Yonder's processing of such personal data. Appendix 1 of the Ordering Document sets out the details of the personal data which Blue Yonder processes on the Customer's behalf which is required to meet Applicable Laws (as defined in the Data Processing Addendum).

**(d) China Data Protection.** Customer warrants that it shall not under, or in connection with, this Agreement provide or give Blue Yonder access to or ask Blue Yonder to process any China Personal Information or Important Data. For the purpose of this Section, the following terms have the following meanings: (i) "**China**" refers to the People's Republic of China, only for the purpose of this Agreement, excluding Hong Kong SAR, Macau SAR and Taiwan; (ii) "**Important Data**" means the data closely related to China's national security, economic development and public interests, and China's relevant national standards and guidelines for identification of important data shall apply mutatis mutandis to the specific scope of important data. Important Data does not form part of Customer Data; and (iii) "**China Personal Information**" means Personal Data and Customer Personal Data (as defined in the Data Processing Addendum) which is gathered and produced during Customer's operations within China.

**(e) Personal Information.** Customer acknowledges that Blue Yonder may process certain personal data about the Customer and/or its agents, representatives, employees or other related third parties for its own purposes including for the purposes of: (i) processing orders; (ii) managing Customer's account with Blue Yonder; and (iii) compiling aggregate statistics of the distribution and use of the Cloud Services. Customer may request access to and correction of the personal information or exercise any other rights it may have in respect of such personal data. More details on Blue Yonder's data processing activities are set out in its Privacy Policy a current version is available <https://blueyonder.com/privacy-policy>.

## 6. ORDERS, FEES & PAYMENT

**(a) Orders.** Customer will place a binding order, subject to Blue Yonder's acceptance, by sending a signed Ordering Document and SOW. Customer agrees that its purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Blue Yonder, its Affiliates, its distributors or resellers regarding future functionality or features of the Cloud Services.

**(b) Fees Generally.** Customer will pay Blue Yonder for the Services and related expenses at the rates set forth in the Ordering Document and/or SOW. Invoiced amounts will be due and payable 30 days from the invoice date. All fees are quoted and payable in the currency set out in the Ordering Document or SOW. Except where otherwise expressed agreed in this Agreement, fees are nonrefundable and Customer's payment obligation is not cancelable. Customer is responsible for providing Blue Yonder with Customer's complete and accurate billing and contact information and notifying Blue Yonder of any changes to Customer's billing and contact information.

**(c) Cloud Services Fees.** Customer shall pay all fees specified in the Ordering Document. Fees based on the UOM or other quantity as indicated on the Ordering Document, will not be decreased during the Subscription Term. Unless otherwise set out in the Ordering Document, the fees for the Cloud Services will be invoiced in advance.

**(d) Professional Services Fees.** Invoices for Professional Services are payable as set forth in the Statement of Work. Customer shall reimburse Blue Yonder for all reasonable out-of-pocket expenses incurred by Blue Yonder in performing the Professional Services. Unless otherwise agreed in the Statement of Work, Professional Services will be billed on a time and materials basis and invoiced twice monthly in arrears.

**(e) Overdue Payments.** Any payment (except payment subject to a good faith dispute pursuant to Section 6(f)) not received from Customer by the due date may, at Blue Yonder's discretion, accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date the payment was due until the date paid. Customer will pay to Blue Yonder all reasonable costs and expenses for collection of overdue amounts, including legal fees. In addition, Blue Yonder may condition future purchases on payment terms shorter than those specified in this Section 6.

**(f) Payment Dispute Procedure.** Blue Yonder will not exercise its rights under the "Overdue Payments" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute. To submit a dispute, Customer must notify Blue Yonder in writing of the dispute within ten (10) days of the invoice date and include a description of the dispute. Blue Yonder will promptly review and respond to the notice. Where Customer disputes only part of an invoice, Customer must pay all undisputed amounts when due. After the dispute is resolved, Customer will immediately pay the amounts in dispute. If Customer fails to provide notice to Blue Yonder within ten (10) days of the invoice date, then Customer's right to dispute the invoice will be deemed waived.

**(g) Suspension for Non-Payment.** If Customer's account is more than thirty (30) days past due (except with respect to fees subject to a good faith dispute pursuant to Section 6(f)), in addition to any other rights or remedies Blue Yonder may have under this Agreement or by law, Blue Yonder may, without liability to the Customer, suspend the Services upon ten (10) days written notice, until the amounts are paid in full.

**(h) Taxes.** All amounts payable pursuant to the Ordering Document or SOW are exclusive of any sales or use taxes, value added tax (VAT), goods and services tax (GST), or any and all similar taxes or legally imposed fees, duties or contributions based on such amounts payable, all of which shall be the sole responsibility of Customer whether due now or subsequently imposed by any jurisdiction. Blue Yonder may charge value added tax, goods and services tax, sales tax or other consumption or similar taxes ("**Indirect Taxes**") in addition to Subscription Fees under the Ordering Document, on condition that Blue Yonder's invoice meets the requirements for a valid tax invoice for such Indirect Taxes after consideration of any applicable tax exemption certificate. For avoidance of doubt, the address used for indirect tax purposes is identified as Customer Address on the table in the Ordering Document. If the Cloud Services are provided to Customer elsewhere, Customer is responsible for notifying Blue Yonder. Customer is not responsible for any taxes based upon the net income of Blue Yonder or its employees unless agreed to elsewhere in this Agreement.

(i) **Withholding Tax.** If Customer is required to withhold income tax on any payments due under this Agreement, it shall promptly provide Blue Yonder with the official receipt of payment of these taxes to the appropriate taxing authority. Customer shall withhold only to the extent legally required under existing tax laws of Customer's legal country of domicile and after full consideration of applicable income tax treaty provisions, if any, by and between Customer's and Blue Yonder's respective legal countries of domicile. If tax is withheld and Customer does not submit a tax certificate to Blue Yonder within thirty (30) days after the payment due date, Customer shall immediately remit full payment for the outstanding amount to Blue Yonder.

## 7. PROPRIETARY RIGHTS

(a) **Reservation of Rights.** Blue Yonder is and will remain the exclusive owner of all right, title and interest in and to the Cloud Services, Deliverables, Machine Learning Outputs (as defined in Section 3(a)) and Aggregated Data (as defined in Section 7(c)) including any Intellectual Property Rights relating thereto. All Intellectual Property Rights in any work arising from or created, produced or developed by Blue Yonder (whether alone or jointly with others) under or in the course of this Agreement, including those arising from the Services, will immediately upon creation or performance vest absolutely in and will be and remain the property of Blue Yonder, and Customer will not acquire any right, title or interest in and to the same. Customer is only granted the limited rights to the Cloud Services, Deliverables and Machine Learning Outputs as described in this Agreement. All rights not specifically granted in this Agreement to Customer are exclusively reserved to Blue Yonder or its licensors.

(b) **Deliverables.** Subject to payment of the Professional Services fees due, Blue Yonder grants to Customer a non-exclusive, non-sublicensable, non-transferable, right (or license as applicable) to use the Deliverables solely for Customer's internal purposes. If a Deliverable was created in connection with, or as an extension to, the Cloud Services (a "**Connected Deliverable**") then the right (or license as applicable) to use the Connected Deliverable endures only for so long as Customer is authorized to use the Cloud Services related to the Connected Deliverable. Further for the duration of the Subscription Term Customer's use of the Deliverables shall be further restricted to testing and evaluation purposes.

(c) **Aggregated Data.** Customer grants Blue Yonder the right to compile, collect, copy, modify, publish and use anonymous data in aggregate form that is generated from, or based upon, Customer's use of the Cloud Services (including by way of example, amount of uptime for the service monthly and annually, number and types of system incidents encountered and their trends, analysis of which functions within the Cloud Services are more/less frequently used, security threats encountered and handled and/or metrics such as number of order line volumes, SKUs, Warehouses etc. processed by Blue Yonder systems to provide the Cloud Services) ("**Aggregate Data**"); on condition that: (i) Aggregate Data does not include Customer Data or Customer Confidential Information; (ii) Aggregate Data does not include any information that can be used directly, or in connection with other data, to identify, contact or locate an individual; (iii) Aggregate Data is combined with data from other customers and cannot be used to identify, directly or indirectly, Customer; and (iv) Blue Yonder uses Aggregate Data solely for data analytics, statistical reporting, product or service improvements, or other lawful business purposes.

(d) **Customer Input.** Customer agrees that Blue Yonder owns and has the right to exploit and include in the Subscription Content, its products and other services, any suggestions, enhancement requests, feedback or recommendations provided by Customer, its employees, contractors and users to Blue Yonder without any obligation to Customer.

## 8. CONFIDENTIALITY

(a) **Confidential Information.** "Confidential Information" means all information disclosed by a party (disclosing party) to the other party (receiving party), whether orally or in writing, or, made available to or learned by the receiving party during the term of this Agreement, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes, without limitation, technical, business, financial, marketing or other information of every kind or nature (including, without limitation, trade secrets, know-how and information relating to the technology, Services, designs, specifications and prototypes, customers, business plans, strategies, product plans and designs, promotional and marketing activities, finances and other business affairs and processes of a party), third party confidential information, the terms and conditions of this Agreement (including pricing), and any information arising from or relating to an Ethical Hack performed by Customer, and, with respect to Customer, Customer Data.

(b) **Exclusions.** Confidential Information does not include any information that: (i) is or becomes generally available to the public through no improper action or inaction by the receiving party or any affiliate, agent, consultant or employee of the receiving party; (ii) was properly in the receiving party's possession or properly known by it, without restriction, prior to receipt from the disclosing party; (iii) was rightfully disclosed to the receiving party by a third party without restriction; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.

(c) **Confidentiality Obligations.** Each party shall: (i) hold in strict confidence all Confidential Information of the other party; (ii) use the Confidential Information solely to perform its obligations or exercise its rights under this Agreement; and (iii) not transfer, display, convey or otherwise disclose or make available all or any part of the other party's Confidential Information to any person or entity other than to its directors, officers, employees, consultants, subcontractors, auditors, and legal and financial advisors (or those of its Affiliates), and, in the case of Blue Yonder, its Suppliers and subcontractors, (collectively, "**Representatives**") who need to know the Confidential Information and who are under confidentiality obligations at least as restrictive as the terms of this Agreement. Each party is responsible for any breaches of this Agreement by its Representatives. Except as otherwise expressly provided in this Agreement, neither party shall use or disclose the Confidential Information of the other party without the prior written consent of the disclosing party. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information, but in no circumstances less than reasonable care.

(d) **Permitted Disclosures.** The receiving party may disclose the Confidential Information of the disclosing party in response to a valid court order, subpoena, civil investigative demand, law, rule, regulation (including, without limitation, any securities exchange regulation), or other governmental action, provided that: (i) to the extent permitted by applicable law or regulation, the disclosing party is notified in writing prior to disclosure of the information; (ii) the receiving party uses reasonable efforts to obtain a protective order or, in the absence of a protective order, to limit the disclosure of the disclosing party's Confidential Information and to obtain confidential treatment thereof; and (iii) the receiving party has allowed the disclosing party to participate in the proceeding that requires the disclosure.

(e) **Know-how.** Nothing in this Section 8 shall prevent either party from using any techniques, business insights, ideas or know-how gained during the performance of the Agreement in the course of its normal business (which, in respect of Blue Yonder, includes predication-related services) to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of its Intellectual Property Rights.

(f) **Ownership.** As between the parties, the parties agree that the Confidential Information of the disclosing party is, and will remain, the property of the disclosing party. The receiving party obtains no right, title, interest, or license in or to any of the Confidential Information of the disclosing party except for the rights expressly set forth in this Agreement.

## 9. WARRANTIES & DISCLAIMER OF WARRANTIES

(a) **General Warranty.** Each party represents and warrants that it has validly entered into this Agreement and has the legal power to do so.

(b) **CLOUD SERVICES AND SUBSCRIPTION CONTENT WARRANTIES.** THE CLOUD SERVICES AND SUBSCRIPTION CONTENT ARE PROVIDED AS IS AND WITHOUT WARRANTY.

(c) **Professional Services Warranty.** Blue Yonder warrants that the Professional Services will: (i) be of a professional quality consistent with generally accepted industry standards and practices; and (ii) substantially conform in all material respects with the Statement of Work. Customer's exclusive remedy for the breach of this Professional Services warranty will be: (I) for Blue Yonder to cure the breach promptly, at no cost to Customer; or (II) if Blue Yonder is unable to cure the breach, Blue Yonder shall refund the fees paid for the non-conforming Professional Services. Customer must make any claim under the foregoing warranty to Blue Yonder in writing within ninety (90) days of performance of the Professional Services, Blue Yonder is not obligated to cure any breach of the Professional Services warranty if Customer fails to identify the breach in writing within this time period. THIS SECTION 9(c) SETS FORTH BLUE YONDER'S ENTIRE OBLIGATION AND LIABILITY FOR BREACH OF THE WARRANTY SET FORTH IN THIS SECTION 9(c).

(d) **DISCLAIMER OF WARRANTIES.** EXCEPT AS SET FORTH IN THIS SECTION 9 AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES AND DELIVERABLES ARE OFFERED "AS IS" AND "AS AVAILABLE" AND CUSTOMER RECEIVES NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. BLUE YONDER AND ITS AFFILIATES, SUPPLIERS AND LICENSORS DO NOT MAKE ANY, AND EXPRESSLY DISCLAIM ALL OTHER, WARRANTIES, CONDITIONS, AND REPRESENTATIONS, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, OR ARISING BY USAGE OR TRADE PRACTICE OR COURSE OF DEALING, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MEETING THE CUSTOMER REQUIREMENTS, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. BLUE YONDER AND ITS AFFILIATES, SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE USE OR OPERATION OF THE SERVICES OR DELIVERABLES WILL BE SECURE, UNINTERRUPTED, FREE OF HARMFUL CODE OR ERROR-FREE OR THAT THE SERVICES OR DELIVERABLES WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE, EQUIPMENT OR HARDWARE (EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SOW), OR THAT THE SERVICES OR DELIVERABLES WILL NOT CAUSE ANY LOSS OR CORRUPTION OF DATA, OR THAT THE SERVICES OR DELIVERABLES WILL MEET CUSTOMER OR ANY OTHER PERSON'S REQUIREMENTS. CLOUD SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET, TELEPHONIC AND ELECTRONIC COMMUNICATIONS AND BLUE YONDER AND ITS AFFILIATES, SUPPLIERS AND LICENSORS ARE NOT RESPONSIBLE FOR DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE AS A RESULT.

## 10. INDEMNIFICATION

(a) **Indemnification.** Blue Yonder will indemnify, defend and hold harmless Customer from and against any IP Claim in the Territory. Customer agrees to indemnify, defend and hold Blue Yonder and its Affiliates, Suppliers and licensors harmless from and against any unaffiliated third-party claim or legal action arising from or in connection with: (i) Customer's breach of Section 5 (Customer Data); (ii) Customer's use of the Cloud Services or Deliverables in violation any local, state, federal or foreign law applicable to Customer's use of the Cloud Service or Deliverables or in a way that damages a third-party; or (iii) any Customer Data, including any Customer Data that infringes Intellectual Property Rights.

(b) **Possible Infringement.** In the event that Blue Yonder, in its sole discretion, reasonably determines, that the Cloud Service or Deliverables, or any portion thereof, infringes or misappropriates, or may infringe or misappropriate, any third-party Intellectual Property Right, Blue Yonder will, as Customer's sole and exclusive remedy (but without limitation of Blue Yonder's indemnification obligations under Section 11(a)), and at Blue Yonder's sole discretion, either: (i) obtain the right, at reasonable cost, for Customer to continue using the Cloud Service or Deliverables, or relevant portion thereof; (ii) modify the Cloud Service or Deliverables while retaining substantively equivalent functionality; (iii) provide a non-infringing, functionally equivalent replacement; or (iv) terminate the applicable Cloud Service or use of the Deliverables in whole or in part and give Customer a refund for any unused, prepaid fees for the infringing Cloud Service covering the remainder of the Subscription Term (if any), after the date of termination.

(c) **Exceptions.** Blue Yonder has no liability for an IP Claim to the extent the IP Claim is based on or arises from: (i) the modification of the Cloud Services and/or Deliverables by anyone other than Blue Yonder unless the modification was done at the instruction of Blue Yonder; (ii) the combination of the Cloud Services and/or Deliverables, or any portion thereof, with any other third-party software, hardware, service, technology, content or material not provided by Blue Yonder if infringement would not occur without the combination, unless contemplated by this Agreement; (iii) Customer's use of the Cloud Services and/or Deliverables not in accordance with this Agreement; (iv) modification of the Cloud Services and/or Deliverables or Blue Yonder's compliance with Customer's specifications or directions, including, but not limited to, the incorporation of any software or other materials, functionality modifications, or processes provided by or requested by Customer that have not been specified for Customer's use in this Agreement, if the infringement would not have occurred without Customer's specifications or directions; (v) Customer's use of other than the then most current version of the Cloud Services and/or Deliverables, on condition that the then-most current version was made available to Customer, to the extent such infringement would have been prevented by Customer's use of the then-most current version; or (vi) Cloud Services and/or Deliverables that Blue Yonder makes available for testing or demonstration purposes or Cloud Services and/or Deliverables for which Blue Yonder does not receive a fee.

(d) **Procedure.** The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. Failure to provide timely notice or reasonable assistance will relieve the indemnifying party of its obligations under Section 11(a) to the extent the indemnifying party has been materially prejudiced. The indemnifying party will have the exclusive right to control and direct the investigation, defense (including appeals), negotiations and settlement (if applicable) of the indemnified portion of the claim, except that: (i) it may not make an admission of fault on behalf of the other party without written consent; (ii) any settlement requiring the party seeking indemnification to admit liability, pay money, or take or refrain from taking any action that would be materially detrimental to its overall business and reputation (except with respect to use or non-use of the Cloud Service or Deliverable) requires prior written consent, not to be unreasonably withheld or delayed; and (iii) the other party may join in the defense with its own counsel at its own expense. The indemnifying party will: (I) retain and pay attorneys, expert witness and court costs as part of its defense obligation; (II) reimburse the other party for reasonable out-of-pocket expenses that it incurs in providing assistance; and (III) pay the amount of any resulting adverse

final judgment (including any award of attorney's fees and costs), penalties, sanctions or settlement. SECTION 10 STATES THE SOLE LIABILITIES AND EXCLUSIVE REMEDIES FOR CLAIMS DESCRIBED IN SECTION 10.

## 11. LIMITATION OF LIABILITY

(a) **General Liability Cap.** THE CUMULATIVE, AGGREGATE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE AFFILIATES TO THE OTHER PARTY FOR ALL CLAIMS RELATED TO THE SERVICES AND/OR THIS AGREEMENT (INCLUDING THE ORDERING DOCUMENT AND STATEMENT OF WORK BUT EXCLUDING DATA PROTECTION LOSSES WHICH IS COVERED UNDER SECTION 11(b) BELOW) IS LIMITED TO DIRECT DAMAGES UP TO THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO BLUE YONDER UNDER THE AGREEMENT. THIS LIMITATION APPLIES TO ANY DAMAGE, HOWEVER CAUSED, AND ON ANY THEORY OR LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, NEGLIGENCE (ACTIVE OR OTHERWISE), THE USE OR PERFORMANCE OF THE SERVICES OR DELIVERABLES, OR OTHERWISE AND REGARDLESS OF WHETHER THE DAMAGES WERE FORESEEABLE OR NOT.

(b) **Data Protection Losses Liability Cap.** IN NO EVENT WILL BLUE YONDER OR ITS AFFILIATES AGGREGATE LIABILITY IN RESPECT OF DATA PROTECTION LOSSES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING THE ORDERING DOCUMENT, THE DATA PROCESSING ADDENDUM AND STATEMENT OF WORK), EXCEED THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO BLUE YONDER UNDER THE AGREEMENT. TO THE EXTENT THAT ANY BREACH OF SECTION 8 (CONFIDENTIALITY) OF THIS AGREEMENT RELATES TO THE PROCESSING OF ANY PERSONAL DATA, THEN THE CAP IN THIS SECTION 11(b) APPLIES.

(c) **Damages Waiver.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY (OR THEIR RESPECTIVE AFFILIATES OR THE SUPPLIERS) IS LIABLE FOR ANY LOSS, WHETHER DIRECT OR INDIRECT, OF PROFITS, REVENUE, BUSINESS, BUSINESS INFORMATION, OPPORTUNITY, USE, GOODWILL, DATA, OR FOR INTERRUPTION OF BUSINESS, DELETION OR LOSS OF DATA, FAILURE TO STORE DATA, COSTS OF RECREATING DATA, OR THE COST OF ANY SUBSTITUTE EQUIPMENT, SOFTWARE OR SERVICES, OR FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT OR PUNITIVE DAMAGES ARISING IN ANY WAY OUT OF THE USE OF THE SERVICES (INCLUDING THE CLOUD SERVICES AND DELIVERABLES) OR THIS AGREEMENT, HOWEVER CAUSED, AND REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING UNDER ANY CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY), AND EVEN IF A PARTY KNEW OR SHOULD HAVE KNOWN THAT THE LOSS OR DAMAGES WERE POSSIBLE OR REASONABLY FORESEEABLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

(d) **EXCEPTIONS TO LIMITATIONS.** NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT EITHER PARTY'S (OR THEIR RESPECTIVE AFFILIATES OR THE SUPPLIERS) LIABILITY FOR: (I) THE TORT OF DECEIT; (II) DEATH OR PERSONAL INJURY CAUSED BY THAT PARTY'S NEGLIGENCE OR THAT OF ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS; (III) FRAUD OR FRAUDULENT MISREPRESENTATION; (IV) CUSTOMER'S VIOLATION OF BLUE YONDER'S INTELLECTUAL PROPERTY RIGHTS; (V) WILLFUL MISCONDUCT OR GROSS NEGLIGENCE; (VI) CUSTOMER'S FAILURE TO COMPLY WITH ITS PAYMENT OBLIGATIONS; (VII) A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10); (VIII) DAMAGES ARISING OUT OF OR RELATING TO, A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, EXCEPT WHERE THAT BREACH RELATES TO THE PROCESSING OF ANY PERSONAL DATA IN WHICH CASE THE CAP IN SECTION 11(b) APPLIES; OR (IX) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW. FURTHER NEITHER PARTY WILL BE LIABLE FOR ANY CLAIM BROUGHT BY THE OTHER PARTY MORE THAN 24 MONTHS AFTER THE OTHER PARTY BECAME AWARE OF THE CLAIM. IF CUSTOMER'S PLACE OF BUSINESS REGISTRATION OR INCORPORATION IS IN EUROPE, MIDDLE EAST OR AFRICA THEN THE PARTIES AGREE THAT IN ADDITION NOTHING IN THE AGREEMENT SHALL EXCLUDE OR LIMIT BLUE YONDER'S LIABILITY ANY BREACH OF THE OBLIGATIONS IMPLIED BY S12 SALE OF GOODS ACT 1979 OR S2 SUPPLY OF GOODS AND SERVICES ACT 1982.

## 12. TERM & TERMINATION

(a) **Subscription Term.** Cloud Services are available for the period specified in the Ordering Document and will, subject to anything to the contrary on the Ordering Document, begin on the Ordering Document's Effective Date. The Effective Date is the date the Subscription Term begins. The Effective Date will apply to all the Cloud Services on the Ordering Document. This Agreement will automatically terminate upon expiration of the Subscription Term.

(b) **Early Termination or Suspension of Cloud Services.** In addition to any other rights or remedies Blue Yonder may have under the Agreement or by law, Blue Yonder may, subject to Section 12(c) below, immediately suspend, terminate, withhold, or disable access to the Cloud Services, in whole or in part, at any time, with or without notice: (i) if Blue Yonder reasonably concludes there is an Emergency Regulatory Issue; (ii) if Blue Yonder reasonably concludes there is an Emergency Security Issue; or (iii) if Customer has breached any of its obligations to Blue Yonder under Sections 4(c) or 4(d) and Customer has failed to cure such breach within ten (10) days after Blue Yonder has provided Customer notice of such breach. In addition, if Suppliers cease to make generally available to customers Third-Party Services or any portion or feature thereof, then Blue Yonder shall use commercially reasonable efforts to replace the Third-Party Services with functionally equivalent services. If after a commercially reasonable period of time Blue Yonder is unable to replace such Third-Party Services with functionally equivalent services, then, subject to Section 12(c) below, and upon Blue Yonder's advance written notice to Customer, Blue Yonder may suspend, terminate, withhold, or disable access to the Cloud Services, in whole or in part.

(c) **Procedure for Early Termination or Suspension of Cloud Services.** Except as otherwise set forth in Section 12(b)(iii), Blue Yonder's right to terminate, suspend, withhold, or disable access to the Cloud Services in accordance with Section 12(b) is conditioned upon: (i) Blue Yonder exercising its right only to the minimum extent and minimum duration required to prevent or resolve the issue (provided that the issue is capable of resolution); and (ii) if Blue Yonder exercises its right without prior notice to Customer, Blue Yonder will provide Customer the reason for the termination, suspension, withholding, or disabling of access as soon as reasonably practicable.

(d) **Termination for Cause; Bankruptcy.** Except as otherwise set forth in Section 12(b)(iii) above, either party may terminate the Agreement (including the Ordering Document and the SOW) for cause if: (i) the other party materially breaches this Agreement, including untimely payment, and does not cure such breach within thirty (30) days after its receipt of written notice specifying the breach from the non-breaching party (consent to extend the cure period will not be unreasonably withheld, so long as the breaching party has commenced cure during the 30-day notice period and pursues cure of the breach in good faith); or (ii) the other party (A) becomes insolvent, (B) is generally unable to pay, or fails to pay, its debts as they become due, (C) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law which results in an inability to perform its obligations under this Agreement, (D) makes or seeks to make a general assignment for the benefit of its creditors (generally), or (E) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.



(e) **Effect of Termination.** Upon termination of this Agreement the Ordering Document and the SOW shall immediately terminate; except that the parties remain bound by the obligations within Section 12(g) below. Upon termination of the relevant Service: (i) Customer shall immediately cease accessing or using the Cloud Services and Deliverables; and (ii) all subscriptions, licenses and rights granted under this Agreement with respect to the Cloud Services and/or Deliverables will immediately terminate. Termination of this Agreement (including the Ordering Document and the SOW) will not prevent either party from pursuing all available legal remedies. Any payment obligations as of the termination of the Agreement (including the Ordering Document and the SOW) will remain in effect.

(f) **Deletion of Customer Data.** After termination of this Agreement, Blue Yonder will, unless legally prohibited, delete the Customer Data in its systems or otherwise in its possession or under its control.

(g) **Survival.** Sections concerning the parties' rights and obligations that by the content of the section operate after termination or that are necessary to enforce any right will survive termination of this Agreement, including, without limitation, the Sections titled "Intellectual Property Rights", "Orders, Fees and Payment", "Effect of Termination", "Deletion of Customer Data", "Confidentiality", "Indemnification", "Limitation of Liability" and "General".

### 13. GENERAL

(a) **Governing Law.** This Agreement and the rights and obligations of the parties with respect to their relationship under this Agreement are governed by and must be construed and enforced, without reference to its choice of law rules, in accordance with the internal laws of: (a) the State of Arizona, if Customer's place of incorporation or principal place of business is in the United States, or in any region not otherwise specified herein; (b) the laws of England, if Customer's place of business registration or incorporation is in Europe, the Middle East, or Africa; (c) the laws of Singapore, if Customer's place of business registration or incorporation is in Asia Pacific; or (d) the laws of the Province of Ontario and the laws of Canada applicable therein, if Customer's place of business registration or incorporation is in Canada. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act are expressly excluded from this Agreement

(b) **Jurisdiction and Venue.** Subject to Section 11(c) below, any dispute, controversy, claim, question or disagreement (a "**Claim**") arising out of or related to this Agreement or the breach thereof: (a) will, if Customer's place of incorporation or principal place of business is in the United States, be brought exclusively in the state and federal courts located in Maricopa County, Arizona, and Customer hereby submits to the personal jurisdiction of such state and federal courts; or (b) will, in all regions other than the United States, be finally resolved by binding arbitration before a single arbitrator under the commercial arbitration rules of the International Chamber of Commerce in effect at the time such Claim is submitted to arbitration. The arbitrator must be a person having experience with and knowledge of the computer software business and such arbitrator will not have any authority to make any ruling, finding or award that does not conform to this Agreement. Judgment upon the award rendered by the arbitrator will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

(c) **Equitable Relief.** Each party acknowledges that money damages may not be sufficient compensation for a breach of Sections 2 (Services), 4 (Customer Use of the Cloud Services and Deliverables), 5 (Customer Data), 7 (Proprietary Rights), or 8 (Confidentiality). Notwithstanding anything to the contrary contained in Section 13(b), (i) any party may immediately seek equitable relief (without the necessity of posting a bond), including, without limitation, temporary injunctive relief, against the other party in any court of competent jurisdiction with respect to any and all equitable remedies sought in connection with this Agreement; and (ii) Blue Yonder, at its option, may pursue any and all remedies available at law and in equity in any court of competent jurisdiction with respect to any claim against Customer for nonpayment under this Agreement.

(d) **Cumulative Remedies.** Except as otherwise set forth in this Agreement and subject to the terms of this Agreement, including Section 11, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of that remedy to the exclusion of any other remedies.

(e) **Attorneys' Fees and Costs.** The prevailing party in any action or proceeding to enforce this Agreement, including any efforts to collect amounts due under this Agreement, is entitled to recover from the other party its costs and attorneys' fees in addition to its damages.

(f) **Notices.** Notices or approval must be in writing, in English, and signed by a party's authorized representative. Notices may be sent by email, except for notices of breach or demands for indemnification, which must be sent by either, certified mail or internationally recognized courier to the address indicated in the Ordering Document or such other address as either party may indicate by at least 10 days' prior written notice to the other party. Notices to Blue Yonder must be addressed to Chief Executive Officer, with a copy to General Counsel at Blue Yonder, Inc., 15059 N. Scottsdale Rd., Scottsdale, AZ 85254.

(g) **Entire Agreement.** This Agreement, including any appendices, the Data Processing Addendum, Ordering Document, and Statement of Work which are incorporated herein by this reference, sets forth the entire understanding and agreement between Customer and Blue Yonder and supersedes and extinguishes all previous agreements, negotiations, proposals, communications, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter of this Agreement. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement. In the event of any conflict or inconsistency between the documents that make up the Agreement, the documents will control and govern, to the extent necessary to resolve the conflict or inconsistency, in the following order: the Ordering Document or SOW and then these Online Terms. In the event of any inconsistency between these Online Terms and any Data Processing Addendum, the Data Processing Addendum controls and governs over these Online Terms (except where these Online Terms expressly states an intention to override a specific section of the Data Processing Addendum) to the extent necessary to resolve the conflict or inconsistency. Customer will not require Blue Yonder or its employees to sign, or otherwise enter into, any additional agreements, addendums or other documents not specifically referenced and incorporated in this Agreement nor require Blue Yonder or its employees to undergo any security or background screening not expressly set forth in this Agreement as a condition of Blue Yonder performing any Services under this Agreement (including the SOW).



**(h) Amendment.** Any amendment or other modification to these Online Terms, the Ordering Document or Statement of Work must be in writing and signed by an authorized representative of both parties.

**(i) Waiver.** No waiver of any right under this Agreement will be deemed effective unless contained in a writing signed by a duly authorized representative of the party to be bound. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**(j) Severability.** If any provision in this Agreement is invalid or unenforceable, that provision will be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, and the remaining provisions of this Agreement will remain in full force and effect.

**(k) Assignment; Successors and Assigns.** Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld), except that either party may assign this Agreement in its entirety (including the Ordering Document and the SOW), without the other party's consent to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then the other party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**(l) Force Majeure.** Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment obligations and obligations under Section 8 (Confidentiality)) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, riots, war, acts of terror, shortage or inability to obtain labor or materials, internet failure, communication line failure or power failures, acts of God, earthquake, fire or other action of the elements, accidents, quarantines, epidemics or pandemics, or governmental action (including the passage of laws or regulations or other acts of government that impact the delivery of the Cloud Services). Neither party will be liable for any losses, injury, delay or damages suffered or incurred by the other party due to the above causes.

**(m) Purchase Orders.** Any inconsistent or additional terms of Customer's purchase order or similar document are excluded regardless of Blue Yonder accepting the purchase order or other Customer document for payment purposes. In addition, nothing contained in any clickwrap agreement, other document or instrument issued by Customer will in any way modify or add any additional terms or conditions to this Agreement, and any modified or additional terms or conditions are expressly rejected and excluded from this Agreement.

**(n) Independent Contractors.** The parties are independent contractors. Neither party is the legal representative, agent, joint venturer, partner, franchisee, fiduciary, employee, or employer of the other party for any purpose whatsoever. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes. Blue Yonder does not undertake to perform any of Customer's regulatory obligations or assume any responsibility for Customer's business or operations. Neither party has any right, power, or authority under this Agreement to assume or create any obligation of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect.

**(o) Non-solicitation.** Both parties agree that during the term of this Agreement and for one (1) year after the last date Services are performed under this Agreement, employees, agents, subcontractors or representatives of a party directly involved in the provision of Services under this Agreement will not directly or indirectly solicit for employment or engagement by the other Party, without prior written consent of the first party; except, that nothing in this Agreement prevents either party from engaging in general recruiting directed to the public that do not target the personnel of the other party.

**(p) Third Party Rights.** Except for Blue Yonder's licensors and Suppliers, no third party will be deemed to be an intended or unintended third-party beneficiary of this Agreement.

**(q) Anti-Corruption.** Each party agrees that it has not entered into this Agreement with a corrupt motive to obtain or retain business or to secure an unfair business advantage and it shall fully comply with all applicable anti-corruption laws. Each party represents that it has an anti-bribery policy in place and that it has not made and will not make or facilitate improper or illegal payments.

**(r) Compliance and Audit Rights.** Blue Yonder may, at any time, verify Customer's compliance with this Agreement by reviewing Customer's use of the Cloud Services and Deliverables and Customer shall provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Blue Yonder with respect to verifying Customer's compliance with this Agreement.

**(s) Export.** Each party is responsible for ensuring that its actions with respect to the Services comply with the export control laws of the United States, United Kingdom, European Union and any other applicable law. Customer will not, directly or indirectly, export, re-export, transfer, re-transfer, sell, supply, or allow access to or use of the Cloud Services to, in, by, or for sanctioned, embargoed, or prohibited countries, persons, or end uses under U.S., U.K., European Union, or other applicable law (collectively, "**Prohibited Uses**"). Customer is responsible for screening for Prohibited Uses and obtaining any required licenses, governmental approval, or other authorizations. Upon learning that any of the Cloud Services were diverted contrary to the obligations in this section, Customer will immediately notify Blue Yonder.

**(t) Interpretation.** In the event of a dispute between the parties, this Agreement will not be construed for or against either party but will be interpreted in a manner consistent with the intent of the parties as evidenced by the terms of this Agreement. Unless otherwise specified, "days" means calendar days.

**(u) Counterparts.** This Agreement may be executed in any number of counterparts, each of which is deemed an original, and all of which together constitute one and the same instrument. The parties agree that a facsimile or portable document format (pdf) of a signed counterpart is effective and has the same force and effect as the original thereof. The parties' consent to use electronic signatures and the Agreement may not be invalidated on the basis that the documents and signatures were electronically provided.