CONFIGURE8 PLATFORM TERMS OF SERVICE

Last Updated: August 11th, 2023

These configure8 Platform Terms of Service set forth legal terms and conditions applicable to a Customer's access and use of our configure8 Platform and configure8's related Services. All access to and use of the Services by a Customer is subject to these Terms of Service. Capitalized terms used in these Terms of Service are set forth in Section 1 below or as otherwise defined in the text of these Terms of Service.

ANY INDIVIDUAL ACCEPTING THESE TERMS OF SERVICE ON BEHALF OF A CUSTOMER (E.G. THE COMPANY THE INDIVIDUAL WORKS FOR) REPRESENTS AND EXPRESSLY AGREES THAT HE OR SHE IS AUTHORIZED ON BEHALF OF SUCH CUSTOMER, AS AN OFFICER, EXECUTIVE OR OTHER AUTHORIZED AGENT, TO AGREE TO AND ACCEPT THESE TERMS OF SERVICE AND SUCH INDIVIDUAL FURTHER REPRESENTS THAT HE OR SHE HAS AUTHORITY TO BIND SUCH CUSTOMER TO THE TERMS HEREOF.

BY REGISTERING FOR, SUBSCRIBING TO, OR ACCESSING OR USING, ANY OF THE SERVICES OR (INCLUDING BY CLICKING "I AGREE" TO THESE TERMS OF SERVICE WHEN PRESENTED DURING THE REGISTRATION PROCESS), CUSTOMER ACKNOWLEDGES THAT IT HAS READ ALL OF THESE TERMS AND CONDITIONS AND AGREES TO COMPLY WITH THEM INCLUDING ANY PRIVACY POLICIES A OR DATA PRIVACY ADDENDUMS (AS APPLICABLE), WHICH ARE INCORPORATED HEREIN BY REFERENCE. IF CUSTOMER DOES NOT AGREE WITH THESE TERMS OF SERVICE, CUSTOMER MAY NOT ACCESS OR OTHERWISE USE ANY SERVICES AND MUST DISCONTINUE ALL USE THEREOF. CUSTOMER'S ACCESS TO AND USE OF THE ANY OF THE SERVICES INDICATES CUSTOMER'S FULL UNDERSTANDING AND ACCEPTANCE OF THESE TERMS OF SERVICE.

THESE TERMS OF SERVICE CONTAIN AN ARBITRATION PROVISION, WHICH WILL, WITH LIMITED EXCEPTION, REQUIRE CUSTOMER TO SUBMIT CLAIMS CUSTOMER HAS AGAINST CONFIGURE8 TO BINDING AND FINAL ARBITRATION. UNDER THE ARBITRATION PROVISION, (1) CUSTOMER WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST CONFIGURE8 ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, AND (2) CUSTOMER WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS. THESE TERMS OF SERVICE ALSO CONTAIN OTHER LIMITATIONS ON CUSTOMER, INCLUDING LIMITATIONS ON CONFIGURE8'S LIABILITY AND DISCLAIMERS OF WARRANTY, AND CUSTOMER SHOULD READ THESE TERMS CAREFULLY.

THESE TERMS OF SERVICE ALSO CONTAIN AUTOMATIC BILLING PROVISIONS FOR WHEN YOU MAY EXCEED CERTAIN USAGE RESTRICTIONS, PLEASE REVIEW THESE BILLING AND PAYMENT TERMS CAREFULLY.

1. **Definitions**. For purposes of these Terms of Service, capitalized terms used herein shall have the meanings set forth in this Section or the meanings otherwise given to them in the main body of these Terms of Service:

"Account" means either a Paid Account (as defined below) or a Free Account (as defined below).

"Affiliate" means configure8's owners, officers, directors, affiliated companies, suppliers, partners, sponsors, and agents and representatives, and includes (without limitation) all parties involved in creating, producing, and/or delivering the any of the Services.

"Applicable Laws" means any applicable law, rule, regulation or other government requirement.

"Authorized Users" means Customer's employees and agents authorized to access the Services pursuant to the terms and provisions of these Terms of Service.

"configure8" "Company" "we" "us" "our" and other similar terms means configure8, Inc., a Delaware

corporation.

"Cloud Resource" means the cloud, SaaS, PaaS, software, hosted or other services, products or offerings (including cloud based operations, resources and accounts) that Customer links to, integrates with, or uses with Customer's Account via the Services. For example, Cloud Resources may include, but are not limited to, Amazon Web Services, Google Cloud, GitHub, PagerDuty, Jira, DataDog, Microsoft Azure, your on-prem resources integrated via the configure8 API, OpsGenie, and SonarCloud.

"Cloud Resource Provider" means the party, business, company or entity that provides or sells the Cloud Resource to Customer.

"Cloud Resource Provider Terms" means the Cloud Resource Provider's applicable terms of service, terms of use, customer agreements, privacy policies, and/or other terms, contracts or agreements (and all related and applicable policies or terms applicable to Customer (e.g. terms incorporated by reference)) that governs a Customer's use of the Cloud Resource.

"Competitor" means any individual, business, entity or other party that offers a product, service, technology or offering that is similar to, or competitive with the configure8 Platform or Services on a commercial basis or is offered by (or released or made public by) such party on an open source, free or similar basis. For clarity, a Competitor does not include any Customers that have an internal technology platform that is similar to the configure8 Platform or Services provided that such platform is used solely for bona fide internal business purposes in support of such Customers' internal infrastructure.

"configure8 Platform" or the "Platform" means (i) configure8's proprietary software-as-a-service known as "configure8" that is made available on a software-as-a-service basis and consolidates information from across multiple clouds, tools, and Customer Materials into a unified catalog for purposes of enabling teams to organize and discover essential knowledge, assess and observe compliance with various user-defined standards, enable users to configure and execute actions orchestrated by Customer tools, and generate analytics and insights from this data, (ii) any related Sites offered by configure8, and (iii) any related data, APIs, software, technology, programs and/or software and platform specific related services or functions that configure8 may provide to Customer from time-to-time pursuant to the terms of these Terms of Service.

"configure8 IP" means any and all of the following (i) the Platform, (ii) the Services (iii) Feedback (as defined below), (iv) the Inventions (as defined below), (iv) all other configure8 Intellectual Property, and (vi) any Improvements of the foregoing.

"Customer" "you" "your" and other similar terms means the entity, company, organization, individual or party that is accepting and agreeing to, or is otherwise bound by, these Terms of Service as set forth herein.

"Customer Materials" means any data, information, results, reports, communications, content, documents, instructions, files, software or other materials that Customer or its Authorized Users or Cloud Resources directly or indirectly upload, provide, input, transmit to configure8 or any of the Services. Customer Materials include any data or information from a Cloud Resource account that Customer processes via the Services.

"Demo Access" means temporary access to the Services (or portions thereof) made available from time to time by configure8 via an account or credentials provided to Customer by configure8 that permits a Customer to use the Services (or portions thereof) on a demonstration basis for a limited time period, free of charge, and subject to the terms of this Agreement.

"Documentation" means the printed and digital instructions, on-line help files, technical documentation and user manuals made available by configure8 for any of the Services.

"Feedback" means (i) any feedback from Customer or its employees, representatives or Authorized Users related to their respective access to and use of the Services, including without limitation, feedback on features or functionality, usability, specifications, architectural diagrams, integrations, APIs and related information, software or hardware compatibility, interoperability, performance, bug reports, test results and documentation requirements, and may also include suggestions or ideas for improvements or enhancements to the Services, and (ii) any Intellectual Property or Improvements that Customer or its employees, representatives or Authorized Users, develop, invent, author, discover or otherwise create related to or connected with the configure8 Platform or Services, or the use thereof, including, without limitation, any Intellectual Property or Improvements that are made to, or for, any Customer Offerings that may be competitive with or similar to the configure8 Platform or Services (e.g. Improvements to Customer Offerings that are competitive with or similar to the configure8 Platform or Services), to the extent based on or related to any configure8 Confidential Information or configure8 IP.

"Improvements" means any improvements updates, upgrades, enhancements, evolutions, extensions, customizations, modifications, translations, new versions, developments or derivative works.

"Intellectual Property" means any technology, processes, methodologies, software, tools, data analysis tools, designs, forms, methods, systems, procedures, frameworks, algorithms, applications, know-how, trade secrets, ideas, content, layouts, prototypes, techniques, user interface designs, technical data, models, architecture, applications, class libraries, documentation (both printed and electronic), works of authorship, records, reports, and other intellectual property, including any Improvements of any the foregoing.

"Order" means (i) any order form or other written agreement that is signed by the Parties or electronically agreed to by the Parties and which sets forth the particular Services to be provided to Customer and related terms; and/or (ii) an online order page or similar website page on a configure8 website or other related site or page that allows Customer to select any of the Services (e.g. selecting a specific offering level or plan offered by configure8, selecting a tier or number of users, etc.).

"Party" means configure8 or Customer individually and "Parties" means configure8 and Customer collectively.

"Permitted Use" means use of the configure8 Platform solely for Customer's internal business purposes related to tracking, monitoring, navigating, understanding, accessing, and optimizing Customer's Cloud Resources and related technology and cloud infrastructure. For Demo Access, "Permitted Use" means use of the configure8 Platform solely for internal evaluation and demonstration purposes using the provided demonstration data.

"Personal Information" means data that can be used to identify, contact, or locate a natural person, which may include but is not limited to, name, address, telephone number, e-mail address, online contact information (including, without limitation, an instant messaging user identifier or a screen name that reveals an individual's e-mail address), account numbers (financial and otherwise), government-issued identifier (including, but not limited to, social security number) and any other data considered personal information or personal data under Applicable Laws (including, in some jurisdictions, IP addresses, and where applicable cookie information and mobile identifiers).

"Services" means, collectively, (a) access to and use of the configure8 Platform as described in these Terms of Service (whether via a Free Account, a Paid Account or Demo Access); (b) any additional services or offerings that may be provided by configure8 related to the configure8 Platform (whether pursuant to an Order or otherwise), including without limitation any Premium Features and/or Subscription Upgrades agreed upon by the Parties in an Order; and (c) any support services and related technologies, software, APIs and/or Documentation that may be provided by configure8 in its sole discretion for facilitating, maintaining and monitoring Customer's use of the foregoing.

"Site" means the www.configure8.io website, and all other website(s) made available by Company for purposes of providing information regarding, and facilitating access to and use of the Platform.

"Terms of Service" or "Agreement" means these configure8 Terms of Service and any related policies or agreements incorporated by reference.

2. Organizational Use. Any individual entering into these Terms of Service on behalf of Customer (if such Customer is an entity, company, organization or other similar business) hereby represents that they have the authority to bind such Customer, its affiliates and all Authorized Users who access any of the Services through such Customer's Account to these Terms of Service. ANY INDIVIDUAL WHO DOES NOT HAVE SUCH AUTHORITY, OR WHO DOES NOT AGREE WITH THESE TERMS OF SERVICE, MUST NOT ACCEPT THESE TERMS OF SERVICE AND MAY NOT ACCESS NOR USE ANY OF THE SERVICES.

3. Subscription Levels.

a. <u>Multiple Subscription Levels</u>. configure8 offers multiple different subscription tiers for the Services, including: a free subscription level (a "Free Account"), a paid mid-tier subscription level (a "Professional Account"), and a paid enterprise subscription level (an "Enterprise Account" and, together with the Professional Accounts, each, a "Paid Account"). Customers with Enterprise Accounts may be subject to a different, negotiated agreement with configure8 covering their access to and use of the Services. In such case, the terms of that negotiated agreement shall govern and control with respect to the Customer's access to and use of the Services, and the terms of this Agreement shall not apply with respect to the Customer's Enterprise Account. In addition, configure8 may offer Demo Access to the Platform as set forth below.

b. <u>Tiered Access Rights</u>. The particular Services made available to each Customer will depend on the subscription tier purchased by that Customer. Free Accounts may access and use only limited portions of the Services relative to Paid Accounts, and Professional Accounts may likewise access and use only limited portions of the Services relative to Enterprise Accounts. In other words, Free Accounts and Professional Accounts may not have full access to all features and functionality of the Services and may be subject to other limitations as determined from time to time by configure8 in its sole discretion (e.g., limits on number of Authorized Users, limits on number of Cloud Resources covered by the Services, limits on metrics, reports, alerts and/or data analysis performed by the Services, and/or limits on maximum amount of allotted storage within the Services). In particular, configure8 reserves the right at any time to limit any Services made available free of charge or provide only certain functionality or support with respect to the Services made available free of charge. Customer hereby expressly acknowledges and agrees that (i) configure8 may modify or restrict any portions of (or features or functionality in) the Services at anytime, and (ii) the Free Accounts and Professional Accounts will not provide all of the features and functionality of the Enterprise Accounts. configure8 does not and has no obligation to provide support services for any Services made available free of charge.

Demo Access Rights; Competitor Restrictions. configure8 may offer Demo Access to the c. Platform from time-to-time with such access solely at the discretion of configure8. Demo Access permits Customer to access and use a limited version of the Platform with pre-populated and demonstration data. While configure8 generally provides Demo Access consistent with general features and functionality of the Platform, configure8 may limit or restrict certain aspects of the Platform in its sole discretion. In connection with Demo Access, Customer hereby acknowledges and agrees: (i) configure8 may provide multi-use login credentials for use (i.e. shared) or may require Customer to obtain their own specific Demo Access credentials, (ii) Demo Access does not permit use of live Customer specific data or Cloud Resource data or Customer Materials, and Customer shall not attempt to use the Services with any data other than the provided demo data, (iii) Competitors may not use Demo Access for any purposes, including, without limitation, to use the Services to develop, create, improve or modify any Competitor product, service, technology or offering. WITHOUT LIMITING ANYTHING IN THESE TERMS OF USE, YOU MAY NOT, WHETHER DIRECTLY OR INDIRECTLY (INCLUDING FOR THE BENEFIT OF A THIRD PARTY) ACCESS OR USE THE SERVICES IN ANY MANNER, INCLUDING DEMO ACCESS, IF YOU ARE A COMPETITOR OF CONFIGURE8. IN THE EVENT THAT YOU, AS A COMPETITOR, BREACH OR VIOLATE ANY OF THE TERMS OR PROVISIONS OF THIS SECTION, YOU HEREBY AGREE TO PAY CONFIGURE8 \$5,000,000 (FIVE MILLION) USD. Any Customer that is a Competitor acknowledges and agrees that the sum payable in the foregoing sentence shall constitute liquidated damages and not penalties and are in addition to all other rights of the configure8 under these Terms of Use. The Parties further acknowledge that (i) the amount of loss or damages likely to be incurred is incapable or is difficult to precisely estimate. (ii) the amounts specified above bear a reasonable relationship to, and are not plainly or grossly disproportionate to, the probable loss likely to be incurred in connection with any breach by Customer of this Section, (iii) one of the reasons for the parties reaching an agreement as to such amounts was the uncertainty and cost of litigation regarding the question of actual damages, and (iv) the Parties are sophisticated business parties. The terms of this Section 3.c shall supersede any directly conflict terms and provisions of these Terms of Use, provided that the Parties intend for this Section and the rest of these Terms of Use to be read in a consistent and additive manner to extent reasonably possible.

d. <u>Subscription Upgrades; Automatic Billing</u>. In order to access and use more features and functionality of the Services (a "Subscription Upgrade"), Customers must pay additional fees or register for a Paid Account via an Order. Please contact support@configure8.io for more information regarding Subscription Upgrades and Paid Accounts. Unless otherwise agreed in an Order, any incremental Fees associated with a

Subscription Upgrade will be prorated over the remaining period of the then-current Term and charged to Customer and due and payable in accordance with Section 10. In the event that an Order does not include fees for Subscription Upgrades, then Customer agrees that configure8's standard fees for that particular Subscription Upgrade shall apply. In addition, unless otherwise set forth in an Order, Customer will be deemed to have automatically agreed to a Subscription Upgrade if, after being notified (including via email to the email account used to register) that use of particular features or functionality within the Services requires payment, Customer elects to proceed with utilizing those features or functionality. Likewise, if Customer exceeds usage limitations applicable to Customer's Account, Customer may be billed for such usage and after being notified (including via email to the email account used to register) by us, agrees to pay the additional Fees and will be deemed to have automatically consented to a Subscription Upgrade with respect to such usage limitations. configure8 will only provide email notice to you one time when you reach an applicable use restriction or limitation. For clarity, Customer understands and agrees that (i) Customer may be required to provide billing information to configure8 to continue to use the Services (e.g. to access certain features or functionality or when their usage exceeds certain limitations or restrictions), (ii) configure8 may bill and charge you for any increased usage or access to features or functionality that you incur when using the Services and you agree to pay these amounts consistent with the terms of this Agreement, and (iii) configure8 may automatically suspend or disable your use of the Services without further notice and without liability in the event you do not provide billing information and make payments as required.

4. Services.

a. <u>configure8 Platform Right to Access and Use</u>. During the Term (as defined below) and subject to the terms and provisions of these Terms of Service, configure8 hereby grants to Customer a non-exclusive, non-transferable right to permit Authorized Users to access and use the Platform on a software-as-a-service basis solely for the Permitted Use (subject to the particular subscription tier Customer has selected (i.e., Free Accounts vs. Paid Accounts) and subject to any other feature or other use restrictions based on the access rights or Premium Features (if any) Customer is paying for, in each case as agreed in an Order). configure8 provides the Platform and configure8's other Services subject to Customer's and each of its Authorized User's compliance with all the terms, conditions, policies and notices contained or referenced in these Terms of Service, as well as any other written or electronic Order or other agreement between configure8 and Customer. In addition, when using the Services, Customer and its Authorized Users shall be subject to any posted guidelines, rules or documentation (if any) applicable to such services or materials that may contain terms and conditions in addition to those in these Terms of Service (e.g. an Authorized Use Policy). All such guidelines, rules or documentation are hereby incorporated by reference into these Terms of Service.

b. Authorized Users. Authorized Users may access and use applicable portions of the Services hereunder solely for purpose of exercising Customer's rights and performing Customer's obligations hereunder. and in each case solely for the Permitted Use. Customer shall be fully liable and responsible for each Authorized User's compliance with the terms and provisions of these Terms of Service and any of their acts or omissions. The number of Authorized User seats available to Customer shall be based on Customer's subscription tier and/or otherwise mutually agreed in an Order. Authorized Users shall be granted initial access to the Services via email. That initial email shall include registration instructions, and Authorized Users may utilize their Google access credentials to access the Services or may create new login and access credentials consistent with registration requirements of the Services. Additionally, existing Authorized Users shall have the ability to invite new Authorized Users (i.e., other employees and agents of Customer) to register with the Services via email, subject to the maximum number of Authorized Users permitted under Customer's account. Customer shall be responsible for verifying the status of Authorized Users, maintaining and updating Authorized User lists on a regular basis and providing any such lists to configure8 upon request. configure8 shall have the right to monitor use of the Services via Customer's account, including monitoring the number of Authorized Users associated with Customer's account and tracking their user credentials. Customer and each Authorized User are responsible for maintaining the confidentiality of usernames and passwords. Customer agrees to immediately notify configure8 via an email to support@configure8.io of any unauthorized use of the Services of which Customer becomes aware. Each Authorized User accessing the Services shall be required to have separate Account credentials and sharing of accounts or passwords is not permitted. Customer agrees to indemnify and hold harmless configure8 from and against any and all liability arising in any way from the access to the Services by persons to whom Customer or any Authorized User has provided their applicable access credentials.

c. <u>Effective Date; Right to Modify; Binding Effect of Continued Use</u>. These Terms of Service are effective as of the date that Customer first uses any of the Services, clicks "I Agree" when these terms are first presented in connection with the Service registration process, or as otherwise specified in an Order (the "Effective Date"). configure8 reserves the right to change these Terms of Service from time to time without notice to Customer or its Authorized Users and any modifications or changes to these Terms of Service shall be effective upon such modification or amendment being posted to the applicable Services or Sites or otherwise communicated to Customer. Customer acknowledges and agrees that it is Customer's and its Authorized Users' responsibility to review the Platform and these Terms of Service periodically and to be aware of any modifications. Customer's continued use of the Services after such modifications will constitute Customer's acknowledgement of the modified Terms of Service and agreement to abide and be bound by the modified Terms of Service.

Cloud Resources and Third Party Sites. In order to utilize the Services, Customer and its d. Authorized Users are required to link Customer's Account to Customer's applicable Cloud Resources. The Services may also allow Customer to link Customer's Account to Customer's other third party accounts or sites in order to provide, submit or upload Customer Materials or other information to the Services (e.g. Google accounts, Google APIs, AWS accounts, etc.). Customer expressly acknowledges and agrees and grants configure8 all necessary rights and licenses to (i) access the Cloud Resources, Customer Materials and other information that may be hosted on third party sites, (ii) integrate the Services with third party APIs and Cloud Resources accounts in order to access Cloud Resources and transmit Customer Materials and other information to the Services, and (iii) store such Customer Materials and information and process and use such Customer Materials and other information via the Services. Customer and its Authorized Users are solely responsible for complying with all Cloud Resource Provider Terms or other applicable legal terms and ensuring that they have all necessary rights and permissions to transmit Customer Materials to the Services, to permit the Services to process and use the Customer Materials, to link the Cloud Resources to, and integrate the Cloud Resources with, the Services and Customer's Account, and to permit configure8 to access the Cloud Resources for purposes of providing the Services. configure8 is not and shall not be responsible any of the foregoing and configure8 assumes no responsibility for compliance with any Cloud Resource Provider Terms as related to the Services and Customer's Account, and Customer is solely responsible therefor and for obtaining all third party permissions and consents required by Cloud Resource Providers to link, integrate and use Customer's Cloud Resources and Customer Materials with the Services.

5. Support. During the Term and subject to the terms and provisions of these Terms of Service, configure8 shall use commercially reasonable efforts to provide Customers with the following support services for the Services: (i) internet-based support related to use of the Services via a web support portal provided by configure8: (ii) direct email support; and (iii) any other support service mutually agreed in an Order or otherwise offered to Customer by configure8 from time to time which configure8 may, at its sole discretion, designate as a support service. Support services shall not include any services related to any errors, bugs or issues resulting from: (a) any alteration or modification to the Services made by any person other than configure8; (b) minor defects in the Services which do not materially affect or impair the use of the Services; (c) any incorrect or improper use of the Services: (d) failure to implement configure8 recommendations in respect of any solutions or workarounds to errors previously advised by configure8; (e) errors or problems caused, at least in part, by Customer Materials, Cloud Resources or any Authorized User inputs; and (f) the use of the Services for any purpose for which it was not designed (collectively "Exclusions"). Additional fees may apply to any services that configure8 elects to provide related to the foregoing Exclusions. Exact technical support offered by configure8 shall vary based on the subscription tier associated with Customer's account and configure8's offered support for such tier, and Customers with Free Accounts shall not receive the same level of technical support (response times, service levels, etc.) as Customers with Paid Accounts. Additional technical support may be purchased or otherwise mutually agreed upon in an Order. No support is provided for Demo Access.

6. Customer Agreements.

a. <u>Requirements and Restrictions</u>. Except as expressly set forth herein, Customer and its Authorized Users shall not: (a) copy the Services; (b) loan, rent, or lease the Services or otherwise transfer, assign the right to use or commercialize any of the Services, including but not limited to posting or otherwise making the Services available on the Internet including as a service bureau or application service provider; (c) itself, nor permit or encourage others to, reverse engineer, decompile, decipher, tamper with, disassemble, translate or otherwise decrypt or discover the source code of all or any portion of the Services, or use any tool to enable features or functionalities that are otherwise disabled within the Services, or otherwise workaround any technical limitations

of the Services; (d) modify, adapt or write or develop any derivative works based on the Services or use the Services in any manner except as expressly provided in these Terms of Service; (e) interfere with, disrupt, compromise, or attempt to interfere with, disrupt or compromise, the integrity, operation or proper working of the Services or our related systems, network or data; (f) copy, reproduce, republish, resell, transmit or otherwise distribute any features, functions, screens, materials, interfaces or graphics of the Services; (g) violate any Applicable Laws (including without limitation data, privacy, and export control laws), third party rights or configure8 policies while using or receiving the Services; (h) use the Services or submit any configure8 forms if temporarily or indefinitely suspended from using the Services by configure8; (i) manipulate any of the Services, email responses or interfere with any other configure8 client's or user's use of the Services; (i) provide or upload false. inaccurate, misleading, defamatory, discriminatory, malicious, inflammatory, pornographic, harmful to minors, unlawful, or libelous information, content or other materials to the Services, or otherwise provide or upload information, content or materials to the Services that you don't have rights to submit or upload: (k) spoof or create any emails, content, correspondence or other information from configure8, including fake or fraudulent acceptances or offers, or otherwise send any unsolicited or unauthorized advertising, promotional materials, email, iunk mail. spam. chain letters or other form of solicitation or otherwise contact our other users for any purposes: (I) create any competitive service or feature (or otherwise establish a competitive business) based on, in whole or in part, any of configure8's Services or business ideas, or disparage configure8 or any of our partners, affiliates or vendors; (m) distribute viruses or any other technologies that may harm configure8 or the interests or property of configure8's other clients and users; (n) harvest or otherwise collect information about configure8's clients and users, including email addresses, without their consent; (o) use the Services to gain unauthorized access to configure8's or any third parties network(s), server(s), system(s), program(s), data or account(s), or attempt to probe, scan, or test the vulnerability of any network(s), server(s), system(s), program(s), data or account(s), or breach any security or authentication measures included in the Services; (p) interfere with any of configure8's other client's and user's access to and use and enjoyment of the Services; (q) frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of configure8 or the Services or use any configure8 trademark or service marks, unless authorized to do so in writing by configure8; (r) violate the intellectual property rights, including but not limited to, copyrights, trademark rights, trade secrets or patents of any person or entity (including configure8); (s) attempt to access or search the Services or download content from the Services through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software, interfaces and/or search agents provided by configure8 or other generally available third-party web browsers; (t) transmit or store in or through the Services (or any portion thereof) any viruses, malware or other harmful code, any infringing, libelous, or otherwise unlawful or tortious material, or material in violation of third party privacy rights or in a manner that violates Applicable Law; (u) circumvent or manipulate the configure8 fee structure, billing practices, or other fees owed to configure8, or abuse referrals, promotions or credits to get more features than paid for; (v) perform or attempt to perform any action that could impose an unreasonable or disproportionately large load on configure8's networks and infrastructure, including consuming an unreasonable amount of storage; (w) decipher, or attempt to decipher, any transmissions to or from the servers running the Services; (x) impersonate or misrepresent your identity or your affiliation with any person or entity; (y) using the Services to violate the privacy of others, including publishing or posting other people's private and confidential information without their express permission, or collecting or gathering other people's personal information (including account names or information) from the Services; (z) using the Services to stalk, harass, attack, or post direct, specific threats of violence against others; (aa) otherwise use the Services except as expressly allowed under these Terms of Service and/or an Order: and/or (bb) use the Services if Customer is a Competitor. Under no circumstances shall Customer allow other commercial entities (including, without limitation, Customer's affiliates, customers, clients or business partners) to access or use the Services without configure8's prior written consent. Customer covenants and agrees that it shall: (i) perform those tasks and assume those responsibilities required of it by configure8 to provide the Services, including, without limitation, providing Authorized Users with equipment and/or Internet access to access and use the Services; (ii) comply with all Applicable Laws when using the Services; (iii) ensure that only Authorized Users use the Services and only as intended and in accordance with the terms of these Terms of Service and any provided documentation; and (iv) comply with all Cloud Resource Provider Terms and obtain all third party permissions and consents required to link, integrate and use Customer's Cloud Resources and Customer Materials with the Services. This description of prohibited conduct is not intended to be exhaustive, and configure8 has sole discretion to determine what constitutes prohibited conduct for Customer and its Authorized Users. Anyone who violates configure8's system or network security may incur criminal or civil liability.

b. <u>Modifications</u>. Customer acknowledges and agrees that, from time-to-time, portions of, or functionality included in, the Services may be added to, modified, or deleted by configure8 and that the Services

may change over time. configure8 may (but is not required to) expand or enhance the Services by providing additional features in the general course of configure8's standard development model and offering road map ("Premium Features"). Customer acknowledges and agrees that certain Premium Features may be priced separately in configure8's sole discretion and Customer may be required to pay additional amounts for such Premium Features (in addition to Fees previously agreed upon by the Parties with respect to Paid Accounts). Any Premium Features made available by configure8 shall be considered Services and shall be subject to these Terms of Service. Customer understands that certain functionality and portions of the Services may only be available to certain Customers and that not all functionality and portions of the Services may be available to all Customers and all users. Specifically, Customers with Free Accounts will not have access to all of the same features. functionality and use rights as those with Paid Accounts. Additionally, configure8 may sometimes allow Customers to access and use on a limited free, trial basis functionality and portions of the Services that are considered Premium Features or that require a Subscription Upgrade. In such event, configure8 grants such right for convenience and trial purposes only and reserves the right to at any time limit, terminate or require payment of additional fees for, Customer's access to such functionality and features. configure8 may also from time to time elect in its sole discretion to offer services designated as beta, pilot, limited release, non-production, early access, evaluation, labs or by a similar description (collectively "Beta Services"). Customer's access to and use of any such Beta Services shall be at Customer's sole election and are not required. Beta Services are provided on an as-is basis and without any warranties, conditions, support, or compatibility or availability commitments of any kind.

c. <u>Third Party Technology</u>. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, Internet access, desktop or laptop computers or other compatible devices, web browsers, browser extensions, etc. and also including all Cloud Resources that Customer desires to deploy on the Services (collectively, "Third Party Technology"). Customer shall also be responsible for maintaining the security of the Third Party Technology, Customer accounts, passwords (including but not limited to administrative and user passwords) and files, and for all uses of any of the Customer accounts or the Third Party Technology with or without Customer's knowledge or consent. In order for Customer to make full use of the Services, it may be necessary for Customer to use particular Third Party Technology and Customer shall be responsible for procuring and maintaining such Third Party Technology and complying with any requirements related thereto. If Customer is unable to access all or part of the Services because it does not have access to any necessary Third Party Technology, this shall not constitute a breach of these Terms of Service by configure8 and configure8 shall not be liable for any loss, damage or expense which may result from Customer's inability to access the Services.

d. <u>Customer Offerings</u>. configure8 assumes no responsibility for Customer's products, services, solutions, offerings, operations and other business activities (the "Offerings"), including, without limitation, that use of the Service by Customer and its Authorized Users shall comply with all Applicable Laws. Customer is solely responsibility for providing and delivering the Offerings to its clients, customers and user base, and resolving all disputes with such clients, customers and user base. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT CONFIGURE8 SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR ANY OF CUSTOMER'S OFFERINGS AND ANY CLAIMS, ISSUES, MATTERS OR OTHER INTERACTIONS WITH ANY OF CUSTOMER'S CLIENTS, CUSTOMERS OR USE BASE.

e. Customer Responsibilities. Customer agrees that, at all times during the Term, it shall: (i) perform those tasks and assume those responsibilities required by configure8 related to the Services; (ii) upon configure8's request, make available to configure8 Customer personnel familiar with Customer's business requirements related to the Services; (ii) reasonably cooperate with configure8 regarding the Services: (iv) provide true, accurate, current and complete information about Customer as prompted by configure8's forms and in any other related document or agreement; (v) maintain and update Customer's information to keep it true, accurate, current, and complete; and (vi) obtain all agreements, rights, consents and permissions necessary to link, integrate and use Customer's Cloud Resources and Customer Materials with the Services and to otherwise comply with any requirements or obligations of the Cloud Resource Provider Terms (collectively, the "Customer Responsibilities"). Each Order shall also contain any assumptions of Customer for providing the Services and/or additional responsibilities required of Customer for configure8's performance of the Services. Customer understands that configure8's performance is dependent on Customer's timely and effective satisfaction of Customer Responsibilities hereunder and timely decisions and approvals by Customer. Customer acknowledges that, if any information provided by Customer is untrue, inaccurate, not current, or incomplete, configure8 reserves the right to terminate Customer's use of the Services and withdraw any offer or agreement. Customer agrees to keep

Customer's Account access information, including login and password information, secure and not to share it with any third party. Customer is solely responsible for the maintaining the security of Customer's Account. Customer is solely responsible for selecting the Cloud Resources it deploys on the Services. For each such Cloud Resource so deployed on the Services, Customer does so on Customer's own initiative and Customer is solely responsible for compliance with all Cloud Resource Provider Terms and for obtaining all agreements, rights, consents and permissions necessary to link, integrate and use such Cloud Resources with the Services.

f. <u>Age for Use of the Services</u>. All Authorized Users must be 18 years of age or older to visit or use any of the Services in any manner. By, using or receiving any of the Services or otherwise accepting these Terms of Service, Customer represents and warrants to configure8 that all of its Authorized Users are at least 18 years of age or older, and that each such Authorized User has the right, authority and capacity to agree to and abide by these Terms of Service. Customer also represents and warrants to configure8 that Customer will cause all of its Authorized Users to use the Services in a manner consistent with any and all Applicable Laws.

Customer Materials Restrictions. Customer is and shall be solely responsible for all Customer g. Materials that Customer or any of its Authorized Users submit, provide or upload to the Services, including the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright of all such Customer Materials. configure8 assumes no responsibility for any Customer Materials and configure8 has no obligation to and is not required to review or approve any Customer Materials. Without limiting the foregoing, Customer shall not, and shall not permit any Authorized User to, submit, provide or upload any Customer Materials to the Services that: (a) include offensive, unlawful, misleading, malicious, infringing, threatening, discriminatory, harmful, fraudulent, false and/or abusive language or content, including without limitation: obscenities, harassment, vulgarities, sexually explicit language, hate speech (e.g., racist/discriminatory speech), incitements to violence, defamatory material, public disinformation campaigns, and/or material violative of third-party privacy right; (b) are determined by configure8, in its sole discretion, to be illegal, or to violate any Applicable Laws or the rights of any other person or entity (including intellectual property rights or privacy rights); (c) that are encrypted or that contain viruses, Trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, interfere with, intercept or appropriate any system, data or personal information; or (d) violate any Cloud Resource Provider Terms of Customer's applicable Cloud Resources. Customer acknowledges and agrees that if Customer or any of its Authorized Users submits, provides or uploads any Customer Materials to the Services that configure8 in its sole discretion believes violate the foregoing or any other applicable configure8 guidelines or policies, or for which configure8 has received a third party complaint that such Customer Materials may violate any of the foregoing or any other applicable configure8 guidelines or policies, then configure8 may: (i) remove without notice all or a portion of the applicable Customer Materials, and/or (ii) suspend Customer's or a particular Authorized User's continued access to or use of the Services pending removal of such Customer Materials or permanently terminate Customer's or a particular Authorized User's continued access to and use of the Services. Customer hereby grants, and represents and warrants that the Customer and each Authorized User has the right to grant, to configure8 an irrevocable, perpetual, non-exclusive, fully paid, worldwide license to use, copy, perform, display, reproduce, adapt, modify, and distribute Customer Materials within the Platform and in connection with configure8's other Services.

h. <u>Customer Representations</u>. Customer represents and warrants: (a) these Terms of Service: (i) have been authorized by all necessary corporate action, (ii) do not violate the terms of any Applicable Law or court order to which Customer is subject or the terms of any material agreement to which Customer or any of its assets may be subject, and (iii) will not breach any contractual right of, or obligation to, any third party (including any Cloud Resource Provider Terms) and are not subject to the consent or approval of any third party (including any Cloud Resource Provider); and (b) these Terms of Service are the valid and binding obligation of Customer, enforceable against Customer in accordance with its terms.

i. **DO NOT USE OUR SERVICES FOR HIGH RISK ACTIVITIES**. The Services are not designed or intended for use or resale in high-risk or hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, air traffic control, or direct life support machines, in which the failure of the Services could lead directly to death, personal injury, or severe physical or environmental damage (all of the foregoing, "High Risk Activities"). Accordingly, we specifically disclaim any express or implied warranty of fitness for High Risk Activities.

7. configure8 Rights.

a. <u>License</u>. Customer acknowledges and agrees and hereby grants configure8 any and all rights and licenses to: (i) access, use, process, display and manipulate any Customer Materials and any Customer equipment or Third Party Technology as necessary to provide, improve, analyze and monitor the Services; and (ii) display or use, in advertising or otherwise, Customer's name, logo and trademarks, to provide the Services and to indicate that Customer is or was a customer of configure8.

b. <u>Remote Monitoring</u>. configure8 shall have the right and ability to monitor Customer's and each Authorized User's use of the Services remotely and/or electronically to verify their respective compliance with the terms and provisions of these Terms of Service.

c. <u>Telemetry and Remote Collection</u>. Customer acknowledges and agrees that certain Services may transmit to configure8 (and configure8 may collect and use) certain data and information related to the Services, including as related to its operation and use.

d. <u>Remote Disablement</u>. In the event that Customer or an Authorized User breaches any of the terms or provisions of these Terms of Service, Customer acknowledges and agrees that configure8 may remotely disable or terminate Customer's and/or the applicable Authorized User's use of the Services.

8. Intellectual Property Matters; Customer Materials.

a. <u>configure8 IP</u>. Customer agrees that all of the configure8 IP is owned by configure8 or its licensors, and is protected by U.S. and international intellectual property laws, and that configure8 does and shall solely own and retain all right, title and interest to, including all intellectual property rights in, the configure8 IP. configure8 and/or its Affiliates shall own all right, title and interest, including all intellectual property rights in, the configure8 IP. configure8 and/or its Affiliates shall own all right, title and interest, including all intellectual property rights, in and to all inventions, improvements, developments, discoveries, marks, logos, know-how, trade secrets, notes, records, reports, drawings, designs, data, computer programs and all other works of authorship conceived, made, discovered or developed by or on behalf of configure8 in performing the Services hereunder or provided or delivered to Customer hereunder (collectively, the "Inventions"). Customer agrees to assign and hereby does fully and irrevocably assign to configure8 all of its right, title and interest in and to the Feedback, including all intellectual property rights therein. The configure8 IP shall be deemed the Confidential Information of configure8. Neither configure8 nor configure8's Affiliates warrant or represent that Customer's and its Authorized Users' use of any Inventions or any Services will not and does not infringe the rights of third parties.

b. <u>Customer IP</u>. configure8 agrees that the Customer Materials are owned by Customer or its customers and clients, and is protected by U.S. and international intellectual property laws, and that Customer or its clients or customers shall solely own and retain all right, title and interest to, including all intellectual property rights in, the Customer Materials, subject to configure8's license and use rights set forth in these Terms of Service.

Customer Materials. Customer is solely responsible for all Customer Materials submitted or c. uploaded to or shared with the Services and any activity that occurs under Customer's Account or with respect to one of Customer's Cloud Resources. Without limiting the foregoing, Customer is solely responsible for the accuracy, guality, integrity, legality, reliability, appropriateness, and copyright of all Customer Materials, and configure8 assumes no responsibility for the deletion, correction, destruction, loss, infringement or failure of the Services to store any Customer Materials. configure8 reserves the right to establish a maximum amount of memory or other computer storage and a maximum amount of Customer Materials that Customer (or its Authorized Users) may store, post, collect or transmit on or through the Services. configure8 shall not be required to maintain a backup or copy of any Customer Materials and configure8 shall have no liability for any loss of Customer Materials, whether caused by configure8, Customer, any third party service configure8 or any third party. Customer shall comply with local, national and international laws and regulations applicable to the transmission or storage of data through the Services. Customer shall be solely responsible for its actions while using the Services and the contents of its transmissions through the Services. Customer is solely responsible for ensuring that it (and each Authorized User) has all rights necessary to provide the Customer Materials to configure8 and the Services, and to link and use Customer's Cloud Resources with the Services, configure8 shall not be responsible for any data, information or material that Customer authorizes configure8 to retrieve from a Cloud Resource or elsewhere or that the Customer submits to the Services in the course of using the Services. configure8 does not pre-screen, verify, confirm or otherwise authorize any Customer Materials or Cloud Resources. However, configure8 and its designee(s) have the right (but not the obligation) in their sole discretion to refuse or remove any Customer Materials or Cloud Resource that is processed by, integrated with or provided

to the Services. configure8 may, but has no obligation to, remove content and Accounts containing content that configure8 determines in its sole discretion are illegal, threatening or otherwise objectionable or violates any party's intellectual property or these Terms of Service. configure8 does not endorse and is not responsible or liable for any Customer Materials posted by Customer or any Authorized User. The statements, information, advice and opinions contained in any Customer Materials solely reflect the view of the Customer or Authorized User that submitted such Customer Materials and do not reflect the opinion of Brightspot or any of its Affiliates. Customer acknowledges and agrees that no transmission or hosting of data is 100% secure and there remains a possibility that Customer Materials or Cloud Resources may be subject to unauthorized access by hacking, malware, systems breach or other unauthorized method AND CONFIGURE8 SHALL HAVE NO LIABILITY RELATING TO ANY SUCH BREACH OR ACCESS.

d. <u>Usage Information</u>. configure8 is serious about improving the Services and continuously strives to make the Services smarter, faster, more secure, better integrated, and more useful. configure8 uses information and collective learnings about how the Services are being used to troubleshoot, to identify trends, usage, activity patterns, and areas for integration and to improve the Services and to develop new products, features and technologies that benefit configure8's client base. As this specifically relates to Customer and its Authorized Users, configure8 may collect, generate and use data and information concerning Customer's, and its Authorized Users' use of the Services ("Usage Information") on an anonymous and/or aggregated basis, including but not limited to compiling statistical and performance information related to the use and operation of the Services and conducting related research and development activities with respect to the Services. configure8 shall use Usage Information solely (i) to provide, monitor and improve the Services (including to identify trends, usage and activity patterns and to train its algorithms or for machine learning purposes), and (ii) for internal research and development purposes (including to develop new products, features, integrations and technologies). configure8 retains all intellectual property rights in and to the Usage Information.

e. <u>Reservation of Rights</u>. Customer acknowledges and agrees that the Services are provided under license, and not sold, to Customer or its Authorized Users. Customer and its Authorized Users do not acquire any ownership interest in any of the Services under these Terms of Service, or any other rights thereto other than to use the Services in accordance with the license granted, and subject to all terms, conditions, and restrictions, under these Terms of Service. configure8 and its licensors and service providers reserve and shall respectively retain their entire right, title, and interest in and to the Services, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to Customer in these Terms of Service.

f. <u>Third Party Materials</u>. Portions of the Services may link to other sites on the Internet or otherwise include information, documents, software, materials, content and/or services provided or submitted by third parties ("Third Party Materials") or references to such Third Party Materials. These Third Party Materials may contain information or material that some people may find inappropriate or offensive. These Third Party Materials (and the third parties responsible therefor) are not under configure8's control, and Customer acknowledges that configure8 is not responsible for the accuracy, completeness, appropriateness, validity, copyright compliance, legality, decency, or any other aspect of such Third Party Materials, nor is configure8 responsible for errors or omissions in any references to other parties or their products and services. The inclusion of Third Party Materials, including any reference or link thereto, is provided merely as a convenience and does not imply endorsement of, or association with, the Services, configure8 or any configure8 Affiliates, or any warranty of any kind, either express or implied. Customer accesses and uses all such Third Party Materials entirely at Customer's own risk and subject to such third parties' terms and conditions.

g. <u>Suspected Copyright Violations</u>. configure8 respects the intellectual property of others, and configure8 asks Customer to do the same. If Customer believes it's or an Authorized User's copyright, trademark or other property rights have been infringed by the Services, Customer should send notification to configure8, via the contact information described herein, immediately. To be effective, the notification must include: (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (ii) information reasonably sufficient to permit configure8 to contact the complaining party, such as address, telephone number and, if available, an electronic mail address at which the complaining party may be contacted; (iii) identification of the material that is claimed to be infringing or to be subject to infringing activity and that is to be removed and information reasonably sufficient to permit configure8 to locate the materials; (iv) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, agent, or the law; and (v) a statement that the information in the

notification is accurate and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringing.

9. Privacy, Security and & Network Limitations.

a. <u>Authorized User Personal Information</u>. configure8 collects Personal Information only as necessary to provide the Services and permit Customer and Customer's Authorized Users to access and use the Services and as otherwise set forth in any Privacy Policies and/or Data Processing Addendums that we from time to time adopt. For example, Authorized Users may be required to provide certain basic Personal Information like their email address, name, and title in order to register on or access the Services or to receive communications from configure8 regarding the Services. In addition, configure8 may collect certain billing information depending on Customer's preferences and circumstances. Customer and its Authorized Users shall only provide the minimum amount of Personal Information necessary to use or access the Services and Customer hereby acknowledges, agrees and covenants to only provide, and to only allow its Authorized Users to provide, Personal Information to configure8 if Customer or the applicable Authorized User has all rights and licenses to do so (and Customer and the Authorized User has complied with all Applicable Law). Customer hereby agrees to be liable and responsible for any claims or actions related to failure to obtain such rights. The Parties acknowledge and agree that configure8's Data Processing Addendum https://www.configure8.io/privacy/dpa shall apply to all Personal Information collected by configure8.

b. Information Customer Must Not Provide.

(i) <u>No Confidential Information of Third Parties</u>. Notwithstanding anything herein to the contrary, and without limiting (iii) below, under no circumstances will you upload to the Services or otherwise provide to configure8 any data or information (including but not limited to third-party product or pricing information) which you are restricted from disclosing pursuant to any confidentiality (or similar) agreement with any third party. CONFIGURE8 EXPRESSLY DISCLAIMS ALL LIABILITY WITH RESPECT TO ANY SUCH THIRD-PARTY CONFIDENTIAL INFORMATION.

(ii) <u>No Personal Health Information</u>. Notwithstanding anything herein to the contrary, and without limiting (iii) below, under no circumstances will you upload to the Services or otherwise provide to configure8 any data or information which may qualify as protected health information (or any similar information) regulated under the Health Insurance Portability and Accountability Act of 1996 and related regulations ("HIPAA") or the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") (all such data or information, collectively, "PHI"). CONFIGURE8 EXPRESSLY DISCLAIMS ALL LIABILITY WITH RESPECT TO ANY SUCH PHI.

(iii) <u>No Third Party Personal Information</u>. The Services are not designed to store or process any Personal Information of any individual except for Authorized Users as contemplated by Section 9(a) above. If you plan to use the Services to store or process any Personal Information (including any sensitive information) of any other individuals (e.g. site visitors, employee databases, contact lists, etc.), you may not use the Services and you must contact us in order to use one of our other services.

(iv) <u>No High Risk Activities</u>. Customer is not permitted to use the Services with any High Risk Activities and you will not provide any data or information with respect to High Risk Activities with or in the Services.

c. <u>Security</u>. The protection of Customer Materials and Personal Information is a priority for configure8 and configure8 will use commercially reasonable administrative, physical, and technical safeguards to secure the Services. Those safeguards will include measures intended to prevent unauthorized access, use, modification, deletion and disclosure of Customer Materials that have been linked to or integrated with the Services, Customer Materials and Personal Information by our personnel. For instance, configure8 servers are located in professional and secure hosting facilities designed to host servers with protection from unwanted attacks over the Internet and physical attacks to the building or server itself. In particular, configure8's servers are in a private network with a dedicated firewall, and are protected by round-the-clock interior and exterior surveillance. For physical security, our data centers are all SSAE-16 and/or ISO 27001 compliant. Our software infrastructure is regularly updated with the latest security patches. Notwithstanding the foregoing, Customer acknowledges and agrees that no transmission over the Internet or hosting of data is 100% secure and we cannot guarantee the absolute security of any information or data transmitted over the Internet or hosted on the Internet.

There remains a possibility that Customer Materials or Cloud Resources may be subject to unauthorized access by hacking, malware, systems breach or other unauthorized method and configure8 SHALL HAVE NO LIABILITY RELATING TO ANY SUCH BREACH OR ACCESS.

d. <u>Backs Up</u>. configure8 stores all data in secure locations, and performs multiple daily backups of all critical data (including the database). configure8 also tests its backups in duplicate environments on a regular basis to ensure their correctness, and to test disaster recovery scenarios. Database backups are audited daily.

e. <u>Some Third Parties May have Incidental Access to Your Information</u>. configure8 works with other companies to provide information technology services to customers of the Services. These companies may have access to configure8's databases, but only for the purposes of providing service to configure8. For example, a third party (such as AWS) may obtain access to your Customer Materials in an effort to update database software. These companies will operate under confidentiality agreements with configure8.

f. <u>Data Processing Addendum</u>. The information configure8 obtains through the Customer's use of the Services, including all Personal Information, is subject to configure8's Data Processing Addendum https://www.configure8.io/privacy/dpa which is specifically incorporated by reference into these Terms of Service.

g. <u>Customer's Security Responsibilities</u>. Customer agrees to, and shall cause the Authorized Users to: (i) keep all passwords and online IDs granting access to the Services secure and strictly confidential; (ii) instruct the Authorized Users to keep their access credentials for the Services confidential and not to disclose the credentials to any unauthorized person; (iii) notify configure8 immediately and select a new online ID and password for the Services if they may have become known to an unauthorized person; and (iv) notify configure8 if Customer or an Authorized Users is contacted by anyone requesting access credentials for the Services. Customer is responsible for any and all transactions that any person performs while using Customer's account or access credentials of any Authorized User, even those transactions that are fraudulent or that Customer or the Authorized User did not intend or want performed. In addition, Customer is responsible for Customer's information technology infrastructure, including computers, servers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

h. Network Limitations. Customer understands and agrees that temporary interruptions of the Services may occur as normal events. configure8 may use third party providers to store, manage, and authenticate Accounts and content, and to provide the necessary hardware, software, networking, storage, and related technology required to run the Services. configure8 is not responsible for possible issues caused by third party faults or discontinued services. configure8 does not guarantee or warrant that any Customer Materials that an Authorized User saves, stores or accesses through the Services will not be subject to inadvertent damage, corruption, or loss or that any Cloud Resources that Customer links to or integrates or uses with the Services will always be accessible to the Services. Customer is encouraged to back up the files that it and its Authorized Users store or access via the Services. While configure8 takes data security and privacy seriously, Customer understands and agrees that the technical processing and transmission of the Services, including Customer Materials, may be transferred unencrypted and involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices. Additionally, Customer further understands and agrees that configure8 has no control over third party networks that Customer or other Authorized Users may access or attempt to access in the course of the use of the Services (including Cloud Resources), and therefore, delays and disruption of network transmissions and inaccuracies in results may be completely beyond configure8's control and configure8 assumes no responsibility for such delays, disruptions or inaccuracies. Without limiting the foregoing, configure8 expressly disclaims responsibility for any lost revenues, lost profits, lost sales or billing errors, glitches or delays experienced by Customer or an Authorized User to the extent caused by Service outages or network or infrastructure interruptions or that are caused by Cloud Resources. Customer understands and agrees that the Services are provided "AS IS" and that configure8 assumes no responsibility for the timeliness, deletion, loss, corruption, misdelivery or failure to store any Customer Materials, or any other communications or personalization settings, except to the extent any delay, deletion, loss, corruption, misdelivery or failure to store is due solely to configure8's gross negligence or willful misconduct. Without limiting any of the foregoing, Customer acknowledges and agrees that Customer (and not configure8)

bears sole responsibility for adequate security, protection and backup of Customer Materials and Personal Information when in Customer's or its representatives' or agents' possession or control, and configure8 is not responsible for what Customer's Authorized Users, any Third Party Technology, Cloud Resources or any network or infrastructure providers do with Customer Materials or Personal Information. configure8 is not responsible for possible errors, faults, interruptions or discontinued services caused by a Cloud Resource (with or without advance notice), and configure8 makes no representations or warranties that all of Customer's Cloud Resources will be capable of being continuously linked to or integrated with the Services. Additionally, if a particular Cloud Resource changes its permissions or technical requirements, it may become impossible for that particular Cloud Resource to be deployed on the Services.

10. **Fees.**

a. <u>Services Fees and Payment Terms</u>. Free Accounts are offered free of charge. In order to access and use the Services via a Paid Account or to access or use applicable Premium Features or receive a Subscription Upgrade, Customer must and shall pay all applicable subscription, access, usage and service fees for the Services as set forth in an Order or otherwise communicated by configure8 (the "Fees"). For example, the Fees may be set forth in a written Order entered into by the Parties or when you sign up for the Services or a certain tier or offering, the fees may be presented to you on the product pricing page or the product enrollment page, each of which shall be considered the Order as described above. All Fees in U.S. Dollars. If an Order sets forth that increases in Fees may apply upon a renewal, such increase of Fees shall automatically apply as set forth in such Order. Likewise, if an Order or other notice from configure8 states that Fees shall be automatically assessed once Service usage has passed a certain minimum threshold, those Fees shall automatically be charged to Customer's Account once that minimum threshold has been met.

Payment Authorization; Invoices; Recurring Billing. For Paid Accounts and for certain Premium b. Features selected by Customer, a valid credit card, bank account or other payment method may be required. configure8 will bill Customer in accordance with Customer's Order or any applicable pricing schedule set forth on configure8's website, including (to the extent applicable) automatically charging Customer's credit card on file for Services to be provided during the upcoming payment period. There will be no refunds or credits for partial months of paid Services or for any pre-paid Services (e.g. if you pay for a year of Services in advance and cease using the Services or request a termination, we do not have to refund you any of the pre-paid fees). All Fees will be exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer will be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based on configure8's income. Customer shall pay for any taxes that might be applicable to Customer's use of such paid Services. Customer agrees to be billed monthly, annually or at such other installments as set forth in an Order or as applicable to configure8's standard Services, and hereby grants configure8 the right to charge Customer's credit card (or otherwise facilitate payment - e.g. ACH) with the payment information Customer has provided, including in advance and on a recurring basis. Customer will reimburse configure8 for any fees that configure8 may be charged related to declined payments, and Customer will keep configure8 informed of all changes to the Customer's billing information. All amounts invoiced hereunder are due and payable as specified in the applicable Order. Unpaid Fees that are not the subject of a written good faith dispute are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by applicable law, whichever is lower, plus all reasonable expenses of collection.

c. <u>Audit</u>. configure8 shall have the right and authority to monitor Customer's use of the Services electronically to ensure compliance with the terms and provisions of these Terms of Service. In addition, in the event that configure8 has a reasonable belief that Customer is not in compliance with the terms or provisions of these Terms of Service, then configure8 shall have the right to audit Customer's business, records and systems to ensure compliance with the terms and provisions of these Terms of Service. Configure8 shall provide ten days' notice to Customer and such audit shall not unreasonably interfere with Customer's operations. In the event that a violation of these Terms of Service is found by configure8 and such violation relates to an underpayment of fees, then, in addition to any other rights it may have, configure8 shall invoice and Customer shall pay all underpaid fees plus interest at the rate of 1% per month plus the fees of such audit.

11. Term; Termination.

a. Free Accounts. All use of the Services by Customer via a Free Account shall be subject to the

terms of this Agreement, and this Agreement shall continue in full force with respect to Customer's Free Account until terminated with or without cause by either Party at any time. For purposes of Free Accounts, the "Term" of this Agreement shall be the period of time beginning on the Effective Date for the Services and continuing until Customer's Free Account has been terminated or expired consistent with this Section 11. If Customer elects to convert their Free Account to a Paid Account, Customer must enter into a new Order covering the Paid Account, and the "Term" of the Paid Account shall be as specified in subsection (b) below.

b. <u>Paid Accounts</u>. Unless a different term is specified in an Order, all use of the Services by Customer via a Paid Account shall continue for a period of time equal to one year from the Effective Date for the paid Services (the "Initial Term"). Following the Initial Term, these Terms of Service shall automatically renew with respect to the Paid Account for successive one (1) year terms (each, a "Renewal Term", and together with the Initial Term, the "Term"), unless either Party provides the other Party with notice of its intention not to renew at least thirty (30) days' prior to the end of the then-current term.

c. <u>Demo Access</u>. Customer may utilize Demo Access for so long as configure8 offers Demo Access provided that configure8 may require Customer to request new credentials to continue Demo Access and configure8 may terminate Demo Access at any time as set forth below.

d. <u>Termination</u>.

i. For Free Accounts, either Party may terminate these Terms of Service at any time during the Term for any or no reason upon written notice (email being sufficient) to the other Party, including without limitation if Customer's Account remains inactive for more than one hundred and twenty (120) days or if Customer breaches any provision of these Terms of Services.

ii. For Paid Accounts, Customer agrees that configure8 may at any time during the Term, and at configure8's sole discretion, terminate Customer's (or any Authorized User's) access to any portion or all of the Services without prior notice to Customer for violating these Terms of Service, including, without limitation, breach of any specific provision of these Terms of Service. Additionally, during the Term, configure8 may terminate the Agreement with respect to Paid Accounts upon ninety (90) days' written notice in its sole and absolute discretion, including, without limitation, in the event that the continued provision of Services under this Agreement is not commercially reasonable.

iii. Fore Demo Access, configure8 may terminate these Terms of Service and Customer's access to the Services via Demo Access at any time for any reason and without notice to Customer.

iv. For all Accounts, either Party shall also have the right to terminate these Terms of Service if the other Party terminates its business activities or becomes insolvent, files for bankruptcy, admits in writing its inability to pay debts as they mature, makes an assignment for the benefit of creditors, or becomes subject to direct control of a trustee, receiver or similar authority.

v. Without limiting the foregoing, any suspected fraudulent, abusive or illegal activity may be grounds for terminating Customer's relationship with configure8 and may be referred to appropriate law enforcement authorities. Customer acknowledges that configure8 will cooperate fully with investigations of violations of systems or network security at other sites, including Cloud Resources.

e. <u>Effects of Termination</u>. Upon termination or suspension, regardless of the reasons therefore, Customer's right to use the Services immediately ceases, and Customer acknowledges and agrees that configure8 may, unless otherwise agreed in an Order, immediately deactivate or delete Customer's Account and all related information and files in Customer's Account and/or bar any further access to such files and the other Services. Notwithstanding the foregoing, Enterprise Accounts shall have the ability to export their Customer Materials from the Services subject to payment of additional fees applicable at such time for export of larger data sizes. configure8 shall not be liable to Customer or any third party for any claims or damages arising out of any termination or suspension or any other actions taken by configure8 in connection therewith. Applicable provisions of these Terms of Service shall survive any termination, including, without limitation, Sections 6.a, 6.d, 6.e, 6.h, 6.i, 7.a(ii), 8, 9.b, 9.g, 10, 11, 12, 13 through 15 and 17 through 20.

12. Confidentiality.

"Confidential Information" means any information disclosed previously or in the future by one a. Party (in such capacity, the "Disclosing Party") to the other Party (in such capacity, the "Receiving Party"), either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, business plans, source code, software, documentation, specifications, mock ups, financial analyses, marketing plans, customer names, customer lists, product plans, products, services, inventions, processes, designs, drawings, engineering or hardware configuration information, know-how, trade secrets, or any other proprietary or business information), which is designated as "Confidential," "Proprietary" or some similar designation, or other information, the confidential or proprietary nature of which is reasonably apparent under the circumstances. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; (ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; (iii) is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (iv) is obtained by the Receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Receiving Party's possession. Moreover, it shall not be a breach of these Terms of Service for the Receiving Party to disclose to a court or other governmental body Confidential Information of the Disclosing Party which the Receiving Party is required by law to disclose to such entity, provided that the Receiving Party shall give the Disclosing Party written notice of such requirement prior to disclosure so that the Disclosing Party may seek a protective order or other appropriate relief. The Services and Usage Information shall all be considered the Confidential Information of configure8 without any further requirement of marking or designation. The Customer Materials shall all be considered the Confidential Information of Customer without any further requirement of marking or designation.

b. <u>Non-Disclosure and Non-Use</u>. The Receiving Party shall not disclose any Confidential Information of the Disclosing Party to third parties or to the Receiving Party's employees, except those employees who require the information to perform obligations or exercise rights under these Terms of Service and who have signed a confidentiality agreement at least as protective of the Confidential Information of the Disclosing Party as these Terms of Service. The Receiving Party shall not use any Confidential Information of the Disclosing Party for any purpose other than for the purposes contemplated by these Terms of Service. The Receiving Party shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the Disclosing Party. Without limiting the foregoing, the Receiving Party shall exercise the same degree of care to protect Confidential Information of the Disclosing Party as it does to protect its own highly confidential information of like nature, which shall in no event be less than reasonable care. The Receiving Party shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of the Disclosing Party's Confidential Information.

13. Indemnity.

Customer Indemnification. Customer shall indemnify, defend and hold harmless configure8 and a. its Affiliates from and against all liabilities, amounts, damages, claims, alleged claims, costs and expenses, including attorney's fees relating to, or arising out of, (i) Customer's or one of its Authorized User's use or misuse of any of the Services; (ii) any misrepresentation, fraud or other act or omission that is inconsistent with the requirements of the Services or any agreements entered into between configure8 and Customer; (iii) any breach of any provision of these Terms of Service; (iv) any violation of Applicable Laws by Customer or an Authorized User; (v) any violation of any intellectual property rights by Customer or an Authorized User, whether configure8's rights or those of any third party; (vi) any Customer Materials that Customer or an Authorized User imports, uploads or otherwise provides to the Service; (vii) the Customer Offerings; (viii) any claims or issues related to third party integrations or third party technology or platforms, including, without limitation as related to the Cloud Resources or any issues or matters related to the compliance by Customer or the Services with any applicable Cloud Resource Provider Terms; or (ix) any claims by third parties (including Customer's customers or Cloud Resources Providers) arising from or as related to Customer's use of the Services, configure8 reserves the right. at configure8's own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, in which event Customer will cooperate with configure8 in asserting any available defenses.

configure8 Indemnification. configure8 shall defend Customer from and against all third party b. claims alleging that the configure8 Platform or any of the Services infringes any third-party patent, copyright or trademark, or misappropriates any third-party trade secret enforceable in any jurisdiction that is a signatory to the Berne Convention ("IP Claim"), and configure8 will indemnify Customer and hold Customer harmless against any damages and costs finally awarded on the IP Claim by a court of competent jurisdiction or agreed to via settlement executed by configure8 (including reasonable attorneys' fees), provided that configure8 has received from Customer: (a) prompt written notice of the IP Claim (but in any event notice in sufficient time for configure8 to respond without prejudice); (b) reasonable assistance in the defense and investigation of the IP Claim, including providing configure8 a copy of the claim, all relevant evidence in your possession, custody, or control, and cooperation with evidentiary discovery, litigation, and trial, including making witnesses within your employ or control available for testimony; and (c) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of the IP Claim. configure8 will not be responsible for any settlement it does not approve in writing, which approval shall not be unreasonably withheld. The indemnity obligations of configure8 hereunder do not apply to, and configure8 shall have no obligation to indemnify Customer: (1) if Customer is using the Services under a Free Account or Professional Account, (2) if you are an Enterprise Customer unless the total aggregate fees we receive with respect to your subscription to the Services in the twelve (12) month period immediately preceding the claim exceeds \$50,000, (3) with respect to the configure8 Platform or Services (or portions or components thereof): (i) not supplied by configure8, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by configure8, and/or (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (4) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (5) where Customer's or an Authorized User's use of the configure8 Platform or Services is not strictly in accordance with this Agreement and any provided documentation, (6) if the claim relates to or is based on (whether in part or in whole): (a) Customer Materials, (b) Third Party Technology, (c) circumstances covered by your indemnification obligations, or (d) any third-party deliverables or components contained with the Services, or (7) if you settle or make any admissions with respect to a claim without our prior written consent. If, due to a IP Claim, the configure8 Platform or the Services are held by a court of competent jurisdiction to be or are believed by configure8 to be infringing, configure8 may, at its sole option and expense (x) replace or modify the configure8 Platform or Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (y) obtain for Customer a license to continue using the configure8 Platform or Services, or (z) if neither of the foregoing is commercially practicable, terminate these Terms of Services and all Orders and Customer's rights hereunder and thereunder and provide Customer a refund of any prepaid, unused fees for the Services. THIS SECTION 13.b (CONFIGURE8 INDEMNIFICATION) STATES CONFIGURE8'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH ANY SERVICES WE PROVIDE UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING OR ANYTHING HEREIN TO THE CONTRARY, CONFIGURE PROVIDES NO INDEMNIFICATION WHATSOEVER FOR, OR RELATED TO, DEMO ACCESS.

14. <u>Limitation of Liability</u>. CONFIGURE8 SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITY, LOSS OF DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF SOURCE MEDIA AND/OR CUSTOMER MATERIALS, OR COSTS OF RECREATING LOST SOURCE MEDIA AND/OR CUSTOMER MATERIALS) ARISING OUT OF OR RELATED TO THESE TERMS OF SERVICE, WHETHER UNDER THEORY OF CONTRACT, TORT OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL AGGREGATE AND CUMULATIVE LIABILITY OF CONFIGURE8 ARISING OUT OF OR RELATED TO THESE TERMS OF SERVICE SHALL BE THE SERVICES FEES OWED BY CUSTOMER TO CONFIGURE8 IN THE TWELVE MONTHS PRIOR TO SUCH CLAIM. CUSTOMER AND CONFIGURE8 AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THE SERVICE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES AND OTHERWISE SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

15. **Disclaimer of Warranties**. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS OF SERVICE, THE PLATFORM AND THE SERVICES ARE PROVIDED TO CUSTOMER "AS IS", "AS AVAILABLE", "WITH ALL FAULTS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND. CONFIGURE8 EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, QUIET-ENJOYMENT, ACCURACY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THESE TERMS OF SERVICE. NO USE OR DISTRIBUTION OF THE SERVICES IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER. NO WARRANTIES ARE CREATED BY ANY COURSE OF DEALING BETWEEN THE PARTIES, TRADE USAGE OR INDUSTRY CUSTOM. CONFIGURE8 SPECIFICALLY DISCLAIMS ANY REPRESENTATION AND WARRANTY THAT THE SERVICES WILL BE ERROR FREE OR WILL FUNCTION UNINTERRUPTED, THAT ANY ERRORS OR DEFECTS IN THE SERVICES CAN OR WILL BE CORRECTED, THAT ANY SUCH CORRECTION CAN OR WILL BE MADE IN A TIMELY MANNER, THAT THE SERVICES WILL OPERATE IN THE COMBINATIONS WHICH MAY BE REQUIRED OR WILL PRODUCE THE RESULTS REQUIRED. CONFIGURE8 DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S SPECIFIC REQUIREMENTS. CONFIGURE8 MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY CLOUD RESOURCES. CONFIGURE8 SPECIFICALLY DISCLAIMS ANY REPRESENTATION AND WARRANTY THAT THE SERVICES WILL CORRECTLY INTEGRATE WITH ALL CLOUD RESOURCES, AND THAT ALL CLOUD RESOURCES MAY BE DEPLOYED BY OR INTEGRATED WITH THE SERVICES. CONFIGURE8 MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO USE OF THE SERVICES IN CONNECTION WITH HIGH RISK ACTIVITIES, AND HEREBY DISCLAIMS ALL RESPONSIBILITY FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING FROM USE OF THE SERVICES IN CONNECTION WITH ANY SUCH HIGH RISK ACTIVITIES.

16. <u>International Use</u>. Although the Services may be accessible worldwide, configure8 makes no representation that use of the Services is compliant with foreign law. If Customer chooses to access the Services from other locations, Customer does so on Customer's own initiative and is responsible for compliance with local laws. Any offer for any product, service, and/or information made in connection with the Services is void where prohibited.

17. <u>Electronic Contracting and User Notices</u>. Customer's affirmative act of viewing or using any portion of the Services (including, without limitation, submitting any forms or communications via the Platform) or other acceptance of these Terms of Service as described above constitutes Customer's electronic signature to these Terms of Service and Customer's consent to enter into agreements with configure8 electronically. Customer also agrees that configure8 may, but has no obligation to, send to Customer in electronic form any privacy or other notices, disclosures, reports, documents, communications or other records regarding the Services (collectively, "Notices"). configure8 can send Customer electronic Notices (i) to the e-mail address that Customer provided to configure8 (if any), or (ii) by posting the Notice through the Services. The delivery of any Notice from configure8 is effective when sent or posted by configure8, regardless of whether Customer reads or views the Notice when Customer receives it or whether Customer actually receives the delivery. Customer can withdraw Customer's consent to receive Notices electronically by discontinuing Customer's use of the Services. Customer can retrieve an electronic copy of this contract by clicking on the "Terms of Service" link on a Site or as set forth in the Services. All contracts completed electronically will be deemed for all legal purposes to be in writing and legally enforceable as a signed writing.

All questions, complaints, claims or other notices to configure8 shall be in writing and shall be made using any contact functions made available via the Services.

Any notices or communication under these Terms of Service will be deemed delivered to configure8 on the delivery date.

18. **Law; Venue**. Customer agrees that the laws of the State of Delaware, without regard to principles of conflict of laws, will govern these Terms of Service and any claim or dispute that has arisen or may arise between Customer and configure8, except as otherwise stated in these Terms of Service. All actions related to these Terms of Service shall take place in Fairfax, Virginia, including any arbitration as contemplated below.

19. **Dispute Resolution & Arbitration**.

a. <u>Agreement to Arbitrate</u>. This Section is referred to as the "Arbitration Agreement." Customer agrees that any and all disputes or claims that have arisen or may arise between Customer and configure8, whether arising out of or relating to these Terms of Service or in connection with Customers use of the Services, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that Customer may assert individual claims in small claims court, if

Customer's claims qualify. Customer agrees that, by agreeing to these Terms of Service, Customer and configure8 are each waiving the right to a trial by jury or to participate in a class action. Customer's rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. Notwithstanding the foregoing, this Arbitration Agreement shall not (i) preclude either Party from pursuing a court action for the sole purpose of obtaining a temporary restraining order or preliminary injunction in circumstances in which such relief is appropriate; provided that any other relief shall be pursued through an arbitration proceeding pursuant to this Arbitration Agreement, and (ii) apply to Customer's obligations and restrictions (and confugure8's rights and remedies related to) set forth in Sections 3.c and 13.a, provided that configure8 shall have the option, in its sole discretion, to provide recourse and remedy under this Arbitration Agreement or in a court of law.

b. <u>Prohibition of Class and Representative Actions and Non-Individualized Relief</u>. Customer and configure8 agree that each may bring claims against the other only on an individual basis and not as plaintiff or class member in any purported class or representative action or proceeding. Unless both Customer and configure8 agree otherwise, the arbitrator may not consolidate or join more than one person's or party's claims and may not otherwise preside over any form of a consolidated, representative, or class proceeding. Also, the arbitrator may award relief (including monetary, injunctive, and declaratory relief) only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's individual claim(s).

Pre-Arbitration Dispute Resolution. configure8 is always interested in resolving disputes amicably c. and efficiently, and most concerns can be resolved guickly and to the participant's satisfaction by emailing configure8's support team at support@configure8.io and indicating in such email that Customer desires to initiate Upon configure8's receipt of such email, the Parties will informally the informal dispute resolution process. consult and negotiate with each other and attempt to reach agreement regarding the dispute. If, after a period of (30) calendar days, such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to configure8 should be sent to configure8 at 1765 Greensboro Station Place, 9th Floor, McLean, VA 22102, Attn: Legal Notices with separate copy to 1390 Chain Bridge Rd PMB 50017 McLean, VA 22101 ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. The Parties will then use continued efforts to consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both Parties. If configure8 and Customer do not resolve the claim within sixty (60) calendar days after the Notice is received, Customer or configure8 may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by configure8 or Customer shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which Customer or configure8 is entitled. Additionally, all negotiations pursuant to this Section will be confidential and treated as compromise and settlement negotiations for purposes of all rules and codes of evidence of applicable legislation and jurisdictions.

Arbitration Procedures. Arbitration will be conducted by a neutral arbitrator in accordance with d. the American Arbitration Association's ("AAA") rules and procedures, including the AAA's Commercial Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. The arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under these Terms of Service and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons. Unless configure8 and Customer agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by AAA. If Customer's claim is for \$10,000 or less, configure8 agrees that Customer may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing or by an in-person hearing as established by the AAA Rules. If Customer's claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

e. <u>Costs of Arbitration</u>. Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. Any payment of attorneys' fees will be governed by the AAA Rules.

f. <u>Confidentiality</u>. All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties.

g. <u>Severability</u>. If a court or the arbitrator decides that any term or provision of this Arbitration Agreement other than clause (b) above is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court or the arbitrator decides that any of the provisions of clause (b) is invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void. The remainder of these Terms of Service will continue to apply.

20. <u>General</u>.

a. <u>Assignment</u>. Customer may not assign Customer's rights and obligations under these Terms of Service to any third party, and any purported attempt to do so shall be null and void. configure8 may freely assign configure8's rights and obligations under these Terms of Service and transfer, assign or novate these Terms of Service. Any change in control of Customer resulting from a merger, consolidation, stock transfer, asset sale or other corporate transaction shall be deemed an assignment or transfer for purposes of this Agreement that requires configure8's prior written consent. In the event that Customer has unlimited seat license (without a cap or maximum number of Authorized Users) and Customer purchases or otherwise acquires any third party business, division, operations, product/service or employee group (whether by merger, consolidation, stock transfer, asset sale or other corporate transaction), that materially increases the employee count of the Customer, the Parties shall mutually discuss an increase in the fees under this Agreement; provided that configure8 may terminate this Agreement without liability if such an agreement is not reached on fees.

b. <u>Force Majeure</u>. In addition to any excuse provided by applicable law or under these Terms of Service, configure8 shall be excused from liability for non-delivery or delay in delivery of products and services available through the Services arising from any event beyond configure8's reasonable control, whether or not foreseeable by either party, including but not limited to, labor disturbance, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, and other causes or events beyond configure8's reasonable control, whether or not similar to those which are enumerated above.

c. <u>Enforceability</u>; <u>Severability</u>. If any part of these Terms of Service are held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect.

d. <u>No Waiver</u>. Any failure by configure8 to enforce or exercise any provision of these Terms of Service or related rights shall not constitute a waiver of that right or provision or a waiver of configure8's right to enforce or exercise any such provision of these Terms of Service in the future.

e. <u>Intended Beneficiaries</u>. These Terms of Service are strictly between configure8 and Customer. There are no intended third party beneficiaries of these Terms of Service.

f. <u>Government Sales</u>. If Customer is a branch or agency of the United States Government or a contractor thereto, the following provision applies. As defined in FAR section 2.101, the Services and related documentation are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of these Terms of Service and will be prohibited except to the extent expressly permitted by the terms of these Terms of Service.

g. <u>Use of Words</u>. The term "including" as used in these Terms of Service shall mean "including, without limitation," unless the context otherwise requires.

h. <u>Entire Agreement</u>. These Terms of Services and configure8's Data Processing Addendum https://www.configure8.io/privacy/dpa constitute the entire agreement and understanding between configure8 and Customer concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties with respect thereto. These Terms of Service may NOT be altered, supplemented, or amended by the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for products or services which are subject to additional or altered terms and conditions shall be null and void, unless otherwise agreed to in a written agreement signed by Customer and configure8.

i. <u>Independent Contractors</u>. In performing these Terms of Service, the Parties act and shall act at all times as independent contractors, and nothing contained in these Terms of Service shall be construed or implied to create an agency, partnership or employer and employee relationship between the Parties. Except as expressly set forth in these Terms of Service, at no time shall either Party make commitments or incur any charges or expenses for, or in the name of, the other Party.

BY USING THE PLATFORM AND/OR ANY OF CONFIGURE8'S OTHER SERVICES AND/OR ACCEPTING THESE TERMS OF SERVICE (OR OTHERWISE BEING BOUND AS DESCRIBED ABOVE), CUSTOMER AGREES TO BE BOUND BY THESE TERMS OF SERVICE. IF CUSTOMER DOES NOT WISH TO BE BOUND BY THE THESE TERMS OF SERVICE, PLEASE EXIT THE PLATFORM NOW AND CEASE ALL FURTHER USE THEREOF AND OF ALL OTHER SERVICES.