

Master Subscription and Professional Services Agreement

Updated September 29, 2022

Welcome to ProductBoard! This Master Subscription and Professional Services Agreement (these “**Terms**”) describe your rights and responsibilities as a customer of ProductBoard. These Terms are between you and ProductBoard (“**ProductBoard**”, “**we**” or “**us**”). “**You**” or “**Customer**” means the entity you represent in accepting these Terms or, if that does not apply, you individually.

If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to these Terms; (ii) you have read and understand these Terms; and (iii) you agree to these Terms on behalf of the party that you represent. If you don’t have the legal authority to bind your employer or the applicable entity please do not click “Sign Up” (or similar button or checkbox) that is presented to you.

PLEASE NOTE THAT IF YOU SIGN UP FOR PRODUCTBOARD USING AN EMAIL ADDRESS FROM YOUR EMPLOYER OR ANOTHER ENTITY, THEN (A) YOU WILL BE DEEMED TO REPRESENT SUCH PARTY, (B) YOUR CLICK TO SIGN UP WILL BIND YOUR EMPLOYER OR THAT ENTITY TO THESE TERMS, AND (C) THE WORD “YOU” OR “CUSTOMER” IN THESE TERMS WILL REFER TO YOUR EMPLOYER OR THAT ENTITY. These Terms are effective as of the date you first click “Sign Up” (or similar button or checkbox) or use or access ProductBoard, whichever is earlier (the “Effective Date”). These Terms do not have to be signed in order to be binding. You indicate your assent to these Terms by clicking “Sign Up” (or similar button or checkbox) at the time you register for ProductBoard, create a ProductBoard account, or place an Order Form.

“Account(s)” means an account enabling a User to access and use the Subscription Service through User login credentials.

1. Definitions

“Affiliate” of a Party means any entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Party. For purposes of this definition, the “control” of an entity means the direct or indirect ownership or control of more than 50% of the voting interests of such entity.

“Authentication Key” means any access key, application key or authentication key necessary for utilizing an Authorized API.

“Authorized API” means the application programming interfaces developed and provided by ProductBoard that permit Customer to access certain functionality provided by the Subscription Services.

“Background IP” means any intellectual property, materials and other content that ProductBoard provides to Customer in connection with its performance of Professional Services that (i) was in existence prior to performance of ProductBoard’s Professional Services obligations set forth in the applicable Order Form, (ii) is conceived or developed at any time wholly independently of such Professional Services or (iii) was otherwise not specifically created for Customer.

“Beta Services” means the features and/or functionality of the Subscription Services that may be made available to Customer to try at its option at no additional charge and which are clearly designated as beta, pilot, limited release, non-production, early access, evaluation, labs or by a similar description.

“Confidential Information” means all confidential and proprietary information of a Party (“Disclosing Party”) disclosed to the other Party (“Receiving Party”), whether orally or in writing, that is either marked or designated as confidential at the time of disclosure to the Receiving Party, or that a reasonable person should consider confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. ProductBoard’s Confidential Information shall include the ProductBoard Property and the terms of this Agreement and all Order Forms. Notwithstanding the foregoing, Confidential Information shall not include any information that the Receiving Party can show: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party (excluding patentable subject matter which is not subject to this exclusion); or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

“Customer Property” means any content (including text, images, illustrations, charts, tables and other materials) supplied by Customer to ProductBoard, either directly or indirectly (for example, through the Subscription Service or integration with a Third Party Product).

“Documentation” means all documentation and other instructional material made available by ProductBoard regarding the use of the Subscription Services.

“End-Users” means any person or entity other than Customer or Users with whom Customer or Users interact using the Subscription Service.

“Order Form” means an ordering document for Services purchased from ProductBoard that has been executed hereunder by the Parties (or, in the case of an online transaction, which has been electronically accepted by Customer).

“Personal Data” means any information relating to an identified or identifiable natural person (‘data subject’) where an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity of that natural person.

“Processing/to Process/Processed” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, or erasure or destruction.

“ProductBoard Property” means (i) the Subscription Services, (ii) the Documentation, (iii) Background IP, and (iv) all content and other materials and software supplied by ProductBoard in connection with, or used by ProductBoard in providing, any Services.

“Professional Services” means fee-based setup, implementation, configuration, consulting, training, content development and other services (other than the Subscription Services) that ProductBoard provides pursuant to an Order Form and which is detailed in an attached statement of work.

“Services” means Subscription Services and Professional Services, but in all cases excluding Beta Services.

“Subprocessor” means any third-party data processor engaged by ProductBoard, including ProductBoard’s Affiliates, that receive Customer Property from ProductBoard for Processing on behalf of Customer and in accordance with Customer’s instructions (as communicated by ProductBoard) and the terms of its written subcontract.

“Subscription Services” means the software services and platform provided by ProductBoard, including (i) the web and other user interfaces, applications, and software provided to Users and End-Users, (ii) the Authorized APIs and (iii) any modifications, updates, derivative works, optional modules, custom or standard enhancements, updates, and upgrades to or of any of the foregoing.

“Subscription Term” means the subscription period set forth in the applicable Order Form during which ProductBoard agrees to provide the Subscription Services to Customer.

“Third Party Products” means certain third party applications, integrations, systems, or services used by Customer, but not supplied by ProductBoard, that are designed to interoperate with the Subscription Services (for example, third-party ticketing and email services from which the Subscription Services can import Customer Property or SatisMeter).

“Users” means all users that are authorized to access Customer’s account on the Subscription Services, including “Makers”, “Collaborators” and “Contributors.”

2. Services

(a) Subscription Services

(i) *Provision of Subscription Services.* Subject to the payment of all applicable Fees and for the applicable Subscription Term, ProductBoard hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive right to access and use the Subscription Services in accordance with the terms and conditions of this Agreement and all Order Forms.

(ii) *Order Forms.* Each Order Form for Subscription Services will describe additional mutually agreed-upon limitations on use of the Subscription Service, including, to the extent applicable, Fees, the Subscription Term, the number of and/or class of permitted Users and the permitted scope of use of the Subscription Services. To the extent an Order Form provides for a Subscription Term that automatically renews or provides Customer with pricing for Subscription Upgrades (as defined below), the Parties may confirm, thereby creating a binding obligation with respect to, such renewal or Subscription Upgrade via email without the need for an additional Order Form executed by the Parties.

(iii) *Platform Guidelines.* Customer hereby acknowledges that it will at all times comply with, and ensure that all of its Users and End-Users comply with, the platform guidelines set forth at www.productboard.com/platform-guidelines, which are hereby incorporated by reference (the “Platform Guidelines”).

(iv) *Free Trials.* If Customer registers for a free trial for the Subscription Services or a Subscription Upgrade (“Free Trial”), ProductBoard will make the Subscription Services or Subscription Upgrade available to Customer and its Users and End-Users on a trial basis free of charge until the earlier of (A) the end of the Free Trial period; (B) the date upon which Customer’s and its Users’ aggregate use of the Free Trial exceeds any usage or quantity limitations imposed thereon; (C) the start date of any Subscription Term purchased by Customer; or (D) termination of the Free Trial by ProductBoard in its sole discretion. Additional trial terms and conditions may appear on the Free Trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. ANY CUSTOMER PROPERTY CUSTOMER SUBMITS TO THE SUBSCRIPTION SERVICES, AND ANY CONFIGURATIONS OR CUSTOMIZATIONS MADE TO THE SUBSCRIPTION SERVICES OR SUBSCRIPTION UPGRADES BY OR FOR CUSTOMER DURING THE FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES THE SAME SUBSCRIPTION SERVICES AS COVERED BY THE FREE TRIAL OR CUSTOMER EXPORTS SUCH CUSTOMER PROPERTY BEFORE THE END OF THE FREE TRIAL PERIOD.

(v) *Third Party Products*. Customer or its Users may choose to use the Subscription Services with certain Third Party Products. Use of Third Party Products is subject to Customer's agreement with the relevant provider of such Third Party Products and are not governed by, or subject to, the terms and conditions in this Agreement. ProductBoard will have no liability for Customer's or its Users' use of Third Party Products, including their security, functionality, operation, availability, or interoperability or how the Third Party Products or their providers use Customer Property (including Personal Data). By enabling or otherwise using a Third Party Product with the Subscription Service, Customer hereby authorizes ProductBoard to access and exchange Customer Property with the Third Party Product on Customer's behalf. To the fullest extent permitted by applicable law, ProductBoard is not responsible for any Third Party Product's or their provider's use of any exported information (including Customer Property).

(b) Professional Services

(i) *Scope*. ProductBoard will perform the Professional Services set forth in an Order Form executed by the Parties or signing up online, which shall include and/or specify a description of the Professional Services to be provided to Customer and the applicable Fees and payment terms. If either Customer or ProductBoard request a change in the scope of Professional Services, any agreed-upon changes, including changes in Fees and expenses, will not be binding against either Party unless set forth in a writing executed by the Parties (each, a "Change Order").

(ii) *Background IP*. ProductBoard hereby grants to Customer a non-sublicensable, non-transferable, non-exclusive license to access and use the Background IP, if any, that is included in a Professional Services deliverable ("Professional Services Deliverable") solely as necessary for Customer to use that Professional Services Deliverable; it being understood that the foregoing license does not permit Customer to exploit any Background IP apart from the specific Professional Services Deliverable in which it is included.

(iii) *Customer Cooperation*. Customer acknowledges that ProductBoard's ability to timely deliver the Services is dependent upon Customer's ongoing cooperation and assistance. Accordingly, Customer will supply to ProductBoard, on a timely basis, all information, materials, and assistance reasonably necessary for ProductBoard to perform the Services, including the Customer Property, User lists, and any additional information, material, or assistance identified in an Order Form. Customer will also appoint and actively manage the key roles identified in the statement of work relating to such Order Form. ProductBoard's period of performance shall be equitably extended to account for any delays resulting from Customer's failure to fully comply with the foregoing.

(iv) *Staffing*. ProductBoard shall be responsible for staffing decisions with respect to employees or contractors utilized in the performance of any Service under this Agreement, and shall have the right at any time to delegate, subcontract, remove or

replace any of its personnel or contractors assigned to perform any Services under this Agreement. ProductBoard will be responsible for the acts or omissions of its employees and contractor personnel and any delays caused by the reassignment or replacement thereof.

(v) *Expense Reimbursements.* Customer will reimburse ProductBoard for reasonable travel and other expenses incurred in connection with performing the Professional Services, provided that Customer approves such expenses before they are incurred.

3. Fees and Payment Terms

(a) *Fees.* Customer will pay ProductBoard all fees specified in or otherwise incurred pursuant to an Order Form ("Fees") in accordance with this Section 3 and the applicable Order Form. If Customer adds additional Subscription Services or otherwise upgrades its tier of Subscription Services during a Subscription Term (a "Subscription Upgrade"), any incremental Fees associated with such Subscription Upgrade will be prorated over the remaining period of the then-current Subscription Term and charged to Customer and due and payable in accordance with Section 3(b). In addition, unless otherwise set forth in an Order Form, Customer will be deemed to have executed a Subscription Upgrade with ProductBoard if its usage of the Subscription Services exceeds the previously purchased usage levels. In any renewal Subscription Term of such Order Form, the Fees will reflect any such Subscription Upgrades. Fees are quoted and payable in United States dollars. Payment obligations are non-cancellable and Fees paid are non-refundable, except as otherwise expressly set forth in this Agreement.

(b) *Invoices and Payment.* By providing a credit card or other payment method accepted by ProductBoard ("Payment Method") for the Services, Customer agrees that ProductBoard is authorized to charge to the elected Payment Method all applicable Fees when due, and any other charges Customer may incur in connection with Customer's use of the Services. For all purchased Services, the Payment Method will be charged on a monthly basis or at the interval indicated in the applicable Order Form. If ProductBoard does not collect a Payment Method from Customer at the time of purchase, ProductBoard will invoice Customer for the charges at the email address on file with ProductBoard. Customer will pay all invoiced amounts within thirty (30) calendar days of the invoice date. Unless otherwise specified in an Order Form, Customer will pay all Fees on an annual, prepaid basis. Overdue invoices are subject to a finance charge of 1.5% per month or the maximum permitted by law, whichever is lower, plus all expenses of collection.

(c) *Taxes.* Customer is solely responsible for the payment of all taxes, assessments, tariffs, duties, or other fees imposed, assessed, or collected by or under the authority of any governmental body arising from ProductBoard's provision of the Services hereunder (collectively, "Taxes"), except any taxes assessed upon ProductBoard's net income. If ProductBoard is required to directly pay Taxes related to Customer's use or receipt of any Services, Customer agrees to promptly reimburse ProductBoard for any amounts paid by ProductBoard.

(d) *Free Trials.* If Customer provides billing information when signing up for the Free Trial, Customer will not be charged by ProductBoard until the Free Trial has expired. Upon the expiration of the Free Trial period, unless Customer previously cancelled its Services by contacting ProductBoard at support@productboard.com, ProductBoard reserves the right to automatically charge Customer Fees applicable to the type and quantity of Services provided to Customer during the Free Trial, at ProductBoard's then-applicable rates.

(e) *Credits.* ProductBoard may, at its sole discretion, choose to offer credits for the Subscription Services in various ways, including but not limited to, coupons, promotional campaigns, and referrals for ProductBoard services such as training. ProductBoard reserves the right to award credits at its sole discretion. Credits have no monetary or cash value and can only be used by Customer to offset Customer's subsequent payments of Fees for the Subscription Services. Credits may only be applied to Fees due for the Subscription Services specifically identified by ProductBoard when issuing the credit. Credits can only be used by Customer and are non-transferable. To the extent that Customer has been awarded credits, unless the instrument (including any coupon) states an earlier expiration date, credits shall expire and no longer be redeemable twelve (12) months from the date the credit was issued.

4. Proprietary Rights

(a) *Customer Property.* As between Customer and ProductBoard, Customer retains all rights, title, and interest in and to the Customer Property, including all patent, copyright, trade secret, trademark or other intellectual property rights embodied in or related to the Customer Property. Except as expressly set out in this Agreement, no right, title, or license under any Customer Property is granted to ProductBoard or implied hereby, and for any Customer Property that is licensed to ProductBoard, no title or ownership rights are transferred to ProductBoard with such license. Customer is solely responsible for Customer Property, including its content and accuracy, and for backing up Customer Data.

(b) *ProductBoard Property.* As between ProductBoard and Customer, ProductBoard retains all right, title, and interest in and to the ProductBoard Property, including all patent, copyright, trade secret, trademark or other intellectual property rights embodied in or related to the ProductBoard Property. Except as expressly set out in this Agreement, no right, title, or license under any ProductBoard Property is granted to Customer or implied hereby, and for any ProductBoard Property that is licensed to Customer, no title or ownership rights are transferred to Customer with such license.

(c) *Licenses to ProductBoard.* Customer hereby grants ProductBoard a limited, non-exclusive, non-transferable (except in connection with the permitted assignment of this Agreement), and royalty-free license to access and use the Customer Property made available to ProductBoard or any of its Affiliates, solely as necessary for ProductBoard to provide the Services to Customer pursuant to this Agreement. Additionally, Customer grants ProductBoard a non-exclusive, revocable license to use Customer's trademarks

and logos to identify Customer as a subscriber of the Services; provided that, Customer may revoke such consent at any time in its sole discretion. By submitting to ProductBoard any unsolicited suggestions, enhancement requests, comments, feedback or other input relating to the Services (“Feedback”), Customer, its Users and End-Users (as applicable) grant to ProductBoard a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate such Feedback into the Services in any manner.

5. Data Privacy and Security

(a) *Hosting and Processing.* Unless otherwise specifically agreed to in writing by ProductBoard, Customer Property may be hosted by ProductBoard or its Affiliates, or their respective authorized third-party service providers, in the United States, the European Economic Area (“EEA”) or the United Kingdom.

(b) *Transfer of Personal Data.* To the extent that Personal Data within the Customer Property originates from a User or End-User in the EEA, as further described in the DPA, ProductBoard will ensure that, pursuant to (i) the EU Regulation 2016/679 and any applicable national laws made under it; and (ii) the Swiss Federal Act of 19 June 1992 on Data Protection (as may be amended or superseded), if Personal Data within Customer Property is transferred to a country or territory outside of the EEA (a “non-EEA country”), then such transfer will only take place if: (i) the non-EEA country in question ensures an adequate level of data protection based on a decision by the European Commission; (ii) one of the conditions listed in Article 46 or 49 of the GDPR (or its equivalent under any successor legislation) is satisfied; or (iii) the Personal Data is transferred on the basis of binding corporate rules.

(c) *Data Processing Agreements.* The Data Processing Agreement with ProductBoard (“DPA”) is located here: <https://www.productboard.com/dpa>. The DPA is incorporated by reference herein and is part of this Agreement.

(d) *Subprocessors.* Customer acknowledges and agrees that ProductBoard may use Subprocessors, who may access Customer Property, to provide, secure and improve the Subscription Services. ProductBoard shall be responsible for the acts and omissions of its Subprocessors to the same extent that ProductBoard would be responsible if ProductBoard was performing the services of each Subprocessor directly under the terms of this Agreement. A list of all Subprocessors can be found here: <https://www.productboard.com/subprocessors/>.

(e) *In-Product Cookies.* Whenever Customer, Users or End-Users interact with the Subscription Services, ProductBoard automatically receives and records information on its server logs from the browser or device, which may include IP address, “cookie” information, and the type of browser and/or device being used to access the Subscription Services, as further described here: <https://www.productboard.com/cookies/>. When ProductBoard collects this

information, it only uses this data to (i) provide the Services or (ii) in aggregate form, and not in a manner that would identify Users or End-Users personally.

6. Confidentiality

(a) *Confidentiality.* During the term of this Agreement and for a period of three (3) years thereafter, each Party agrees to protect the confidentiality of the Confidential Information of the other Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of a like kind; provided that a Receiving Party may disclose Confidential Information of the Disclosing Party with Disclosing Party's consent or to its Affiliates, officers, directors, employees, subcontractors, agents or prospective financing sources or acquirers who need to know such information in connection with this Agreement and who are bound by written agreements requiring the protection of such Confidential Information. This Section 6 shall supersede any non-disclosure agreement by and between Customer and ProductBoard entered prior to the Effective Date that would purport to address the confidentiality of Confidential Information and such agreement shall have no further force or effect with respect to either Party's Confidential Information.

(b) *Compelled Disclosure.* If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

(c) *Return of Confidential Information.* At any time upon the request of the Disclosing Party, the Receiving Party will destroy all Confidential Information of the Disclosing Party, including all copies thereof and notes and other materials incorporating such Confidential Information, whether in physical or electronic form; provided, however, the Receiving Party shall not be required to return or destroy electronic copies that are automatically stored in accordance with Receiving Party's generally applicable backup policies and which are not reasonably accessible by the Receiving Party ("Backup Media"). All Backup Media shall remain subject to the confidentiality obligations set forth herein, notwithstanding the expiration or termination of this Agreement, so long as it remains undeleted.

(d) *Remedies.* If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information in breach of this Section 6, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the Parties that any other available remedies are inadequate.

7. Warranties; Disclaimers

(a) *Mutual Warranties.* Each Party represents and warrants that it has the legal power and authority to enter into this Agreement.

(b) *ProductBoard Warranties.* ProductBoard warrants to Customer that the Professional Services shall be performed by ProductBoard in a professional and workmanlike manner, and the Subscription Services purchased by Customer will, in all material respects, perform in accordance with the applicable portions of the Documentation. This warranty shall not apply to non-conformities, errors, or problems caused by acts within the control of Customer or any of its Users or End-Users, or arising from Customer's negligence or improper use of the Subscription Services, from unauthorized modifications made to the Subscription Services, from use of the Subscription Services in an unsupported operating environment or manner, or that arises from Customer's or any third party's software or systems (including Third Party Products).

(c) *Customer Warranties.* Customer warrants that (i) it will not use the Subscription Services for unlawful purposes or in a manner that infringes or otherwise violates the rights of any third party, (ii) it will, and will require that its Users, use the Services in compliance with applicable laws, and (iii) it will grant the rights and licenses needed by ProductBoard to perform under this Agreement and such grant will not violate or breach any third party terms or conditions.

(d) *Disclaimer.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BUT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (1) THE SERVICES ARE PROVIDED "AS-IS"; (2) NEITHER PARTY MAKES ANY ADDITIONAL WARRANTY, CONDITION, REPRESENTATION, UNDERTAKING OR GUARANTY OF ANY KIND TO THE OTHER PARTY, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, (3) EACH PARTY HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, CONDITIONS, REPRESENTATIONS, UNDERTAKINGS AND GUARANTIES, INCLUDING, WITHOUT LIMITATION, ANY WITH RESPECT TO TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, AND (4) PRODUCTBOARD'S LIABILITY UNDER ANY IMPLIED OR STATUTORY WARRANTY, CONDITION, REPRESENTATION, UNDERTAKING OR GUARANTY WHICH CANNOT BE LEGALLY EXCLUDED IS LIMITED IN RESPECT OF THE SERVICES TO SUPPLYING THE SERVICES AGAIN OR PAYING THE COST OF SUPPLYING THE SERVICES AGAIN. PRODUCTBOARD EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF ITS CUSTOMER'S OR USERS' USE OF THE SERVICES.

(e) *Beta Services.* ProductBoard may make Beta Services available to Customer at no charge, and Customer may choose to try such Beta Services in its sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms that will be presented to Customer. Beta Services are not considered "Subscription Services" under this Agreement for purposes of Section 7 (Warranties; Disclaimer) and Sections 8(a) (Indemnification by ProductBoard); however, all restrictions, ProductBoard's reservation of rights and Customer's obligations concerning the Subscription Service, and use of any Third Party Products shall apply equally to Customer's use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the

trial start date or the date otherwise specified in writing by ProductBoard. ProductBoard may discontinue Beta Services at any time in its sole discretion and may never make them generally available. Beta Services are provided “AS IS” with no express or implied warranty and are outside the scope of ProductBoard’s indemnification obligations.

8. Indemnification

(a) *Indemnification by ProductBoard.* ProductBoard will defend and pay Customer, its employees, directors and officers (the “Customer Indemnified Parties”) from and against any and all costs, damages and expenses (collectively, “Losses”), suffered or incurred by any Customer Indemnified Party, as a result of any claim brought by a third party (“Third Party Claim”) against a Customer Indemnified Party alleging that the use of the Subscription Services in accordance with the terms and conditions of this Agreement infringes any patent, copyright, trademark or trade secret right of such third party (an “Infringement Claim”). Without limiting the foregoing, in the event that any portion of the Subscription Services is likely to, in ProductBoard’s sole opinion, or does become the subject of an Infringement Claim, ProductBoard may, at its option and expense: (i) procure for Customer the right to continue using the allegedly infringing item, (ii) substitute a functionally equivalent non-infringing replacement for such item, or (iii) modify such item to make it non-infringing and functionally equivalent, or (iv) terminate the Agreement and any outstanding Order Forms and refund to customer prepaid unused Fees for the infringing items. ProductBoard shall have no liability for any Infringement Claim to the extent arising from (1) Customer’s use or supply to ProductBoard of any Customer Property; (2) use of the Subscription Services in combination with any software, hardware, network or system not supplied by ProductBoard if the alleged infringement relates to such combination; (3) any modification or alteration of the Subscription Services (other than by ProductBoard); or (4) Customer’s violation of applicable law or third party rights.

(b) *Indemnification by Customer.* Customer will defend and pay ProductBoard, its employees, directors and officers (the “ProductBoard Indemnified Parties”) from and against any and all Losses, suffered or incurred by any ProductBoard Indemnified Party, arising from any Third Party Claim against a ProductBoard Indemnified Party (i) alleging that any Customer Property or Customer’s use of the Services beyond the license granted in this Agreement infringes, violates or misappropriates any patent, copyright, trademark or trade secret right of any third party or (ii) arising from Customer’s breach of the Platform Guidelines.

(c) *Indemnification Conditions.* The Parties’ obligations under this Section 8 are contingent upon the indemnified party (i) giving prompt written notice to the indemnifying party of any claim subject to indemnification under this Section 8, (ii) giving the indemnifying party sole control of the defense or settlement of the claim, and (iii) cooperating in the investigation and defense of such claim(s). The indemnifying party shall not settle or consent to an adverse judgment in any such claim that adversely affects the rights or interests of the indemnified party without the prior express written consent of the indemnified party, which shall not be unreasonably withheld. The rights

and remedies set forth in this Section 8 are the sole obligations of the indemnifying party and exclusive remedies available to the indemnified party in the event of an applicable Third Party Claim.

9. Limitation of Liability

(a) *Limitation of Liability.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH SUCH CLAIM OR CAUSE OF ACTION AROSE ("LIABILITY CAP"). THE FOREGOING LIMITATION APPLIES EVEN IF A PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

(b) *Exclusion of Consequential and Related Damages.* TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOST PROFITS, LOSS OF USE OR DATA, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE FOR ANY LOSS, DAMAGE OR INCONVENIENCE SUFFERED BY THE OTHER PARTY OR BY ANY THIRD PERSON, TO THE EXTENT THAT SUCH LOSS, DAMAGE OR INCONVENIENCE IS CAUSED BY THE FAILURE OF THE OTHER PARTY TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

10. Term and Termination

(a) *Term of Agreement.* This Agreement commences on the Effective Date and shall remain in effect until terminated in accordance with Section 10(c).

(b) *Term of Subscriptions.* Customer's access to the purchased Subscription Services shall commence on the start date specified in the relevant Order Form and continue for the Subscription Term specified on such Order Form. At the expiration of each Subscription Term, the Subscription Term for all purchased Subscription Services will automatically renew for the same period as the renewing Subscription Term, unless either Party elects to not renew by notifying the other Party in writing at least 30 days before such renewal (or at anytime before the renewal date, if the expiring Order Form provides for a month-to-month subscription). ProductBoard may increase Fees at renewal by providing Customer with prior written notice of such increase. Any introductory or temporary discount offered in a previous Subscription Term is one-time only and does not apply for a renewal Subscription Term. For clarity, pricing for a

renewal Subscription Term will be based on ProductBoard's pricing in effect at the time of the applicable renewal.

(c) *Termination.* Either Party may terminate this Agreement and/or any Order Form by providing written notice to the other Party in the event the other Party materially breaches any of its duties, obligations or responsibilities under this Agreement and fails to: (i) cure such breach within thirty (30) days after receipt by the breaching Party of written notice specifying the breach, or (ii) if the breaching Party is incapable of curing such breach within thirty (30) days, provide the other Party with an acceptable plan for curing such breach within ten (10) days after receipt of such notice and thereafter curing such breach in accordance with such plan. In addition, a Party may terminate this Agreement by providing written notice to the other Party if there are no Order Forms in effect for more than thirty (30) days, continuously.

(d) *Effect of Termination.* Expiration or termination of one Order Form shall not affect any other Order Forms. In the event of termination of this Agreement, upon Customer's written request made within thirty (30) days after the effective date of termination, Customer shall be entitled to export the Customer Property to the extent provided for at <https://help.productboard.com/en/articles/360056354854-export-your-features-and-notes-into-csv> for up to ninety (90) days from the date such written request is received. After such ninety (90) day period, ProductBoard shall have no obligation to maintain or provide any Customer Property and may thereafter unless legally prohibited, delete all Customer Property in its possession.

(e) *Surviving Provisions.* The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 1, 3, 4, 6, 7(d), 8, 9, 10(d), 11, and the Platform Guidelines. Termination or expiration of this Agreement shall not affect any obligation accrued or arising prior to such termination or expiration.

11. Miscellaneous Provisions

(a) *Relationship.* This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties, and ProductBoard will be considered an independent contractor when performing any Services hereunder.

(b) *Customer Affiliates.* An Affiliate of Customer may purchase Services subject to the terms of this Agreement by executing Order Forms with ProductBoard hereunder. By entering into an Order Form hereunder, the Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

(c) *Acquired and Divested Businesses.* If Customer has purchased Subscription Services under an Order Form for an unlimited number of Users within the Customer's enterprise, a particular business unit or division or otherwise (an "ELA"), any entity or business unit acquired by Customer after the applicable Order Form date (an "Acquired Business"), including its employees, shall not be entitled to any Subscription Services

provided under such Order Form. In the event an Acquired Business had previously entered into an agreement with ProductBoard (a "Prior Agreement"), its new status as a Customer Affiliate shall not create (i) any entitlement on the part of Customer to terminate a Prior Agreement or any Order Forms, (ii) any obligation of ProductBoard to refund or waive monies paid or payable under either the Prior Agreement or any Order Form, or (iii) any obligation for ProductBoard to extend or apply any favorable pricing in such Prior Agreements to purchases made under any Order Forms or to subsequent purchases made under the Prior Agreement. If an entity or business unit ceases to be owned by Customer during the Subscription Term of any ELA (a "Divested Entity"), the Divested Entity shall not be entitled to any Services provided under such Order Form after the date on which it ceases to be owned or controlled by Customer without ProductBoard's prior written consent, which shall not be unreasonably withheld.

(d) *Entire Understanding.* This Agreement (including the DPA (if applicable) and all Exhibits and Order Forms, which are incorporated herein by reference) constitutes the entire agreement between the Parties as to its subject matter, and supersedes all prior proposals, marketing materials, negotiations and other written or oral communications between the Parties with respect to the subject matter of this Agreement. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form, the terms of such Order Form shall prevail. Notwithstanding any language to the contrary therein, all terms and conditions stated in any Customer purchase order or in any other ordering documentation (excluding Order Forms) are hereby rejected. Such terms will not be deemed incorporated into or form any part of this Agreement, and all such terms or conditions are null and void.

(e) *Modification; Waiver.* Except for ProductBoard's modification or update of the Documentation or the Subscription Service, or any policies as necessary to comply with applicable law, rules, regulations, no modification of this Agreement, and no waiver of any breach of this Agreement or right under this Agreement, is legally binding against the other Party unless in writing and signed or electronically accepted by both Parties.

(f) *Governing Law; Venue.* The parties hereto agree that any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity hereof or thereof, including the determination of the scope or applicability of this Agreement to arbitrate, shall be determined by final and binding arbitration in San Francisco, California (except for an action for interim equitable relief otherwise permitted under this Agreement and/or unless otherwise agreed by the parties), before a sole arbitrator, in accordance with the laws of the State of California for agreements made in and to be performed in that State. The arbitration shall be administered by JAMS (or its successor) pursuant to its Comprehensive Arbitration Rules and Procedures; provided, however, if the Parties mutually elect, the arbitration can be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures instead of its Comprehensive Arbitration Rules and Procedures. The arbitrator's decision shall be reduced to writing, signed by the arbitrator, and mailed to each of the parties and their legal counsel. All decisions of the arbitrator shall be final and binding. The arbitrator or a court of appropriate jurisdiction may issue a writ of

execution to enforce the arbitrator's judgment. Judgment may be entered upon such a decision in accordance with applicable law in any court having jurisdiction thereof. The Parties will pay their own costs (including, without limitation, attorneys' fees) and expenses in connection with such arbitration.

(g) *Assignment*. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other Party; provided, however, a Party may assign this Agreement in its entirety, together with all rights and obligations hereunder, without consent of the other Party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets related to this Agreement. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

(h) *Notices*. Except for notification methods expressly permitted under the Platform Guidelines, all notices under this Agreement to Customer shall be in writing and shall be delivered to the addresses first set forth in the Order Form(s). Notices to ProductBoard shall be addressed to: ProductBoard, Inc., Attn: Legal Department, 333 Bush St., 20th Floor, San Francisco, CA 94104, with a copy to legal@productboard.com. Either Party may change its address for notice by giving notice of such address change in the manner provided herein. All communications and notices to be made or given pursuant to this Agreement shall be in the English language.

(i) *Anti-Corruption*. Customer acknowledges and agrees that it has not received or been offered any illegal bribe, kickback, payment, gift or thing of value from any ProductBoard employees, agent or representative in connection with this Agreement, other than reasonable gifts and entertainment provided in the ordinary course of business. Customer will promptly notify ProductBoard if it offers or receives any such improper payment or transfer in connection with this Agreement.

(j) *Force Majeure*. Except for performance of a payment obligation, neither Party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, epidemics, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. In the event any of the foregoing events results in ProductBoard not being able to provide the Subscription Services for a period of more than thirty (30) days, then either Party may terminate the Agreement upon written notice to the other Party.

(k) *Export Control*. The Subscription Service and related technical data and services (collectively, "Controlled Technology") may be subject to the import and export laws of the United States, specifically the U.S. Export Administration Regulations (EAR), and

the laws of any country where Controlled Technology is imported or re-exported. Customer agrees to comply with all applicable export and re-export control laws and regulations and will not export or re-export any Controlled Technology in contravention to U.S. law, nor to any prohibited country, entity, or person for which an export license or other governmental approval is required. All Controlled Technology is generally prohibited for export or re-export to Cuba, North Korea, Iran, Syria, Sudan, and any other country subject to relevant trade sanctions.

(l) *Severability*. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

(m) *Reseller Agreements*. To the extent Customer purchases Services from or through an authorized partner or reseller ("Reseller"), Customer's and its Users' access to and use of the Services will be governed by this Agreement, subject to this Section 11(m). Instead of Customer paying Fees to ProductBoard, Customer will pay applicable amounts to the Reseller as agreed upon between Customer and the Reseller and Reseller will pay ProductBoard the Fees set forth in the applicable Reseller Order (defined below). Customer's order details (e.g., scope of use, Subscription Term, and Fees) will be as stated in the order form placed by Reseller with ProductBoard on Customer's behalf ("Reseller Order"). The Reseller is responsible for the accuracy of such Reseller Order. ProductBoard may suspend or terminate Customer's rights to access and use the Services if it does not receive the corresponding payment from the Reseller. If Customer is entitled to a refund under this Agreement, ProductBoard will refund any applicable Fees to the Reseller and the Reseller will be solely responsible for refunding the appropriate amounts to Customer, unless otherwise specified. This Agreement is directly between ProductBoard and Customer and governs all use of the Services by Customer and its Users. Resellers are not authorized to modify this Agreement or make any promises, representations, warranties, or commitments on ProductBoard's behalf, and ProductBoard is not bound by any obligations to Customer other than as set forth in this Agreement. ProductBoard is not party to (or responsible under) any separate agreement between Customer and Reseller and is not responsible for the Reseller's acts, omissions, products or services. The amount paid or payable by the Reseller to ProductBoard for Customer's use of the applicable Services under this Agreement will be deemed the amount paid by and due from Customer to ProductBoard under this Agreement for purposes of Section 9(a).

To view the previous version of our Master Subscription and Professional Services Agreement, please click [here](#).