

Five – Terms of Service

Last Amendment 02/12/2024

These Five – Terms of Service (the “Agreement”) are between Five International Pty Ltd, a company registered in Australia with company number 651 443 604 (“Five”) and the entity or person agreeing to these terms (“Customer”).

By clicking the box below, completing the registration process and using the Services, you are stating that you have the authority to bind the Customer to this Agreement and that the Customer agrees to be bound by this Agreement and the Five Privacy Policy (<https://five.co/privacy-policy/>) (the “Privacy Policy”).

1. Provision of the Services

1.1. Services Use. Subject to this Agreement, during the Term, Customer and its Affiliates may: (a) use the Services, (b) integrate the Services into any Application that has material value independent of the Services, and (c) use any Software provided by Five as part of the Services. Customer may not sublicense or transfer these rights except as permitted under Section 14.2 of the Agreement.

1.2. Facilities. All facilities used to store and process an Application, Application Data and Customer Data will adhere to industry security standards no less protective than the security standards at facilities where Five processes and stores its own information of a similar type. Five has implemented at least industry standard systems and procedures to (i) ensure the security and confidentiality of the Application(s), Application Data and Customer Data, (ii) protect against anticipated threats or hazards to the security or integrity of the Application(s), Application Data and Customer Data, and (iii) protect against unauthorized access to or use of the Application(s), Application Data and Customer Data.

1.3. Data License and Location. Customer hereby grants Five an irrevocable, non-exclusive, royalty-free, fully-paid, worldwide license to reproduce, distribute, perform, prepare and otherwise use the Customer Data in connection with the Services and as permitted by this Agreement. Five may process and store the Customer Data anywhere Five or its agents maintain facilities. By using the Services, Customer consents to this processing and storage of Customer Data.

1.4. Accounts. To register for the Services and receive an Account, Customer must provide Five with current, complete and accurate information as prompted by the registration form, including a valid e-mail address. Customer must have an Account to use the Services, and is responsible for the information it provides to create the Account, the security of its passwords for the Account, and for any use of its Account. If Customer becomes aware of any unauthorized use of its password or its Account, Customer will notify Five as promptly as possible. Five has no obligation to provide Customer multiple Accounts. Customer is solely responsible for any and all activities that occur under its Account and for use and disclosure of any Customer Data created, collected or maintained in its Account whether such activities or use is conducted by Customer or a third party. Customer agrees to notify Five immediately upon learning of any unauthorized use of its Account or any other breach of security.

1.5. New Applications and Services. Five may in its absolute discretion: (i) make new applications, tools, features or functionality available from time to time through the Services and (ii) add new services to the “Services” definition from time to time (by adding them at the URL set forth under that definition), the use of which may be contingent upon Customer’s agreement to additional terms.

1.6. Modifications.

- (a) To the Services. Five may make in its absolute discretion updates to the Services from time to time. Modifications may cause downtime or delays from time to time.
- (b) To the Agreement. Five may make changes to this Agreement, including pricing (and any linked documents) from time to time by giving the customer at least 14 days notification of any such changes. Unless otherwise noted by Five, material changes to the Agreement will become effective 30 days after they are notified to the customer, except if the changes apply to new functionality in which case they will be effective immediately. Price changes will not be applied retroactively or to existing agreements. Customer will only be subject to the new pricing at the beginning of a new Fee Accrual Period, at which time Customer can choose to continue or discontinue using the Service, subject to Section 8.3 of this Agreement. If Customer does not agree to the revised Agreement, Customer must stop using the Services. Five will post any modification to this Agreement to its Website. In the event that a change to this Agreement would be in direct conflict with any of the terms and conditions set forth in a written Addendum entered into between Five and Customer, the Addendum will have priority over such change.
- (c) To the HIPAA Business Associate Agreement, Regional Data Processing Addendum and other written Addendum to this Agreement. For Customers that have entered into a written HIPAA Business Associate Agreement, Regional Data Processing Addendum and other written Addendum to this Agreement with Five, Five will only make changes to such agreement(s) in a written amendment signed by Customer and Five, unless otherwise specified in such Addendum.

2. Payment Terms

2.1. Trial & Free Accounts.

- (a) From time to time Five may offer a trial or free download of the Services to prospective customers. Five reserves the right to discontinue the offering of a trial or free download of the Services without notice. Trials or free downloads are meant to let prospective customers experience the Services before committing to it. Use of a trial or free downloads of the Services for anything other than the above is prohibited. Furthermore, Customer agrees that it is not allowed to (i) open more than one trial Account or download more than one copy of Five, and/or (ii) upon termination of its free trial Account open a new trial Account.
- (b) A trial Account may require payment information at the time of sign up. This type of trial Account automatically converts to a regular paying Account at the end of the trial period. If the trial Account is not closed within the trial period, regular Fees will apply immediately thereafter.
- (c) Trial Accounts or free downloads are time- or feature-limited, and it is under Five's sole discretion to specify and change their conditions at any time without prior notice to Customers. At the end of a trial, Five reserves the right to discontinue the Account and delete all Customer Data, Application Data and Account information without notice except to the extent prohibited by applicable law or as otherwise agreed to by Five.

2.2. Fees. The Fees for the Services are as posted on the Five Website, unless otherwise stated on a valid written or electronic purchase order (which has been accepted by Five in writing) or any other agreement between the parties; provided, however, that any additional or conflicting terms contained in any purchase order, standardized form or correspondence, which are in addition to or conflict with this Agreement, shall be null and void unless such terms and conditions are contained in an amendment to this Agreement duly executed by both parties hereto.

2.3. Online Billing. Prior to the beginning of the applicable Fee Accrual Period, Five will issue an electronic bill to Customer for all subscription Fees to accrue during such period. Fees are payable latest on the day of commencement of the Fee Accrual Period and are recurring in nature, unless

cancelled in accordance with Section 8. Payments made via wire transfer must include the bank information provided by Five. Five will continue to debit the subscription Fees from Customer's Account on the first day of each subsequent Fee Accrual Period. By choosing a recurring payment plan, Customer acknowledges that the subscription has an initial and recurring payment feature and accepts responsibility for all recurring charges prior to cancellation of the subscription. Hosting or end-user Fees attributable to Customer's use of the Services are payable by Customer in addition to the subscription Fees.

- 2.4. Taxes.** Customer is responsible for any Taxes, and Customer will pay Five for the Services without any reduction for Taxes. If Five is obligated to collect or pay Taxes, the Taxes will be billed to Customer, unless Customer provides Five with a timely and valid tax exemption certificate authorized by the appropriate taxing authority. In some states the sales tax is due on the total purchase price at the time of sale and must be billed and collected at the time of the sale. If Customer is required by law to withhold any Taxes from its payments to Five, Customer must provide Five with an official tax receipt or other appropriate documentation to support such withholding.
- 2.5. Bill Disputes & Refunds.** Any bill disputes must be submitted within fifteen (15) days of the billing date. If the parties determine that certain billing inaccuracies are attributable to Five, Five will not issue a corrected bill, but will instead issue a credit memo specifying the incorrect amount in the affected invoice. If the disputed bill has not yet been paid, Five will apply the credit memo amount to the disputed bill and Customer will be responsible for paying the resulting net balance due on that bill. If the disputed bill has been paid, Customer may choose to apply for a refund instead of a credit, such refund will not be unreasonably withheld by Five. To the fullest extent permitted by law, Customer waives all claims relating to Fees unless claimed within sixty days after charged (this does not affect any Customer rights with its credit card issuer). Nothing in this Agreement obligates Five to extend credit to any party.
- 2.6. Delinquent Payments; Suspension.** Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) from the payment due date until paid in full. Customer will be responsible for all reasonable expenses (including attorneys' fees) incurred by Five in collecting such delinquent amounts. If Customer is late on payment for the Services, Five may suspend the Services (in accordance with Section 4) or terminate the Agreement for breach pursuant to Section 8.2; provided that re-activation of a suspended Account may be subject (in Five's sole discretion) to additional fees.
- 2.7. No Purchase Order Number Required.** For clarity, Customer is obligated to pay all applicable Fees without any requirement for Five to provide a purchase order number on Five's bill (or otherwise).
- 2.8. Automatic recurring billing.** Customer's subscription to the Services will continue to renew indefinitely by subsequent Fee Accrual Periods, unless Customer notifies Five of cancellation in accordance with Section 8.

3. Customer Obligations

- 3.1. Compliance with applicable laws.** Customer agrees that it will comply with all laws and regulations applicable to its use of the Services, including without limitation all applicable anti-corruption laws, anti-money laundering laws, antitrust laws, economic sanctions laws, export control laws, trade sanction laws, data protection and data privacy laws, and modern slavery and human trafficking laws.
- 3.2. Acceptable Use Policy (the "AUP").** Customer agrees not to use, or allow access to, the Services for the purposes of

- (a) spam or sending any unsolicited commercial messages; and
- (b) disrupting the performance of Five servers or causing server-wide outages; and
- (c) advertising, transmitting, storing, posting, displaying, or otherwise making available materials that
 - (i) violate any law, regulation, or other provision having the force of law, either intentionally or unintentionally;
 - (ii) impersonate any person or entity or falsely state or otherwise misrepresent your affiliation with a person or entity;
 - (iii) infringe or misappropriate the Intellectual Property Rights of others;
 - (iv) violate privacy, publicity, or other personal rights of others;
 - (v) falsify the origin of an email, either by forging the sender's address or email header, or otherwise;
 - (vi) are of adult nature, pornographic, or harmful to minors;
 - (vii) contain the images of children or disclose personally identifiable information belonging to children;
 - (viii) are unlawful, harmful, vulgar, obscene, threatening, abusive, harassing, tortious, unlawful, or libelous; and/or
 - (ix) are viruses, worms, so-called trojan horses, or other destructive codes, files, or programs, or information regarding the creation of such material; and
- (d) other than for the purpose for which the Services are designed, including any illegal or fraudulent activity or facilitating such activity.

If Five determines Customer has violated the terms of this AUP and Customer has not corrected such violation within 7 days, that determination, made in Five's sole and absolute discretion, constitutes grounds for termination of Customer's Account without notice to Customer or penalty to Five.

3.3. Compliance. Customer is solely responsible for its Applications, Application Data and Customer Data and for making sure its Applications, Application Data and Customer Data comply with the AUP. Five reserves the right to review the Application, Application Data and Customer Data for compliance with the AUP. Customer is responsible for ensuring all Customer End Users comply with Customer's obligations under this Agreement, including the AUP, these Service Specific Terms, and the restrictions in Sections 3.4 and 3.7 below.

3.4. Privacy. Customer represents that Customer is the owner or otherwise has authority and consent under applicable laws necessary to permit use, disclosure, processing and storage of Application Data and Customer Data under this Agreement. Customer is solely responsible for access to, use and disclosure of Application Data and Customer Data, whether by Customer, Customer End Users or third parties, and Five disclaims any and all responsibility associated with such access, use and disclosure. Customer will comply with all applicable laws with respect to use, disclosure, processing and storage of Application Data and Customer Data under this Agreement.

3.5. Restrictions

- (a) Customer will not, and will not allow third parties under its Control to: (a) copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract any or all of the source code of the Services (subject to Section 3.6 below and except to the extent such restriction is expressly prohibited by applicable law); (b) use the Services for High Risk Activities; (c) sublicense, resell, or distribute any or all of the Services separate from any integrated Application; (d) create multiple Applications, Accounts to simulate or act as a single Application or Account (respectively) or otherwise access the Services in a manner intended to avoid incurring Fees; (e) process or store any Application Data or Customer Data that is subject to the International Traffic in Arms Regulations

maintained by the U.S. Department of State; (f) circumvent or manipulate Five's fee structure, billing process, or other fees owed to Five or (g) interfere with or disrupt the integrity or performance of the Services or the data contained therein.

- (b) Unless otherwise specified in writing by Five, Five does not intend uses of the Services to create obligations under the HIPAA and its related rules and regulations, as amended, the European Union Directive 95/46/EC (the Data Protection Act), as amended by the GDPR, and their related rules and regulations, or any other similar local, national, regional or international data protection laws (collectively, "Data Protection Laws") and makes no representations that the Services satisfy such requirements for Customer. Because Five may not be able to independently determine whether Customer, Application Data or Customer Data may be subject to the Data Protection Laws, Customer must: (i) notify and obtain Five's prior consent to use the Services where subject to such Data Protection Laws; and (ii) enter into a Regional Data Processing Addendum, or other applicable written addendum with Five, as applicable. Customer will not use the Services for any purpose or in any manner involving data which is subject to such Data Protection Laws (including without limitation if Customer is or becomes a "covered entity" or "business associate" as defined under HIPAA) unless Customer has received such prior written consent to such use from Five and entered into a separate written addendum with Five with respect to such as required under this section. Failure to comply with this section may result in termination of Customer's Account and this Agreement in Five's sole discretion.

3.6. Third Party Components. Third party components (which may include open source software) of the Services may be subject to separate license agreements. To the limited extent a third party license expressly supersedes this Agreement, that third party license governs Customer's use of that third party component.

3.7. Documentation. Five may provide Documentation for Customer's use of the Services. The Documentation may specify restrictions (e.g. attribution or HTML restrictions) on how the Applications may be built or the Services may be used and Customer will comply with any such restrictions specified.

3.8. Copyright Policy. Five cannot determine whether something is being used legally or not without input from copyright holders. Five responds to notices of alleged copyright infringement and terminates Accounts of repeat infringers according to applicable copyright laws. If Customer believes there is or has been a violation of Customer's or Customer End Users' copyrights and wants to notify Five, Customer can do so by contacting Five via email: legal@five.co.

3.9. Fair Use. The Services are provided as a managed cloud service to the Customer. Many of Five's plans do not impose fixed limits on the usage of certain cloud resources (e.g. data transfer, triggered actions, API profiles). These plans are designed to offer flexible and straightforward pricing, allowing Customers to maximize their use of the Services without undue restrictions. However, usage that significantly exceeds what Five deems as "Fair Use" may warrant intervention.

- (a) Fair Use is assessed based on several factors, including but not limited to the account's size, resource consumption, duration of the relationship, level of commitment, industry norms, geographic region, and engagement levels. For example, Customers who engage in disproportionately high resource consumption, such as publishing high-traffic pages or executing excessive API calls, may need to transition to a custom plan that aligns with their usage patterns.
- (b) If Five determines that a Customer's use intentionally or unintentionally impairs the security, performance, or integrity of the Services—or negatively impacts other users—Five reserves the right to temporarily suspend, restrict, or limit the Customer's access until the issue is resolved.

- (c) Where feasible, Five will make reasonable efforts to notify the Customer in advance or as soon as practicable following such action, although prior notice may not always be possible.

4. Suspension and Removals.

- 4.1. Suspension/Removals.** If Customer becomes aware that any Application, Application Data or Customer Data violates the AUP or this Agreement, Customer will immediately suspend the Application and/or remove the relevant Application Data and / or Customer Data (as applicable). If Customer fails to suspend or remove as noted in the prior sentence, Five may specifically request that Customer do so, although prior notice before a suspension or removal may not always be possible. If Customer fails to comply with Five's request to do so within twenty-four hours, then Five may disable the Application, and/or disable the Account (as may be applicable) until such violation is corrected except to the extent prohibited by applicable law.
- 4.2. Emergency Security Issues.** Despite the foregoing, if there is an Emergency Security Issue, then Five may automatically suspend the offending Application and/or Account.

5. Intellectual Property Rights; Use of Customer Data; Feedback; Proprietary Notices.

- 5.1. Intellectual Property Rights.** Except as expressly set forth in this Agreement, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data, Application Data and the Application (if applicable), and Five owns all Intellectual Property Rights in the Services and Software.
- 5.2. Use of Data.** Five may collect, process, store, use and disclose Customer Data and Personally Identifiable Information (as defined in the Privacy Policy) in connection with providing the Services and as described more specifically in the Privacy Policy (collectively, "Five's Use of Data"). Customer hereby acknowledges and consents to Five's Use of Data, including access to Customer's Account, as necessary for Five to provide the Services. Customer is solely responsible for notifying Five in the event that any Customer Data created, collected, maintained, used or disclosed in connection with Customer's Account is subject to Data Protection Laws. Customer agrees that Customer will not disclose any such data to Five or create, collect, maintain, use or disclose any such data in connection with Customer's Account unless or until Customer and Five enter into a written HIPAA Business Associate Agreement, Regional Data Processing Addendum or other written addendum as may be applicable. Any Customer Data will thereafter be accessed, used and disclosed by Five consistent with the terms and conditions of such addendum. To the extent a use or disclosure of Customer Data permitted under this Agreement would not be permitted under the terms and conditions of such addendum, the addendum will have priority with respect to such use or disclosure. Failure to comply with the terms and conditions of this paragraph may result in suspension or termination of Customer's Account in Five's sole discretion.
- 5.3. Customer Feedback.** If Customer provides Five Feedback about the Services, then Five may use that information without obligation to Customer, and Customer hereby irrevocably assigns to Five all right, title, and interest in that Feedback.
- 5.4. Proprietary Notices.** Customer shall not remove, hide or otherwise alter any proprietary notices or labels included with the Software, including but not limited to any labels or links displayed and/or included with the Software.

6. Technical Support Services.

6.1. By Customer. Customer is responsible for technical support of its Applications.

6.2. By Five. From time to time, Five support staff may access your Account in order to maintain or improve service, including without limitation, assisting you with technical or billing issues. Subject to payment of applicable support Fees, Five will provide Support to Customer during the Term in accordance with the Support Guidelines. Certain Support features are only included with a minimum Services package level as described in the “Fees” definition below.

7. Confidential Information

7.1. Obligations. The recipient will not disclose the Confidential Information, except to Affiliates, employees, agents or professional advisors who need to know it and who have agreed in writing (or in the case of professional advisors are otherwise bound) to keep it confidential. The recipient will ensure that those people and entities use the received Confidential Information only to exercise rights and fulfill obligations under this Agreement, while using reasonable care to keep it confidential.

7.2. Required Disclosure. Notwithstanding any provision to the contrary in this Agreement, the recipient may also disclose Confidential Information to the extent required by applicable Legal Process; provided that the recipient uses commercially reasonable efforts to: (i) promptly notify the other party of such disclosure before disclosing; and (ii) comply with the other party's reasonable requests regarding its efforts to oppose the disclosure. Notwithstanding the foregoing, subsections (i) and (ii) above will not apply if the recipient determines that complying with (i) and (ii) could: (a) result in a violation of Legal Process; (b) obstruct a governmental investigation; and/or (c) lead to death or serious physical harm to an individual. As between the parties, Customer is responsible for responding to all third party requests concerning its use and Customer End Users' use of the Services. This Section 7.2 is not intended to and shall not authorize disclosure of protected health information in any manner not permitted by the HIPAA Business Associate Agreement, as applicable.

8. Term and Termination.

8.1. Agreement Term. The “Term” of this Agreement will begin on the Effective Date and continue until the Agreement is terminated as set forth in Section 8 of this Agreement.

8.2. Termination for Breach. Either party may terminate this Agreement for breach if: (i) the other party is in material breach of the Agreement and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of this Agreement more than two times notwithstanding any cure of such breaches.

8.3. Customer's Cancellation. Customer may cancel a subscription to the Services by giving notice of non-renewal to Five at least 30 (thirty) days before the end of the relevant billing cycle. Customer's subscription will end on the then current Fee Accrual Period, and customer will be fully charged for this billing cycle. Upon termination, Customer must cease use of the applicable Services.

8.4. Effect of Termination. If the Agreement is terminated, then: (i) the rights granted by one party to the other will immediately cease; (ii) any applicable refunds shall be granted in accordance with the refund policy set forth in these terms; (iii) Customer will retrieve any Customer Data and Application Data; and (iv) each party will use commercially reasonable efforts to destroy all

Confidential Information of the other party. Except as otherwise may be provided for in the HIPAA Business Associate Agreement, as applicable, Customer remains solely responsible for making and retaining any copies of Customer Data and Application Data which Customer may require prior to deletion, and Five disclaims any and all responsibility associated with such deleted Customer Data and Application Data. Customer will immediately thereafter discontinue use of and delete Customer's Account.

9. Publicity

Customer is permitted to state publicly that it is a customer of the Services, consistent with the Trademark Guidelines. If Customer wants to display Five Brand Features in connection with its use of the Services, Customer must obtain written permission from Five. Five may include Customer's name or Brand Features in a list of Five customers, online or in promotional materials. Five may also reference Customer as a customer of the Services and, subject to Customer consent, utilize Customer testimonials and/or Brand Features for advertising, marketing and related purposes. Neither party needs approval if it is repeating a public statement that is substantially similar to a previously approved public statement. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section 9 with written notice to the other party and a reasonable period to stop the use.

10. Representations and Warranties

Each party represents and warrants that it has full power and authority to enter into the Agreement.

11. Disclaimer

EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FIVE AND ITS SUPPLIERS DO NOT MAKE ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. FIVE AND ITS SUPPLIERS ARE NOT RESPONSIBLE OR LIABLE FOR THE DELETION OF OR FAILURE TO STORE ANY CUSTOMER DATA OR APPLICATION DATA AND OTHER COMMUNICATIONS MAINTAINED OR TRANSMITTED THROUGH USE OF THE SERVICES. CUSTOMER IS SOLELY RESPONSIBLE FOR SECURING AND BACKING UP ITS APPLICATION, PROJECT, APPLICATION DATA AND CUSTOMER DATA. NEITHER FIVE, NOR ITS SUPPLIERS, WARRANTS THAT THE OPERATION OF THE SOFTWARE OR THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED. NEITHER THE SOFTWARE NOR THE SERVICES ARE DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES.

12. Limitation of Liability

12.1. Limitation on Indirect Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR FIVE'S SUPPLIERS, WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES, PROFITS, SAVINGS, OR GOODWILL OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

12.2. Limitation on Amount of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY, NOR FIVE'S SUPPLIERS, MAY BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CUSTOMER TO FIVE UNDER THIS AGREEMENT DURING THE TWELVE MONTHS, EXCLUDING HOSTING FEES (IF ANY) PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

13. Indemnification

13.1. By Customer. Unless prohibited by applicable law, Customer will defend and indemnify Five and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from: (i) any Application, Application Data, Customer Data or Customer Brand Features; or (ii) Customer's, or Customer End Users', use of the Services in violation of the AUP or this Agreement.

13.2. By Five. Five will defend and indemnify Customer and its Affiliates against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising solely from an Allegation that use of (Five's technology used to provide the Services (excluding any open source software) infringes or misappropriates the third party's patent, copyright, trade secret, or trademark.

13.3. Exclusions. This Section 13 will not apply to the extent the underlying Allegation arises from:

- (a) the indemnified party's breach of this Agreement;
- (b) modifications to the indemnifying party's technology or Brand Features by anyone other than the indemnifying party;
- (c) combination of the indemnifying party's technology or Brand Features with materials not provided by the indemnifying party; or
- (d) use of non-current or unsupported versions of the Services or Brand Features.

13.4. Conditions. Sections 13.1 and 13.2 will apply to the extent:

- (a) The indemnified party has promptly notified the indemnifying party in writing of any Allegation(s) that preceded the Third-Party Legal Proceeding and cooperates reasonably with the indemnifying party to resolve the Allegation(s) and Third-Party Legal Proceeding. If breach of this Section 13.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 13.1 or 13.2 (as applicable) will be reduced in proportion to the prejudice.
- (b) The indemnified party tenders sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

13.5. Remedies.

- (a) If Five reasonably believes the Services might infringe a third party's Intellectual Property Rights, then Five may, at its sole option and expense: (a) procure the right for Customer to continue using the Services; (b) modify the Services to make them non-infringing without materially reducing their functionality; or (c) replace the Services with a non-infringing, functionally equivalent alternative.
- (b) If Five does not believe the remedies in Section 13.5(a) are commercially reasonable, then Five may suspend or terminate Customer's use of the impacted Services.
- (c) Sole Rights and Obligations. Without affecting either party's termination rights, this Section 13 states the parties' only rights and obligations under this Agreement for any third party's Intellectual Property Rights Allegations and Third-Party Legal Proceedings.

14. Miscellaneous

- 14.1. Notices.** All notices must be in writing and in English, and addressed to the other party's legal department and primary point of contact. The email address for notices being sent to Five is legal@five.co. Notice will be treated as given on receipt as verified by written or automated receipt or by electronic log (as applicable).
- 14.2. Assignment.** Neither party may assign any part of this Agreement without the written consent of the other, except to an Affiliate where: (a) the assignee has agreed in writing to be bound by the terms of this Agreement; (b) the assigning party remains liable for obligations under the Agreement if the assignee defaults on them; and (c) the assigning party has notified the other party of the assignment. Any other attempt to assign is void. Notwithstanding the foregoing, Five may assign these terms without Customer's consent to an acquirer of its business or a successor by merger.
- 14.3. Force Majeure.** Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.
- 14.4. No Agency.** This Agreement does not create any agency, partnership or joint venture between the parties.
- 14.5. No Waiver.** Neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this Agreement.
- 14.6. Severability.** If any term (or part of a term) of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.
- 14.7. No Third-Party Beneficiaries.** This Agreement does not confer any benefits on any third party unless it expressly states that it does.
- 14.8. Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.
- 14.9. Arbitration.** All claims arising out of or relating to this Agreement or the Services shall be determined by arbitration. Either party may give notice to the other party of the existence of a dispute and unless the dispute is settled between the parties within five (5) Business Days after the other party receives notice of the dispute, the dispute shall be referred to arbitration. The arbitrator shall be the nominee of the President of the Queensland Law Society. The arbitration shall be conducted in accordance with the Rules for the Conduct of Commercial Arbitrations of the Institute of Arbitrators Australia and, subject to those Rules, in accordance with the provisions of the Commercial Arbitration Act 1990 (Queensland).
- 14.10. Governing Law.** This agreement shall be governed by and construed in accordance with the laws of Queensland. The parties each irrevocably and unconditionally submit to the non exclusive jurisdiction of the courts of Queensland whether State or Federal and each waives any immunity or any objection it may have to any action in those courts and to a claim that any action has been brought in an inconvenient forum or to those courts not having jurisdiction.
- 14.11. Amendments.** Except as set forth in Section 1.6(b) or (c), any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.
- 14.12. Survival.** The following sections will survive expiration or termination of this Agreement: 2, 3, 5, 7, 8.4, 11, 12, 13, and 14.
- 14.13. Entire Agreement.** This Agreement, including any HIPAA Business Associate Agreement, Regional Data Processing Addendum, and other written addendum, as applicable, sets out all terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation or warranty

(whether made negligently or innocently), except those expressly set out in this Agreement. The terms located at a URL referenced in this Agreement and the Documentation are incorporated by reference into the Agreement. After the Effective Date, Five may provide an updated URL in place of any URL in this Agreement.

14.14. Conflicting Terms. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Order, the Agreement, and the terms at any URL.

14.15. Definitions.

“Account” means Customer’s Five account.

“Affiliate” means any entity that directly or indirectly Controls, is Controlled by, or is under common Control with a party.

“Allegation” means an unaffiliated third party’s allegation.

“Application(s)” means any web or other application Customer creates using the Services, including any source code written by Customer to be used with the Services. For the avoidance of doubt, any Intellectual Property Rights in Application(s) are owned by the Customer.

“Application Data” means all data that a customer of Five enters into any application that a customer builds on Five software.

- If a customer chooses to have Five host their instance of the Five software, the latest terms at <https://five.co/termsofservice/TermsofService.pdf> must apply, and this governs Five access to and use of Application Data.
- If a customer self-hosts the Five software, the base software supplied by Five, only sends Application Data to the web browsers to authorised users, where the authorisation credentials are configured and managed by the customer.
- Additionally, developers can configure integrations with the Five software, to import Application Data into Five from other source systems and/or to export Application Data from Five out to other target systems. The developers are responsible for ensuring such integrations have been configured in a secure manner.
- Five has no access to any Application Data of any customer hosting their own instance(s) of the Five software, unless a customer explicitly grants Five access rights to the environment where the customer is self-hosting the Five software platform.

“Brand Features” means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

“Builders” means third-party service providers which can offer services and deliverables related to the Software, Application and Services and which are engaged directly by Customer independent from this Agreement.

“Confidential Information” means information that one party (or an Affiliate) discloses to the other party under this Agreement, and which is marked as confidential or would normally under the circumstances be considered confidential information. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data and Application Data is considered Customer’s Confidential Information.

“Control” means control of greater than fifty percent of the voting rights or equity interests of a party.

“Customer Data” means all data that Five collects to manage contracts between Five and its customers, and to provide support to customers in their use of software from Five. Five delivers support to each customer, interchangeably from all its offices across all countries, unless an explicit agreement, signed by both Five and a customer is put in place. For the purposes of contract management and customer support, Customer Data is available (and stored in) each country where Five maintains an office. Five maintains its list of office locations at <https://five.co/about-five/#locations>. Customer Data does not include Application Data as defined above.

“Customer End Users” means the individuals that the Customer permits to use the Application, including any Builders, as applicable.

“Documentation” means the Five documentation (as may be updated from time to time) in the form generally made available by Five to its customers for use through its Website.

“Emergency Security Issue” means either: (a) Customer’s or Customer End Users’ use of the Services in violation of the AUP, which could disrupt: (i) the Services; (ii) other customers’ or their customer end users’ use of the Services; or (iii) the Five network or servers used to provide the Services; or (b) unauthorized third party access to the Services.

“Fee Accrual Period” means one year (or portion thereof following the free trial period (if any)).

“Feedback” means feedback or suggestions about the Services provided to Five by Customer.

“Fees” means the applicable fees for each Service and any applicable Taxes. The Fees for each Service are set forth on the Five Website.

“GDPR” is the European Union General Data Protection Regulation of May 25th, 2018.

“High Risk Activities” means uses such as the operation of nuclear facilities, air traffic control, emergency response or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act, and their related rules and regulations.

“Indemnified Liabilities” means any (i) settlement amounts approved by the indemnifying party; and (ii) damages and costs finally awarded against the indemnified party and its Affiliates by a court of competent jurisdiction.

“Intellectual Property Rights” means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.

“Legal Process” means a data disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.

“Order” means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between Customer and Five from time to time. Orders shall be deemed incorporated herein by reference. The term “Order” specifically excludes any preprinted terms on Customer’s purchase order or other terms on a purchase order that are additional to or inconsistent with the terms of this Agreement.

“Service Specific Terms” means the terms specific to one or more Services (as may be updated from time to time) set forth on the Five Website.

“Services” means the services that Five offers.

“Software” means any downloadable tools, software development kits or other such proprietary computer software provided by Five in connection with the Services, which may be accessed by Customer, and any updates Five may make to such Software from time to time.

“Support” means the technical support service provided by Five to the administrators under the Support Guidelines.

“Support Guidelines” means Five’s technical support services guidelines then in effect for the Services (as may be updated from time to time).

“Taxes” means any duties, customs fees, or taxes (other than Five’s income tax) associated with the purchase of the Services, including any related penalties or interest.

“Third-Party Legal Proceeding” means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any appellate proceeding).

“Trademark Guidelines” means Five’s guidelines for use of Five Brand Features.

“Website” means five.co, five.dev, five.net, five.org or any other site operated by Five in connection with the Services.