

## ENTERPRISE SERVICE AGREEMENT

Last updated: August 28, 2023

**PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE SERVICE. IF YOU ARE ACCEPTING OR AGREEING TO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ACT ON BEHALF OF AND BIND THAT ENTITY TO THIS AGREEMENT. THIS AGREEMENT REQUIRES YOU TO ARBITRATE ANY DISPUTES YOU HAVE WITH US.**

This Enterprise Service Agreement (the “**Agreement**”) governs the individual, company and/or organizational (collectively, “**Client**”) purchase and use of the Service provided by Goody Technologies, Inc. (“**Goody**”). By agreeing to this Agreement, Client also agrees to be bound by the [Terms of Use](#).

### 1. **Definitions.**

1.1. “**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Service.

1.2. “**Client Data**” means all information uploaded, submitted or transmitted to or through the Service by or on behalf of Client, excluding Goody Data.

1.3. “**Effective Date**” means the date Client signs up for the Starter Plan or the “Start Date” set forth in an Order Form (if applicable). If Client upgrades to a Paid Plan, the Effective Date will be amended to be the date of any such upgrade.

1.4. “**Gift Swapping**” means that a recipient of a gift has the option to change the gift for any other gift available on Goody that is of equal or lesser value to the original gift received by recipient.

1.5. “**Goody Data**” means information collected or generated by or on behalf of Goody for purposes of providing, measuring or improving Goody’s products and services, including for benchmarking performance, or preparing statistics or system metrics, and all information developed or derived from its provision of the Service or rendering of the Professional Services, including any information derived from Client Data or appearing in solely an anonymized and/or aggregated form. For the avoidance of doubt, “Goody Data” shall not include any personally identifiable information of any User or the contents of any data or documents uploaded, submitted or transmitted by or on behalf of any User.

1.6. “**Goody Materials**” means the Service, Documentation, Goody Data, Work Product and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Goody or any subcontractor in connection with the Service or otherwise comprise or relate to the Service.

1.7. “**Customization**” means services provided by Goody to Client to create, develop, implement and maintain additional features and functionalities to the Service.

1.8. “**Documentation**” means any manuals, instructions, or other documents or materials available at <https://www.ongoody.com/>, that Goody provides or makes available to Client which describe the functionality, components, features or requirements of the Service, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof, as applicable to the Service purchased by Client.

1.9. “**Implementation**” means services provided by Goody to Client to allow the Service to integrate with and be useable through Client’s existing software and hardware environment.

1.10. “**Plan**” means the Starter Plan and any Paid Plan or a separate written order form (“**Order Form**”) subject to the terms of this Agreement that is executed by Goody and Client and sets forth the Service ordering details.

1.11. “**Professional Services**” means collectively the Implementation, Customization and any training services provided by Goody to Client as stated in the Statement of Work.

1.12. “**Service**” means access to Goody’s mobile application for enterprise customers and/or web-based portal for enterprise customers, as well as any additional services as identified in the Client’s Plan.

1.13. “**Starter Plan**” means the free Service plan presented to Client after signing up for an enterprise account at <https://www.ongoody.com/business>, which sets forth the Service ordering details.

1.14. “**Users**” means individuals for which Client has procured subscriptions to the Service, as identified to Goody, or as otherwise identified in Client’s account. Users may include, but are not limited to Client’s employees, consultants, contractors and agents.

1.15. “**Work Product**” means all services, programs, systems, data and materials, in whatever form, first provided, produced or created by or for Goody as a result of, or related to, performance of the Professional Services under a Statement of Work.

## 2. **Terms of Service.**

2.1. **Service.** Subject to the terms and conditions of this Agreement and during the Term, Goody shall make the Service available to be used by Client and Client’s Users. The terms of this Agreement shall also apply to updates, and upgrades subsequently provided by Goody to Client. Goody may update the features, functionality, and other aspects of the Service, including any related Documentation, from time to time in its sole discretion, as part of its ongoing efforts to improve the Service.

2.2. **License Details.** Goody shall provide the Service as set forth in Client’s Plan. The Plan shall include at a minimum a listing of the Service Client has signed up for and the corresponding fees.

2.3. **Professional Services.** Goody agrees to be available to Client to perform one or more projects involving Implementation, Customization and/or training on such terms and conditions as Goody and Client may mutually agree in a separate written agreement (each project, a “**Project**”). Each Project will be described in a corresponding statement of work (each, a “**Statement of Work**”), which will be effective when signed by both parties. The Statement of Work will set forth the respective responsibilities of Goody and Client for the respective Project. Subject to the provisions of this Agreement, once the Statement of Work has been approved, each party will carry out and complete its duties and responsibilities set forth in the Statement of Work. If Goody or Client requests modifications or enhancements to a Project, each such change will be described in an amendment to the Statement of Work describing such modifications, enhancements or new development in appropriate detail and shall be effective upon signature by both parties. Goody shall not be liable for delays or amendments to the Professional Services to the extent they are caused by Client (such as inaccurate or incomplete descriptions or representations regarding the software and/or hardware environments in which Goody is rendering Implementations and/or Customizations). Additional Customizations may require additional fees.

2.4. **Accuracy of Client’s Contact Information.** Client shall provide accurate, current and complete information on Client’s legal business name, address, e-mail address and phone number, and maintain and promptly update this information in Client’s account if it should change.

2.5. **E-mail and Notices.** Except for legal notices, each party’s e-mail address for communication and notice purposes relating to this Agreement shall be the e-mail address Client used to set up an account (or subsequent e-mail addresses as advised by the parties). Goody may provide any and all notices, statements, and other communications in English to Client through either e-mail, posting on the Service (or other electronic transmission) or by mail or express delivery service. Upon account setup, Client may further designate additional contacts for various types of notices. In addition, Goody may rely and act on all information, authorizations and instructions provided to Goody from the e-mail address and/or Client administrators specified in Client’s account (“**Administrators**”).

2.6. **Service Control.** Except as otherwise expressly provided in this Agreement, as between the parties, Goody has and will retain sole control over the operation, provision, maintenance, and management of the Goody Materials.

2.7. **Plan Upgrades and Seats.** After signing up for a Starter Plan, Clients may choose to upgrade to a paid Plan (each, a “**Paid Plan**”). Paid Plans include (i) Pro, or (ii) Goody for Teams, which has three (3) tiers: Base, Growth, or Enterprise. Paid Plans permit Administrators or Users to purchase additional seats (“**Seats**”). Client is responsible for understanding the settings and controls of the Service for purchasing additional Seats. Goody will charge Client the applicable pro-rated amount for additional Seats for the remainder of the then-current Term based on the current fees unless otherwise set forth in Client’s Plan.

2.8. **Modifications; Discontinuation of Service.** Goody may make modifications to the Service or individual features and functionality of the Service from time to time and will use commercially reasonable efforts to notify Client of any material modifications. Goody further reserves the right to discontinue offering the Service, in whole or in part, at any time. Client agrees that Goody shall not be liable to Client or any third party for any such modification or discontinuation of the Service. In the event of a modification or discontinuation that has a material, adverse impact on Client’s ability to use the Service, Client shall be entitled, as its sole and exclusive remedy, to terminate its subscription(s) to the affected Service, and receive a prorated refund of the subscription fees pre-paid by Client for the affected Service for the remaining portion of the Term.

2.9. **Users.** Client acknowledges that, prior to being granted access to the Service, each User will be required to accept the [Terms of Use](#) and [Privacy Policy](#) applicable to all users of the Service. Client agrees that (i) Client shall be responsible for ensuring each User agrees to, and abides by the terms of, the [Terms of Use](#); (ii) Client assumes all liability for any failure of the foregoing; and (iii) Goody shall not be liable to Client in connection with the failure or refusal by any such User to agree to accept the Terms of Use. In the event of a conflict between the [Terms of Use](#) and this Agreement, the [Terms of Use](#) will govern.

3. **Restrictions.** Client must not use the Service to act as a service bureau or otherwise provide an outsourced service, and may not rent, resell, sublicense, or permit the concurrent use of any Access Credentials, or time-sharing of the Service. Client shall not and shall not permit any User or other third party to (i) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service, or any algorithms or software used to operate the Service, or any part thereof or otherwise attempt to discover any source code or modify the Service in any manner or form, (ii) access or use the Service to circumvent or exceed Service account limitations or requirements, (iii) use the Service for the purpose of building a similar or competitive product or service, (iv) attempt to circumvent the authentication required to access the Service or other security measures of the Service (including without limitation permitting access to or use of the Service via shared Access Credentials, or another system or tool, the primary effect of which is to enable input of requests or transactions by other than authorized Users), (v) use the Service in a manner that is in violation of any third party rights of privacy or intellectual property rights, (vi) issue or participate in any press release or other public statement related to this Agreement or the Service without prior written consent of Goody, (vii) publish, post, upload or otherwise transmit Client Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another, or (viii) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Service. Client will not input or share any Client Data to or through the Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Client agrees not to access the Service by any means other than through the interfaces that are provided by Goody. Client shall not engage in any “mirroring” or “framing” of any part of the Service, or create hyperlinks to the Service which include Access Credentials and/or secure cookies.

4. **Client Obligations.** Client acknowledges that the successful deployment and continued operation of the Service is contingent on Client complying with the Documentation and Client’s Plan and Goody’s reasonable requirements made known to Client from time to time. Goody is not responsible or liable for any delay or failure of performance caused in whole or in part by Client’s delay in performing, or failure to perform, any of its obligations under this Agreement. Client acknowledges that it is solely Client’s obligation to secure consent and authorization for Goody to perform any integration or interface of the Service with third party software, including third party APIs, and including (but not limited to) any third party platforms identified in the applicable Statement of Work. In no event will Goody be responsible for any claims arising from or relating to the interface of the Service with such third party systems. Client is responsible for all activities of its Users, including as a result of any sharing of Access Credentials, or failure to adequately safeguard Access Credentials. Client shall comply with all applicable local, state, federal, and

foreign law, treaties, regulations, and conventions (collectively, “**laws**”) in connection with this Agreement. Client shall only use the Service, and shall limit Users access to the Service, only within the United States. Client shall ensure that all Users access and use the Service only in accordance with the terms and conditions of this Agreement. Any action or breach of this Agreement by a User shall be deemed an action or breach by Client.

## **5. Term; Suspension/Termination.**

5.1. **Term.** The term of this Agreement (the “**Term**”) will continue until this Agreement is terminated in accordance with the terms hereof or pursuant to Client’s Plan. If specified in Client’s Plan, upon expiration of the Term, this Agreement shall automatically renew for additional periods set forth in Client’s Plan (each, a “**Renewal Term**”) unless either party provides written notice to the other party of its intent not to renew this Agreement at least thirty (30) days prior to the end of the then-current Term.

5.2. **Suspension for Ongoing Harm.** Goody may on reasonable notice to Client suspend access to the Service if Goody reasonably concludes that Client’s account is being used to engage in denial of service attacks, spamming, or illegal activity, and/or Client’s use of the Service is causing immediate, material and/or ongoing harm to Goody or others. In the event that Goody suspends access to the Service, Goody will use commercially reasonable efforts to limit the suspension to (and only for the duration of) the offending portion of the Service and work with Client to resolve the issues causing the suspension of Service. Goody reserves the right to charge Client for resolving such issues. Client agrees that Goody shall not be liable to Client nor to any third party for any suspension of the Service under such circumstances. Any such suspension shall not excuse Client from Client’s obligation to make payments under this Agreement.

5.3. **Termination.** Either party may terminate this Agreement or a Statement of Work upon written notice if the other party fails to cure a material breach of this Agreement within thirty (30) days of receipt of written notice from the non-breaching party describing the breach in reasonable detail. Additionally, Goody may terminate this Agreement or a Statement of Work for any reason upon ten (10) days prior written notice to Client.

5.4. **Effect of Termination.** Upon termination or expiration of this Agreement, Client shall have no rights to continue use of the Service. If this Agreement is terminated by Client for any reason other than a termination expressly permitted by this Agreement, then Goody shall be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of Goody’s breach of this Agreement, then Client shall be entitled to a refund of the pro rata portion of any fees paid by Client to Goody for the base Service under this Agreement for the terminated portion of the Term. Professional Services fees will only be eligible for a refund in circumstances where Goody terminates this Agreement for convenience under Section 5.3 and the Professional Services have not been completed at the date of termination. In such circumstances, Goody shall refund to the Client the proportion of the fees paid for the Professional Services which were not completed at the date of termination (such proportion to be determined by Goody, acting reasonably). Goody shall not be required to delete or expunge data or documents that Goody is required to retain pursuant to applicable laws or for purposes of current or anticipated litigation, audit or government investigation.

## **6. Fee, Payment & Taxes.**

6.1. **Service Fees.** Client shall pay Goody the fees set forth in Client’s Plan (the “**Service Fees**”) in accordance with this Section 6. The term of use for additional Users procured during an existing term will co-terminate with the end of the term for the applicable Service. Pricing for the first Renewal Term shall be at the rate set forth in Client’s Plan. If a price increase for subsequent Renewal Terms (which shall be notified to Client at least forty-five (45) days in advance of the relevant renewal) is unacceptable to Client, Client may provide notice of its intent not to renew this Agreement for the upcoming Renewal Term in accordance with Section 5.1.

6.2. **Goody for Business Fee** means the specified percentage of the Gift Fee (5%), which may cover, among other things, logistics, curation, customer support, digital delivery, use of the platform, and personalized gift experience. Any gifts sent on Goody for Business is subject to this fee, except alcohol.

6.3. **Professional Fees.** Client shall pay Goody the fees for Professional Services in accordance with this Section 6. Client shall reimburse Goody for all reasonable, non-incident out-of-pocket expenses that are pre-approved in writing by Client and directly incurred in connection with the Professional Services. Goody agrees to maintain

appropriate records and to submit copies of all receipts necessary to verify such expenses.

6.4. **Subscriptions Fees.** If Client's Plan specifies that Client is to receive services on a subscription basis then Client agrees to pay Goody the recurring fees on the cadence specified and shall authorize Goody to automatically charge Client's credit card for such subscription fees.

6.5. **Prepayment and Balance Deposits.**

(a) If Client's Plan specifies that Client is required prepay for gifts in accordance with the terms thereof then Client agrees to pay Goody the specified amount upfront on the Effective Date, which prepayment shall be non-refundable (the "**Organization Balance**"). If Client's Plan specifies that Client has the option to prepay an Organization Balance, then Client agrees to pay Goody the amount Client selects, which amount shall be deposited into Client's Goody account and shall be non-refundable. In the case of an Organization Balance, any unused funds will be automatically forfeited if (i) such funds are not used within one (1) year of purchase, or (ii) Client elects to downgrade their account from the applicable Plan. Prepaid funds can only be spent at ongoody.com, cannot be exchanged for cash, cannot be used for purchasing alcohol, and may be used at the discretion of Client for gifting purposes only. For the avoidance of doubt, no refunds will be issued for gifts that are not accepted by intended recipients, however, such funds will be credited to Client's account as an Organization Balance for future use, subject to the terms hereof.

(b) If Client elects to enable Gift Swapping and the recipient exchanges the gift for something of lesser value, then the difference between (x) the price for the gift sent by Client, and (y) the price for the gift exchanged by recipient will be credited to Client's account for future use, subject to the terms hereof (the "**Account Balance**"). The Account Balance is non-refundable. In the case of an Account Balance, any unused funds will be automatically forfeited if the Client's account has no Activity for a period of at least twelve (12) consecutive months. For purposes hereof, "**Activity**" means Client completing one or more transactions on Goody, adding funds to Client's account, or otherwise using funds already on account as an Account Balance or Organization Balance.

6.6. **Invoices; Payment.** All invoices shall be sent by Goody to the email address associated with Client's account or as otherwise specified by Client to Goody in writing. All fees payable are due upon receipt unless specified otherwise in Client's Order Form or Plan. If specified in Client's Plan, Client may pay all fees by credit card and hereby authorizes Goody to charge Client's credit card according to the balance of the applicable invoice. Client acknowledges that it may receive multiple invoices depending on the nature of the services purchased from Goody. All fees are non-refundable, except as otherwise explicitly stated in this Agreement.

6.7. **Late Payment.** Goody reserves the right to suspend or terminate access to the Service upon seven (7) days' written notice to Client in the event of late or non-payment of Goody's invoices. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection.

6.8. **Taxes.** Goody fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("**Taxes**"). Client is responsible for paying all Taxes, excluding only taxes based on Goody's net income. If Goody has the legal obligation to pay or collect Taxes for which Client is responsible under this Section 6.6, the appropriate amount shall be invoiced to and paid by Client unless Client provides Goody with a valid tax exemption certificate authorized by the appropriate taxing authority.

## 7. **Proprietary Rights**

7.1. **Ownership of Client Data.** As between Goody and Client, all title and intellectual property rights in and to the Client Data is owned exclusively by Client. Client acknowledges and agrees that in connection with the provision of the Service, Goody may store and maintain Client Data for a period of time consistent with Goody's standard business processes for the Service. Client grants Goody a limited, revocable, non-exclusive, non-transferable (except in connection with an assignment of this Agreement), sublicensable license to access, store, and process the Client Data to the extent necessary to provide the Service and otherwise fulfill its rights and obligations under this Agreement. Notwithstanding the foregoing, nothing in this Agreement is intended to prevent Goody from generating and using Goody Data for purposes of providing, measuring, improving and marketing Goody's products and services; provided that Goody shall not disclose to any third party any information that is identifiable as Client-specific information.

7.2. **Ownership of Goody Materials.** All rights, title and interest in and to the Goody Materials (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Service provided or developed by Goody) and the Goody Marks are owned exclusively by Goody or its licensors. Except as provided in this Agreement, the rights granted to Client do not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Client grants Goody a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Service (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Client or any Users related to the operation or functionality of the Service. Any rights in the Service or Goody's intellectual property not expressly granted herein by Goody are reserved by Goody.

7.3. **Ownership of Work Product.** All Work Product will be owned solely by Goody. To the extent Goody is not automatically deemed the author and/or owner of all Work Product, Client hereby grants and assigns to Goody all right, title, and interest in the Work Product created by or on behalf of Goody in connection with the Professional Services and this Agreement including, without limitation, any specifications concepts, ideas, methodologies, trade secrets and know-how developed by Goody in performing the Professional Services hereunder. Client hereby grants to Goody an unrestricted, worldwide, royalty-free, fully paid up, irrevocable, perpetual and nonexclusive license to use and otherwise exploit any Client owned or licensed specifications, information, feedback, suggestions or other information provided by Client to Goody in connection with the Professional Services. Goody grants Client a royalty free, fully paid-up, worldwide, non-exclusive, transferable license to use any Work Product developed by Goody for Client for internal purposes during the Term, solely in accordance with this Agreement. No rights, neither express nor implied, are granted under this Agreement with respect to any patents, trademarks, trade secrets or copyrights, except as specifically provided for in this Agreement. Each party hereby agrees to execute all documents, take all rightful oaths, and do any and all acts which may be necessary, desirable, or convenient for securing and maintaining the rights granted or assigned in this Section.

7.4. **Trademarks.** Goody's name, trademarks service marks, logos and product and service names are marks of Goody (the "Goody Marks") and all right, title and interest in and to the Goody Marks shall remain the property of Goody. Client agrees not to use or display or use the Goody Marks in any manner without Goody's express prior written permission. Client's name, trademarks service marks, logos and product and service names are marks of Client (the "Client Marks") and all right, title and interest in and to the Client Marks shall remain the property of Client. Goody agrees not to use or display or use the Client Marks in any manner without Client's express prior written permission; provided, however, that Client expressly approves and grants Goody permission to use the Client Marks in Goody's marketing materials and to publish the Client Marks solely for the purpose of identifying Client as a customer of Goody. Client retains the right to request that Goody remove the Client Marks at any time.

7.5. **Reservation of Rights.** Nothing in this Agreement grants Client any right, title, or interest in or to (including any license under) any intellectual property rights in or relating to, the Service, Goody Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Service, the Goody Materials are and will remain with Goody.

## **8. Users; Data Security; Processing; Transmission**

8.1. **Users.** Client shall provide Goody the names and e-mail addresses of Users authorized by Client to access the Service. Goody will then send each authorized User an e-mail invitation, which may include unique Access Credentials, in order to allow the User to set up an account. Client acknowledges and agrees that the accuracy of the e-mail addresses provided is the sole responsibility of Client, and that Goody is not responsible to verify either the accuracy of the e-mail address or the actual identity of the e-mail recipient. Users may be limited to the number permitted in Client's Plan. Access Credentials are for designated Users and cannot be shared, transferred or used by more than one User. Client will be responsible for the confidentiality and use of Access Credentials. Client will also be responsible for all Client Data, including that which contains business information, account registration, account holder information, financial information, and all other data of any kind contained within e-mails or otherwise entered electronically through the Service or under Client's account. Any Client Data received from a User associated with Client will be deemed to have been sent by Client. Client shall use all commercially reasonable efforts to prevent unauthorized access to or use of the Service and shall promptly notify Goody of any unauthorized access or use of the Service and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

8.2. **Security.** Goody shall maintain commercially reasonable administrative, physical and technical safeguards designed for the protection, confidentiality and integrity of Client Data. All Client Data shall be processed in accordance with applicable U.S. local, state, and federal laws.

8.3. **Privacy.** Goody's handling of personally identifiable information shall be in accordance with the [Privacy Policy](#).

8.4. **Transmission.** Client understands that the technical processing and transmission of Client Data is fundamentally necessary to use of the Service. Client expressly consents to Goody's interception and storage of Client Data as needed to provide the Service, and Client acknowledges and understands that the Client Data will be subject to transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Goody. Client further acknowledges and understands that Client Data may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Without limiting Goody's applicable obligations under Sections 8.2 (Security) or 9 (Confidentiality), Goody is not responsible for any Client Data that is delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by Goody, including, but not limited to, the Internet and Client's local network.

## 9. **Confidentiality**

9.1. **Definition.** "Confidential Information" means any non-public commercial, financial, marketing, business, sales, customer, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party in connection with this Agreement, that, under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary, including the features and functionality of the Service. For the avoidance of doubt, Client Data is the Confidential Information of Client and Goody Materials are the Confidential Information of Goody. Notwithstanding the foregoing, the following shall not be subject to the restrictions on Confidential Information (i) information that was publicly available at the time of its disclosure, or becomes publicly available through no fault of the receiving party, (ii) information that was rightfully in the receiving party's possession without restriction prior to disclosure, (iii) information that was rightfully disclosed to the receiving party by a third party without restriction, or (iv) information that was independently developed by employees and/or contractors of the receiving party who did not have access to, and without use of or reference to the disclosing party's Confidential Information.

9.2. **Obligations of the Parties.** Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by the disclosing party. The receiving party may disclose Confidential Information on a need to know basis to its contractors and service providers who shall be bound by confidentiality and non-use obligations at least as restrictive as those in this Section 9. Either party may disclose Confidential Information to the extent that such disclosure is required by law or order of a court or request or requirement of any other governmental authority.

## 10. **Warranties**

10.1. **Warranty of Functionality.** Goody warrants that (i) the Service will perform substantially in accordance with the functionality described in the applicable Documentation, and (ii) such functionality will not be materially decreased during the then-current Term. Client's sole and exclusive remedy for Goody's breach of this warranty shall be that Goody shall be required to use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the applicable documentation and if Goody is unable to restore such functionality, Client shall be entitled to terminate this Agreement and receive a pro-rata refund of the fees paid under this Agreement for its use of the Service for the terminated portion of the then-current Term. Goody shall have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the first instance of any material functionality problem. The warranties set forth in this Section 10.1 are made to and for the benefit of Client only. Such warranties shall only apply if the applicable Service has been utilized in accordance with the applicable documentation, this Agreement and applicable law.

10.2. **Warranty of No Malicious Code.** Client warrants that it will not introduce any viruses, Trojan horses,

worms, spyware, or other such malicious code into the Service.

10.3. **Disclaimer of Warranties.** For the avoidance of doubt, the foregoing warranties are applicable only to the Service as provided by Goody and described in the Documentation. Any Customizations will be subject to the warranties provided in the Statement of Work, if any. EXCEPT AS OTHERWISE STATED IN THIS SECTION 10, THE SERVICE IS PROVIDED TO CLIENT ON AN “AS IS” AND “AS AVAILABLE” BASIS. GOODY DOES NOT WARRANT OR REPRESENT THAT CLIENT’S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CLIENT’S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CLIENT’S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN THIS SECTION 10 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY GOODY. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. GOODY EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT CLIENT’S USE OF THE SERVICE WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS. CLIENT ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CLIENT’S PURPOSES.

## 11. Limitations of Liability

11.1. **Exclusion of Consequential Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT FOR ANY LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 11.2 BELOW.

11.2. **Limitations on Liability.** THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE, SHALL NOT EXCEED THE GREATER OF: (I) THE TOTAL FEES PAYABLE BY THE CLIENT FOR THE SERVICE DURING THE FIRST TWELVE (12) MONTHS OF THIS AGREEMENT; AND (II) THE TOTAL FEES PAID FOR THE SERVICE GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OUT OF WHICH THE LIABILITY AROSE.

11.3. **Exceptions.** The limitations of liability set forth in Section 11.2 shall not apply to (i) either party’s indemnification obligations pursuant to Section 12 below, (ii) fees due under this Agreement, (iii) a breach of Section 9 of this Agreement, or (iv) any Client fraud, gross negligence, or willful / intentional misconduct. Notwithstanding anything to the contrary, neither party shall be liable to the other party to the extent such liability would not have occurred but for the other party’s failure to comply with the terms of this Agreement.

11.4. **Acknowledgement.** Both parties acknowledge that the fees reflect the allocation of risk set forth in this Agreement and that the parties would not enter into this Agreement without these limitations on their liability.

## 12. Indemnification

12.1. **Infringement.** Subject to the terms and conditions set forth in Section 11, Goody shall, at its own expense, defend Client from and against any and all allegations, threats, claims, suits, and proceedings brought by third



parties (collectively “**Claims**”) alleging that the Service, as used in accordance with this Agreement, infringes such third party’s valid patents, copyrights or trademarks, or misappropriates such third party’s trade secrets, and shall indemnify Client from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys’ fees) (collectively, “**Losses**”) to the extent based upon such Claim(s). Goody will have no liability for Claims or Losses to the extent arising from (i) use of the Service in violation of this Agreement or applicable law, (ii) use of the Service after Goody notifies Client to discontinue use because of an infringement claim, (iii) modifications to the Service not made by Goody, or made by Goody based on Client specifications or requirements, (iv) use of the Service in combination with any non-Goody software, application or service including, without limitation, the integration or interface of the Service with any third party software or API, or (v) services offered by Client or revenue earned by Client for such services. If a Claim of infringement as set forth above is brought or threatened, Goody shall, at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will allow Client to continue using the Service without cost to Client; (b) to modify or replace all or portions of the Service, as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate this Agreement and refund to the Client a prorated refund of the fees paid under this Agreement for the terminated portion of the Term. The rights and remedies granted to Client under this Section 12.1 state Goody’s entire liability, and Client’s exclusive remedy, with respect to any Claim of infringement of the intellectual property rights of a third party.

12.2. **Client’s Indemnity.** Subject to the terms and conditions set forth in this Section 12, Client shall, at its own expense, hold harmless and defend Goody from and against any and all Claims: (i) alleging that the Client Data or any trademarks or service marks, or any use thereof, infringes the copyright or trademark or misappropriates the trade secrets of a third party, or violates applicable law; (ii) arising from Client’s breach of any of the terms of this Agreement or violation of applicable laws; or (iii) arising from Client’s gross negligence or willful misconduct, and shall indemnify Goody from and against liability for any Losses to the extent based upon such Claims.

12.3. **Indemnification Procedures and Survival.** In the event a party becomes aware of a Claim for which the other party may have an indemnification obligation, the indemnified party shall: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; provided, however, that the indemnifying party shall not enter into any settlement or compromise of any such Claim that imposes any liability or obligation on the indemnified party without the indemnified party’s prior written consent, which consent shall not be unreasonably withheld or delayed; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party’s cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. A party’s indemnification obligations are expressly conditioned upon the indemnified party’s compliance with this Section 12.3, except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations, but such obligations shall be reduced to the extent of any damages attributable to such failure.

### 13. **Governing Law and Dispute Resolution.**

13.1. **Governing Law; Arbitration.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation shall be governed by and construed in accordance with the laws of the State of New York. Notwithstanding any contrary provision of this Agreement, all disputes, claims, controversies and matters relating to or in connection with this Agreement (or the breach thereof) or any transactions hereunder shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules (“**AAA Rules**”), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall take place in the State of New York before a single neutral arbitrator appointed in accordance with the AAA Rules and shall be conducted in the English language. All arbitrations shall be conducted and resolved on an individual basis and not a class-wide, multiple plaintiff or similar basis. No arbitration shall be consolidated with any other arbitration proceeding involving any other person or entity.

13.2. **Jurisdiction and Venue.** Subject to the above arbitration provisions, the parties agree that any and all disputes, claims and actions, at law or in equity, arising out of or relating to or in connection with this Agreement or the breach, termination, enforcement, interpretation or validity thereof, or to the use of the Service in the federal or state courts located in the State of New York and each party agrees that such courts shall have exclusive jurisdiction and venue for any such actions, except that Goody retains the right to submit a dispute to any court of competent

jurisdiction. Goody also may seek injunctive or other equitable relief for breach of this Agreement in any court of competent jurisdiction wherever located. Client consents to the jurisdiction of and venue in such courts and waive any objection as to inconvenient forum. The prevailing party in any suit, action or proceeding, including any arbitration proceeding, will be entitled to recover its reasonable legal fees and costs and expenses from the other party.

#### **14. General Provisions**

14.1. **Amendment of this Agreement.** Goody reserves the right, in its sole discretion, to amend this Agreement, at any time and without prior notice, including to change, modify, add to, update or remove terms and conditions (collectively “**amend**” or “**update**”). If Goody chooses to amend this Agreement, Goody will update the “Last Updated” date at the top of this Agreement and post the updated version. Goody may also, at its option, choose to notify Client by e-mail or another means. By continuing to use the Service after Goody has posted an updated version of this Agreement or otherwise notified Client of an update, Client is affirming that it agrees to be bound by the amended Agreement. If the amended Agreement is not acceptable to Client, Client’s only recourse is to stop using the Service.

14.2. **Notice.** Any notices or other communications permitted or required hereunder, including those regarding updates to this Agreement, will be in writing and given by Goody (i) via e-mail (in each case to the address that you provide), or (ii) by posting to the Service. For notices made by e-mail, the date on which such notice is transmitted will be deemed the date of receipt. If Client has a legal dispute with Goody or if Client wishes to provide a notice under Section 12 (Indemnification) of this Agreement, or if Client becomes subject to insolvency or other similar legal proceedings, Client will promptly send written notice to Goody at legal@ongood.com.

14.3. **Integration.** This Agreement, together with all referenced items, constitutes the entire understanding between Client and Goody and are intended to be the final and entire expression of their agreement. The parties expressly disclaim any reliance on any and all prior discussions, e-mails, and/or agreements between the parties. There are no other verbal agreements, representations, warranties undertakings or other agreements between the parties other than those incorporated into this Agreement.

14.4. **Assignment and Subcontracting.** Client may not assign this Agreement without the prior written consent of Goody. This Agreement shall inure to benefit and bind the parties hereto, and their successors and assigns. Client agrees that Goody may subcontract aspects of the Service and shall not be responsible or liable for any breach by the applicable service provider that is beyond Goody’s reasonable control.

14.5. **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

14.6. **Relationship of the Parties.** This Agreement does not create any joint venture, partnership, agency, or employment relationship between the parties, although Goody reserves the right to name Client as a user of the Service in a press release or similar public statement.

14.7. **Severability.** If any provision is held by a court of competent jurisdiction to be contrary to law, such provision shall be eliminated or limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

14.8. **Waiver.** A waiver of any breach under this Agreement should not constitute a waiver of any other breach or future breach.

14.9. **Force Majeure.** Neither party shall be liable for loss, delay, nonperformance to the extent resulting from any force majeure event, including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute (other than those involving Goody employees), or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible and any delivery date shall be extended accordingly.

14.10. **Headings.** The Section headings used in this Agreement are included for reference purposes only and shall not affect the meaning or interpretation of this Agreement in any way.

14.11. **Survival.** Sections 3, 5.5, and 6–14 shall survive the termination or expiration of this Agreement.