



## **3radical Software Subscription Agreement**

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF OUR SERVICES.

IF YOU ARE GRANTED A TRIAL OF OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

You may not access the Services if You are Our direct competitor, except with Our prior written consent. In addition, You may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

This Agreement was last updated on 14<sup>th</sup> April 2020. It is effective between You and Us as of the date of You accepting this Agreement.

### **1. DEFINITIONS**

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Agreement**" means this Software Subscription Agreement.

"**Beta Services**" means Our services that are not generally available to customers.

"**Content**" means information obtained by Us from Our content licensors or publicly available sources and provided to You through the Services, Beta Services or pursuant to an Order Form, as more fully described in the Documentation.

"**Documentation**" means Our online user guides, documentation, help and training materials and policies as updated from time to time, accessible via [help.3radical.com](http://help.3radical.com) or login to the applicable Service.

"**Malicious Code**" means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"**Non-3radical Applications**" means a Web-based, mobile, offline or other software process or functionality that is provided by You or a third party and interoperates with a Service, including, for example, an application that is developed by or for You.



**“Order Form”** means an ordering document specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

**"Purchased Services"** means Services that You or Your Affiliate purchase under an Order Form, as distinguished from those provided pursuant to a trial.

**“Services”** means the products and services that are ordered by You under a trial or an Order Form and made available online by Us, including associated offline components, as described in the Documentation. “Services” exclude Content and Non-3radical Applications.

**“User”** means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business as well as your individual customers in the case of consumer software elements of our Services such as web sites or mobile apps..

**"We," "Us" or "Our"** means the 3radical company described in Section 13 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction).

**"You" or "Your"** means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

**“Your Data”** means electronic data and information submitted by or for You to the Services or collected and processed by or for You using the Services, excluding Content and Non-3radical Applications.

## **2. TRIAL**

If You are granted a trial, We will make one or more Services available to You on a trial basis until the earlier of (a) the end of the trial period for which you registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s). Additional trial terms and conditions may be included in the trial documentation. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

**ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU, DURING YOUR TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASE UPGRADED SERVICES, OR EXPORT SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD.**

NOTWITHSTANDING SECTION 9 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE TRIAL THE SERVICES ARE PROVIDED “AS-IS” WITHOUT ANY WARRANTY. WITHOUT LIMITING THE FOREGOING, WE AND OUR AFFILIATES AND LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) YOUR USE OF THE SERVICES DURING THE TRIAL PERIOD WILL MEET YOUR REQUIREMENTS, (B) YOUR USE OF THE SERVICES DURING THE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, OR (C) USAGE DATA PROVIDED DURING THE TRIAL PERIOD WILL BE ACCURATE. NOTWITHSTANDING ANYTHING TO THE



CONTRARY IN SECTION 11.1 (LIMITATION OF LIABILITY), YOU SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO US AND OUR AFFILIATES FOR ANY DAMAGES ARISING OUT OF YOUR USE OF THE SERVICES DURING THE TRIAL PERIOD, ANY BREACH BY YOU OF THIS AGREEMENT AND ANY OF YOUR INDEMNIFICATION OBLIGATIONS HEREUNDER.

### 3. OUR RESPONSIBILITIES

**3.1. Provision of Purchased Services.** We will (a) make the Services and Content available to You pursuant to this Agreement and the applicable Order Forms, (b) provide Our standard support for the Purchased Services to You, and/or upgraded support if purchased, and (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-3radical Application, or denial of service attack.

**3.2. Protection of Your Data.** We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Purchased Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8.3 (Compelled Disclosure) below, or (c) as You expressly permit in writing. We may also use and share with our partners certain Aggregated Anonymous Data, derived from Your Data, to analyze, improve, support, plan for, and operate the Services, both during and after the term of this Agreement. Aggregated Anonymous Data means data that is: (i) anonymized and not identifiable to any person or entity; (ii) combined with the data of other customers or additional data sources; and (iii) presented in a way which does not reveal your specific data. To the extent that We processes any Personal Data (as defined in the DPA) contained in Customer Data, on Customer's behalf, in the provision of the Services, the terms of the data processing addendum at <https://www.3radical.com/legal> ("DPA"), which are hereby incorporated by reference, shall apply and the parties agree to comply with such terms.

**3.3 Our Personnel.** We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

**3.4 Beta Services.** From time to time, We may invite You to try Beta Services at no charge. You may accept or decline any such trial in Your sole discretion. Beta Services are for evaluation purposes and not for production use, are not considered "Services" under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

## 4. USE OF SERVICES AND CONTENT

**4.1 Subscriptions.** Unless otherwise provided in the applicable Order Form Services and Content are purchased as subscriptions. Subscriptions may be added during a subscription term on terms agreed either between You and Us.

**4.2 Usage Limits.** Services and Content are subject to usage limits, including, for example, the quantities specified in Order Forms. If the Order Form has a limit on Users (a) the Service or Content may not be accessed by more than that number of Users, (b) a User's password may not be shared with any other individual, and (c) a User identification may be reassigned to a new individual replacing one who no longer requires ongoing use of the Service or Content. Other limits may be specified on the order form together with charges for additional usage. Where not covered by an existing Order Form, You will execute an Order Form for additional quantities of the applicable Services or Content promptly. We will invoice you for any usage charges in accordance with Section 6.2 (Invoicing and Payment).

**4.3 Your Responsibilities.** You will (a) be responsible for Users' compliance with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data and Your use of Your Data with our Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify Us promptly of any such unauthorized access or use, (d) use Services and Content only in accordance with the Documentation and applicable laws and government regulations, and (e) comply with terms of service of Non-3radical Applications with which You use Services or Content.

**4.4 Usage Restrictions.** You will not (a) make any Service or Content available to, or use any Service or Content for the benefit of, anyone other than You or Users, (b) sell, resell, license, sublicense, distribute, rent or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks, (g) permit direct or indirect access to or use of any Service or Content in a way that circumvents a contractual usage limit, (h) copy a Service or any part, feature, function or user interface thereof, (i) copy Content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service or Content, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Service or Content in order to build a competitive product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law).

**4.5 Consumer Apps.** If You subscribe to a Service that includes the provision of mobile Apps or other Consumer facing software ("Consumer Software") then the use of such by consumers shall be subject to an applicable software license included with that Consumer Software.



**4.6. Removal of Content and Non-3radical Applications.** If We are required by a licensor to remove Content, or receive information that Content provided to You may violate applicable law or third-party rights, We may so notify You and in such event You will promptly remove such Content from Your systems. If We receive information that a Non-3radical Application hosted on a Service by You may violate applicable law or third-party rights, We may so notify You and in such event You will promptly disable such Non-3radical Application or modify the Non-3radical Application to resolve the potential violation. If You do not take required action in accordance with the above, We may disable the applicable Content, Service and/or Non-3radical Application until the potential violation is resolved.

## **5. NON-3RADICAL PROVIDERS**

**5.1. Acquisition of Non-3radical Products and Services.** We or third parties may make available third-party products or services, including, for example, Non-3radical Applications such as email tools and implementation and other consulting services. Any acquisition by You of such non-3radical products or services, and any exchange of data between You and any non-3radical provider, is solely between You and the applicable non-3radical provider. We do not warrant or support Non-3radical Applications or other non-3radical products, except as specified in an Order Form.

**5.2. Non-3radical Applications and Your Data.** If You enable a Non-3radical Application for use with a Service, You grant Us permission to allow the provider of that Non-3radical Application to access Your Data as required for the interoperation of that Non-3radical Application with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from access by a Non-3radical Application.

**5.3. Integration with Non-3radical Applications.** The Services may contain features designed to interoperate with Non-3radical Applications. To use such features, You may be required to obtain access to Non-3radical Applications from their providers, and may be required to grant Us access to Your account(s) on the Non-3radical Applications. If the provider of a Non-3radical Application ceases to make the Non-3radical Application available for interoperation with the corresponding Service features on reasonable terms, We may cease providing those Service features without entitling You to any refund, credit, or other compensation.

## **6. FEES AND PAYMENT FOR PURCHASED SERVICES**

**6.1. Fees.** You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and Content purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

**6.2. Invoicing and Payment.** We will invoice you at billing frequency stated in the applicable Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

**6.3. Overdue Charges.** If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 6.2 (Invoicing and Payment).



**6.4. Suspension of Service and Acceleration.** If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue, We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 13.2 (Manner of Giving Notice), before suspending services to You.

**6.5. Payment Disputes.** We will not exercise Our rights under Section 6.3 (Overdue Charges) or 6.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**6.6. Taxes.** Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 6.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

**6.7. Future Functionality.** You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

## **7. PROPRIETARY RIGHTS AND LICENSES**

**7.1. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, We and Our Affiliates and Our licensors and Content Providers reserve all of Our/their right, title and interest in and to the Services and Content, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

**7.2. Access to and Use of Content.** You have the right to access and use applicable Content subject to the terms of applicable Order Forms, this Agreement and the Documentation.

**7.3. License by You to Host Your Data and Applications.** You grant Us, Our Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Your Data, and any Non-3radical Applications and program code created by or for You using a Service or for use by You with the Services, and Your Data, each as reasonably necessary for Us to provide the Services and associated systems in accordance with this Agreement. You also grant US the right to use Aggregated Anonymous Data, derived from Your Data, as set forth in Section 3.2. Subject to the limited licenses granted herein, We acquire no right, title or interest from You or Your licensors under this Agreement in or to Your Data or any Non-3radical Application or program code.

**7.4. License by You to Use Feedback.** You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of the Services.



## 8. CONFIDENTIALITY

**8.1. Definition of Confidential Information.** “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Services and Content; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, (iv) was independently developed by the Receiving Party; or (v) Aggregated Anonymous Data.

**8.2. Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-3radical Application Provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.

**8.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.



## **9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

**9.1. Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

**9.2. Our Warranties.** We warrant that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, (b) We will not materially decrease the overall security of the Purchased Services, (c) the Purchased Services will perform materially in accordance with the applicable Documentation, and (d) subject to Section 5.3 (Integration with Non-3radical Applications), We will not materially decrease the functionality of the Purchased Services during a subscription term. For any breach of an above warranty, Your exclusive remedies are those described in Sections 12.3 (Termination) and 12.4 (Refund or Payment upon Termination).

**9.3. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

## **10. MUTUAL INDEMNIFICATION**

**10.1. Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that the use of a Purchased Service in accordance with this Agreement infringes or misappropriates such third party’s intellectual property rights (a “**Claim Against You**”), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a court-approved settlement of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Service so that it no longer infringes or misappropriates, without breaching Our warranties under Section 9.2 (Our Warranties), (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days’ written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that our Services are the basis of the Claim Against You; (2) a Claim Against You arises from the use or combination of our Services or any part thereof with software, hardware, data, or processes not provided by Us, if our Services or use thereof would not infringe without such combination; (3) a Claim Against You arises from Services under an Order Form for which there is no charge; or (4) a Claim Against You arises from Content, a Non-3radical Application or Your use of the Services in violation of this Agreement, the Documentation or applicable Order Forms.



**10.2. Indemnification by You.** You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your Data, or Your use of any Service or Content in breach of this Agreement, infringes or misappropriates such third party's intellectual property rights or violates applicable law (a "**Claim Against Us**"), and will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a court-approved settlement of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

**10.3. Exclusive Remedy.** This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 10.

## 11. LIMITATION OF LIABILITY

**11.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

**11.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## 12. TERM AND TERMINATION

**12.1 Term of Agreement.** This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

**12.2. Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The per-unit pricing during any automatic renewal term will be the same as that during the immediately prior term unless We have given You written notice of a pricing increase at least 60 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

**12.3. Termination.** A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**12.4. Refund or Payment upon Termination.** If this Agreement is terminated by You in accordance with Section 12.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 12.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

**12.5. Your Data Portability and Deletion.** Upon request by You made within 30 days after the effective date of termination or expiration of this Agreement, We will make the Your Data available to You for export or download as provided in the Documentation. After that 30-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control as provided in the Documentation, unless legally prohibited or maintained in the form of Aggregated Anonymous Data.

**12.6. Surviving Provisions.** The Sections titled "Fees and Payment for Purchase Services," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Portability and Deletion of Your Data," "Who You Are Contracting With, Notices, Governing Law and Jurisdiction," and "General Provisions" will survive any termination or expiration if this Agreement.

## 13. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

**13.1. General.** Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such lawsuit, depend on where You are domiciled.

<b>If You are domiciled in:</b>	<b>You are contracting with:</b>	<b>Notices should be addressed to:</b>	<b>The governing law is:</b>	<b>The courts having exclusive jurisdiction are:</b>
Australia or New Zealand	3radical Pty Limited, an Australian private limited company	T53, 2A Defries Avenue, Zetland, NSW2017, Australia	New South Wales, Australia	New South Wales, Australia
A Country in Asia or the Pacific region other than Australia or New Zealand	3radical Pte Limited, a Singapore private limited company	51 Goldhill Plaza, #07-10/11, Singapore 308900	Singapore	Singapore

United States of America	3radical Inc., a Delaware corporation	564 W Randolph St, 2 <sup>nd</sup> Floor, Chicago, IL 60661	State of Delaware	State or Federal Courts of the State of Delaware
Any other Country	3radical Limited, a UK private limited company	Desklodge House, Redcliffe Way, Bristol BS1 6EA, England	England	England

**13.2. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim). Billing-related notices to You shall be addressed to the relevant billing contact designated by You. All other notices to You shall be addressed to the relevant Services system administrator designated by You.

**13.3. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

## 14. GENERAL PROVISIONS

**14.1. Export Compliance.** The Services, Content, other technology We make available, and derivatives thereof may be subject to export laws and regulations. Each party represents that it is not named on any government denied-party list. You agree that You will not export, re-export, transfer or make available, whether directly or indirectly, any regulated item or information that is subject to this agreement to anyone outside of Your jurisdiction without first complying with all export control laws and regulations which may be imposed by any country or organization of nations within whose jurisdiction You operate or do business.

**14.2. Anti-Corruption.** You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Us.

**14.3 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between You and Us regarding Your use of Services and Content and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.

**14.4. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in



its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice. In the event of such a termination, We will refund to You any prepaid fees covering the remainder of the term of all subscriptions. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.5. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**14.6. Third-Party Beneficiaries.** Our Content licensors shall have the benefit of Our rights and protections hereunder with respect to the applicable Content. There are no other third-party beneficiaries under this Agreement.

**14.7. Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

**14.8. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

*Updated: 14 April 2020*