



## Subscription Terms and Conditions

Version: 1.21.26

These Subscription Terms and Conditions (this “**Agreement**”) are a binding legal agreement between EvenUp Inc., a Delaware corporation (“**EvenUp**”) and the Customer identified in an Order Form executed by the Parties that references this Agreement. The Agreement is effective as of the Effective Date set forth in the first Order Form executed by the Parties that references this Agreement (the “**Effective Date**”).

The Parties agree as follows:

**1. DEFINITIONS.** The capitalized terms below have the following definitions, as used throughout this Agreement.

**1.1. “Affiliates”** means a person or entity that (i) controls such Party; (ii) is under the control of such Party; or (iii) is under the control of another person or entity that controls such Party, whether (directly or indirectly) through voting rights, board seats, contract or otherwise. The definition of Affiliate specifically excludes contractors, outsourcers, or agents of a Party.

**1.2. “Artificial Intelligence” or “AI”** refers to computer systems that may leverage proprietary and third-party algorithms, rule-based reasoning, large language models, machine learning, and other techniques that are designed to mimic human intelligence and carry out tasks that historically have required human intelligence or capabilities.

**1.3. A “case”** refers to a unique claim or set of related claims specific to the same client of Customer that is uploaded to the Service.

**1.4. “Confidential Information”** means all business, technical, personal, legal, strategic and financial information, which a Party obtains from the other or learns from the other in connection with this Agreement either directly or indirectly, in writing, orally, or by inspection or access to tangible objects or computer systems whether or not marked confidential, including, without limitation, customer/client data, claims/case data, personally identifiable information and nonpublic information regarding disclosing Party’s products, services, technology, finances, pricing, clients, prospects, employees, data sources, plans, marketing, legal affairs, compliance, ideas, inventions, research, contracts, opportunities, methods, techniques, procedures, know-how, and trade secrets, together with all information received by or on behalf of the disclosing Party from third parties which the disclosing Party is obligated to keep confidential. Confidential Information will not include any information that (a) was in the public domain at the time of disclosure; (b) became publicly available after disclosure without breach of this Agreement; (c) was lawfully received from a third party without such restrictions; (d) was known by the receiving Party, its employees or agents without such restrictions prior to its receipt pursuant to this Agreement; or (e) was independently developed without breach of this Agreement.

**1.5. “Credits”** are a measure of prepaid, non-refundable units of value purchased by Customer under an Order Form that are redeemable only for access to and use of the services specified in such Order Form in the quantities and at the rates specified in such Order Form.



**1.6. “Customer Input”** means any data, images, code, or other content (including without limitation text, graphics, audio files, video files, or computer software) that Customer makes available to EvenUp in conjunction with the Service or otherwise allows EvenUp or the Service to access.

**1.7. “Deliverable”** means Output that takes the form of a delivered document that is produced specifically and exclusively for Customer at Customer’s request, such as a draft demand letter, medical chronology, or other work product for use in connection with a specific client of Customer. “Deliverable” excludes any “EvenUp Materials.”

**1.8. “Documentation”** means any manuals, documentation and other supporting materials related to the Service that EvenUp provides to its customers. Documentation is considered part of the Service.

**1.9. “EvenUp Materials”** means EvenUp’s pre-existing materials, templates, forms, checklists, prompts, models, algorithms, libraries, system-generated boilerplate, and any generic or reusable components.

**1.10. “Feedback”** means suggestions or comments for enhancements or improvements, new features or functionality or other feedback in connection with the Service or related products and services.

**1.11. “Order Form”** means an order form substantially in the same form as the one executed by both Parties in connection with this Agreement whereby Customer agrees to subscribe to certain features of the Service subject to the terms and conditions of this Agreement. Each Order Form is incorporated into and governed by this Agreement.

**1.12. “Order Form Effective Date”** means the effective date specified on the applicable Order Form. If such date is unstated or unclear, the Order Form Effective Date will be the earliest date that the Service is made available to Customer pursuant to the Order Form.

**1.13. “Output”** means content and/or data generated by the Service in response to a Customer request, including EvenUp Materials.

**1.14. A “page”** is a physical or electronic copy (e.g., a PDF) of an 8.5” x 11” page containing data readable by the unaided human eye that relates to a case.

**1.15. A “Party”** refers to EvenUp or Customer, and the **“Parties”** refer to both collectively.

**1.16. “Professional Legal Services”** means legal advice, analysis, judgment, advocacy, supervision, oversight, counsel, or other services involving the practice of law, as understood pursuant to the rules of professional legal ethics in all relevant jurisdictions.

**1.17. “Professional Services”** means training, consulting, deployment, configuration and/or case support services that EvenUp may provide to Customer pursuant to an Order Form. Professional Services do not include the Service itself.



**1.18. “Representatives”** are the employees, independent contractors, consultants, and legal and financial advisors of a Party.

**1.19. “Service”** means EvenUp’s proprietary platform and associated services, which include a suite of advanced, AI-based features that enable legal professionals such as Customer to manage their legal practice and casework more efficiently and effectively.

**1.20. “Subscribed Services”** are the components of the Service that Customer purchases access to pursuant to an Order Form.

**1.21. “Subscription Period”** means the term specified for each Subscribed Service in the applicable Order Form during which time the Subscribed Service is made available to Customer, typically expressed on the Order Form as the period from the “Service Start Date” to the corresponding “Service End Date.” If such term is unstated or unclear, the Subscription Period for the relevant Subscribed Service will default to one (1) year.

**1.22. “System Data”** means data collected by EvenUp related to EvenUp’s products and services that may be used to generate logs, statistics, reports or related materials regarding the performance, availability, usage, integrity or security of EvenUp’s products and services.

**1.23. “Usage Limits”** means the certain usage limits, such as on volumes, throughput, feature utilization, or other consumption metrics, as may be specified on an Order Form (e.g., a quantity of Credits, cases, or pages purchased), or as may be otherwise apply across all EvenUp customers using the same Subscribed Service.

## **2. SERVICE.**

**2.1. Access to the Service.** Subject to Customer’s compliance with the terms of this Agreement (including, among other things, paying any fees owed to EvenUp), EvenUp hereby grants Customer a non-exclusive, non-transferable, worldwide, royalty-free, limited-term right and license to access and use the Subscribed Services during the applicable Subscription Period, solely up to the Usage Limits, in accordance with the applicable Documentation. Customer’s agents and contractors can access the Service, as well, so long as: (i) they are accessing it on Customer’s behalf, and (ii) Customer agrees to be fully responsible for their actions under this Agreement.

**2.2. Cooperation.** Customer acknowledges that EvenUp’s provision of the Subscribed Services may be dependent on Customer cooperating as reasonably required, and Customer will provide all such cooperation in a diligent and timely manner, including making all necessary Customer Input available to EvenUp. By providing Customer Input, Customer grants EvenUp a worldwide, royalty-free, and non-exclusive license to reproduce, view, and use the Customer Input for the purpose of providing the Service, including, without limitation, to generate Output.

**2.3. Use.** Customer will (i) be responsible for all use of the Service under its account, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Service and notify EvenUp promptly of any such unauthorized access or use or any other known or suspected breach of security or misuse of the Service, and (iii) be responsible for obtaining and maintaining any equipment, software and ancillary services needed to connect to, access or otherwise use the Service, including as



set forth in the Documentation. Customer will be solely responsible for its failure to maintain such equipment, software and services, and EvenUp will have no liability for such failure.

**2.4. Other Restrictions.** Customer will not directly or indirectly: (i) reverse engineer, decompile, disassemble, modify, create derivative works of or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive, the source code underlying the Service; (ii) attempt to probe, scan or test the vulnerability of the Service, breach the security or authentication measures of the Service without proper authorization or willfully render any part of the Service unusable; (iii) use or access the Service to develop a product or service that is competitive with EvenUp's products or services, or engage in competitive analysis or benchmarking; (iv) transfer, distribute, resell, lease, license, or assign the Service or otherwise offer the Service on a standalone basis; or (v) otherwise use the Service in violation of applicable law (including any export laws) or outside the scope expressly permitted hereunder and in the applicable Order Form.

**2.5. Features.** EvenUp reserves the right to incorporate new features in connection with the Service, and to modify or deprecate existing features in order to maintain or improve the overall user experience and operational effectiveness, or to comply with regulatory requirements.

### **3. FEES AND PAYMENT.**

**3.1. Fees.** Customer will pay the fees set forth in each Order Form in accordance with the payment schedule set forth therein, without deduction or setoff of any kind. Fees (a) are quoted and payable in U.S. Dollars, (b) reflect the amounts to be received by EvenUp free and clear of any withholding that any jurisdiction might require Customer to withhold or other taxes that might be levied on payments to be made pursuant to this Agreement, (c) are due in advance unless otherwise set forth on the applicable Order Form, and (d) are non-cancelable, non-refundable, and non-proratable for partial months. Whether specified on an Order Form or not, Customer will be responsible for paying any applicable sales, use, and value-added taxes.

**3.2. Late Payment.** EvenUp may suspend access to the Service immediately upon notice if Customer fails to pay any amounts due within fifteen (15) days of the applicable payment due date. If EvenUp has not received payment within thirty (30) days after the applicable payment due date, interest will accrue on past due amounts at the rate of one percent (1%) per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by EvenUp.

#### **3.3. Usage; Overages.**

**3.3.1. Included Usage.** For each Subscribed Service, Customer's fees entitle Customer to access and use the Service up to the Usage Limits during the applicable Subscription Period.

**3.3.2. Overages.** If Customer's use of any Subscribed Service exceeds the Usage Limits (whether measured on a monthly or aggregate basis, as indicated in the Order Form), such excess use will be deemed "Overage." Customer will pay all Overage monthly in arrears at the per-credit, per-unit, or other overage rates set forth in the applicable Order Form, or, if no such rate is specified, at a rate derived from the then-current fees and usage commitments in the applicable Order Form.



**3.3.3. Usage Controls and Adjustment of Commitments.** EvenUp may implement controls to enforce the Usage Limits and may reasonably adjust them from time to time to address unusual, abusive, or materially higher-than-anticipated usage patterns. For example, to manage against volatility, Customer may not in a given month process more than 2x the case or page quantity specified for that month. Additionally, if Customer exceeds its Usage Limits on a recurring basis, EvenUp may adjust Customer's fees accordingly to more accurately reflect Customer's actual usage, or restrict/suspend Customer's access to the applicable Subscribed Service.

#### **4. TERM; TERMINATION.**

**4.1. Term.** This Agreement starts on the Effective Date and will continue in effect for as long as any Order Form is in effect. Each Order Form will be in effect for the Subscription Period reflected thereon and, unless otherwise stated, will automatically renew for successive twelve (12) month periods at the pricing and Usage Limits in effect in the Order Form's last month of service, unless one party provides written notice to the other at least thirty (30) days prior of its intention not to renew. For the sake of clarity, an Order Form with a trial or ramp-up period will not renew with a trial or ramp-up period in the renewal term; it will renew at the service level commitment in effect in the last month of the initial term. EvenUp reserves the right to modify the fees for the Service effective with the renewal of any Order Form by providing sixty (60) days' prior written notice to Customer.

**4.2. Termination for Breach.** Either party can terminate this Agreement (or any Order Form) immediately upon written notice to the other party if the other party breaches any part of this Agreement (or that Order Form, as applicable), and fails to cure the breach within thirty (30) days of receiving notice of it. Termination of an Order Form will not result in the automatic termination of this Agreement or any other Order Form. Termination of this Agreement will result in the automatic termination of all outstanding Order Forms. Failure to pay amounts due to EvenUp pursuant to Section 3 (Fees and Payment) of this Agreement will be considered a material breach.

**4.3. Other Terminations.** Customer may terminate a specific Subscribed Service specified in an Order Form effective at the end of any trial period specified on the applicable Order Form for such Subscribed Service by providing seven (7) days advance written notice to EvenUp, with payment due through the end of the trial period. This Agreement and any Order Form may be terminated by EvenUp for any reason or for no reason upon thirty (30) days' advance written notice to Customer.

**4.4. Effect of Termination.** Upon the termination of this Agreement or any Order Form for any reason: (i) Customer will promptly pay EvenUp according to the terms herein and in any applicable Order Form for services rendered before the effective date of termination, (ii) any prepaid Deliverable requested prior to the effective date of termination will be delivered to Customer within thirty (30) days, and (iii) any unused Credits, rights and other licenses granted to Customer pursuant to this Agreement and any applicable Order Form will terminate immediately.

**4.5. Right to Suspend Service.** Without limiting any of the other rights in this Agreement, EvenUp has the right, in its sole discretion, to suspend Customer's ability to access the Service, without liability, under the following circumstances: (i) for scheduled or emergency maintenance to the Service; (ii) if EvenUp reasonably believes that Customer is using the Service in violation of this Agreement or applicable law; (iii) if EvenUp reasonably believes that Customer's use of the Service poses a security risk



to EvenUp or any third party; or (iv) if required by law enforcement or government agency, or otherwise in order to comply with applicable law or regulation.

## **5. DATA SECURITY; DATA PROCESSING**

**5.1. Data Security.** EvenUp will maintain a security program materially in accordance with industry standards that is designed to (i) ensure the security and integrity of Customer Input; (ii) protect against threats or hazards to the security or integrity of Customer Input; and (iii) prevent unauthorized access to Customer Input. In furtherance of the foregoing, EvenUp will maintain administrative, physical and technical safeguards to protect the security of Customer Input.

**5.2. Data Processing.** To the extent EvenUp processes Personal Data (as defined in the DPA, as incorporated herein) on Customer's behalf, the Data Processing Addendum available at [www.evenuplaw.com/dpa](http://www.evenuplaw.com/dpa) (the "DPA") is hereby incorporated by reference and applies to such processing.

## **6. INTELLECTUAL PROPERTY**

**6.1. Proprietary Rights.** As between the Parties, Customer exclusively owns all rights, title and interest in and to any non-public Customer Input, Deliverables, and Customer's Confidential Information, while EvenUp exclusively owns all rights, title and interest in and to the Service, any other product or service provided by EvenUp, System Data, EvenUp Materials, Output (excluding Deliverables and Customer Confidential Information), and EvenUp's Confidential Information. EvenUp grants Customer a non-exclusive, non-transferable, worldwide license, during the Subscription Period, to use Output generated for Customer solely for Customer's internal business purposes in connection with the Subscribed Services and to use Deliverables. To the extent EvenUp Materials are embedded in a Deliverable, EvenUp grants Customer a non-exclusive, perpetual license to use, reproduce, and display those EvenUp Materials as incorporated in that Deliverable, solely for Customer's internal business purposes and in the applicable client matter(s). No rights are granted to use EvenUp Materials standalone or to create competing products.

**6.2. Feedback.** Customer may from time to time provide Feedback to EvenUp. EvenUp will have full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality. EvenUp will have the full, unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such Feedback in connection with its products and services.

**6.3. Product Improvement.** Customer agrees that EvenUp has the right to collect, analyze, and aggregate Customer Input, Output, and other information relating to the performance of EvenUp's products and services, and may during and after the term hereof (i) use such data to improve EvenUp's products and services, and (ii) disclose non-privileged information from such data provided that it does not identify Customer or any client of Customer (the "**Deidentified Data**"). For example, EvenUp may extract and disclose useful, non-privileged information about insurance codes and health care providers that may benefit the broader ecosystem of Service users without reference to Customer, any client of Customer, or any client matter. EvenUp owns all rights, title, and interest in such Deidentified Data.



**6.4. Artificial Intelligence.** Customer acknowledges and agrees that the Service and its Output (including Deliverables) may rely on, and in some cases be exclusively generated by, Artificial Intelligence, which by its nature, has known limitations that can result among other things in Output that (a) contains errors and misleading information, (b) is repetitive or formulaic, (c) features information that is out of context or does not make sense, (d) lacks appropriate empathy and emotion for its intended use, (e) reflects biases that are present in the training data, which can result in Output that is discriminatory or offensive, (f) reflects incorrect assumptions and bad judgment. Customer agrees that it is responsible for evaluating, and bearing all risks associated with, its use of the Service and Output.

**7. CONFIDENTIAL INFORMATION.** Neither Party will use the other's Confidential Information except as permitted under this Agreement. Each Party agrees to take commercially reasonable precautions to prevent any unauthorized disclosure of the other's non-anonymized Confidential Information, including, without limitation, disclosing Confidential Information to Representatives and Affiliates of the receiving Party only in connection with the services they perform for such Party, provided they are subject to confidentiality provisions sufficient to comply with this provision. Each Party will be responsible for the acts and omissions of its Representatives and Affiliates pursuant to this Section. Nothing in this Section will restrict either Party from disclosing Confidential Information of the other pursuant to the valid order or requirement of a court, administrative agency, or other governmental body, provided that the Party required to make the disclosure gives reasonable notice to the other Party to enable it to contest the order or requirement. The terms of this Agreement are the Confidential Information of both Parties.

## **8. WARRANTIES.**

**8.1. EvenUp Warranties.** EvenUp warrants that (i) the Service will substantially conform to its Documentation; and (ii) any Professional Services will be performed in a good and workmanlike manner by appropriately qualified personnel. Customer must notify EvenUp in writing of any alleged breach of the foregoing express warranties (a "**Warranty Report**") within ten (10) days after Customer becomes aware of the applicable nonconformance and, with respect to any Deliverables resulting from Professional Services, within ten (10) days after delivery of such Deliverables, and in any event must provide reasonable detail sufficient for EvenUp to verify the issue. EvenUp will use commercially reasonable efforts to cure any verified material breach of the foregoing express warranties, as applicable, within thirty (30) days after receipt of a timely Warranty Report (the "**Cure Period**"). Customer's exclusive remedies, and EvenUp's sole liability, for breach of these express warranties will be (a) during the Cure Period, correction or re-performance (as applicable) by EvenUp; and (b) if EvenUp fails to cure within the Cure Period, suspension or termination of the affected Subscribed Services and/or Professional Services under the applicable Order Form. In the event of termination solely due to EvenUp's uncured breach of these express warranties, Customer may recover a pro rata portion of the prepaid fees corresponding to the terminated portion of the applicable Order Form. Except as expressly provided in this Section, Customer has no other remedies for breach of the foregoing express warranties. Any suspension under this Section will not excuse Customer's payment obligations except to the extent the Parties expressly agree in writing.

**8.2. Customer Warranties.** Customer represents, warrants and covenants that it (a) will confirm the completeness, accuracy and truthfulness of the Output (including any Deliverable) prior to its use, (b) has and will have all necessary right, power and authority and has taken all necessary action to enter into and perform its obligations under this Agreement and to grant the rights granted herein





(including without limitation, obtaining any third party consents and approvals necessary for Customer's use of the Service, e.g. any licenses and rights related to Customer Input); (c) will comply with all applicable laws, including without limitation with respect to (i) domestic and foreign data privacy or other rights of Customer clients and other third parties whose personally identifiable information may be shared with EvenUp (e.g., Health Insurance Portability and Accountability Act) and (ii) any other laws, regulations and obligations pertaining to end users; and (d) will not cause EvenUp to violate any law or regulation. To the extent Customer instructs EvenUp to transmit or receive information (such as Customer Input or a Deliverable) to or from a third party (such as a third party case management system), Customer represents, warrants and covenants that it has all necessary rights and permissions to allow EvenUp to transmit or receive such information.

## **9. DISCLAIMERS AND LIMITATIONS OF LIABILITY.**

**9.1. NO PROFESSIONAL LEGAL SERVICES.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE, ITS OUTPUT (INCLUDING ANY DELIVERABLES), AND THE PROFESSIONAL SERVICES DO NOT CONSTITUTE "PROFESSIONAL LEGAL SERVICES" AS DEFINED HEREIN OR OTHERWISE SERVE AS A SUBSTITUTE FOR THE PRACTICE OF LAW, AND ARE INTENDED ONLY TO BE USED WITH THE OVERSIGHT OF LEGAL PROFESSIONALS WHO ARE QUALIFIED TO PROVIDE PROFESSIONAL LEGAL SERVICES IN THE RELEVANT JURISDICTION. DELIVERABLES ARE PROVIDED IN DRAFT AND NOT FINAL FORM. IT IS CUSTOMER'S EXCLUSIVE RESPONSIBILITY TO OVERSEE THE SERVICE, REVIEW OUTPUT (INCLUDING ANY DELIVERABLES) FOR ACCURACY AND COMPLETENESS, AND CONFORM THEM TO ANY EVENTUAL USE IN CONNECTION WITH ANY PROFESSIONAL LEGAL SERVICES.

**9.2. ADDITIONAL DISCLAIMERS AND EXCLUSIONS.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 8.1 (EVENUP WARRANTIES) AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVENUP HEREBY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WITH RESPECT TO WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, LOSS OF PROFITS, AND FITNESS FOR A PARTICULAR PURPOSE. EVENUP DOES NOT WARRANT THAT THE SERVICE OR ANY OUTPUT (INCLUDING ANY DELIVERABLE) WILL BE ERROR-FREE, ACCURATE, TIMELY OR UNINTERRUPTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM THE SERVICE OR ITS OUTPUT (INCLUDING ANY DELIVERABLE) WILL CREATE ANY WARRANTY REGARDING EVENUP, ITS AFFILIATES, OR THEIR COLLECTIVE SERVICES THAT IS NOT EXPRESSLY STATED IN SECTION 8.1 (EVENUP WARRANTIES) OF THIS AGREEMENT. EVENUP IS NOT RESPONSIBLE OR LIABLE FOR ANY NON-EVENUP SERVICES (SUCH AS THIRD PARTY CASE MANAGEMENT SYSTEMS), DOES NOT GUARANTEE THE CONTINUED AVAILABILITY THEREOF OR ANY INTEGRATION THEREWITH, AND MAY CEASE MAKING ANY INTEGRATION WITH NON-EVENUP SERVICES AVAILABLE IN ITS SOLE DISCRETION.

**9.3. ASSUMPTION OF RISK.** CUSTOMER (I) ASSUMES ALL RISK FOR ANY DAMAGE THAT MAY RESULT FROM CUSTOMER'S OR ANY OF ITS CLIENTS' USE OF OR ACCESS TO THE SERVICE, ITS OUTPUT (INCLUDING ANY DELIVERABLE), AND (II) UNDERSTANDS AND AGREES THAT CUSTOMER'S USE OF THE SERVICE, ITS OUTPUT (INCLUDING ANY DELIVERABLE) IS AT CUSTOMER'S OWN DISCRETION AND RISK, AND THAT CUSTOMER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER, CUSTOMER'S CLIENTS OR OTHER THIRD PARTIES.

**9.4. BETA PRODUCTS.** FROM TIME TO TIME, CUSTOMER MAY HAVE THE OPTION TO ACCESS AND USE SO-CALLED "ALPHA" OR "BETA" PRODUCTS, FEATURES OR DOCUMENTATION THAT ARE EARLY





IN DEVELOPMENT (COLLECTIVELY, “**BETA PRODUCTS**”) OFFERED BY EVENUP. BETA PRODUCTS ARE NOT FULLY DEVELOPED AND ARE PROVIDED “AS IS.” EVENUP DOES NOT PROVIDE ANY INDEMNITIES, SERVICE LEVEL COMMITMENTS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, IN RELATION THERETO. CUSTOMER OR EVENUP MAY TERMINATE CUSTOMER’S ACCESS TO BETA PRODUCTS AT ANY TIME.

**9.5. LIMITATIONS OF LIABILITY.** OTHER THAN WITH RESPECT TO ANY PARTY’S OBLIGATIONS UNDER SECTION 10 (INDEMNIFICATION) AND SECTION 2.4 (OTHER RESTRICTIONS) OF THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, (I) WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, GOODWILL, BUSINESS OR PROFITS, OR WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION) WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE, OR (II) EXCLUDING CUSTOMER’S PAYMENT OBLIGATIONS, WILL EITHER PARTY BE LIABLE FOR ANY AGGREGATE LIABILITY IN EXCESS OF THE AMOUNTS PAID BY CUSTOMER UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THE FOREGOING LIMITATIONS WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

## **10. INDEMNIFICATION.**

**10.1. EvenUp Indemnification.** EvenUp will defend Customer against any claim, demand, suit, or proceeding (“**Claim**”) made or brought against Customer by a third party alleging that the Service or use thereof as permitted hereunder infringes or misappropriates a United States patent, copyright or trade secret and will indemnify Customer for any damages finally awarded against Customer (or any settlement approved by EvenUp) in connection with any such Claim; provided that (a) Customer will promptly notify EvenUp of such Claim, (b) EvenUp will have the sole and exclusive authority to defend and/or settle any such Claim (provided that EvenUp may not settle any Claim without Customer’s prior written consent, which will not be unreasonably withheld, unless it unconditionally releases Customer of all related liability) and (c) Customer reasonably cooperates with EvenUp in connection therewith. If the use of the Service by Customer, as applicable, has become, or in EvenUp’s opinion is likely to become, the subject of any claim of infringement, EvenUp may at its option and expense (i) procure for Customer the right to continue such use as set forth hereunder; (ii) replace or modify such use to make it non-infringing (with comparable functionality); or (iii) if the options in clauses (i) or (ii) are not reasonably practicable, terminate the affected portion of the applicable Order Form and provide a pro rata refund of any prepaid fees corresponding to the terminated portion of the applicable Order Form. EvenUp will have no liability or obligation with respect to any Claim if such Claim is caused in whole or in part by (A) compliance with guidelines or specifications provided by Customer; (B) use of the Service or its Output (including any Deliverable) by Customer not in accordance with this Agreement; (C) modification of the Service or its Output (including any Deliverable) by or on behalf of Customer; (D) the contents of Customer Confidential Information or (E) the combination, operation or use of the Service or its Output (including any Deliverable) with other products or services where the Service or its Output (including any Deliverable) would not by itself be infringing (clauses (A) through (E), “**Excluded Claims**”). This Section states EvenUp’s sole and exclusive liability and obligation, and Customer’s exclusive remedy, for any claim of any nature related to infringement or misappropriation of intellectual property.



**10.2. Customer Indemnification.** Customer will indemnify, defend and hold EvenUp and its Affiliates harmless from and against any and all Claims brought against them by a third party arising from or relating to (a) the Excluded Claims, or (b) Customer's violation of any third party's rights, including without limitation any act or omission of Customer that causes EvenUp to violate any third party's rights; or (c) any material violation of the terms of this Agreement or applicable Order Form.

**10.3. Indemnification Cap.** Such indemnification obligations as described in this Section 10 (Indemnification) will not be subject to the limits described in Section 9 (Disclaimers and Limitations of Liability) of this Agreement.

**11. MODIFICATIONS.** No amendment or modification to this Agreement, nor any waiver of any rights hereunder, will be effective unless assented to in writing by both Parties. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

**12. MISCELLANEOUS.** In the event of any conflict or inconsistency between this Agreement and an Order Form, this Agreement will control, unless an Order Form expressly identifies the provision of this Agreement to be modified and states that it is intended to supersede this Agreement for that specific purpose. EvenUp is an independent contractor and is not an agent or employee of Customer. EvenUp may use third party contractors to perform its obligations under this Agreement, provided that their acts and omissions in connection with this Agreement will be imputed to EvenUp. The Parties agree that nothing in this Agreement will be construed as preventing either EvenUp or Customer from entering into a similar relationship with third parties. If a court of competent jurisdiction or arbitrator finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement will be amended to achieve as nearly as possible the intent of the Parties, and the remainder of this Agreement will remain in full force and effect. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter hereof and obligations hereto. Neither Party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other Party's prior written consent, except that either Party may assign this Agreement without consent to a successor to all or substantially all of its assets or business related to this Agreement. Any attempted assignment, delegation, or transfer by either Party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the Parties and their successors and assigns. Customer grants EvenUp the right to identify Customer as a customer of the Service and to use Customer's name and logo for that purpose in EvenUp's marketing materials. Customer may revoke this right at any time by providing written notice to EvenUp.

**13. GOVERNING LAW.** Except as otherwise provided in Section 14 (Arbitration), the validity, interpretation, enforceability, and performance of this Agreement will be governed by and construed in accordance with the law of the State of California, without giving effect to its law regarding the conflict of laws.

**14. ARBITRATION.** Except in circumstances where a Party seeks equitable remedies (including injunctive relief), before commencing any court proceedings, if any disputes arise under this Agreement the Parties will negotiate in good faith to resolve the dispute and if the dispute has not been resolved



within thirty (30) days, the dispute will be referred to arbitration. The arbitration will be administered by the Judicial Arbitration and Mediation Services (“JAMS”) pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules, and determined by one (1) or more arbitrators appointed in accordance with said Rules, with any hearings to be held in San Francisco, California. Each Party irrevocably and unconditionally consents to the jurisdiction of any such proceeding and waives any objection that it may have to personal jurisdiction or the laying of venue of any such proceeding. The JAMS panel will have the authority to award all appropriate relief; provided, however, that such JAMS panel will not be authorized to award punitive damages. Any award of the JAMS panel will be final and binding on the Parties. The Parties agree that the decision of the arbitrator will be enforceable in any court of competent jurisdiction.

**15. NOTICES.** All notices under this Agreement must be in writing. Notices to EvenUp must be sent as follows: (a) notices of non-renewal (and, if applicable, termination/cancellation) by email to [support@evenuplaw.com](mailto:support@evenuplaw.com); (b) notices regarding breach, indemnification, or other legal matters by email to [legal@evenuplaw.com](mailto:legal@evenuplaw.com) with a copy to [support@evenuplaw.com](mailto:support@evenuplaw.com); and (c) any summons, complaint, notice of arbitration, subpoena, or other formal legal process must be served on EvenUp’s then-current registered agent for service of process in Delaware (as reflected in the Delaware Division of Corporations records), with a copy emailed to [legal@evenuplaw.com](mailto:legal@evenuplaw.com). Notices to Customer will be sent by email to the notice email address designated in the applicable Order Form (or as Customer designates by written notice). For the purposes of this Section, notices sent by email will be deemed received when delivered to the recipient’s email server, provided the sender does not receive an automated “undeliverable” message, and notices sent by courier will be deemed received upon confirmation delivery.

**16. SURVIVAL.** The provisions of Sections 1 (Definitions), 2.4 (Other Restrictions), 3 (Fees and Payment), 4 (Term; Termination), 6 (Intellectual Property), 7 (Confidential Information), 9 (Disclaimers and Limitations of Liability), 10 (Indemnification), 12 (Miscellaneous), 13 (Governing Law), 14 (Arbitration), 16 (Survival) and 18 (Government Terms) will survive expiration or termination of this Agreement for any reason.

**17. FORCE MAJEURE.** Neither Party will be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared), cyber attacks (e.g., denial of service attacks), or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

**18. GOVERNMENT TERMS.** EvenUp provides the Service, including related software and technology, for ultimate federal government end use solely in accordance with the terms of this Agreement. If Customer is an agency, department, or other entity of any government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, or any related documentation of any kind, including technical data, software, and manuals, is restricted by the terms of this Agreement. All other use is prohibited and no rights other than those provided in this Agreement are conferred. The Service was developed fully at private expense.