

**COPADO MASTER SERVICES AGREEMENT**

This Master Services Agreement ("***Agreement***") is entered into effective as of the date signed by the parties below or, if signed by the parties on different dates, the date signed by the later signing party (the "***Effective Date***") and is entered into by and between **Copado Inc.**, having its principal place of business at 20 W. Kinzie Street, Chicago, IL 60654 ("***Copado***") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("***Customer***")**.** Copado and Customer are individually hereinafter referred to as a “Party” and collectively as the “Parties.”

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS**

***“Advanced Data Deployer”*** means the MetaData migration Service further described in Section 3.5.

"***Affiliate***” means any entity which 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 Master Services Agreement.

***“Change of Support***” means the date that the subscription to Copado’s Salesforce Services or related development operations tool is no longer supported via original provided Copado-Customer support engagement methods and is replaced with comparable support engagement methods.

***“Configuration Data”*** means a type of data stored in the Salesforce or similar database that acts like MetaData for Salesforce or similar applications and can be customized and assigned to transaction types for customizing how the proposed Salesforce or similar function should behave.

***“Customer”*** means the company or other legal entity listed in the preamble of this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Orders or SOWs.

"***Customer Materials***" means any information submitted by Customer to Copado as part of the business engagement, excluding and Non-Copado Applications.

“**Data Warehouse**” means the extracted storage location for Customer Object Data.

**“Documentation”** means the Copado provided training materials and system documentation, including specifications, user guide, and functionality of Advanced Data Deployer and Dev Ops 360, located at <https://docs.copado.com/>

“***DevOps 360***” means the Copado analytics Services, as purchased by Customer, which enables Customer to measure development and implementation performance as specified in the Documentation, and further described in Section 3.6.

“***ETL***” means “extract, transform, load”; which are three database functions combined into one tool to pull data out of one database and place it into another database.

"***Malicious Code***" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

“***MetaData***” means contextual information about data or data sets such as form fields, hierarchical flow, formats, decision matrices, properties, and underlying definitions or descriptions which provides a framework to identify and classify a variety of other data.

***“Non-Copado Application”*** means a web-based, mobile, offline or other software application functionality that interoperates with a Service, that is provided by Customer or a third party and/or listed on an app exchange or marketplace (including Salesforce Labs or under similar cloud designation). Non-Copado Applications, other than those obtained or provided by Customer, will be identifiable as such.

**“*Object Data*”** meansa type of Meta-Datastored in the Salesforce or similar database that relays information about the planning, development, integrate, test, and release stages of development.

"***Order***" means the documents for placing orders hereunder, including addenda thereto, that are entered into between Customer and Copado or any of Copado’s Affiliates from time to time, including addenda and supplements thereto. By entering into an Order hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto. Orders shall be deemed incorporated herein by reference.

“***Personally Identifiable Information***” (or **PII**) means information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual, and includes information protected by the following regulations: The General Data Protection Regulation (GDPR), HIPAA/HITECH - Health related information, GLBA - Financial information, Privacy Act - Fair Information Practices for PII held by Federal Agencies, COPPA , FERPA, and FCRA.

***“Professional Services”*** means work performed by Copado as may be more fully described in an SOW or Order.

***“Seeded” or “Seeding”*** means the process of inputting Test Data and/or Configuration Data to enable a Salesforce function to work correctly to generate meaningful results for testing purposes.

***“Service(s)”*** means the subscription license to Copado Salesforce or related development operations online tools or Professional Services that are ordered by Customer under an Order or SOW and performed by Copado, as described in the Documentation or SOW, as applicable. “Services” exclude Non-Copado Applications.

“***SOW***” means a statement of work describing Professional Services that is entered into between Customer and Copado or which is incorporated into an Order that is entered into between Customer and Copado or any respective Affiliates.

“***Test Data***” means data that is Seeded to perform the tests for identifying and locating defects, to verify and validate the given features, and/or develop scenarios of the Salesforce or similar cloud function under the test. Test Data is representative of Salesforce or similar cloud production data but does not use actual PII or expose any PII.

***“User”*** means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services provided by Copado without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, Copado at Customer’s request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

1. **COPADO RESPONSIBILITIES**
   1. **Provision of Services; Change of Support.** 
      1. Copado will (a) make the Services available to Customer pursuant to this Agreement, and the applicable Orders and Documentation, (b) provide applicable Copado standard support for the Services to Customer at no additional charge, and/or upgraded premiere support if purchased, (c) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Copado shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Copado’s 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 Copado employees), Internet service provider failure or delay, Non-Copado Application, or denial of service attack, and (d) provide the Services in accordance with laws and government regulations applicable to Copado’s provision of its Services to its customers generally (i.e., without regard for Customer’s particular use of the Services), and subject to Customer’s use of the Services in accordance with this Agreement, the Documentation and the applicable Order.
      2. Copado strives to continually innovate and evolve its support process with more effective systems and processes. As part of this ongoing evolution, certain support processes, including but not limited to versions, methods of Copado-Customer engagement, and instructions will be revised from time to time. In the event of such a revision, Copado will provide Customer with not less than five (5) days advance notice of such support revisions, along with necessary instructions and process to enable Customer to access the support purchased by Customer pursuant to this Agreement or the applicable Order.
   2. **Protection of Customer Materials; Personally Identifiable Information.** The parties acknowledge that Copado Services only manage customer MetaData within the Salesforce or applicable cloud environment and should not be used to nor is it intended to access, receive, control, store, process, transmit, maintain, or possess Customer’s Personally Identifiable Information. To the extent a customer utilizes such PII with Copado Services, it is expressly outside of the express design and use of the Services, unless a specific PII related service is specified in an applicable Order, and which will contain any applicable terms and conditions relative to the security and safeguards necessary for such PII. Copado will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Materials. Copado will take measures to safeguard all information processed in its system, this will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Materials (other than by Customer or Users).

Copado Services only requires personal information in the form of name (which can be fictionalized) and email used for authentication, authorization, and process outcome notification purposes. Copado Services access is limited to Customers instance of S[alesforce.com](http://salesforce.com/) or the applicable cloud environment. No access to Customer infrastructure is provided to Copado.

1. **USE OF THE SERVICES**
   1. **Subscriptions**. Unless otherwise provided in the applicable Order or Documentation, (a) Services and access to Documentation are purchased as subscriptions for the term stated in the applicable Order or in the applicable online purchasing portal, (b) subscriptions for Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Copado regarding future functionality or features.
   2. **Usage Limits**. Services may be subject to usage limits specified in Orders and Documentation. If Customer exceeds a contractual usage limit, Copado may work with Customer to seek to reduce Customer’s usage so that it conforms to that limit. If, notwithstanding Copado’s efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order for additional quantities of the applicable Services promptly upon Copado’s request, and/or pay any invoice for excess usage in accordance with the “Invoicing and Payment” section below.
   3. **Customer Responsibilities.** Customer will (a) be responsible for Users’ compliance with this Agreement, Documentation and Orders, (b) be responsible for the accuracy, quality and legality of Customer Materials, the means by which Customer acquired Customer Materials, Customer’s use of Customer Materials with the Services, and the interoperation of any Non-Copado Applications with which Customer uses Services , (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Copado promptly of any such unauthorized access or use, (d) use Services only in accordance with this Agreement, Documentation, Orders and applicable laws and government regulations, and (e) comply with terms of service of any Non-Copado Applications with which Customer uses Services. Any use of the Services in breach of the foregoing by Customer or Users that in Copado’s judgment threatens the security, integrity or availability of Copado’s services, may result in Copado’s immediate suspension of the Services, however Copado will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.
   4. **Usage Restrictions.** Customer will not (a) make any Service available to anyone other than Customer or Users, or use any Service for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service or Non-Copado Application 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 or Non-Copado Application 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 its related systems or networks, (g) permit direct or indirect access to or use of any Services in a way that circumvents a contractual usage limit, or use any Services to access or use any of Copado intellectual property except as permitted under this Agreement, an Order, or the Documentation, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (i) copy Documentation except as permitted herein or in an Order or the Documentation, (j) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent.
   5. **Advanced Data Deployer** If purchased by Customer as stated in an Order, the following terms apply:
      1. **Data Deployer Subscription Licenses** Customer must specifically allocate each Data Deployer subscription license to each applied User pursuant to the Agreement.
      2. **Data Deployer Functionality**  Data Deployer is designed for Salesforce or similar cloud deployments of Meta-Data in the development operations lifecycle; specifically, to deploy Configuration Data with complex relationships between objects, and to deploy Test Data sets to new sandboxes. Data Deployer can be used to create a [Template](https://docs.copa.do/article/u147lj0e1b-data-templates), which is a configuration file that defines a structure to migrate between Salesforce organizations. Customer can define a template for a main object and its related parent and child objects. Copado has designed several pre-built Templates to assist Customer: [Pre-Built Templates](https://docs.copa.do/article/pv00aviv9j-pre-built-data-templates)

3.5.3 **Exclusions** Data Deployer is not an ETL tool and is not designed for large production data migrations. Data Deployer is also not designed for production data back-ups or emergency recovery. In no event should Customer Seed actual PII with the Data Deployer Service. No actual, real, valid data should ever be transferred using Data Deployer without the appropriate data [Masking](https://docs.copa.do/article/5hye9mdkwm-data-masking).

3.5.4 **Best Practices** In order to utilize Data Deployer most efficiently and effectively, Customer should follow Copado’s [Data Deployer Best Practices](https://docs.copa.do/article/nqomqlp76u-advanced-data-deploy-best-practices).

3.5.6 **Limitations**

1. A Template deployment with one main object and no related objects can deploy up to 40,000 records.
2. A Template deployment with one main object and many related objects can deploy up to 8,000 records of all the related objects. If this limit is being reached, Customer can split the deployment in different deployment steps until all the necessary records are migrated.
3. Query filters are only applied to the main Template selected for deployment. Filters do not apply to the selected child object Templates.

3.5.7 **Disclaimer** Copado is not liable for any claims, losses, demands, or suit arising directly or indirectly from Customer’s failure to follow these requirements. Copado does not store any Customer Test Data, Meta Data, or Configuration Data (collectively for this Section 3.5.7, “**Deployer** **Data**”) with any permanence, but only for transport operation of the Data Deployer. Copado does not retain any such Deployer Data. Copado does not provide any back up or Deployer Data recovery for any type of Deployer Data, as no Deployer Data is captured or retained by Copado. Customer should not use the Data Deployer for on-boarding/offboarding employee information. Customer must delete all Deployer Data (of any kind) from the applicable Salesforce or similar sandbox environments after use.

* 1. **DevOps 360** If purchased by Customer as stated in an Order, the following terms apply:
     1. **Dev Ops 360 Subscription Licenses** Customer must specifically allocate each DevOps 360 subscription license to each applied User pursuant to the Agreement.
     2. **Interoperation with Third Party Services** The DevOps 360 Services may interoperate with other services provided by Salesforce, third parties, and applicable Data Warehouses (collectively “**Third Party Services**”). Customers use of such Third-Party Services are subject to the terms and conditions for such services provided by such third parties and/or as stated in the Documentation.
     3. **Exclusions**. DevOps 360 Services are not intended for use with PII.
     4. **Disclaimer** Copado is not liable for any claims, losses, demands, damages, or suit arising directly or indirectly from use of DevOps 360 except when used in accordance with its intended use. Copado stores only Object Data or MetaData (collectively for this Section 3.6.4, “**DevOps 360 Data**”) in the Third-Party Data Warehouse only for purposes of operation of the DevOps 360 Services. All DevOps 360Data storage shall be maintained by the Third-Party Data Warehouse, subject to the applicable terms and conditions of such Third-Party Service as specified in the Documentation. Copado does not provide any back up or DevOps 360Data recovery for any type of DevOps 360Data.

1. **FEES AND PAYMENT**

4.1 **Fees.** Customer will pay all fees specified in Orders or SOW. Except as otherwise specified herein or in an Order or SOW, (i) fees are based on Services subscription access purchased, (ii) payment obligations are non- cancelable and fees paid are non-refundable, and (iii) quantities of access purchased cannot be decreased during the relevant subscription term.

4.2 **Invoicing and Payment.** If required by Customer’s internal purchasing procedures in order to pay any Copado invoice,Customer will provide Copado with a valid purchase order or alternative document reasonably acceptable to Copado commensurate with Customer’s execution of an Order or SOW. Copado may withhold access to Services and delay Professional Services until any required purchase order is provided enabling Copado to submit an invoice. Copado will invoice Customer in advance and otherwise in accordance with the relevant Order or SOW. Unless otherwise stated in the Order or SOW, invoiced fees are due net thirty (30) days from the invoice date. Customer is responsible for providing complete and accurate billing and contact information to Copado and notifying Copado of any changes to such information.

4.3 **Overdue Charges.** If any invoiced amount is not received by Copado by the due date, then without limiting Copado’s rights or remedies, (a) those charges will 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) Copado may condition future subscription renewals and Orders on payment terms shorter than those specified in the “Invoicing and Payment” section above.

4.4 **Suspension of Service and Acceleration.** If any charge owing by Customer under this or any other agreement for Services is overdue, Copado may, without limiting its other rights and remedies, accelerate Customer’s unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that, other than for customers paying by credit card or direct debit whose payment has been declined, Copado will give Customer at least ten (10) days’ prior notice that its account is overdue, in accordance with the “Notice” section below for billing notices, before suspending services to Customer. Copado shall not be required to provide more than two (2) such overdue notices in any calendar year and may take action for nonpayment as provided by this Section if payment is not timely received as invoiced.

4.5 **Payment Disputes.** Copado will not exercise its rights under the “Overdue Charges” or “Suspension of Service” section above if Customer has notified Copado of a reasonable dispute with the applicable charges listed in a Copado invoice prior to the invoice due date (including reasonable detail as to the nature of the dispute), and reasonably and in good faith cooperates diligently to resolve the dispute.

* 1. **Taxes.** Copado's 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”). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Copado has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Copado will invoice Customer and Customer will pay that amount unless Customer provides Copado with a valid tax exemption certificate authorized by the appropriate taxing authority. Copado is solely responsible for taxes assessable against it based on its income, property and employees.

1. **PROPRIETARY RIGHTS**
   1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Copado reserves all rights, title and interest in and to the Services, including all related intellectual property rights. No rights are granted to Customer hereunder other than expressly set forth herein.
   2. **Customer Materials.** Subject to the limited rights granted by Customer hereunder, Copado acquires no right, title or interest from Customer or Customer’s licensors under this Agreement in or to Customer Materials, including any intellectual property rights therein.
   3. **Admin Access.** Customer understands and agrees that selected Copado technical and customer support personnel may require temporary access to the Customer's applicable cloud environment (but not access any PII or other actual data) through the normal course of providing customer support, system administrative services, or professional services. Customer hereby consents to such access and retains control over any access.
   4. **License by Customer to Copado**. In order for Copado to provide and ensure proper interoperation of the Services and associated systems in accordance with this Agreement, Customer grants Copado, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-Copado Applications and program code created by or for Customer. If Customer chooses to use a Non Copado Application with a Service, Customer grants Copado permission to allow the Non-Copado Application and its provider to access Customer Materials and information about Customer’s usage of the Non-Copado Application as appropriate for the interoperation of that Non-Copado Application with the Service. Subject to the limited licenses granted herein, Copado acquires no right, title or interest from Customer or its licensors under this Agreement in or to any Customer Materials, Non-Copado Application or such program code.
   5. **License by Customer to Use Feedback.** Customer grants to Copado and its Affiliates a worldwide, perpetual, irrevocable, royalty free license to use and incorporate into its Services any suggestion, Salesforce post, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Copado’s or its Affiliates’ services.
   6. **Federal Government End Use Provisions.** If Copado provides the Services, including related software and technology, for ultimate federal government end use in accordance, the following applies: The Services consist of “commercial items,” as defined at FAR 2.101. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Services shall be as provided in this Agreement, except that, for U.S. Department of Defense end users, technical data customarily provided to the public is furnished in accordance with DFARS 252.227-7015. If a government agency needs additional rights, it must negotiate a mutually acceptable written addendum to this Agreement specifically granting those rights.
2. **CONFIDENTIALITY**
   1. **Definition of Confidential Information.** As used herein, "***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. Customer Confidential Information shall include Customer Materials; Copado Confidential Information shall include, without limitation, the Services, the source code, and the data schema; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Orders, 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 shall 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, or (iv) was independently developed by the Receiving Party, as demonstrated by contemporaneous written records.
   2. **Protection of Confidential Information.** The Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event 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, contractors and agents who need such 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 shall disclose the terms of this Agreement or any Order to any third party other than its Affiliates and their legal counsel and accountants without the other party’s prior written consent.
   3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such 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 such Confidential Information.
   4. **Accepted use.** Customer acknowledges and agrees that Copado may compile aggregated, anonymized, de-identified data or metrics from all or part of Customer’s use of the Services, provided that such aggregated results will not contain information that could be used to individually identify Customer or its Users. Copado shall use such aggregated data in non-personally identifiable form for the purposes of improving the Copado Service, for evaluating global trends for product development and marketing, for optimizing its performance or metrics, for best practice or benchmarking evaluation, and as may be required for accounting or audit requirements, or by law. Such aggregated de-identified data shall belong to Copado and shall be considered Copado’s Confidential Information.
3. **WARRANTIES AND DISCLAIMERS**
   1. **Warranties by Copado.** Copado warrants that (i) Copado has validly entered into this Agreement and has the legal power to do so, (ii) the Services shall perform materially in accordance with its Documentation, and (iii) the functionality of the Services will not be materially decreased during a subscription term specified in the Order. For any breach of a warranty above, the exclusive remedy shall be as provided in Section 10.4 (Refund or Payment upon Termination) below.
   2. **Warranties by Customer.** Customer warrants that Customer has validly entered into this Agreement and has the legal power to do so.
   3. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
4. **MUTUAL INDEMNIFICATION**
   1. **Indemnification by Copado.** Copado shall defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Services as permitted hereunder infringes or misappropriates the intellectual property rights of a third party (a "***Claim Against Customer***"), and shall indemnify Customer for any damages, attorney fees and costs finally awarded against Customer as a result of, and for amounts paid by Customer under a judgment, or court approved settlement of, a Claim Against Customer; provided that Customer (a) promptly gives Copado written notice of the Claim Against Customer; (b) give Copado sole control of the defense and settlement of the Claim Against Customer (provided that Copado may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to Copado all reasonable assistance, at Copado’s expense. In the event of a Claim Against Customer, or if Copado reasonably believes the Services may infringe or misappropriate a third party’s intellectual property rights, Copado may in its sole discretion and at no cost to Customer (i) modify the Services so that they no longer infringe or misappropriate, which shall not be considered a breach of any warranties under this Agreement, (ii) obtain a license for continued use of the Services in accordance with this Agreement, or (iii) terminate subscriptions for such Services upon (thirty) 30 days written notice and refund to Customer any prepaid fees covering the remainder of the term of such subscriptions after the effective date of such termination. Copado shall have no liability or obligation hereunder with respect to any claim based upon (a) use of any Services in an application or environment or on a platform or with devices for which it was not designed or contemplated; (b) modifications, alterations, combinations or enhancements of the Services not created by or for Copado; (c) Customer’s continuing allegedly infringing activity after being notified thereof, or its continuing use of any version after being provided modifications that would have avoided the alleged infringement; or (d) any intellectual property right in which Customer or any Customer Affiliates has an interest.

8.2 **Indemnification by Customer.** Customer shall defend Copado against any claim, demand, suit or proceeding made or brought against Copado by a third party alleging that Customer Materials, or Customer’s use of the Services in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law (a "***Claim Against Copado***"), and shall indemnify Copado for any damages, attorney fees and costs finally awarded against Copado as a result of, or for any amounts paid by Copado under a judgment, or court-approved settlement of, a Claim Against Copado; provided that Copado (a) promptly gives Customer written notice of the Claim Against Copado; (b) gives Customer sole control of the defense and settlement of the Claim Against Copado (provided that Customer may not settle any Claim Against Copado unless the settlement unconditionally releases Copado of all liability); and (c) provides to Customer all reasonable assistance at Customer’s expense.

8.3 **Exclusive Remedy.** Section 8 (Mutual Indemnification) 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 8**.**

1. **LIMITATION OF LIABILITY**
   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 CUSTOMER AND ITS 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 CUSTOMER'S AND ITS AFFILIATES’ PAYMENT OBLIGATIONS UNDER THE “FEES AND PAYMENT” SECTION ABOVE.
   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.
2. **TERM AND TERMINATION**
   1. **Term of Agreement.** This Agreement commences as of the Effective Date and continues until all subscriptions granted in accordance with this Agreement or SOWs have expired or have been terminated.
   2. **Term of Purchased Subscriptions.** The term of each subscription shall be as specified in the applicable Order. Except as otherwise specified in an Order, subscriptions will automatically renew for additional periods equal to the expiring subscription term or one (1) year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant subscription term. The per-unit pricing during any renewal term will increase by up to Seven percent (7%) above the applicable pricing in the prior term, unless Copado provides Customer notice of different pricing at least sixty (60) days prior to the applicable renewal term. Except as expressly provided in the applicable Order, renewal of “promotional or one-time” priced subscriptions, specified as such in the Order, will be at Copado’s applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume for any Services has decreased from the prior term will result in repricing at renewal without regard to the prior term’s per-unit pricing.
   3. **Termination.** A party may terminate an applicable Order or SOW for cause (i) upon thirty (30) days written notice to the other party of a material breach and 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.
   4. **Refund or Payment upon Termination**. If an Order or SOW is terminated by Customer in accordance with the “Termination” section above, Copado will refund Customer a pro-rata portion of any prepaid fees covering the remainder of the term of such Order or SOW after the effective date of termination. If an Order or SOW is terminated by Copado in accordance with the “Termination” section above, Customer will pay any unpaid fees covering the remainder of the term of such Order or SOW to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Copado for the period prior to the effective date of termination.
   5. **Surviving Provisions.** The sections titled “Proprietary Rights,” “Confidentiality,” “Warranties & Disclaimers,” “Mutual Indemnification,” “Limitation of Liability,” “Refund or Payment upon Termination,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement.
3. **GENERAL PROVISIONS.**
   1. **Export Compliance.** The Services may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list. Customer shall not permit Users to access or use Services in a U.S.-embargoed country or otherwise in violation of any U.S. export law or regulation.
   2. **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.
   3. **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Copado and Customer regarding Customer’s use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Orders and SOWs pursuant to this Agreement) is void notwithstanding that the Customer documentation may be later in time. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, 2) the applicable SOW, and (3) this Agreement. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.
   4. **Relationship of the Parties.** The parties to this Agreement are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
   5. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
   6. **Waiver.** No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.
   7. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the objectionable portions of such provision will be deemed null and void, and the remaining provisions or portions of this Agreement will remain in effect.
   8. **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, conditioned, or delayed); provided, however, either party may assign this Agreement in its entirety (including all Orders or SOWs), 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 by Customer, Copado will refund Customer any prepaid fees covering the remainder of the term of all subscriptions for the period after the effective date of such termination. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
   9. **Notices, Governing Law, and Venue.** The address to which Customer should direct notices under this Agreement, the law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and the courts that have exclusive jurisdiction over any such dispute or lawsuit is as listed below. Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules:
      1. Notices should be addressed to: Copado, Inc., 20 W. Kinzie Street, Chicago, IL 60654, Attn: Legal Dept.
      2. Governing Law: California and controlling United States Federal law.
      3. Courts with exclusive jurisdiction: San Francisco, California
   10. **Manner of Giving Notice.** Except as may otherwise be specified in this Agreement, all notices related to this Agreement will be in writing and will be deemed received upon (a) personal delivery with signature receipt, (b) the third business day after mailing, (c) delivery by overnight mail via a recognized provider, or (d) by email, except for notices of termination or an indemnifiable claim which shall clearly be identifiable as such in their terms and sent contemporaneously via a method listed in a) through c) above. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant Services system administrator or supervising employee designated by Customer, or if no such designation is provided, to the relevant billing contact.
   11. **No Agency.** Copado, Inc. is entering into this Agreement as principal and not as agent for any Copado company. Subject to any permitted Assignment under the “Assignment” section above, the obligations owed by Copado, Inc. under this Agreement shall be owed to Customer solely by Copado, Inc. and the obligations owed by Customer under this Agreement shall be owed solely to Copado, Inc.
   12. **Insurance**. Copado will purchase and maintain from the Effective Date of this Agreement through the expiration of this Agreement and any Order(s) or SOWs under the Agreement, the following minimum insurance limits and coverage with an A.M. Best Guide rating to A VII or better:
4. Workers' Compensation Insurance, with statutory limits, as required by the state having jurisdiction over Copado’s employees, and Employer's Liability Insurance with limits required in the applicable jurisdictions;
5. Commercial General Liability Insurance, written claims-made basis, combined single limit per occurrence of $1,000,000 and an annual aggregate of $2,000,000, including defense costs, for all coverages;
6. Commercial Automobile Liability Insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 each accident. This insurance shall cover liability arising out of the use of Copado’s owned, non-owned, and hired automobiles in the performance of the Services;
7. Umbrella/Excess Liability Insurance, written on an occurrence, not claims-made basis, providing coverage excess of the underlying Employer’s Liability, Commercial General Liability, and Commercial Automobile Liability insurance, with limits of not less than $4,000,000;
8. Professional Liability and Cyber Liability Insurance, including acts, errors and omissions arising out of the rendering professional services related to this Agreement with coverage limits of no less than $5,000,000 per claim and an annual aggregate of $5,000,000.

The Commercial General Liability and Umbrella/Excess Liability insurance required above shall list Customer as an additional insured for liability arising out of the acts or omissions of Copado, its employees, or agents and for liability arising out of Copado’s Services.

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this Agreement as of the Effective Date:

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| --- | --- | --- |
| **COPADO, Inc.**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | **CUSTOMER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |