

# Ekata Master Services Agreement

Welcome to Ekata, Inc. ("**Ekata**," "**we**," or "**us**"), and thank you for signing up for our global identity verification and fraud prevention products and services.

If you accept this Agreement on behalf of a company or other legal entity, then "**Customer**" or "**you**" means that entity, and you represent and warrant that: (i) you are authorized to bind this entity to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree to the terms and conditions of this Agreement on their behalf. If you do not have authority bind the entity, or you do not agree with these terms and conditions, you must not accept this Agreement and may not use the Services.

BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, YOU AGREE TO THE TERMS OF THIS MSA.

This Agreement was last updated on **September 10, 2019**. It is effective between Customer and Ekata as of the date of Customer's acceptance of 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 Master Services Agreement ("**MSA**") and any Orders entered pursuant to this MSA, including all referenced documents, and all associated amendments and addenda.

"**Customer Data**" means electronic data and information submitted by or for Customer to the Services.

"**DPA**" means a Data Processing Agreement which may be made a part of this Agreement.

"**Ekata Data**" means information that Ekata makes available to Customer through the Services or pursuant to an Order, consisting of information from publicly available sources, third-party data providers, and Metadata.

"**GDPR**" means the General Data Protection Regulation (Regulation (EU) 2016/679).

"**Metadata**" are data that Ekata derives from its analysis of its customers' data that are submitted to the Services. Examples of Metadata include: the number of times a data element has been queried in a period of time (velocity) or the last time a data element has been seen (recency). Metadata is not Customer Data.

"**Order**" means a document or online order entered into between Customer and Ekata, or any of their Affiliates, that specifies the Services to be provided by Ekata. By entering into an Order, an Affiliate of Customer agrees to be bound by the terms of this Agreement as if it were an original party.

**“Purchased Services”** means the Services and licensing of Ekata Data that Customer or its Affiliate purchases under an Order. Purchased Services do not include Services provided pursuant to a free trial.

**“Services”** are Ekata’s suite of global identity verification products and services provided to Customer under an Order, or pursuant to a free trial, that Ekata makes available online. “Services” exclude Ekata Data.

**“User”** means an individual who is authorized by Customer to access or use the Services, and who has been provided a user id and password, or other account credential. For example, Users may include employees, contractors and agents of Customer.

## **2. Our Commitments to You**

**2.1 Services and Ekata Data.** Ekata will make the Services and Ekata Data available to you pursuant to this Agreement. The Services are comprised of digital identity verification and fraud prevention products and services, some or all of which you may elect to receive. You will access Ekata Data through the Services, and we will provide the application programming interface(s), web portal(s) and, for some testing use cases, secure file transfer protocol server, to enable your access. Ekata provides certain Services and Ekata Data by employing machine learning techniques that identify patterns in data by using algorithmic models. These models leverage Ekata Data, Customer Data, and data provided by Ekata’s other customers. When you submit Customer Data to the Services, Ekata may analyze Customer Data in conjunction with Ekata Data and other customers’ data, to create Metadata to provide results to your query.

**2.2 Security of Customer Data.** Ekata will maintain a security program with reasonable and appropriate administrative, physical, organizational, and technical safeguards designed to protect your Customer Data against unauthorized access or disclosure and accidental loss or destruction. As part of these safeguards, we cryptographically hash your Customer Data when we use them in our algorithmic models. For more information on Ekata’s security initiatives, please see our Security Overview and FAQ, available [here](#).

**2.3 Customer Data Deletion.** Upon termination of this Agreement, you may request deletion of your Customer Data. Subject to the “Use of Customer Data” section below, Ekata will delete Customer Data within 90 days.

### **2.4 Data Protection.**

**2.4.1 GDPR.** To the extent you submit personal data from the European Economic Area (EEA), the United Kingdom or Switzerland (collectively “Europe”) to the Services, our DPA found [here](#) shall apply and is hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data, as defined in the DPA. If you have transferred personal data originating in Europe to us, the Standard Contractual Clauses attached to the DPA will apply. Customer and its applicable Affiliates are the data exporter(s), and Customer's acceptance of this Agreement, and an applicable Affiliate's execution of an Order, will also be treated as its execution of the DPA and Standard Contractual Clauses. You acknowledge that Ekata does not merely process data but also controls the purpose and means of the data processing contemplated by this Agreement.

**2.4.2 Our Privacy Policy.** With respect to Ekata Data that we make available to Customer, we will (a) ensure that we have posted a privacy policy that complies with applicable law and, as applicable, adequately discloses the sale and disclosure of information to categories of third parties, (b) obtain consent and offer opt-outs that may be required under applicable law, (c) not disclose or make available to Customer personal data about any individuals who are 17 years old or younger.

**2.5 Support.** We provide support for the Purchased Services in accordance with our [service tiers](#). In addition, we will make the Purchased Services available 24 hours a day, 7 days a week, in accordance with our [service level agreement](#).

**2.6 Compliance with Laws.** Subject to your use of the Services in accordance with this MSA and any applicable Orders, we will provide the Services in accordance with laws applicable to our provision of the Services to our customers generally—meaning without regard to your particular use of the Services.

**2.7 Data Evaluations.** If you register on our web site or enter into an Order for a free data evaluation, we will make the applicable Services available to you on a trial basis free of charge until the earlier of (a) the end of the free evaluation period for which you registered or the period indicated in the Order, (b) the start date of the Purchased Services ordered by you following the evaluation, and (c) termination by Ekata, in its sole discretion. Additional trial terms and conditions may appear on an Order or the trial registration web page, and are made a part of this Agreement by reference.

NOTWITHSTANDING THE “REPRESENTATIONS AND WARRANTIES” SECTION AND “INDEMNIFICATION BY EKATA” SECTION, DURING A FREE TRIAL THE SERVICES ARE PROVIDED “AS-IS”, WITHOUT ANY WARRANTY OF ANY KIND. WE SHALL HAVE NO INDEMNIFICATION OBLIGATIONS, NOR LIABILITY OF ANY TYPE, WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS THE EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW, IN WHICH CASE OUR LIABILITY SHALL NOT EXCEED \$5,000.00. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE “LIMITATION OF LIABILITY” SECTION, YOU ARE FULLY LIABLE FOR ANY DAMAGES ARISING OUT OF YOUR OR YOUR AFFILIATES’ USE OF THE SERVICES AND EKATA DATA DURING ANY FREE TRIAL PERIOD, YOUR BREACH OF THIS AGREEMENT, AND YOUR INDEMNIFICATION OBLIGATIONS HEREUNDER.

### **3. Your Responsibilities.**

**3.1 Generally.** You will be responsible for your compliance with this Agreement and for the compliance of all Affiliates and Users. You will use commercially reasonable efforts to prevent unauthorized access to or use of the Services and Ekata Data, and will notify us without undue delay of any such unauthorized access or use. You will use the Services and Ekata Data only in accordance with this Agreement. You are solely responsible for ensuring that your use of the Services and Ekata Data, including your provision of Customer Data to Ekata as contemplated hereunder, does not violate the laws of the applicable jurisdictions in which you do business. Any use of the Services in breach of this Section by Customer, its Affiliates, or any Users, may result in Ekata’s immediate suspension of the Services; however, Ekata will use commercially reasonable efforts under the circumstances to provide you with notice and an opportunity to remedy a breach prior to suspension.

**3.2 Your Privacy Policy.** You will not collect, nor provide to Ekata, any Customer Data that is not collected, stored, or used in accordance with applicable law and your privacy policy (or the privacy policy of your customers, if applicable). You will ensure that your privacy policy is readily accessible to anyone whose personal information you disclose to us and, if required by applicable law, provide individuals with the ability to exercise rights applicable to their personal information, such as opting-out of disclosure of their personal information by you. You are solely responsible for obtaining any consents required in connection with your provision of Customer Data to Ekata for the purposes described in this Agreement.

### **3.3 Restrictions.**

**3.3.1 General Restrictions.** Customer will not: (a) make any Services or Ekata Data available to anyone other than Customer, its Affiliates, and their respective Users; (b) use the Services or Ekata Data for the benefit of anyone other than Customer or its Affiliates; (c) falsify or alter any unique identifier assigned to Customer, or otherwise obscure or alter the source of queries to the Services; (d) permit direct or indirect access to or use of any Services or Ekata Data in a way that circumvents any usage limits; (e) reproduce, modify, distribute, disassemble, reverse engineer or create derivative works based on any portion of the Services; (f) violate or attempt to violate the security of the Services, or introduce any malicious code into the Services; (g) use the Services or Ekata Data to build a competitive product or service; or (h) submit Customer Data to the Services that contain any information deemed “sensitive” under applicable law (such as government identification numbers, financial account information, or information related to children).

**3.3.2 Data Use Restrictions.** Customer will use the Ekata Data for identity verification and fraud detection and prevention use cases only, and will not: (a) use the Ekata Data for marketing purposes; (b) use the Ekata Data in violation of any applicable law, rule, or regulation or in violation of any third-party right; (c) store the Ekata Data for purposes other than Customer’s own internal business purposes; (d) use the Ekata Data in conjunction with illicit activities; (e) store or cache the Ekata Data to avoid making additional queries to the Services; (f) merge stored Ekata Data with other data unless it is coded or tagged to indicate Ekata as its source; or (g) use the Ekata Data for file download in a fixed page format (i.e., create a printable, downloadable directory of personal information).

**You acknowledge that the Service is not provided by a “consumer reporting agency” as that term is defined in the Fair Credit Reporting Act (“FCRA”) and the Ekata Data do not constitute “consumer reports” as defined in the FCRA. Accordingly, the Ekata Data may not be used as a factor in determining eligibility for credit, insurance, employment or any other purpose in which a consumer report may be used under the FCRA (or any similar consumer credit law in the United States of America or otherwise).**

**3.4 Orders and Accounts.** In order to access the Services and Ekata Data, you must enter into an Order or create a user account. You agree to pay us for the Purchased Services that you order through your account or as stated on an Order. Your Users may also be required to create accounts. You agree that the account information you provide will be accurate and complete at the time you provide it and you will maintain and update such information to keep it accurate and complete. We may contact you and require confirmation of your account information before you use or continue to use the

Services. We reserve the right to terminate any licenses granted hereunder and to refuse to provide you access to the Services if, in our sole discretion, we determine that any of your account information is, or appears to be, inaccurate, incomplete, or fraudulent.

**3.4.1 Per Query and Per Seat.** If you sign up for a Purchased Service sold on a per query basis, you will be charged either for the monthly minimum number of queries to which you agreed or the actual number of queries performed, whichever is greater. If you sign up for a Purchased Service sold on a per seat basis, you will instead be charged for the number of seat licenses issued to your account during the applicable billing period, prorated for partial periods. **NOTE: Ekata may limit or suspend accounts of customers who have purchased seat licenses whose accounts are used to submit queries to the Services with a velocity that is inconsistent, in Ekata's sole discretion, with the typical query velocity of a single, human user.**

#### **4. Proprietary Rights.**

##### **4.1 Customer Data**

**4.1.1 Ownership of Customer Data.** As between Ekata and you, you own and retain all right, title, and interest in and to your Customer Data. You grant to us a limited, royalty-free, non-exclusive, worldwide right and license to store, access, use, copy, and create derivative works from the Customer Data, but only as set forth in this Agreement.

**4.1.2 Use of Customer Data.** You agree that we may analyze and store Customer Data for as long as reasonably necessary (but not longer than three years) to provide identity verification and fraud detection services through the Services. We store Customer Data in a securely encrypted format to enable us to bill for the Services, to provide customer service to you, and to apply machine learning techniques that help us identify patterns in the data. When we apply machine learning to Customer Data, these Customer Data (a) will be pseudonymized through cryptographic hashing, (b) will be aggregated with data from other customers of the Services, and (c) will not be made available to any other customer. For clarity, no Metadata provided through the Services includes any identifiers that indicate that you are a source of Metadata.

##### **4.2 Ekata Data and the Services**

**4.2.1** As between Ekata and you, Ekata owns all rights, title and interest in and to the Services, the Ekata Data, including Metadata, and any enhancements or modifications thereto. No rights are granted to you hereunder other than as expressly set forth herein. Subject to your compliance with all of the terms and conditions of this Agreement, and in consideration of your promises reflected herein and your payment of related fees and taxes, Ekata grants to you a limited, royalty-free, non-exclusive, worldwide right and license to access and use the Services and the Ekata Data, as set forth in this Agreement for the duration of this Agreement.

**4.2.2 Feedback.** You grant Ekata a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into our Services any suggestion, enhancement request, or other feedback provided by you or Users relating to the Services.

## 5. Fees and Payment

**5.1 Fees.** Unless otherwise agreed in a signed writing, you will pay all fees specified in any Order. Except as otherwise specified herein or in an Order, payment obligations are non-cancelable and fees paid are non-refundable, and minimum monthly or annual commitments that you purchase cannot be decreased during the relevant term, or rolled into any future time period.

**5.2 Payment.** Payment terms will be specified in an Order, but fees are generally invoiced in advance on all annual or monthly committed amounts. Payments may be made by either electronic funds transfers made directly from your bank account or by charging your credit card account. You authorize us to obtain payment for all Purchased Services listed in the Order for the initial term and any renewal terms. To the extent the terms regarding fees, payment, contract renewal, and contract term of an Order conflict with the terms of this MSA, the Order will control.

**5.3 Unauthorized access.** In the event of unauthorized access of the Services or Ekata Data through your account, you should immediately notify us. You will remain responsible for all fees incurred through your account until the time you notify us of the unauthorized access. However, you shall not be responsible for unauthorized access caused by our gross negligence or willful misconduct. Our records will presumptively determine your usage of the Services and fees due hereunder, and we reserve the right to issue refunds or credits at our sole discretion. If we issue a refund or credit, we are under no obligation to issue the same or similar refund in the future.

**5.4 Taxes.** Our stated fees do not include any taxes, duties or other governmental assessments, including, for example, value-added, sales, use or withholding taxes, that are assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). You are responsible for paying all Taxes associated with your purchases. If we have a legal obligation to pay or collect Taxes for which you are responsible, we will invoice you and you will pay that amount unless you provide us with a valid tax exemption certificate. Notwithstanding the foregoing, we are solely responsible for taxes assessable against us based on our income and employees.

**5.5 Errors.** If a price stated on an Order is determined by us, in our sole discretion, to be in error, we are not under any obligation to offer you access to the Services at that price. We will notify you of the error and give you the opportunity to cancel your Order and obtain a refund if payment has already been made. If you believe someone else has used your account or you are being charged for a product you do not have, please contact your account representative or [Customer Support](#) [*hyperlink to general customer support page*].

**5.6 Overdue Charges.** We may charge late interest on any unpaid amount due at the rate of one and one half percent (1.5%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date it is paid. You will be responsible for all costs we incur in connection with the collection of unpaid amounts, including court costs, attorneys' fees, collection agency fees and any other associated costs.

**5.7 Suspension and Payment Disputes.** If you owe any fees under this Agreement that are more than 45 days overdue, we may, without limiting our other rights and remedies, accelerate your unpaid fee obligations so that all obligations under your Agreement immediately become due and payable. We may also suspend Services until such amounts are paid in full; however, we will give you at

least 10 days' prior notice before suspending the Services, unless you pay by credit card or direct debit and your payment has been declined. We will not exercise our late payment rights, however, if you are disputing the charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

**5.8 Purchases through Third Parties.** If you have purchased the Services through a third party, this Section 5 may not apply to you. We are not liable to you for any claims related to purchases made through third parties, so please contact the third party directly.

## **6. Term and Termination.**

**6.1 Term Commencement.** This Agreement commences on the date you first accept it (by using or gaining access to the Services), and continues so long as Ekata is providing the Services to you. Each Order will identify the initial subscription period for the applicable Services.

**6.2 Term and Renewal.** Unless otherwise provided in your Order, you agree that you have purchased the Purchased Services and access to Ekata Data on an annual (12-month) commitment. Unless otherwise provided in your Order, your Order will renew annually thereafter for 12-month periods unless one of us provides the other with written notice of termination at least 30 days prior to the end of the annual term. After the initial term, if Ekata's pricing increases, Ekata will give you at least 60 days prior notice of the planned increased, and increases will take effect at renewal.

**6.3 Termination for Cause.** Either one of us may terminate this Agreement for cause if the other party (i) materially breaches this Agreement, and has not cured the breach within 30 days of receiving written notice from the other party, or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors or cancellation or readjustment of substantially all of its obligations.

**6.4 Payment on Termination.** If you terminate this Agreement in accordance with Section 6.3(i) above, Ekata will refund you any prepaid fees covering the remainder of the term of your Order(s) after the effective date of termination. If this Agreement is terminated by us in accordance with the same section, you will pay any unpaid fees covering the remainder of the term of all Orders to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Ekata for the period prior to the effective date of termination.

**6.5 Surviving Provisions.** The sections titled "Fees and Payment," "Proprietary Rights," "Payment on Termination," "Surviving Provisions," "Confidentiality," "Disclaimers," "Limitation of Liability," "Indemnification," and "Miscellaneous" will survive any termination or expiration of this Agreement, and the section titled "GDPR" will survive any termination or expiration of this Agreement for so long as Ekata retains possession of Customer Data from Europe.

## **7. Confidentiality.**

**7.1 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. Confidential

Information of Customer includes Customer Data; Confidential Information of Ekata includes the Services, Ekata Data, including Metadata, and the terms and conditions of this Agreement.

Confidential Information does not include any information that (i) is or becomes generally known to the public without the Receiving Party's breach of any obligation hereunder, (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.

**7.2 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 similar kind, but not less than reasonable care, and will not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement. Except as otherwise authorized by the Disclosing Party in writing, the Receiving Party will limit access to Confidential Information of the Disclosing Party to those employees, contractors and agents who need access for purposes consistent with this Agreement. Neither party will disclose the terms of this Agreement or any Order to any third party other than its Affiliates (who are bound by all obligations hereunder), and legal counsel and accountants who are bound by professional obligations of confidentiality.

**7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if compelled by law or regulation, 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.

## **8. Representations and Warranties.**

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

**8.2 Ekata Warranties.** During the term of this Agreement, we will not materially decrease the overall security of the Services or the overall functionality of the Purchased Services. For any breach of the warranties contained in this section 8.2, your exclusive remedies are those described in the "Termination for Cause" and "Payment on Termination" sections.

**8.3 Disclaimers.** Ekata does not represent or endorse the accuracy, completeness, or reliability of any Ekata Data or other information displayed, uploaded, or distributed through the Services. Except as expressly provided herein, the Ekata Data and Services are distributed "as is" and "as available" without warranties of any kind.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, EKATA AND ITS AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, FITNESS



FOR A PARTICULAR PURPOSE, OR THOSE ARISING FROM A PARTICULAR COURSE OF DEALING OR USAGE OR TRADE. NO INFORMATION OR ADVICE PROVIDED BY EKATA, ITS AFFILIATES, OR BY ITS EMPLOYEES, CONTRACTORS OR AGENTS, SHALL CREATE ANY WARRANTY NOT EXPRESSLY PROVIDED HEREUNDER.

## **9. Indemnification and Defense.**

**9.1 Indemnification by Us.** We will defend you and your Affiliates against any claim, demand, or proceeding made or brought against you by a third party alleging that the Services infringe such third party's patent, copyright, mask work, trademark or trade secret (a "**Claim**"), and will indemnify you from any damages, attorney fees and costs finally awarded as a result of a Claim, provided that you (a) promptly give us written notice of the Claim, (b) give us sole control of the defense and settlement of the Claim (except that we may not settle any Claim unless it unconditionally releases you from all liability), and (c) at our expense, give us reasonable assistance.

If we receive information about an infringement claim related to any of the Services, we may, in our discretion (i) modify the Services so that they are no longer claimed to infringe, (ii) obtain a license for your continued use of your Purchased Service, or (iii) terminate your Order(s) for the allegedly infringing Service with 30 days' prior written notice. We will refund you any prepaid fees covering the remainder of the term of all affected Orders.

These defense and indemnification obligations do not apply if (1) a Claim arises from the use or combination of the Services with software, hardware, data, or processes not provided by Ekata, if the Services or use thereof would not infringe without such combination; (2) a Claim arises from Services under an Order for which there is no charge; or (3) a Claim arises from your or your Affiliates' breach of this Agreement.

**9.2 Indemnification by You.** You will defend Ekata, its Affiliates, and data providers against any claim, demand, or proceeding made or brought against us by a third party (a) alleging that any Customer Data or your use of Customer Data with the Services infringes or misappropriates such third party's intellectual property rights, or (b) arising from Customer's use of the Services or Ekata Data in an unlawful manner or in violation of the Agreement, including any Order (a "**Claim Against Ekata**"), and will indemnify us from any damages, costs and attorney fees finally awarded as a result of a Claim Against Ekata, provided that Ekata (c) promptly gives you written notice of the Claim Against Ekata, (d) gives you sole control of the defense and settlement of the Claim Against Ekata (except that you may not settle any Claim Against Ekata unless it unconditionally releases us from all liability), and (e) at your expense, gives you reasonable assistance. Customer's defense and indemnification obligations do not apply if a Claim Against Ekata arises from Ekata's breach of this Agreement, including any Orders.

**9.3 Exclusive Remedy.** This Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

## **10. Limitation of Liability.**

**10.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES 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.

**10.2 No Consequential Damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, 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.

## **11. Modifications.**

**11.1 Ekata Services.** We may change, suspend or discontinue any aspect of our products and services at any time, including the availability of any feature, database, or content. If a change would have a material adverse effect on your use of the Purchased Services, we will provide you at least 30 days' notice, and if you disagree with the change, your exclusive remedy is to terminate the Agreement by providing ten business days' written notice to us, and to stop using Ekata's products and services.

## **12. Miscellaneous.**

**12.1. Notices.** We may provide you notice of changes or any other matter by displaying notices to you generally through the Ekata web site or customer portal or, at our option, by using any contact information you have provided to us. You agree that notice by the foregoing means shall be deemed complete when posted by Ekata or transmitted to you. All legal notices to Ekata shall be delivered in writing and must be sent by either overnight courier or certified mail, return receipt requested to:

Ekata, Inc.  
Attn: Legal Department  
1301 Fifth Avenue, Suite 1600  
Seattle, WA 98101  
with a copy (which shall not constitute notice) to: [legal@ekata.com](mailto:legal@ekata.com).

**12.2 Time Limitation on Claims and Causes of Action.** You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement or your use of the Services and Ekata Data must be filed within one year after such claim or cause of action arose. Any claim not filed within the foregoing one-year period shall be forever barred.

**12.3 Governing Law, Venue.** This Agreement and your use of the Services and Ekata Data shall be governed by and construed in accordance with the laws of the state of Washington as they apply to agreements made and solely performed therein. You irrevocably consent and waive all objections to personal jurisdiction and venue in the state and federal courts located in King County, Washington, USA, exclusively, for any action arising out of or relating to this Agreement, Ekata, the Services, and the Ekata Data.

**12.4 Third-Party Beneficiaries.** Except when Ekata's data providers are specifically referenced, there are no third-party beneficiaries under this Agreement.

**12.5 Confirmation of Compliance.** If Ekata has knowledge or a reasonable suspicion of your or your Affiliates' non-compliance with this Agreement, we (or our authorized representative) may request information from you to confirm your compliance. This information may include, but not be limited to, architecture and data flow diagrams, copies of processing logs, and interviews with relevant engineers and stakeholders. You will promptly, but in no less than ten business days, provide us with all information we reasonably request, and will make available via telephone or video conferencing appropriate personnel in furtherance of these requests. We will take reasonable measures to ensure that our requests do not unreasonably disrupt your business operations. We will each bear our own costs with respect to any informational requests conducted hereunder.

**12.6 Waiver, Severability and Assignment.** Ekata's failure to enforce a provision is not a waiver of its right to do so later. If any provision of this Agreement is held to be unenforceable for any reason, the provision will be reformed only to the extent necessary to make it enforceable, and such decision will not affect the enforceability of such provision under other circumstances, or of the remaining provisions hereof under all circumstances. Except for assignment to your Affiliate, you may not assign any of your rights under this Agreement without our written consent, which we will not unreasonably withhold. We may assign our rights to our Affiliates, or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.7 No Agency.** The parties are independent contractors. Nothing herein will be construed to create a partnership, joint venture or any type of agency relationship between Ekata and you.

**12.8 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between Ekata and you regarding your use of the Services and Ekata Data 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 any order documentation, excluding an Order, is void. In the event of any conflict or inconsistency between this MSA and an Order, the Order shall control. In the event of any conflict or inconsistency between the DPA, if applicable, and either this MSA or an Order, the DPA shall control. Titles and headings of sections of this Agreement are for convenience only and do not affect the construction of any provision of this Agreement.