



## Service Agreement

(Updated: July 2025)

This Red Oxygen Service Agreement (“**Agreement**”) is between RedOxygen, Inc., its affiliates and subsidiaries (“**Red Oxygen**”, “**we**”, “**us**” or “**our**”) and you or the entity that you represent (“**Customer**” or “**you**” or “**your**”) and governs your use of Red Oxygen’s short message service, whether through its desktop or browser-based applications, including add-ins, APIs, or any other media now existing or created in the future (the “**Service**”).

**IMPORTANT: BY ACCESSING OR USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT COMPANY OR LEGAL ENTITY TO THIS AGREEMENT, IN WHICH CASE “YOU” SHALL MEAN SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU SHOULD NOT ACCESS OR USE THE SERVICE.**

This Agreement incorporates by reference the following documents: (1) the Account Details (“**Account Details**” or “**Account Details Addendum**”), if we have emailed Account Details to you and (2) the Red Oxygen Privacy Policy located at <https://redoxygen.com/privacy-policy> (“**Privacy Policy**”), as these policies and terms may be modified by Red Oxygen from time to time ((1) and (2) together, the “**Additional Policies**”). They supersede any other written or oral representations, understandings or agreements.

This Agreement applies to, and you agree to be bound by the terms and conditions of this Agreement with respect to, your use of the Service whether you have registered for a trial account or upgraded account, unless an authorized representative of Red Oxygen has accepted a separate written agreement with you, but solely with respect to its subject matter. If you use the Service with a trial account, you agree that Section 4 below controls in the event of any conflict or inconsistency with any other provision of this Agreement. When you complete and submit the online Trial Account Upgrade Application, we will notify you in writing of your application’s acceptance or rejection together with the Account Details Addendum. Red Oxygen’s acceptance of your application, however, will not obligate Red Oxygen to upgrade your account or provide the upgraded Service to you if you reject the Account Details Addendum or refuse to check the “I agree to the Service Agreement” box during the trial sign-up process.

For any terms with the first letter capitalized please see the definitions preceding bracketed words in bold and listed at the end of this Agreement.

### 1. **The Short Message Service (SMS)**

- a. We will provide you with the Service which enables software/application users to:
  - i. send SMS from their computer using various Red Oxygen software applications, application plug-ins, API and web services to mobile devices equipped with cellular service; and
  - ii. receive replies to these SMS sent from mobile devices to the user's registered email address or the Service inbox belonging to the user.
- b. We grant you a non-exclusive, worldwide, and non-transferable license for the Term (as defined in Section 11(a) of this Agreement) to install, perform, display on your computer and use our software to access and use the Service ('Software') and any content contained in, accessed by, or transmitted through the Software, solely for your own internal business purposes in accordance with this Agreement. When applicable, the foregoing license is granted in connection with the Software made available by Red Oxygen on Microsoft AppSource, Google Workspace, or other software marketplaces.
- c. Your employees or contractors will become an authorized user when they have installed our Software on a computer associated with or log into the Web Service using your Internet Domain Name (each, an "Authorized User") and their e-mail address is registered on the Red Oxygen database system.
- d. You may request the de-registration of any of your Authorized Users at any time.
- e. We may provide you free of charge with upgrades to the Software from time to time.
- f. You are liable for all fees incurred as a result of use of your Service by any of your Authorized Users whether approved by you or not.
- g. We will use reasonable endeavors to provide you with access to Service on a continuous basis. However, you acknowledge that:
  - i. the Service is not error or fault free and that you may experience interruptions and usage difficulties from time to time;
  - ii. we are not responsible for the successful carriage and delivery of Service messages, including over third-party telecommunications networks;
  - iii. we may immediately and without notice to you suspend access to the Service:
- h. during any technical failure, modification or maintenance involving the Service;
- i. if you breach this Agreement and have not remedied the breach within 15 days of us notifying you of the breach and requesting that it be remedied; or
- j. if you do or allow to be done anything, which, in our reasonable opinion may have the effect of jeopardizing the operation of our or any third party's business, facilities or the services we supply to our customers.
  - i. Except for the license rights granted in this Agreement, (a) Red Oxygen retains all rights in the Offerings; and (b) each party retains all rights it would have independent of this Agreement, including rights under the U.S. Copyright Act and other intellectual property laws or analogous laws in other jurisdictions. No rights will be granted or implied by waiver or estoppel. Rights to access or use Offerings on a device do not give you any right to implement Red Oxygen's patents or other intellectual property in the device itself or in any other software or devices.

## 2. Limitations on Use

You represent, warrant and covenant:

- a. not to take any action that may, in our reasonable opinion, adversely affect or impair any of our rights, title and interests in and to the Software, and/or any of our Intellectual Property Rights in any manner or form;
- b. to restrict access to the Service to Authorized Users;
- c. to use the Service for the sending of short text messages which:
  - i. comply with all applicable laws and regulations and the requirements of any government or statutory body;
  - ii. contains nothing which is likely in the light of generally prevailing standards of decency and propriety to cause offence;
  - iii. comply with all reasonable industry and Red Oxygen policies, standards and codes; and
  - iv. may not in any way be considered as spam or bulk unsolicited commercial messages, and undertake not to allow any Authorized User or third party to do so. As the legislation regarding spam and commercial electronic communications varies widely for different countries and legal jurisdictions the user submitting messages for delivery is responsible for ensuring that their messages are in compliance with all applicable regulations, both in their home location as well as in the delivery destination.
- d. not to repackage, market, license, distribute, transfer, lend, rent or otherwise commercially exploit the Software or translate or export the Software into any other computer language;
- e. to notify us immediately if you become aware of any unauthorized use by any person of the whole or any part of the Service;
- f. not to merge all or any part of the Software with other computer programs, products or services without our prior written consent;
- g. not to reverse engineer, reverse assemble or reverse compile or directly or indirectly allow a third party to reverse engineer, reverse assemble or reverse compile the Software or otherwise attempt to discover any portion of the source code or trade secrets related to the Software, except as and only to the extent that you are legally authorized to do so under any applicable laws. In the event applicable law grants you the right to reverse engineer any portion of the Software notwithstanding this limitation, you shall provide Red Oxygen with written notice prior to such reverse engineering activity, information regarding your intended method of reverse engineering, its purpose and the legal authority for such activity and shall afford Red Oxygen a reasonable period of time before initiating such activity in order to evaluate the activity and/or challenge the reverse engineering activity with the appropriate legal authorities. You shall refrain from such reverse engineering activity until such time as any legal challenge is resolved in your favor. In addition to any other rights and remedies that Red Oxygen may have under the circumstances, you shall be required in all cases to pay royalties to Red Oxygen with respect to any products or services that are developed, marketed or distributed by you, and derived in whole or in part from the reverse engineering of the Software;

- h. not to introduce into our system or the Service viruses, worms, trojan horses or other harmful or malicious software;
  - i. to indemnify us for any loss, cost or damage we incur as a result of your failure to comply with your obligations under this Agreement; and
  - j. to ensure that all customers and users of the Service are 18 years of age or older.
3. **Connection Equipment and Costs**
- a. You will provide at your cost the telephone line, internet service, modem, computer, hardware, software and all other equipment required to use the Service other than the Software.
  - b. You will pay all costs, fees, charges or other expenses which are or may be incurred by your use of any services of a communications service provider (including timed telephone calls) which allow you to use the Service. You agree to indemnify and keep us indemnified in respect of any such costs, fees, charges or other expenses.

4. **Trial Account**

If you have registered for a trial account, the terms and conditions in this Section supersede any conflicting provision in this Agreement:-

- a. No fees are payable by you to us. We will not issue you an Account Details Addendum for your trial account.
- b. You may use the Service as permitted by this Agreement but only for 15 days with limited whitelisted numbers (or longer period and/or more whitelisted number as approved in writing by Red Oxygen) following registration of your trial account (the “**Trial Period**”). At the end of the Trial Period, unless Red Oxygen has accepted your online Trial Account Upgrade Application by sending you the Account Details Addendum, you may no longer use the Service and this Agreement will automatically terminate (that is, without any requirement on our part to provide you with any notice of termination).
- c. In addition to the restrictions set forth in this Agreement, you shall not, nor shall you permit any third party to, attempt to circumvent, dismantle or otherwise interfere with any time-control disabling functionality in our Software, technology or systems that causes the Service to cease functioning upon the expiration of the Trial Period.
- d. Your trial account, the Software and the Service during the Trial Period are provided to you on an “as is” and “as available basis”. We expressly exclude all warranties, conditions and terms implied by statute, general law, international convention or custom with regard to your trial account, the Software and the Service provided during the Trial Period, including without limitation any and all implied warranties with respect to merchantability, fitness for a particular purpose, title and non-infringement, except for any implied condition or warranty, the exclusion of which would contravene any statute or cause this section to be void.
- e. Except to the extent this Section 4 modifies this Agreement, with respect to your trial account, the Software and the Service provided or made available to you during the Trial Period, all other provisions of this Agreement stand and remain unaltered. Nothing in this Section 4 shall apply with respect to any upgraded account obtained by you.

## 5. Fees and Payment

- a. You will pay to us the Set-up fees, Monthly Access fees, Monthly per User fees, Number fees, Message fees, and other applicable fees as specified in the Plan Details section of the Account Details Addendum.
- b. For the avoidance of doubt, if Monthly per User fees are included in your Account Details Addendum, the calculations are determined by counting each unique Authorized user registered on the Red Oxygen database system at any time during the applicable monthly billing period.
- c. You may elect to make payment by credit card during the signup process, upon election you agree to the surcharge for using a credit card.
- d. If you do not elect to make payment by credit card, you will pay all amounts due to us within 30 days from invoice.
- e. Charges are subject to change at any time at the discretion of Red Oxygen.
- f. To the extent permitted by law any prepayment of Charges is not refundable.
- g. If you elect to pay via credit card and your credit card expires or we are for any other reason unable to debit Charges to your credit card, we may immediately and without notice suspend your use of the Service. In such circumstances we will only again permit access to the Service when the problem with the direct debit has been rectified and you pay to us, whether by way of direct debit or otherwise, an administration fee of \$100 in addition to the due payment for the modules and any interest due for late payment.
- h. We may charge you interest on any overdue amount, calculated daily from the due date until date of payment, at the lower of the annual rate of 1.5% above the prevailing base lending rate of our principal banker and the maximum rate allowable at law. You must pay such interest when you remit the overdue principal amount to us. Nothing in this Section affects our right to terminate this Agreement.
  - i. Our billing system uses an “SMS credit” methodology as the basis for all message charge calculations. A customer message submitted for delivery through our system will require a specific number of SMS credits to process successfully. Our SMS credit system includes the following specifications.
  - ii. The delivery of one standard SMS message to a destination mobile device number in the user’s local country will normally require one SMS credit. (You can confirm this by referring to the Plan Details section of your Account Details Addendum for domestic SMS messages sent.)
  - iii. A standard SMS message containing only 7-bit English or some other European language Latin characters (as defined by the GSM character set) can contain 160 characters and will be counted as one SMS credit if sent locally, while any messages that include characters outside of the GSM character set will be sent as Unicode messages (this includes Chinese, Arabic, Hebrew, Cyrillic and other non-Latin languages as well as some special typographic, symbol or emoji characters). A standard Unicode SMS message can only contain 70 Unicode characters and will be counted as one SMS credit if sent locally. ***Users need to be aware that if you are preparing your English or other Latin character SMS messages in***

*certain editing programs (such as Microsoft Office) some punctuation characters can be automatically converted from their standard ASCII values into special typographic equivalents that are effectively Unicode characters (including quotation marks, apostrophes and hyphens). If you then copy and paste these converted characters into your SMS messages, this can result in your messages being detected and charged as Unicode messages, thereby reducing the number of characters you are allowed per SMS credit.*

- iv. If the method used for submitting messages to our system allows for messages longer than the standard SMS message length, then (where possible) these may be sent as concatenated multiple segment SMS messages that can contain either 153 GSM characters or 67 Unicode characters in each segment. One SMS credit is charged for each SMS segment required to send the submitted extended message.
- v. For messages sent to destination countries outside of the user's local country, additional SMS credits are required to deliver these SMS (or each SMS segment required to deliver an extended message). For most countries these are charged at two SMS credits. For postpaid accounts: one SMS credit is rebated/included in your postpaid plan, the second SMS credit is charged at the agreed upon SMS credit cost. For prepaid accounts, both SMS credits are debited to your remaining SMS credit balance. Refer to the Plan Details section of your Account Details Addendum for the SMS credits charged for your international messages.
- vi. Replies or other incoming SMS messages received for a customer are also charged a specified number of SMS credits per SMS (or for each SMS segment of an extended message). See the Plan Details section of your Accounts Details Addendum for the number of SMS credits charged for these replies or other received messages.
- vii. For Post-paid monthly plans that include a specified number of SMS credits these credits expire at the end of the billing month and do not roll-over. For prepaid plans any purchased SMS credits expire one year after the purchase date.

#### **6. Foreign GST or VAT**

If you are located in Australia (or any other foreign country that similarly requires us to charge you a local consumption tax) you must pay us on demand any goods and services tax, value added tax or any other like tax ("GST") which is payable as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this Agreement by us (together with any fine, penalty or interest payable because of your default). The amount paid by you to us on account of GST must be sufficient to ensure that the economic benefit to us of this Agreement remains the same whether GST applies or not. We will give you a tax invoice.

#### **7. Exclusion of Warranties**

We shall use reasonable efforts to rectify (or provide another solution for) any reproducible defects in the Service notified by you to us in writing. Except as otherwise expressly stated in this section, we make no express or implied warranties to you and expressly exclude all warranties, conditions and terms implied by statute, general law,

international convention or custom, including without limitation any and all implied warranties with respect to merchantability, fitness for a particular purpose, title and non-infringement, except for any implied condition or warranty, the exclusion of which would contravene any statute or cause this section to be void.

**8. Limitation of Liability**

- a. to the maximum extent permitted by applicable law, Red Oxygen will not be liable to you or any of your users, for any indirect, incidental, special, consequential, punitive or exemplary damages, or for loss of profits, sales, business opportunities, revenues, goodwill, reputation, data use, or data, even if Red Oxygen or our affiliates, licensors, and service providers have been advised of the possibility of such damages, and whether based on a breach of contract or warranty, or negligence, misrepresentation or other tort, or on any other legal or equitable theory, arising out of or concerning this agreement or the service, including any systems, networks or environments used to provide the service.
- b. to the maximum extent permitted by applicable law, in no event will the aggregate cumulative liability of Red Oxygen for any and all damages suffered by you or any of your users, arising out of or concerning this agreement or the service, including any systems, networks or environments used to provide the service, whether based on a breach of contract or warranty, or negligence, misrepresentation or other tort, or on any other legal or equitable theory, exceed the total amount of fees you paid Red Oxygen for the applicable service giving rise to the liability limited to the monthly access fees paid during the three (3) month period immediately preceding the date that you first learned of the event that gave rise to the claim.

**9. Basis of Bargain.**

The warranty disclaimers in Section 4(d) and 7 and limitation of liability set forth in Section 8 are fundamental elements of the basis of the agreement between you and Red Oxygen. Red Oxygen would not be able to provide the Service on an economic basis without such limitations. The warranty disclaimer and limitation of liability inure to the benefit of Red Oxygen's representatives and suppliers.

**10. Intellectual Property**

You acknowledge that the Software is a commercially valuable and proprietary product of Red Oxygen, the design and development of which reflects the effort of skilled development experts and the investment of considerable time and expense, and is subject to copyright and other Intellectual Property Rights. We are the owner, or authorized licensee, of all rights, title and interests in and to the Software and, except as otherwise specifically granted under this Agreement, you obtain no right, title or interest in or to the Software. Except as expressly permitted by law you will not decompile or reverse engineer the Software. All source code of the Software is our valuable trade secret. No implied licenses are granted by Red Oxygen. You grant Red Oxygen and our affiliates a worldwide, perpetual, irrevocable, transferable, royalty-free and fully-paid license to use and incorporate into, and distribute as a part of, the Service or Software or any other products, services or content, any suggestion, enhancement request, recommendation, correction or other feedback from you or your users relating to the operation, functionality or features of the Service or Software.

**11. Confidentiality**

- a. Neither party will disclose to any third party without the prior written consent of the other party any Confidential Information received from the other party. This restriction does not apply to information which is or becomes generally available to the public (other than as a result of a breach of an obligation under this Section), is independently developed by the recipient or is required by law to be disclosed.
- b. Each party will only use the Confidential Information of the other party for the sole purpose of performing its obligations under this Agreement.
- c. Nothing in this Section or this Agreement prevents us from disclosing the existence of this Agreement to third parties for the purposes of marketing to customers and potential customers.

## **12. Term and Termination Charges and Related Matters**

- a. If you have registered for a trial account, this Agreement will commence on the Effective Date and continue for the duration of the Trial Period, unless terminated earlier in accordance with this Agreement.
- b. If you have upgraded your account, this Agreement will commence on the Effective Date and continue for the duration of the “Initial Term” specified in the Account Details Addendum, unless terminated earlier in accordance with this Agreement. After the Initial Term, this Agreement will renew for consecutive periods each equal to the duration of the Initial Term (each, a “Renewal Term” and together with the Initial Term, the “Term”) until terminated in accordance with this Agreement.
- c. We may terminate the Agreement, any Service, or both, immediately if Customer:
  - i. fails to make any payment due under the Agreement,
  - ii. fails to provide security or additional security within the timeframe, or
  - iii. if you breach any provision of this Agreement and fail to remedy that breach within 3 days for a trial account or 21 days for an upgraded account after receiving notice of the breach requiring you to do so.
- d. You may terminate this Agreement:
  - i. At any time providing written notice from an account administrator with immediate effect; or
  - ii. at any time with immediate effect if we breach any provision of this Agreement and fail to remedy that breach within 3 days for a trial account or 21 days for an upgraded account after receiving written notice of the breach requiring us to do so; or
  - iii. with effect from the date of any increase in Charges notified by us by giving notice to us within 14 days after you have been notified of the increase in Charges.
- e. If an update to the terms and conditions of this Agreement is introduced according to Section 4(a) of this Agreement and you do not agree to the new terms and conditions (or conclude a separate written Agreement with Red Oxygen) then this Agreement will automatically terminate and you shall discontinue use of the Service from the date the changes become effective.
- f. This Agreement will terminate automatically if either party becomes the subject of an Insolvency Event.

## **13. Consequences of Termination or Expiration**



- a. Upon the termination of this Agreement for any reason, all rights granted to you under this Agreement cease and:
  - i. you must immediately discontinue all use of the Software and the Service; and
  - ii. for postpaid accounts: immediately pay to us any outstanding Charges or fees accrued to date of termination or cancelation presented on a final invoice issued at the end of the current billing period. These costs could include but are not limited fees charged on the first of every billing cycle (e.g., plan price, dedicated numbers, campaign fees, alpha headers, etc.), any surplus of SMS credits spent and carrier surcharges.
  - iii. We will release any dedicated numbers from the account.
  - iv. We will cancel any associated registered campaigns or associated registrations curated by Red Oxygen for the Customer.
- b. The provisions of Sections 2, 4(c), 4(d), 4(e), 7, 8, 9, 10, 13, 14, 16 and 17 and your obligation to pay Red Oxygen any amounts owed to it hereunder will survive any termination or expiration of this Agreement.
- c. Any SMS credits purchased on a prepaid account will expire after 365 days of purchase and will not be refunded if unused.
- d. Prepaid accounts that have not purchased SMS credits within two years or have not sent messages within four years may have their account closed without notice, any loss of Customer input information is not the responsibility of Red Oxygen.

#### **14. Force Majeure**

Other than in relation to any payment obligations under this Agreement no party will be in breach of its obligations under this Agreement to the extent that the failure or delay occurs because of a Force Majeure Event and the affected party will be granted a reasonable extension of time to complete its performance of any obligations affected by that Force Majeure Event.

#### **15. Compliance Audits**

You must keep records relating to the Services you and your Affiliates use or distribute. At Red Oxygen's expense, Red Oxygen may verify your and your Affiliates' compliance with this Agreement by directing an independent auditor (under nondisclosure obligations) to conduct an audit or ask you to complete a self-audit process. You must promptly provide any information and documents that Red Oxygen or the auditor reasonably requests related to the verification and access to systems running the Service. If verification or self-audit reveals any unlicensed use, you must order sufficient licenses to cover the period of unlicensed use. The audits may be conducted more frequently, if required by the party's auditors and/or regulators, of books and records related to this Agreement. The expenses for all such audit will be borne by the party conducting the audit. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance

#### **16. General Provisions**

- a. You agree that we may modify this Agreement or any Additional Policy at any time by sending you written notice by electronic mail to the address of any of your then-current administrators specified for your Red Oxygen account or posting a revised version of the Agreement or such Additional Policy on the [redoxygen.com](http://redoxygen.com) website ("**Red Oxygen Site**"). The revised terms will be

effective upon the earlier to occur of: (a) thirty days after we provide you written notice by electronic mail, (b) thirty days after posting the revised version of the Agreement to the Red Oxygen Site, and (c) if we provide a mechanism for your immediate acceptance of the revised terms, such as a click-through confirmation or acceptance button, your acceptance. By continuing to use or receive the Service after the effective date of any revisions to this Agreement, you agree to be bound by the revised Agreement.

- b. Any notification you send to Red Oxygen regarding this Agreement or any Additional Policy should be sent via email to [support@redoxygen.com](mailto:support@redoxygen.com) or in writing to the relevant contact address listed on the Contact Us page on the Red Oxygen Site with the subject line or marked to the attention: Legal.
- c. The failure of Red Oxygen to exercise or enforce any right or provision of this Agreement or any Additional Policy will not constitute a waiver of such right or provision. All waivers by Red Oxygen must be in writing to be effective. If any provision of this Agreement or any Additional Policy is for any reason held unenforceable or invalid, then this Agreement or such Additional Policy, as applicable, will be construed as if such provision were not contained in this Agreement or such Additional Policy, as applicable. No course of performance, course of dealing, or usage of trade will override the written terms of this Agreement.
- d. You may not assign or attempt to assign any of your rights or obligations under the terms and conditions of this Agreement without our prior written consent which shall not be unreasonably withheld.
- e. This Agreement and each Additional Policy is governed by the laws of California unless you are an Australian customer and then this Agreement and each Additional Policy are governed by the laws of Queensland and each party irrevocably submits to the exclusive jurisdiction of the Courts of that State.
- f. Except as otherwise specified below, you and Red Oxygen agree to arbitrate any and all disputes in any way related to this Agreement or any Additional Policy, as applicable, by final and binding arbitration as set forth below. You further waive the right to bring a class action against Red Oxygen, or to serve as a representative of a class in a class action against Red Oxygen, whether in arbitration or in court. This Agreement will not be governed by the following, the application of which is hereby expressly excluded: (1) the conflict of law rules of any jurisdiction, (2) the United Nations Convention on Contracts for the International Sale of Goods, and (3) the Uniform Computer Information Transactions Act, as enacted in any jurisdiction. All proceedings will be held and a transcribed record prepared in English. The number of arbitrators shall be one (1). The arbitration will be heard at JAMS offices in Santa Clara County, California in accordance with JAMS' Streamlined Arbitration Rules and Procedures in effect at the time of the arbitration. The award rendered by the arbitrator shall include costs of arbitration, reasonable attorney's fees and reasonable costs for expert and other witnesses, and judgment on such award may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing nothing in this Agreement will be deemed to prevent Red Oxygen from seeking injunctive relief (or any other provisional remedy) from any court of competent

jurisdiction as necessary to protect its rights pursuant to this Agreement. The prevailing party in any suit will recover its reasonable attorney's fees and costs, including expert costs, from the other party.

- g. This Agreement, together with each Additional Policy, is the entire agreement between us regarding your use of the Service, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (1) the written agreement accepted by Red Oxygen signed by an authorized representative of Red Oxygen, but solely with respect to its subject matter, (2) this Agreement, and (3) the Additional Policies.
- h. Any suit, claim, action or proceeding based on or related to this Agreement, its terms or conditions, or any Additional Policy, or arising out of Red Oxygen's performance or breach, whether in contract or tort (including negligence), must be instituted by Customer against us within one (1) year after the occurrence of any one or more of the acts, omissions, facts, conduct, events, claims or allegations upon which the action, proceeding or claim is based. Customer waives the benefit of any statute of limitations which specifies a period longer than one (1) year for filing an action or proceeding.
- i. You shall indemnify, defend, and hold harmless Red Oxygen, its affiliates, and their respective officers, directors, employees, agents, successors, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, damages, liabilities, costs, and expenses (including reasonable attorneys' fees and costs) arising out of or related to:
  - i. your use of the Service, including any data processed, stored, or transmitted using the Service;
  - ii. any violation of any law or regulation by you in connection with the use of the Service;
  - iii. any claims brought by third parties relating to your use of the Service, except to the extent such claims result directly from the Red Oxygen's gross negligence or willful misconduct.
- j. This Agreement describes certain legal rights. You may have other rights under the laws of your state or country. This Agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.
- k. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to." You agree that this Agreement will not be construed against Red Oxygen by virtue of having drafted them. The official text of this Agreement (and any Addendum or Additional Policy, or notice submitted hereunder) will be in English. The parties acknowledge that they require that this Agreement be drawn up in the English language only. In the event of any dispute concerning the construction or meaning of this Agreement, reference will be made only to this Agreement as written in English and not to any translation into another language.

- l. By executing this Agreement, each party agrees to transact business by electronic means, including but not limited to the transmittal of notices and execution of additional documents related to this Agreement.
- m. This Agreement does not create or intend any third-party beneficiary rights in any individual or entity that is not a party to this Agreement, except as otherwise expressly provided in this Agreement.

## 17. Definitions

- a. **'Affiliate'** means any legal entity that controls, is controlled by, or is under common control with a party.
- b. **'Confidential Information'** means, in relation to a party, all information relating to that party including, without limitation, that party's systems, processes, data, customers, personnel, assets, products, services and affairs, which is disclosed, communicated or delivered to the other party or which comes to the other party's knowledge, or into its possession, before, on or after the date of this Agreement.
- c. **'Effective Date'** means the date you register for an account to access and use the Service.
- d. **'Force Majeure Event'** means an event or circumstance that, despite its reasonable effort and without its fault or negligence, a party is unable to control and includes, without limitation, any act of God, war and other hostilities, fire, flood, strikes, lock-outs, delays in transport, breakdowns in machinery, telecommunications or hosting service provider's failure, or restrictions or prohibitions or any other acts by any government or semi-government authority.
- e. **'Insolvency Event'** includes, without limitation, an arrangement, compromise, winding up, dissolution, official management, appointment of administrator, liquidator, provisional liquidator or controller, assignment for the benefit of a creditor, scheme of arrangement with creditors, insolvency, bankruptcy or if it applies, a merger, amalgamation, reconstruction or change in the constitution of an entity for the purpose or having the effect of altering a party's rights with its creditors, or anything having a substantially similar effect to any of the events specified under the law of any jurisdiction.
- f. **'Intellectual Property Rights'** means all rights, title and interest, whether registerable, registered or unregistered under the laws of any jurisdiction throughout the world, including, but not limited to any copyrights, patents, designs, trademarks, service marks, trade names, business names, get up, trade secrets and any applications for, or rights to obtain or acquire, any such intellectual property rights.
- g. **'Actual Number of Authorized Users'** will be determined by counting each unique authorized user registered on the Red Oxygen database system at any time during the applicable monthly billing period.
- h. **'Offering'** means all services, websites (including hosting), solutions, platforms, and products identified in an ordering document used to transact the Offering and that Red Oxygen makes available under or in relation to this Agreement, including the software, equipment, technology, and services necessary for Red Oxygen to provide the foregoing. Offering availability may vary by region.