

Company Subscription Agreement

IMPORTANT – READ CAREFULLY: This Subscription Agreement (hereinafter the “**Agreement**”) is a legal agreement between you (either an individual or a legal entity) and the “**Company**” Company Inc for the provision of the services as set forth in Section 1 (collectively the “**Services**”). YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY USING THE SERVICES. IF YOU DO NOT AGREE, DO NOT USE THE SERVICES.

Updated: June 14th 2023

1. Subject Matter

Subject matter of this Agreement is the provision of the Services by Company and the use of such Services by you. The software applications that Company provides to you (collectively the “**Software**”) are for installation and deployment within your own environment. The Company Install can only be used through the initial term set forth in the Service Order.

Your Service Order sets forth the Services subscribed to hereunder and such applicable payment terms and technical configurations and requirements. “**Service Order**” means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Company Inc from time to time. All Service Orders shall be deemed incorporated herein by reference.

2. Per VMware ESXi or other Host License and Usage-Based Costs

The “Company” Software is licensed per VMware ESXi or other Host, and additional usage-based costs may apply. This means that each Host being analyzed by the Software must be licensed by acquiring a respective subscription from Company. All installations are licensed in the same manner as mentioned in the Service Order. Once you have reached the maximum licensed capacity or the maximum licensed number of Hosts, you may bring your license back into compliance by reducing the size of the managed capacity. If you desire to acquire additional capacity or additional clusters for the Software Install, you may purchase additional capacity from “Company” Inc. As all “Company” Services connect to one or multiple management systems, all managed Hosts within the management system need to be licensed. In addition to host licenses, usage-based costs may be charged based on the extent of usage of the Services, regardless of the number of host licenses. These usage-based costs will be outlined and communicated separately by “Company” Inc. You may use the Software on any computer, as long as the use of the Services is fully licensed. Additional licensing might be necessary for extensions like storage systems or operating systems.

3. Provision of the Services and Deployment

Company Inc will provide the Services in regard to any active subscription which you have acquired and maintain. The specifications, functionalities, requirements, service levels and availability of each subscription for Company Services are described and defined on the web page provided by Company Inc for the respective subscription. Company Inc may – to a reasonable extent – change such non-material specifications, functionalities, requirements, unilaterally by giving you notice either on Company Inc’s website or by e-mail to the address registered for your user account, to the extent these do not materially reduce the functionalities of the Services.

The Company Software is provided by Company Inc by delivering to you the applicable media or download and configure within your environment.

4. Use of the Services

You are granted the non-exclusive, non-transferable (except as otherwise set forth herein) right to use the Services for your internal purposes and/or for your end customer's internal purpose in compliance with this Agreement for the duration of your active and paid subscription. The Company Software may only be used in conjunction with plug-ins, software development kits and Application Programming Interface calls provided by Company Inc and through the web interface accessible with supported web browsers (such as Google Chrome, Microsoft Explorer, Safari and Firefox) complying with the then current requirements as outlined by Company Inc on the corresponding web page. This Agreement does not entitle you to access the software used for the provision of the Services in any other way nor does it entitle you to a copy of such Software. Any other software that might be provided by Company Inc for the use of the Services may only be used in compliance with this Agreement and in combination with the Services, solely to the extent required to use the Services.

Any use of the Services for illegal or criminal purposes or otherwise in violation of applicable law is strictly prohibited. You acknowledge to fully indemnify Company Inc for any costs and liabilities resulting from any illegal use of the Services by you or through your subscription or account. To the extent Company Inc becomes aware that your data, in Company Inc's reasonable discretion, is in violation of this Agreement or any applicable law, Company Inc may immediately refuse any further support.

You agree to keep the administration password for the Company Software confidential and to protect it from unauthorized access by third parties. You remain fully responsible for any actions taken through your account.

You may copy or print any documentation provided by Company Inc online for an active subscription for the purpose of using the Services, provided that you do not remove any copyright notices and that you limit the number of copies to a reasonable amount. A subscription does not entitle you to a printed copy of the respective documentation.

In case of material breaches remaining uncured for thirty (30) days of notice of such breach of these license terms by you or through your subscription or account, Company Inc is authorized at its own discretion to block any access to your account indefinitely.

5. Subscription Fees

Company Inc will provide subscriptions either for free (hereinafter "**Free Subscription**") or for a subscription fee as listed by the Company Inc website or in writing at the time of conclusion of such a subscription (hereinafter "**Paid Subscription**"). Services for Paid Subscriptions will only be provided after payment of such subscription fees according to the chosen payment plan, including the selected billing cycle. The initial subscription fee shall be due immediately after signing up for the respective subscription and any recurring subscription fees shall be due at the last day of the preceding billing cycle. In case of multi-year annual subscriptions, the subscription fee for the whole duration of the subscription shall be due immediately after signing up for the respective subscription. Notwithstanding the aforementioned provision regarding invoicing of multi-year subscriptions, if you are subscribing to a multi-year subscription, Company Inc is irrevocably entitled to the fees for the whole duration of the subscription. Company Inc may convert a Free Subscription into a Paid Subscription at any time. Subscribing to a Free Subscription does not grant you the right to use the associated Services indefinitely.

If you are paying by credit card, you agree that Company Inc may i) store your credit card data and ii) automatically issue payment of subscription fees at the respective due date by using such stored credit card data. In case of non-payment of any due subscription fees, Company Inc may block any access to some of the online services, until payment is received. Payment shall be made within thirty (30) days from the date of receipt of valid and correct invoice from Company Inc.

6. Copyright and Ownership

The software used for the provision of the Services is owned by or licensed to Company Inc and is protected by copyright laws and international treaty provisions. You acquire only the non-exclusive right to use the Services as permitted herein and do not acquire any other rights (e.g. ownership in the Software used).

7. Maintenance

Free Subscriptions are provided without any maintenance services. Company Inc maintenance services for Paid Subscriptions (“**Maintenance**”) consist of updates, patches, and fixes to the Software used to provide the respective Services, when and if they become available, and e-mail support. Any updates, patches, fixes, or other items provided as a part of Maintenance will automatically be licensed to you under this Agreement. Company Inc will provide e-mail support on a best effort basis only. Any further warranty regarding Maintenance is expressly excluded.

8. Limited Warranty

Free Subscriptions are provided “as is” without any warranties of any kind. For Paid Subscriptions, Company Inc warrants that the Services will perform substantially in accordance with the documentation when used under the recommended configuration. Non-substantial variation of performance from the documentation, which does not materially affect the performance of the Services, does not establish a warranty right. Company Inc does not warrant that the Services are free from any error, that they will operate without interruption or that they will be compatible with any configuration. All warranty claims must be made within ninety (90) days of the conclusion of the affected subscription.

THIS LIMITED WARRANTY IS THE ONLY WARRANTY MADE BY CODENOTARY AND STATES THE SOLE AND EXCLUSIVE REMEDIES FOR CODENOTAY INC BREACH OF WARRANTY. EXCEPT FOR THE FOREGOING LIMITED WARRANTY CODENOTARY INC PROVIDES THE SERVICES “AS IS” AND WITH ALL FAULTS AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING, SECURITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, INTEGRATION, MERCHANTABILITY, QUIET ENJOYMENT, SATISFACTORY QUALITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

9. Limitation of Liability

TO THE EXTENT ALLOWED BY LAW, CODENOTAY INC SHALL NOT BE LIABLE TO YOU FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF CODENOTARY INC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL CODENOTAY INC’S AGGREGATE

LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL FEES PAID TO CODENOTARY INC BY YOU FOR USE OF THE SERVICES DURING THE PRECEDING TWELVE MONTHS PERIOD.

10. Confidential Information

By virtue of this Agreement, the parties may have access to information that is confidential to one another (“**Confidential Information**”). Confidential Information shall be limited to the terms and pricing under this Agreement, and all information clearly identified as confidential.

A party’s Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party.

The parties agree to hold each other’s Confidential Information in confidence during the term of this Agreement and for a period of three (3) years after termination of this Agreement. The parties agree, unless required by law, not to make each other’s Confidential Information available in any form to any third party for any purpose other than the implementation of this Agreement.

11. Indemnity

(A) Company Inc shall (i) at its own expense defend you, its officers, directors, employees, agents, and customers (“**Indemnified Parties**”) against any third party claim (a “**Claim**”) that the Services infringe any copyright or trademark, or patent that is enforceable and shall (ii) indemnify the Indemnified Parties from any damages, awards and expenses (including reasonable attorney’s fees) from such a claim.

(B) The indemnification obligations hereunder are conditioned upon the party seeking indemnification (i) giving the indemnifying party prompt written notice of any claim, action, suit, or proceeding; (ii) granting complete control of the defense to the indemnifying party; and (iii) reasonably cooperating with indemnifying party at the indemnifying party’s expense. In the event that Company Inc determines a risk of an infringement, at Company Inc’s option and expense, Company Inc may replace or modify the Services with substantially equivalent services or replacement services so that the Services are no longer infringing or obtain for you the right to continue using the Services. If Company Inc determines that none of these alternatives are commercially reasonable, Company Inc may cancel the applicable Service and reimburse you for any prepaid but unused Services as of the date of termination.

12. Duration / Termination

This Agreement and your license to use the respective Services including multi-year subscriptions shall commence with the day of the conclusion of a subscription, shall be effective for one year and shall be renewed automatically for one additional year unless it is terminated by you or by Company by giving a written notice sixty (60) days prior to the date of ending. Renewed subscriptions shall be valid and active at the subscription fees applicable at the time of renewal. Company may at its own discretion terminate Free Subscriptions at any time by giving you notice. Company may furthermore immediately terminate any Paid Subscriptions by giving you thirty (30) days notice to cure material breach of your obligations set

out in this Agreement. Upon termination, you shall cease using the affected Services and Company will block your access to such Services. As agreed in section 5 of this Agreement, you are solely responsible for the retrieval of any data uploaded to Company servers and Company shall not be obliged to deliver or transfer any data to you at the expiration or termination of a subscription. You acknowledge that, independent of the reasons for the termination of this Agreement, any reimbursement for fees paid by you to Company in regard to the subject matter of this Agreement is excluded. All disclaimers of warranties and limitations of liability shall survive for a period of two (2) years from any termination or expiration of any subscriptions.

13. Export

You agree to fully comply with all applicable laws and regulations regarding export restrictions (“Export Laws”) to assure that neither the Services nor any direct products thereof are (1) exported, directly or indirectly, in violation of Export Laws, or (2) are used for any purpose prohibited by Export Laws, including, without limitation, nuclear, chemical, or biological weapons production.

14. Notices

Unless stated otherwise in this Agreement, any notices under this Agreement shall be made in writing or by e-mail to the address registered for your account (in case of a notice to you) or the address listed on the applicable web page of Company (in case of a notice to Company).

15. Non-Solicitation

During the Term and for a period of two (2) years after the termination of this Agreement, neither party shall, by direct or indirect means, solicit the employment of any person who was involved in the delivery or receipt of the Services hereunder or the execution of this Agreement, and (a) who at the time of such solicitation is then working for the other party or (b) who within six (6) months prior to such solicitation had worked for that other party.

16. Non-Assignment

You are not allowed to assign your account or any subscription to any third party without Company Inc’s prior written consent.

17. Data Privacy

You acknowledge that the use of Company Services may require the collection and processing of personal data concerning you as an individual or legal entity. You agree that Company may use such data only in connection with its business relationship to you and to transfer or disclose collected data for purposes of this Agreement to any third parties concerned with the fulfillment of this Agreement, in the United States, Austria, or abroad. Company will not actively transfer your personal data to any other third parties. Company is not responsible for any data uploaded by you for use of the Company Software and shall not be considered owner of any such data for the purpose of data protection laws. You confirm that any data stored inside Company has been collected and processed in accordance with the applicable data protection laws and that sharing such data with Company or other users is equally compliant. You shall fully indemnify Company for any costs and liabilities resulting from a breach of applicable data protection laws.

This Company website(s) or any of its affiliate’s websites use Google Analytics, a web analytics service provided by Google, Inc. (“**Google**”). Google Analytics uses “**Cookies**”, which are text files placed on your computer, to help the website analyze how users use the site. The

information generated by the Cookie about your use of the website (including your IP address) will be transmitted to and stored by Google on servers in the United States. Google will use this information for the purpose of evaluating your use of the website, compiling reports on website activity for website operators and providing other services relating to website activity and internet usage. Google may also transfer this information to third parties where required to do so by law, or where such third parties process the information on Google's behalf. Google will not associate your IP address with any other data held by Google. You may refuse the use of cookies by selecting the appropriate settings on your browser, however, please note that if you do this you may not be able to use the full functionality of this website. By using this website, you consent to the processing of data about you by Google in the manner and for the purposes set out above.

18. Complete Agreement; Governing Law; Jurisdiction

This Agreement constitutes the complete agreement between the parties with respect to the Services and is governed by the laws of the State of Texas (other than its conflict of law provisions). The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not be applicable. Place of jurisdiction shall be Houston, TX, USA.

19. Severability

If any part of this Agreement is held to be unenforceable, in whole or in part, such holding shall not affect the validity of the other parts of the Agreement.

20. Waiver

The waiver of a breach of any provision of this Agreement shall not operate or be interpreted as a waiver of any other or subsequent breach.

21. Entire Agreement

Any amendment or modification to the Agreement must be in writing signed by both parties. This Agreement constitutes the entire agreement and supersedes all prior or contemporaneous oral or written agreements regarding the subject matter hereof. Each of the parties has caused this Agreement to be executed by its duly authorized representatives and shall be effective as of the date when last signed by a party.