

# TRADING PARTNER NETWORK MEMBER AGREEMENT

THIS TRADING PARTNER NETWORK MEMBER AGREEMENT ("AGREEMENT") CONTAINS THE TERMS AND CONDITIONS THAT GOVERN YOUR ACCESS TO AND USE OF THE SERVICES AND IS AN AGREEMENT BETWEEN THE BUSINESS YOU REPRESENT AND BLUE YONDER. BY REGISTERING FOR OR USING THE SERVICES, YOU (ON BEHALF OF THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT HAVE AUTHORITY TO ACCEPT THIS AGREEMENT OR DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

This Agreement was last updated on 11 December 2024 and is effective as of the date you accept it ("**Effective Date**").

## 1. DEFINITIONS

**"Affiliate(s)"** means, for Customer, any entity that directly or indirectly controls, is controlled by or is under common control of Customer, where "control," means direct or indirect ownership or control of more than 50% of the voting interests of Customer. For Blue Yonder, "Affiliate" means Blue Yonder Holding, Inc., or any of its direct or indirect subsidiaries.

**"Aggregate Data"** means anonymous data in aggregate form that is generated from or based upon any or all the following: (i) Customer Data; (ii) data provided by you from third party products; (iii) other customer's Aggregated Data; or (iv) data obtained by us from third party products. Aggregate Data does not include any information that can be used directly, or in connection with other data, to identify, contact or locate an individual; and Aggregate Data cannot be used in combination with any of your specific output to identify, directly or indirectly, you or your trading partners.

**"Beta service"** means a free trial, preview, beta, development, or other pre-release version or feature of the Services or new services.

**"Blue Yonder," "we," "us," and "our"** mean Blue Yonder, Inc. and any of its applicable Affiliates.

**"Blue Yonder Content"** means the application program interface (**APIs**) and information from publicly available sources or our third-party content providers and made available to you through the Services. Blue Yonder Content does not include the Services or Non-Blue Yonder Applications.

**"Content"** means software (including machine images and computer code), data, materials, text, audio, video, and images.

**"Customer," "you," "your" and "yours"** mean the company or other legal entity for which the individual is accepting this Agreement.

**"Customer Data"** means any Content, including any personal data, submitted by or for you to the Services or that you derive from your use of and store in the Services (e.g. Customer-specific reports or forecasts). Customer Data and its derivatives do not include (i) our Confidential Information, (ii) Blue Yonder Content, (iii) Non-Blue Yonder Applications, or (iv) the Service's report structures, templates, data models or mechanisms.

**"Documentation"** means our Service descriptions and standard user instructions, published protocols, standards, technical specifications, and functional specifications or use cases which are either embedded within the Services or located at <https://success.blueyonder.com/s/> or <https://docs.onenetwork.com/NeoHelp/PartnerServices/3.10/index.html> as updated from time to time, on condition that such updates do not materially decrease the features or functionality of the Services.

**"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, tradename, moral rights, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Services are used or offered.

**"IP Claim"** means a claim by an unaffiliated third-party against you that the Services when used within the scope of the terms of this Agreement, directly infringe a third-party patent, copyright or trademark or misappropriates a third-party trade secret, in a jurisdiction in which Blue Yonder holds an active, valid, and registered Intellectual Property Right.

**"Losses"** means any claims, damages, losses, liabilities, fines, costs, and expenses (including reasonable attorneys' fees).

**"Non-Blue Yonder Application"** means API, web-based, mobile, offline, or other software functionality that interoperates with a Service, that is provided by you or a third party, whether or not it is offered on our marketplace.

**"Order"** means an ordering document, schedule or online order specifying the Services to be provided that is entered into between you and us, including any addenda and supplements.

**"Service"** means each of the subscription services made available by us pursuant to this Agreement. Services do not include Blue Yonder

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Content or Non-Blue Yonder Applications.

**"Site"** means the site on the World Wide Web on which you, your Users and other customers may access the Trading Partner Network.

**"Subscription Metrics"** means subscription quantity, values and usage limits specified in the applicable Order. Subscription Metrics are not cumulative across different Services which have the same unit of measure and are within the same product bundle.

**"Subscription Term"** means the period of time during which we will provide the Services to you.

**"Suggestions"** means all suggested improvements, enhancement requests, feedback or recommendations related to our products or services that you or your Users provide to us or our Affiliates.

**"Supplier"** means a third-party who provides services, software or other technology that we use to provide the Services.

**"Trading Partner Network"** means the collaborative platform offered by us as a Service.

**"User"** means any individual employee or consultant of yours who you permit to access or use the Services.

## **2. BLUE YONDER RESPONSIBILITIES**

**2.1. General.** You may access and use the Services and Blue Yonder Content in accordance with this Agreement, Documentation and your Order.

**2.2. Third-Party Content.** The Service may include third party content that is subject to additional terms and conditions, which are available at <https://blueyonder.com/legal/third-party-software-terms-and-conditions>.

**2.3. Changes to the Agreement.** We reserve the right to modify this Agreement at any time. Any changes will be communicated to you at least 30 days prior to their effective date. Notice of the changes will be provided through email or by posting the updated agreement on the Site. By continuing to use the Services after the changes take effect, you agree to abide by and be bound by the changes. If you do not agree to the changes, you must terminate your use of the Services before the effective date of the changes.

**2.4. Changes to the Services.** We may change or discontinue any of the Services from time to time. We will provide you with at least 12 months' prior notice before discontinuing a material functionality of a Service, except that this notice will not be required if the 12 month notice period (i) would pose a security, privacy or intellectual property issue to us or the Services, (ii) is economically or technically burdensome, or (iii) would cause us to violate legal requirements.

## **3. CUSTOMER RESPONSIBILITIES**

**3.1. Your Use of the Services.** You will comply with the terms of this Agreement, Documentation, Orders, and all laws, rules, and regulations applicable to your use of the Services, Blue Yonder Content, and Non-Blue Yonder Applications. You will: (i) use the Services solely for your internal business purposes and not for the benefit of any third parties; (ii) select, purchase, configure, operate, and maintain your equipment, hardware, websites, network and Internet, data and telephone connections necessary for use and support of the Services; and (iii) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify us promptly of any unauthorized access or use. Except to the extent caused by our breach of this Agreement, (i) you are responsible for all activities that occur under your account, regardless of whether the activities are authorized by you or undertaken by you, your Users, employees or a third party (including your contractors and agents), and (ii) we and our Affiliates are not responsible for unauthorized access to your account. The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Blue Yonder's direct competitors are prohibited from accessing the Services, except with our prior written consent.

**3.2. Customer Data.** You are responsible for the accuracy, quality and legality of Customer Data, how you acquired Customer Data, your and your User's use of Customer Data with the Services, and the interoperation of any Non-Blue Yonder Applications with which you use Services or Content. You will: (i) not provide any health data or similarly sensitive data or special categories of personal data to us or for use in the Services; and (ii) ensure that the Customer Data and your and your Users' use of Customer Data and the Services will not violate the Privacy Policy at <https://www.onenetwork.com/about/privacy-policy/> or any applicable law. You represent and warrant that you own all right, title, and interest in and to Customer Data and have all rights in Customer Data necessary to grant the rights contemplated by this Agreement.

**3.3. Users.** You are responsible for any action taken by individuals or entities that you permit, assist, or facilitate in relation to this Agreement, Customer Data, or use of the Services. This includes ensuring that all Users' comply with your obligations under this Agreement, the Documentation, and any Orders. If you become aware of any User violating these obligations, you must immediately suspend their access to the Services.

**3.4. Removal of Content and Non-Blue Yonder Applications.** If you receive notice, including from us, that Content or a Non-Blue Yonder Application may no longer be used or must be removed, modified and/or disabled to avoid violating applicable law, or third-party

rights, you will promptly do so. If you do not take required action, including deleting any Content you may have downloaded from the Services, in accordance with the above, or if in our judgment continued violation is likely to reoccur, we may disable the applicable Content, Service, and/or Non-Blue Yonder Application. If requested by us, you will confirm deletion and discontinuance of use of such Content and/or Non-Blue Yonder Application in writing and we are authorized to provide a copy of your confirmation to any third-party claimant or governmental authority, as applicable. In addition, if we are required by any third-party rights holder to remove Content or receive information that Content provided to you may violate applicable law or third-party rights, we may discontinue your access to Content through the Services.

**3.5. Restrictions.** Neither you nor any User will use the Services or Blue Yonder Content in any manner or for any purpose other than as expressly permitted by this Agreement, the Documentation and Orders. Neither you nor any User will, or will attempt to: (i) modify, distribute, alter, tamper with, repair, or otherwise create derivative works of any Content included in the Services or Blue Yonder Content (except to the extent such Content is provided to you under a separate license that expressly permits the creation of derivative works); (ii) sell, resell, license, sublicense, distribute, rent or lease the Services or Blue Yonder Content or include any Service or Blue Yonder Content in a service bureau or outsourcing offering; (iii) make the Services or Blue Yonder Content available to anyone other than you or Users or for the benefit of anyone other than you; (iv) use a Service or Non-Blue Yonder Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (v) use a Service or Non-Blue Yonder Application to store or transmit malicious code; (vi) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein; (vii) attempt to gain unauthorized access to any Service or Content or the related systems or networks; (viii) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit or to avoid incurring fees; (ix) use any Services to access, copy or use any of our intellectual property except as permitted under this Agreement, an Order, or the Documentation, (x) modify, copy, or create derivative works of a Service or any part, feature, function or user interface thereof; (xi) copy Content except as permitted in this Agreement, an Order or the Documentation; (xii) frame or mirror any part of any Service or Content, other than framing on your own intranets or otherwise for your own internal business purposes or as permitted in the Documentation; or (xiii) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Service, or (3) copy any ideas, features, functions or graphics of the Service. These restrictions will continue to apply following the termination of this Agreement.

#### **4. SERVICE TERMS (APPLICABLE TO ALL SERVICES)**

**4.1. Provision of Services.** During the Subscription Term, we will make the Services available to you pursuant to this Agreement, Documentation and your Order. We may provide the Services (including the processing, collecting, organizing, structuring, transfer and storage of Customer Data) from the United States or any country where we contract for, operate or maintain facilities. You consent to this processing, transfer and storage of Customer Data. We will provide the Services in accordance with all laws and government regulations applicable to our provision of the Services to our customers generally and without regard for your particular use of the Services.

**4.2. Usage Limits.** Services are subject to the Subscription Metrics specified in the Order and Documentation. For Services provided on a per User basis, User accounts cannot be shared or used by more than one User, except that User accounts may be reassigned to new Users replacing former Users who no longer use the Services. We may monitor your use to verify compliance with Subscription Metrics, the Agreement or the Documentation. If you exceed the permitted scope of use, then, in addition to any other remedies available to us, you will promptly pay any underpaid fees associated with the overuse based on our then-current list rates.

**4.3. Support.** We or our designated representative will provide updates and incident management ("**Support**") for the Services in accordance with your purchased Support plan, as updated from time to time, as long as the later modification does not materially diminish the Support. The current Support plans are described at <https://docs.onenetwork.com/NeoHelp/PartnerServices>. Support does not include support for any modifications to the Services. You must purchase Support for any permitted modifications to the Services pursuant to a separate support agreement and for an additional fee.

**4.4. Third-Party Services.** Suppliers may provide portion of the Services. We will make Customer Data available to Suppliers as part of Supplier's providing Third-Party Services. We will bind Suppliers to confidentiality obligations that are substantially similar to our obligations under this Agreement. Subject to this Agreement, we will be responsible for any breaches of this Agreement by Suppliers.

**4.5. Professional Services.** If we or our Affiliates offer to or perform any professional services, those professional services are subject to the Project Terms and Conditions and Blue Yonder Services Terms and Conditions available at <https://blueyonder.com/legal/services-terms-and-conditions>.

**4.6. Beta Services.** We may make Beta services available. Beta services are provided "as-is", "with all faults", and "as-available," and are excluded from any service level agreements and all limited warranties provided in this Agreement. Beta services may not be covered by customer support. We may change or discontinue Beta services at any time without notice. We also may choose not to release a Beta service into general availability.

#### **5. TRADING PARTNER NETWORK SERVICES**

**5.1. Trading Partner Network Venue.** You acknowledge that the Site is simply a platform for customers to manage their partner

community and collaborate on planning, processes, operations, and logistics. We do not participate in actual transactions between customers. By using the Site, you agree to disclose your connection to the Trading Partner Network, and we may also disclose that you are a user of this network. We do not control the quality, safety, or legality of the goods or services offered by customers, nor do we verify the accuracy of information provided by customers or their ability to complete transactions. We cannot guarantee that any customer will complete a transaction.

**5.2. Trading Partner Social Network Applications.** You agree to use the social network applications strictly in accordance with this Agreement and to ensure that neither you nor others will: (i) transfer the social network applications or utilize them in combination with third-party software to create an integrated software program that is transferred to unrelated third parties; (ii) use the social network applications in any manner that could damage, disable, overburden, or impair our servers, networks, or those of any network provider connected to the social network applications; or (iii) submit or transmit any material through the social network applications, or engage in any conduct that (1) violates or infringes upon our rights or the rights of others including, but not limited to, patent, trademark, trade secret, copyright, publicity, or other proprietary rights, (2) is unlawful, threatening, abusive, harassing, predatory, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or tortuous, (3) victimizes, harasses, degrades, or intimidates an individual or group based on religion, gender, sexual orientation, race, ethnicity, nationality, age, or disability, (4) impersonates any person, business, or entity, including us or our employees and agents, (5) contains viruses or other computer code, files, or programs that interrupt, destroy, or limit the functionality of any computer software, hardware or telecommunications equipment or otherwise permits unauthorized use of a computer or network, (6) encourages conduct that would constitute a criminal offense or give rise to civil liability, or (7) interferes with the use of the social network applications by us or others. We reserve the right to suspend, terminate, or otherwise deactivate your social network application account without notice, at our discretion, for violation of this "Trading Partner Social Network Applications" Section, and the right to deactivate your social network application username if it has been inactive for more than 90-days.

## **6. NON-BLUE YONDER PRODUCTS AND SERVICES**

**6.1. Non-Blue Yonder Applications and Services.** We or third parties may make available (for example, through a marketplace) third-party products or services, including, for example, Non-Blue Yonder Applications and implementation and other consulting services. Any acquisition by you of such products or services, and any exchange of data between you and any Non-Blue Yonder provider, product or service is solely between you and the applicable Non-Blue Yonder provider. You will comply with the terms of service of any third-party products or services with which you use the Services or Content. We do not warrant or support Non-Blue Yonder Applications or other Non-Blue Yonder products or services, unless expressly provided otherwise in an Order. We are not liable for any issues, damages, or losses incurred because of use of Non-Blue Yonder Applications or other Non-Blue Yonder products or services, including but not limited to service disruptions; disclosure, modification or deletion of Customer Data; or any other consequences arising from the integration. You assume all risks associated with integrating Non-Blue Yonder Applications or other Non-Blue Yonder products or services and indemnify us against any claims or damages arising from their use. We reserve the right to modify or terminate support for specific Non-Blue Yonder Applications at our discretion, with reasonable notice provided to customers. In the event of termination or modification, customers may need to discontinue or update their integration with the affected Non-Blue Yonder Applications.

**6.2. Integration with Non-Blue Yonder Applications.** The Services may contain features designed to interoperate with Non-Blue Yonder Applications. We cannot guarantee the continued availability of such Service features and may cease providing them without entitling you to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-Blue Yonder Application ceases to make the Non-Blue Yonder Application available for interoperation with the corresponding Service features in a manner acceptable to us.

## **7. ARTIFICIAL INTELLIGENCE SERVICES**

**7.1. Generally. "AI Technology"** means any and all machine learning, deep learning, and other artificial intelligence ("AI") technologies, including statistical learning algorithms, models (including large language models), neural networks, and other AI tools or methodologies, all software implementations of any of the foregoing, capable of generating various types of Content based on user-supplied prompts and AI Content. **"AI Services"** means, collectively, our subscription service offerings that leverage AI Technology to solve various business problems and enhance operational efficiencies. **"AI Content"** means Customer Data that is processed by the AI Services. The informational outputs provided by the AI Services are intended for assistance purposes only and do not constitute any modification, alteration, or extension of our warranties or the Services' descriptions. If made available, AI Services are provided "as-is", "with all faults", and "as-available", and are excluded from any service level agreements and all limited warranties provided in this Agreement. AI Services may not be covered by customer support. We may change or discontinue AI Services at any time without notice.

**7.2. Output.** To the extent permitted by applicable law, the output that you generate using AI Services which is unique to you is Customer Data, excluding any non-Customer Data that may be included in the output. Due to the nature of artificial intelligence tools, the AI Services output may not be unique across customers and the AI Services may generate the same or similar results across customers. The AI Services output may contain inaccuracies, biases, problematic Content, hallucination, and confabulation. You should thoroughly validate any outputs before taking action and continuously monitor the performance of the AI Services as well as the outputs going forward, as AI Technology utilizes statistical approximations and limited world knowledge. You must exercise caution before automating any critical workflows and validate outputs thoroughly. The informational outputs provided by the AI Services are intended for assistance purposes only and do not constitute any modification, alteration, or extension of our warranties and we are not liable for actions taken based solely on AI Services outputs.

**7.3. Your Use of the AI Services.** The AI Services have been designed and trained for specific use cases and to produce certain AI Services output by using AI Content. AI Services are not intended for use cases other than they have been designed and trained for, including but not limited, in, or in association with, the operation of any hazardous environments or critical systems that may lead to serious bodily injury or death or cause environmental or property damage, or any kind of use cases that would constitute a high risk use case as stipulated in applicable laws, including, but not limited to, the European Union's Artificial Intelligence Act. You are responsible for using the AI Services in compliance with applicable laws. You are responsible for liability that may arise in connection with any such uses. You will not, and will not allow any third-party to, use the AI Services to, directly or indirectly, develop or improve a similar or competing product or service. Neither you nor your Users will, or will attempt to, reverse engineer, disassemble, or decompile AI Services, or apply any other process or procedure to derive the source code or other underlying components.

**7.4. Use.** We may: (i) use and store AI Content that is processed by the AI Services to maintain and provide the applicable AI Services (including development, training and improvement of the AI Services and its underlying technologies); (ii) use and store AI Content that is not your personal data to develop, train and improve our and our Affiliate machine-learning and artificial-intelligence technologies; and (iii) solely in connection with the development, training and improvement described in clauses (i) and (ii), we may store the AI Content in a region outside of the region where you are using the AI Services.

## **8. DATA PROTECTION**

**8.1. Personal Information.** We may process certain personal data about you or your Users, agents, representatives, employees or other related third parties for the following purposes: (i) processing and fulfilling orders; (ii) managing and maintaining your account, including providing customer support and communication regarding account activities; (iii) compiling Aggregate Data; and (iv) analyzing and improving our products and services, including the development of new features and enhancements. You may request access to, correction of and deletion of the personal data or exercise any other legal rights you may have in respect of this personal data under applicable laws.

**8.2. China Data Protection.** If you provide us with access to, or otherwise request that we process, any Chinese Data in connection with this Agreement, you warrant that you will comply with all applicable Chinese Data Protection Laws and remain solely liable for, and hold us harmless against, any noncompliance. For purposes of this subsection: (i) "Chinese Data" means any data and/or information regulated under Chinese Data Protection Laws, including without limitation, personal information, important data, national core data or data of critical infrastructure information operators; and (ii) "Chinese Data Protection Laws" means any applicable cybersecurity, data protection or privacy laws, regulations, guidance or regulatory measures promulgated by the relevant authorities in the People's Republic of China ("PRC"), as applicable from time to time, including the Data Security Law, the Cybersecurity Law, and the Personal Information Protection Law of the PRC.

## **9. ORDERS, FEES AND PAYMENT**

**9.1. Orders.** You will place a binding Order, subject to our acceptance. Your purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by us, our Affiliates, distributors, partners, or resellers regarding future functionality or features of the Services.

**9.2. Service Fees.** You will pay the applicable fees and charges for use of the Services as described in your Order. The fees for the Services are due within thirty (30) days from the invoice date. If you subscribed to different Services on different billing cycles, we may consolidate and prorate the fees for the additional Services at the time you subscribe to that additional Services.

**9.3. Fees Generally.** All fees are quoted and payable in the currency set out in the Order. Except where otherwise expressly agreed in this Agreement, fees are nonrefundable, and your payment obligation is not cancelable. All amounts payable by you under this Agreement will be paid to us without setoff or counterclaim, and without any deduction or withholding. You are responsible for providing us with your complete and accurate billing and contact information and notifying us of any changes to your billing and contact information. We may elect to charge you interest at the rate of 1.5% per month (or the highest rate permitted by law, if less) on all late payments and may condition future purchases on payment terms shorter than those specified in this "Order, Fees and Payment" Section. You will pay us all reasonable costs and expenses for collection of overdue amounts, including legal fees.

**9.4. Taxes.** Fees are exclusive of any sales or use taxes, value added tax (VAT), goods and services tax (GST), or all similar taxes or legally imposed fees, duties or contributions based on the amounts payable, all of which are your sole responsibility whether due now or subsequently imposed by any jurisdiction. We may charge value added tax, goods and services tax, sales tax or other consumption or similar taxes ("**Indirect Taxes**") in addition to the fees, on condition that the invoice meets the requirements for a valid tax invoice for the Indirect Taxes after consideration of any applicable tax exemption certificate. The address used for Indirect Tax purposes is identified as your address during registration, or on your Order if you did not register online. If the Services are provided to you elsewhere, you are responsible for notifying us. You are not responsible for any taxes based upon our net income or our employees.

**9.5. Withholding Tax.** If you are required to withhold income tax on any payments due under this Agreement, you must promptly provide us with the official receipt of payment of these taxes to the appropriate taxing authority. You may withhold only to the extent legally required under existing tax laws of your legal country of domicile and after full consideration of applicable income tax treaty provisions, if any, by and between you and our respective legal countries of domicile. If tax is withheld and you do not submit a tax certificate to us within thirty (30) days after the payment due date, you must immediately remit full payment for the outstanding amount.

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**9.6. Payment Processor.** You agree to comply with and be bound by the terms and conditions of any third-party payment processor services that we utilize as part of the Services. You acknowledge that such terms and conditions are subject to change by the payment processor and agree to review and accept any updates or modifications. We are not liable for any issues arising from your use of the payment processor services.

## **10. TEMPORARY SUSPENSION**

**10.1. Generally.** We may suspend your or any User's right to access or use any portion or all the Services immediately, with or without notice to you, if: (i) we cannot verify or authenticate any information you provide us about your entity status or Users; (ii) you or a User's use of the Services (1) poses a security risk to the Services or any third party, (2) could adversely impact our systems, the Services or the systems, or Content of any other customer, (3) could subject us, our Affiliates, or any third party to liability, or (4) could be fraudulent; (iii) you are, or any User is, in breach of this Agreement; (iv) you have ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (v) a legal requirement (1) subjects us or our Suppliers to any requirement not generally applicable to businesses operating in that location or line of business; (2) presents a hardship for us or our Suppliers to continue operating the Services without modification or necessary governmental formalities; or (3) causes us or our Suppliers to reasonably believe the Services and/or this Agreement may conflict with the legal requirement.

**10.2. Non-Payment.** We may suspend your or any User's right to access or use any portion or all the Services upon ten (10) days' notice if you are in breach of your payment obligations.

**10.3. Effect of Suspension.** If we suspend your right to access or use any portion or all the Services, you remain responsible for all fees and charges you incur during the period of suspension.

## **11. TERM; TERMINATION**

**11.1. Agreement Term.** The term of this Agreement will commence when you accept this Agreement and will remain in effect until terminated or your access to the Services has expired or terminated.

**11.2. Subscription Term and Renewal.** The Subscription Term for the Services specified in an Order will commence on the Order's effective date and will continue for the duration of the Subscription Term or until terminated. The Subscription Term start date is independent of your launch date, go-live date or the date Services are ready for use in a production environment. The Subscription Term will automatically renew for successive annual or monthly periods, as applicable to your Order, unless either party gives the other written notice to the other at least 30 days before the end of the current Subscription Term or renewal term. We reserve the right to adjust the subscription fee upon renewal, with prior notice sent electronically via email. You will be notified of the new subscription fee for each renewal period at least 90 days before any increase takes effect. It is your responsibility to promptly notify us of any changes to your contact information or designated renewal contact person. Fees for renewal periods may be invoiced in advance of the renewal anniversary date and are payable in accordance with the terms of the Agreement.

### **11.3. Termination for Cause.**

**11.3.1. By Either Party.** Either party may terminate this Agreement and any Orders for cause if the other party is in material breach of this Agreement and fails to cure the breach within thirty (30) days of receiving written notice specifying the breach. Consent to extend the cure period will not be unreasonably withheld, provided that the breaching party has commenced efforts to cure the breach within the 30-day notice period and is diligently pursuing the cure in good faith.

**11.3.2. By Blue Yonder.** We may terminate the Services, Order(s) and/or this Agreement immediately upon notice to you: (i) for cause if we have the right to suspend under the "Temporary Suspension" Section; (ii) if our relationship with a Supplier expires, terminates or requires us to change the way we provide the services, software or other technology as part of the Services; or (iii) in order to comply with the law or requests of governmental entities.

### **11.4. Effect of Termination.**

**11.4.1. Termination of the Agreement.** Upon the termination of this Agreement: (i) all of your rights under this Agreement immediately terminate; (ii) you remain responsible for all fees and charges you incurred through the termination date; and (iii) you will immediately return or, if instructed by us, destroy all Blue Yonder Content in your possession.

**11.4.2. Termination of a Service.** Upon termination of a Service (but not the Agreement): (i) you must immediately cease accessing and using the Service; (ii) all subscriptions, licenses and rights granted under this Agreement with respect to the Service will immediately terminate; and (iii) you remain responsible for all fees and charges you have incurred through the termination date.

**11.4.3. Survival.** The provisions of this Agreement that, by their nature, are intended to survive termination or are necessary to enforce any right, shall remain in effect following the termination of this Agreement. This includes, but is not limited to, the sections titled "Orders, Fees and Payment," "Effect of Termination," "Confidentiality," "Proprietary Rights," "Indemnification," "Limitation of Liability," and "General".

## **12. PROPRIETARY RIGHTS**

**12.1. Reservation of Rights.** Subject to the limited rights expressly granted in this Agreement, we, our Affiliates, licensors and Suppliers

reserve all of their right, title and interest in and to the Services, AI Services, Blue Yonder Content, Aggregated Data, and all related technology, including all of their related Intellectual Property Rights. We own and you irrevocably transfer, assign, and convey to us any and all right, title and interest in any learning, learned behaviors, modifications, and other derivatives of the Services, AI Services (excluding any Customer Data in any outputs), Blue Yonder Content, and Aggregated Data, including those that are a result of processing, analyzing, training and any other interaction of the Customer Data. All Intellectual Property Rights in any work created, produced or developed by us (whether alone or jointly with others), on behalf of us, or otherwise arising from, created, produced, or developed in relation to this Agreement, including those arising from the Services, AI Services, Blue Yonder Content, or Aggregated Data will immediately upon creation or performance vest absolutely in and will be and remain our property, and you will not acquire any right, title or interest in and to the same. No rights are granted to you other than as expressly set forth in this Agreement.

**12.2. License to Blue Yonder.** You grant us, our Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, modify, and display Customer Data for (i) us to provide and ensure proper operation of the Services accordance with this Agreement, (ii) verify your compliance with the Agreement; and (iii) develop, improve and enhance our services, solutions and the underlying technologies. We may also compile, collect, copy, modify, publish and use Aggregate Data that is generated from, or based upon, your use of the Services or AI Services and use the Aggregate Data for existing and new product and service improvements and analysis, to provide analysis and benchmarking, for distribution in general or comparative data and reports, and for any other lawful purpose. If you choose to use a Non-Blue Yonder Application with a Service or AI Service, you grant us permission to allow the Non-Blue Yonder Application and its provider to access Customer Data and information about your usage of the Non-Blue Yonder Application as appropriate for the interoperation of that Non-Blue Yonder Application with the Service or AI Service. Subject to the limited licenses granted herein, we acquire no right, title or interest from you or your licensors under this Agreement in or to any Customer Data or Non-Blue Yonder Application.

**12.3. License to Use Feedback.** You grant to us and our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into our services and products any suggestion, enhancement request, recommendation, correction, or other feedback provided by you or Users relating to the operation of our or our Affiliates' services and products.

## **13. CONFIDENTIALITY**

**13.1. 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, or made available to or learned by the receiving party during the term of this Agreement, 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 includes, but is not limited to:

**Customer Confidential Information:** Non-public Customer Data.

**Blue Yonder Confidential Information:** The Services, AI Services, Blue Yonder Content, Beta services, the terms and conditions of this Agreement, and all Order forms (including pricing).

**Mutual Confidential Information:** Business and marketing plans, technology and technical information, trade secrets and know-how, product plans and designs, customer information, business processes, financial information, other business strategies and affairs, and third-party confidential information.

Confidential Information does not include information that: (i) is or becomes generally available to the public without breach of any obligation owed to the disclosing party; (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party; (iii) is received from a third party without knowledge of any breach of any obligation owed to the disclosing party; or (iv) was independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information. The non-disclosure obligations set forth in this "Confidentiality" Section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Blue Yonder services, solutions, and products.

**13.2. Confidentiality Obligations.** Each party retains all ownership rights in and to its own Confidential Information. The receiving party will use the same degree of care to protect the confidentiality of the disclosing party's Confidential Information as it uses to protect its own confidential information of a similar nature, but in no event less than reasonable care. The receiving party agrees to: (i) not use any Confidential Information of the disclosing party for any purpose outside the scope of this Agreement; and (ii) except as otherwise authorized by the disclosing party in writing, limit access to the disclosing party's Confidential Information to its directors, officers, employees, contractors, auditors, and legal and financial advisors (or those of our Affiliates), and, in the case of Blue Yonder, its Suppliers and partners (collectively, "**Representatives**"), who need access for purposes consistent with this Agreement and who are bound by confidentiality obligations that are not materially less protective of the Confidential Information than those in this Agreement. Each party is responsible for any breaches of this Agreement by its Representatives. We may disclose the terms of this Agreement and any applicable Order to a contractor or Non-Blue Yonder Application provider to the extent necessary to perform our obligations under this Agreement, under terms of confidentiality materially as protective as set forth in this Agreement.

**13.3. Compelled Disclosure.** The receiving party may disclose the disclosing party's Confidential Information to the extent required by law, provided that the receiving party (i) gives the disclosing party prior notice of the compelled disclosure (to the extent legally permitted), and (ii) provides reasonable assistance, at the disclosing party's expense, if the disclosing party wants 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 does not contest the disclosure, the disclosing party will reimburse the receiving party for its reasonable cost of compiling and providing secure access to the Confidential Information.

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**13.4. Know-how.** Nothing in this “Confidentiality” Section prevents either party from utilizing any techniques, business insights, ideas or know-how gained during the performance of this Agreement in the normal course of its business, including our predication-related services, provided that such use does not result in the disclosure of the other party’s Confidential Information or infringe upon its Intellectual Property Rights.

## **14. INDEMNIFICATION**

**14.1. General.** You agree to defend, indemnify, and hold harmless us, our Affiliates, Suppliers, and licensors, and each of their respective employees, officers, directors, and representatives from and against any Losses arising out of or relating to any unaffiliated third-party claim arising from: (i) your use of the Services or Content in an unlawful manner, in violation of the Agreement, the Documentation, or any Order, or in a way that causes harm to a third-party; (ii) any Customer Data or your use of Customer Data with the Services; (iii) a Non-Blue Yonder Application provided by you; or (iv) a dispute between you and any User or Trading Partner. You will reimburse us for reasonable attorneys’ fees, as well as our employees’ and contractors’ time and materials spent responding to any third-party subpoena or other compulsory legal order or process related to the third-party claims described in this subsection, at our then-current hourly rates.

### **14.2. Intellectual Property.**

**14.2.1. Defense and Indemnification.** Subject to the limitations in this “Indemnification” Section, we will defend and indemnify you and your employees, officers, and directors against any unaffiliated third-party IP Claim and will pay the amount of any adverse final judgment or settlement.

**14.2.2. Exclusions from Liability.** We have no liability for an IP Claim to the extent that the IP Claim is based on or arises from: (i) the modification of the Services by anyone other than us, unless the modification was done at our instruction; (ii) the combination of the Services, or any portion thereof, with any other third-party software, hardware, service, technology, Content, or material not provided by us, if the infringement would not occur without such combination, unless contemplated by this Agreement or expressly authorized by the Documentation; (iii) your use of the Services not in accordance with the Documentation or this Agreement; (iv) modification of the Services or our compliance with your specifications or directions, including, but not limited to, the incorporation of any software, materials, functionality modifications, or processes provided by or requested by you that have not been specified for your use in this Agreement or the Documentation, if the infringement would not have occurred without your specifications or directions; (v) your use of a version of the Services other than the most current version made available to you, to the extent the infringement would have been prevented by using the most current version; (vi) AI Services; or (vii) Beta services.

**14.2.3. Remedies.** For any claim covered by this “Intellectual Property” Section or if we, in our sole discretion, reasonably determine, that the Service or any portion thereof infringes or misappropriates, or may infringe or misappropriate, any third-party Intellectual Property Rights, we will, at our election, either: (i) procure the rights to use the allegedly infringing portion of the Services; (ii) replace the alleged infringing portion of the Services with a non-infringing alternative; (iii) modify the allegedly infringing portion of the Services to make it non-infringing; or (iv) terminate the allegedly infringing portion of the Services or this Agreement and provide you with a refund for any unused, prepaid fees for the infringing Service covering the remainder of applicable Subscription Term after the date of termination.

**14.3. Indemnification Obligations.** The obligations under this “Indemnification” Section will apply only if the party seeking defense or indemnity: (i) provides the other party with prompt written notice of the claim; (ii) allows the other party to control the defense and settlement of the claim; and (iii) reasonably cooperates with the other party, at the other party’s expense, in the defense and settlement of the claim. In no event shall a party (1) make an admission of fault on behalf of the other party without the other party’s written consent, or (2) agree to any settlement of any claim that involves any commitment other than the payment of money without the other party’s written consent. THIS INDEMNIFICATION SECTION STATES THE SOLE LIABILITIES AND EXCLUSIVE REMEDIES FOR CLAIMS DESCRIBED HEREIN.

## **15. REPRESENTATIONS AND WARRANTY**

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

**15.2. Services Warranty.** We warrant that during the applicable Subscription Term, the Services will perform substantially as described in the Agreement and applicable Documentation. If the Services fail to meet this warranty we will, at our option and as your exclusive remedy, either: (i) repair the non-conforming portion of the Services; (ii) modify or replace the non-conforming portion of the Services with other services offering comparable functionality; or (iii) if we are unable to correct the warranty issue after a commercially reasonable period of time, you may terminate the non-conforming Service, and we will refund any prepaid, unused fees covering the remainder of the Subscription Term for that Service. You must inform us in writing of any warranty claim and provide the information and materials reasonably requested by us to document and reproduce the noncompliance. This warranty does not apply to problems caused by: (1) accident, abuse, or use of the Services in a manner inconsistent with this Agreement or our published Documentation or guidance, events beyond our reasonable control, unauthorized repair or installation, or acts or omissions of any party other than us or our Affiliates; (2) failure to meet minimum system requirements or issues with your hardware, software, networks or systems; (3) your failure to promptly install or allow an installation of a upgrade or update provided by us; (4) AI Service; or (5) any Beta service or Service for which we do not receive a subscription fee. THIS SUBSECTION SETS OUT OUR ENTIRE OBLIGATION AND LIABILITY AND YOUR SOLE REMEDY FOR ANY BREACH OF THE SERVICES WARRANTY.

**15.3. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED IN THIS REPRESENTATIONS AND WARRANTIES SECTION, THE SERVICES, AI SERVICES, AND BLUE YONDER CONTENT ARE PROVIDED “AS IS.” EXCEPT TO THE EXTENT PROHIBITED BY



LAW, OR TO THE EXTENT ANY STATUTORY RIGHTS APPLY THAT CANNOT BE EXCLUDED, LIMITED OR WAIVED, WE AND OUR AFFILIATES AND LICENSORS: (I) MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICES, AI SERVICES, OR BLUE YONDER CONTENT; AND (II) DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES OF (1) MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT; AND (2) ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE, THAT THE SERVICES, AI SERVICES OR BLUE YONDER CONTENT WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, THAT ANY CONTENT WILL BE SECURE OR NOT OTHERWISE LOST OR ALTERED, AND THAT THE SERVICES, AI SERVICES AND BLUE YONDER CONTENT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT, SOFTWARE, EQUIPMENT OR HARDWARE (EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE DOCUMENTATION).

## **16. LIMITATION OF LIABILITY**

**16.1. Limitation.** THE AGGREGATE LIABILITY OF EACH PARTY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT IS LIMITED TO DIRECT DAMAGES UP TO THE AMOUNT PAID OR PAYABLE UNDER THIS AGREEMENT FOR THE SERVICE GIVING RISE TO THE LIABILITY DURING THE 12 MONTHS IMMEDIATELY BEFORE THE CAUSE OF ACTION AROSE. IN NO EVENT WILL A PARTY'S AGGREGATE LIABILITY FOR ANY SERVICE EXCEED THE AMOUNT PAID FOR THAT SERVICE DURING THE SUBSCRIPTION TERM. THE FOREGOING LIMITATION APPLIES WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY AND REGARDLESS OF WHETHER THE DAMAGES WERE FORESEEABLE OR NOT.

**16.2. Exclusion.** NEITHER PARTY (OR OUR AFFILIATES OR SUPPLIERS) WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION, PUNITIVE, OR EXEMPLARY DAMAGES, OR DAMAGES FOR LOST REVENUE, PROFITS, BUSINESS INFORMATION, OPPORTUNITY, USE, GOODWILL OR DATA, OR FOR THE COST OF ANY SUBSTITUTE EQUIPMENT, SOFTWARE OR SERVICES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF THE PARTY KNEW THEY WERE POSSIBLE OR REASONABLY FORESEEABLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**16.3. Exceptions to Limitations.** The limits of liability in this "Limitation of Liability" Section apply to the fullest extent permitted by applicable law, but do not apply to: (i) the parties' obligations under the "Indemnification" Section; (ii) violation of the other party's Intellectual Property Rights; (iii) the tort of deceit; (iv) death or personal injury caused by that party's negligence or that of its employees or contractors; (v) willful misconduct or gross negligence; (vi) your failure to comply with your payment obligations; (vii) damages arising out of or relating to a party's breach of its confidentiality obligations; (viii) where this Agreement is subject to the Law of England and Wales, any breach by us of the obligations implied by S12 Sale of Goods Act 1979 or S2 Supply of Goods and Services Act 1982; or (ix) any claim brought by the other party more than twenty-four (24) months after the other party became aware of the claim.

## **17. GENERAL**

**17.1 Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between you and us regarding your use of Services, Beta services and Blue Yonder Content and supersedes all prior and contemporaneous agreements (including non-disclosure 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 is: (i) the applicable Order, (2) this Agreement, (3) the Documentation and (4) any other documents in this Agreement. Titles and headings of sections of this Agreement are for convenience only and will not affect the construction of any provision of this Agreement. You will not require us or our employees to sign, or otherwise enter into, any additional agreements, addendums or other documents not specifically referenced and incorporated in this Agreement nor require us or our employees to undergo any audit, security or background screening not expressly set forth in this Agreement as a condition of our performing any Services under this Agreement.

**17.2 Purchase Orders.** Any inconsistent or additional terms of your purchase order or similar document are excluded regardless of our accepting the purchase order or any other document for payment purposes. In addition, nothing contained in any clickwrap agreement, other document or instrument issued by you will in any way modify or add any additional terms or conditions to this Agreement, and any modified or additional terms or conditions are expressly rejected and excluded from this Agreement. Fees or service charges related to invoice processing, account administration or vendor management charged to us by you or your third-party service providers will be reimbursable to us by you and may be added to your invoices.

**17.3. Amendment.** No amendment or other modification of this Agreement or an Order is effective unless in writing, identified as an amendment, and signed by an authorized representative of each party to this Agreement.

**17.4. Severability.** If any part of this Agreement is held unenforceable, the rest remains in full force and effect.

**17.5. Waiver.** No waiver of any right under this Agreement will be deemed effective unless contained in a writing signed by a duly authorized representative of the party to be bound. Failure to enforce any provision of this Agreement will not constitute a waiver.

**17.6. No agency.** The parties are independent contractors. This Agreement does not create an agency, partnership, or joint venture.

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Each party is solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes. We do not undertake to perform any of your regulatory obligations or assume any responsibility for your business or operations. Neither party has any right, power, or authority under this Agreement to assume or create any obligation of any kind or to make any representation or warranty on behalf of the other party, whether express or implied, or to bind the other party in any respect.

**17.7. No third-party beneficiaries.** Except for our licensors and Suppliers, there are no third-party beneficiaries to this Agreement.

**17.8. Assignment.** Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld), except that either party may assign this Agreement in its entirety (including all Orders), without the other party's consent to its Affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that the assigning party is not in breach of this Agreement and the successor has agreed, in writing, to assume all of the Agreement obligations of the assigning party. Notwithstanding the foregoing, if a party is acquired by, sells substantially all its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then the other party may terminate this Agreement upon written notice. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**17.9. Trade Compliance.** Each party represents that it nor any party that owns or controls it, is subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority. The Services, Beta services, Blue Yonder Content, our other technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party will comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments. You will not permit any User to access or use any Service, Beta service, or Blue Yonder Content in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation. Upon learning that any of the Services, Beta services or Blue Yonder Content were diverted contrary to the obligations in this "Trade Compliance" Section, you must immediately notify us.

**17.10. Anti-Corruption.** Each party agrees that it has not entered into this Agreement with a corrupt motive to obtain or retain business or to secure an unfair business advantage and it will fully comply with all applicable anti-corruption laws. Each party represents that it has an anti-bribery policy in place and that it has not made and will not make or facilitate improper or illegal payments.

**17.11. Applicable law.** This Agreement is governed by Arizona law, without regard to its conflict of laws principles, except that (i) if your place of business registration or incorporation is in Europe, the Middle East, or Africa, this Agreement is governed by the laws of England, (ii) if your place of business registration or incorporation is in Asia Pacific, this Agreement is governed by the laws of Singapore, and (iii) if your place of business registration or incorporation is in Canada, the laws of the Province of Ontario and the laws of Canada. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to a violation of Intellectual Property Rights. The parties further agree that the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act, as adopted by any state or governing body, are expressly excluded from this Agreement.

**17.12. Venue.** Any dispute, controversy, claim, question, or disagreement ("**Claim**") arising out of or related to this Agreement, including any breach will be brought exclusively in the state and federal courts located in Maricopa County, Arizona, and you submit to the personal jurisdiction of those state and federal courts, except that if your place of business registration or incorporation is in Africa, Asia Pacific, Canada, Europe, Middle East or Africa any Claim will be finally resolved by binding arbitration before three (3) arbitrators under the commercial arbitration rules of the International Chamber of Commerce in effect at the time the Claim is submitted to arbitration. The language used in any proceedings arising under or in connection with this Agreement will be English. For arbitration: (i) the arbitrators must have substantial and longstanding experience with the computer software and SaaS business and will not have any authority to make any ruling, finding or award that does not conform to this Agreement, (ii) the seat, or legal place, of arbitration will be (I) London, United Kingdom if your place of business registration or incorporation is in Europe, the Middle East, or Africa; (II) Singapore if your place of business registration or incorporation is in Asia Pacific; or (III) Ontario, Canada, if your place of business registration or incorporation is in Canada, and (iii) the judgment upon the award rendered by the arbitrators will be final and binding on all parties and may be entered as a judgment and enforceable by any court of competent jurisdiction.

**17.13. Cumulative Remedies.** Except as otherwise set forth in this Agreement, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of that remedy to the exclusion of any other remedies.

**17.14. Attorneys' Fees and Costs.** The prevailing party in any action or proceeding to enforce this Agreement, including any efforts to collect amounts due under this Agreement, is entitled to recover from the other party its costs and attorneys' and experts' fees in addition to its damages.

**17.15. Language.** All communications and notices made or given pursuant to this Agreement must be in the English language. If we provide a translation of the English language version of this Agreement, an Order or any other documentation, the English language version will control if there is any conflict.

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**17.16. Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier confirmation of delivery. Billing-related notices to you will be addressed to the relevant billing contact designated by you. Notices to Blue Yonder must be addressed to Chief Executive Officer, with a copy to General Counsel at Blue Yonder, Inc., 15059 North Scottsdale Road, Suite 400, Scottsdale, Arizona, 85254, USA, and emailed to [general.counsel@blueyonder.com](mailto:general.counsel@blueyonder.com).

**17.17. Force Majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, shortage or inability to obtain labor or materials, acts of civil or military authority, riots, war, terrorism (including cyber terrorism), epidemics or pandemics, acts of God, acts or omissions of Internet traffic or communication carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of the Services)). This "Force Majeure" Section will not, however, apply to your payment obligations under this Agreement.

**17.18. Publicity; Press Releases.** We may (i) on one or more occasions reference you and use your company name, logo, trademark, trade name, service mark, or other commercial designation in advertisements, brochures, case studies customer lists, presentations, professional articles, financial reports or other marketing, promotional or related materials, and (ii) upon your approval, which will not be unreasonably withheld, we may issue a press release (or similar public announcement or communication) publicizing the relationship created by this Agreement.

**17.19. Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf. If you specify an entity, or you use an email address provided by an entity you are affiliated with (such as an employer) in connection with a purchase or renewal, that entity will be treated as the owner of the purchase or renewal for purposes of this Agreement.