

Pantry Privacy and Security Statement

Privacy and security are too important for legalese. Pantry does not own your data, nor do we sell it to others or use it for advertising. It's your data, period.

This policy applies to all information collected or submitted on Pantry's website and our apps on any other devices and platforms.

After account creation, you will be asked to connect external accounts like email, sales orders, and inventory. You'll need to connect at least one account for Pantry to be useful. Connected accounts are used to build a holistic view of your operations; each has special protections to ensure Pantry only uses data that is necessary for the product, and that sensitive fields are protected.

We view machine learning models as core to our value proposition. Accordingly, we use anonymized customer data to build machine-learning models that power our services.

Pantry Master Terms and Conditions

Effective: April 1st, 2024

Last Modified: April 1st, 2024

These Master Terms and Conditions (the "Terms of Use") govern the relationship between Pantry Software, Inc. ("Pantry"), and the Licensee specified on an applicable Order Form or clickthrough payment service (either, an "OF").

1. General

Pantry operates one or more online services for a fee in the wholesale supply chain. Pantry's online systems are referred to herein as the "Online Paid Systems" or "OPS".

The OPS are provided to customers on a software-as-a-service ("SaaS") basis such that the same basic systems are accessible to all customers. All information that might tend to identify a customer is kept strictly segregated; customer data is anonymized and used as part of our machine learning process. Except for such anonymized data as may be used by Pantry to improve our services for all customers, Licensee's data remains only accessible to Licensee and those individuals authorized by Licensee to access such data. Additionally, Licensee retains all rights in its data and grants Pantry only the rights in the data (a) that are necessary to access the data, (b) to use the data in the operation of the OPS for the purposes set forth in these Terms of Use, and (c) for anonymized use with our machine learning tools to improve our services for all customers. More specific provisions of data management and security are provided below. Any custom software or other deliverables requested by Licensee of Pantry are not covered by these Terms of Use and shall require a separate written agreement between the parties. These Terms of Use include specific terms to cover issues that are unique to the particular SaaS environment in which the OPS manage, process, and handle data (including in some instances, highly sensitive personal data); such issues that may not have overlap with traditional services agreements.

2. Terminology

- 2.1 Aggregated Usage Data. Anonymous statistical data that relates to how Licensee and End Users utilize the OPS. Aggregated Usage Data never includes Licensee Data or End User Personal and Account Data.
- 2.2 Affiliate. An Affiliate of a Party is any entity that directly or indirectly controls, is controlled by, or is under common control with such party. “Control”, “controls”, or “controlled” means the possession, directly or indirectly, of at least 50% of the share capital or voting rights or of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, contract, or otherwise.
- 2.3 Data Controller. A natural or legal person which alone or jointly with others determines the purposes and means of the processing of Personal Data.
- 2.4 Data Privacy Regulations. Data Privacy Regulations are the laws and regulations implemented by Governments around the globe for protecting individual privacy and the protection of the personal data related to those individuals. Examples of Data Privacy Regulations that may apply to the operation of the OPS in given implementations include without limitation: (i) the Standards for the Protection of Personal Information of Residents of the Commonwealth of Massachusetts (e.g., at 201 CMR 17); (ii) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and on the free movement of such data (General Data Protection Regulation) (“GDPR”); (iii) the EU e-Privacy Directive (Directive 2002/58/EC) and any replacement European regulation or other legal instrument from time to time; (iv) any national European Data Protection Law(s) made under or pursuant to (ii) or (iii); (v) the UK’s Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2013; and any applicable associated or supplementary data protection laws or regulations, each as updated, amended or replaced from time to time.
- 2.5 Data Security Incident. Any accidental, unauthorized, and/or unlawful access, disclosure, alteration, loss, damage, destruction, corruption, and/or use or Processing of Licensee Data or other Personal Data transmitted, stored or otherwise Processed.
- 2.6 End User. An End User is a person authorized by Licensee to access an OPS and/or otherwise participate in the Services. For example, an End User may be an employee, officer, director, representative, agent, or contractor of Licensee, or other person provided access by Licensee.
- 2.7 End User Account. Each End User’s Account is a profile of identification information that allows the End User to log into and use the OPS. The information contained in an End User Account is specific to the End User and at no time does the End User Account

include Licensee Data, except that the End User Account may include an identification of which licensee's data the End User is authorized to access.

- 2.8 End User Personal and Account Data. Information about an End User (e.g., name, email address, contact information, profile information, etc.) that Pantry uses to operate the OPS and provide access to an End User to the Services. This information includes the End User Account. This information never includes Subject Data or any other Licensee Data.
- 2.9 Feedback About an OPS. Voluntary information, suggestions, comments, or other feedback to Pantry with respect to Pantry's products and services, including the Services (e.g., suggestions for improvements to the OPS), exclusive of the Licensee Data, provided by Licensee, its employees, representatives, contractors, Affiliates, End Users, and other agents. Feedback About an OPS may include information related to Fee-Free and/or Fee Based Improvements, each defined below.
- 2.10 Licensee Data. Licensee Data includes the Subject Data and any other information related to or about the Licensee and the Licensee's business provided by the Licensee or otherwise obtained by Pantry in its interactions with Licensee in the provision of the Services. Licensee Data does not include the End User Personal and Account Data.
- 2.11 Off-the-Shelf Vendor. An Off-the-Shelf Vendor is a provider of one or more services or products in which the services and products are provided to multiple customers in the same form and fashion without excessive customization, with the services and products being often governed by a standard access or use agreement that is the same for all such customers. Examples include Amazon's AWS and various security and monitoring software such as Sumo Logic.
- 2.12 Personal Data. Any information relating to an identified or identifiable natural person.
- 2.13 Processing (and Process, Processed). Any operation or set of operations that is performed upon data, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or, alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment, combination, restriction, erasure, or destruction.
- 2.14 Processor. A natural or legal person which processes Personal Data on behalf of a Data Controller.
- 2.15 Services. The Services include the provision of access to one or more of Pantry's OPS along with related (1) professional and support services and (2) support artifacts, specifications, and reports provided to Licensee during the onboarding, maintenance, and

support of the OPS, each as set forth herein and in one or more Order Forms agreed to in writing from time-to-time by the Parties.

- 2.16 Special Categories of Data. Special Categories of Data include Personal Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, biometric data used to identify an individual, genetic data, health data, and data related to sexual preference, sex life, and/or sexual orientation, and any other categories of data to the extent considered by Data Privacy Regulations to be particularly sensitive.
- 2.17 Subject. A Subject is an identified or identifiable natural person. A Subject's personal data is entered in, stored by, processed by, or otherwise associated with the OPS in accordance with the provision of the Services.
- 2.18 Subject Data. Subject Data is any information (whether personally identifiable, anonymous, or pseudo anonymous) that includes personal or other information about the Subject entered into, stored in, or otherwise acquired by the OPS. It is recognized that Subject Data may include Special Categories of Data that require higher levels of data protection standards under certain Data Privacy Regulations and Pantry data classification rules.
- 2.19 Technical and Organizational Security Measures. Measures aimed at preventing a Data Security Incident. Such measures may include appropriate and reasonable physical, electronic, and procedural safeguards to protect Personal Data.
- 2.20 End User Agreements. End User Agreements are agreements that set forth the relationship between Pantry and an individual End User. Each OPS may have its own End User Agreement.

3. Services

3.1 Services. Pantry will provide certain services ("Services") as described from time-to-time in one or more Order Forms ("Order Form" or "OF"). The Services shall be more particularly described in an OF, and may include (a) access to one or more of the OPS, (b) corresponding professional onboarding and support services, and (c) other related services as agreed to by the Parties.

3.2 Order Forms. To the extent that terms contained in an OF conflict with the main body of these Terms of Use, the Terms of Use will control unless the OF expressly identifies the term of these Terms of Use and expressly states that the OF provision shall replace the term of these Terms of Use for that OF. In any case where an OF expressly replaces a term of these Terms of Use, (i) the OF must be signed by both Parties and (ii) such replacement will only apply to that OF and have no effect on other OFs.

3.3 End Users. End Users are the individuals that actually access the OPS on behalf of Licensee. Each End User has a separate direct contractual relationship to Pantry that is governed by an End User Agreement to which an End User agrees upon signing into their End User Account. Any End User Agreement between Pantry and End Users will include terms related to confidentiality and data protection that are consistent with such provisions in these Terms of Use. **Licensee remains responsible for all aspects of the relationship between Licensee and each End User. Licensee is liable for acts and omissions of its End Users in connection with the Services and shall be responsible for each End User's compliance with these Terms of Use and any specific End User Agreement.** Licensee agrees to provide to Pantry any information requested by Pantry that is reasonably necessary to authenticate an End User's access to an OPS. Pantry agrees that the OPS are configured and will remain configured to ensure that each End User authorized by Licensee to access a given instantiation of an OPS will have access only to the OPS for which they have been authorized at any given time. Pantry may qualify as a Data Controller for certain End User Personal and Account Data and shall ensure compliance with applicable Data Privacy Regulations. Each Party agrees to immediately notify the other Party of receiving a request from an End User to exercise their rights under any Data Privacy Regulation and to cooperate with each other as reasonably necessary to allow an End User to exercise such rights.

3.4 Data Subjects. Pantry has no direct contractual relationship or point of contact with Data Subjects and acquires no right to Subject Data except for the limited access and usage privileges provided herein necessary to provide the Services. Licensee is responsible for acquiring from the Subject any rights necessary and providing to the Subject any necessary notifications in relation to Subject Data under any applicable Data Privacy Regulations to allow the Subject Data to be used by, entered in, stored by, and otherwise Processed by the OPS. Licensee shall be responsible for maintaining its relationship with Subjects such that Licensee can receive any ongoing communications from and manage any communications with Subjects regarding their data, processing their data, access to their data, and complying with any Data Privacy Regulations related to Subjects and their data. Pantry shall provide reasonable and appropriate cooperation to Licensee in ensuring compliance with Licensee's obligations under any applicable Data Privacy Regulations related to Subject Data. Such cooperation shall include notifying Licensee within three (3) business days of receiving any request from a Subject to exercise their rights under any Data Privacy Regulation.

3.5 Subcontractors. Pantry may use one or more subcontractors to provide one or more components or supporting aspects of the Services or to otherwise fulfill its obligations under these Terms of Use. Such contractors may be Off-the-Shelf Vendors. Pantry maintains a listing of subcontractors used in the operation of the OPS (the "Listed Subprocessors", see <https://www.pantry.ai/subprocessors>). Pantry shall provide Licensee with an updated list of the Listed Subprocessors upon request. Licensee hereby approves and consents to the Listed Subprocessors. All Listed Subprocessors will be selected such that they adhere to data protection standards no less protective than those set forth herein and to comply with any applicable Data Privacy Regulation. Licensee agrees that the standard customer agreements of the Listed Subprocessors (copies of which shall be supplied to Licensee by Pantry upon request) shall be sufficient as contracts with such Subprocessors for these purposes. Since existing and new subprocessors for the OPS are the same for all of Pantry's multiple customers, it is

impractical for Pantry to give any given customer pre-approval power for such subcontractors. However, if Licensee makes an objection on reasonable grounds to the use of a specific Listed Subprocessor and Pantry is unable to modify the Services to prevent the Processing of Licensee Data by that Listed Subprocessor, Licensee shall have the right to terminate the relevant Processing of Licensee Data (and if applicable to terminate these Terms of Use or a corresponding OF). Licensee hereby provides prior written consent that Licensee Data (including Subject Data of data subjects in the European Economic Area and Switzerland where applicable) may be Processed by subcontractors selected using the aforementioned procedure. Pantry shall be fully liable for the acts and omissions of any Listed Subprocessor to the same extent as if the acts or omissions were performed by Pantry.

3.6 Term. The initial term (“Initial Term”) shall be set forth in an applicable OF, and will continue according to the terms of that OF, unless earlier terminated as provided herein. After the Initial Term, the Services outlined in the OF will automatically renew for successive one-year terms (each a “Renewal Term”), unless either party gives written notice to the other of its intent not to renew at least thirty (30) days prior to the expiration of the then current term. The Initial Term and any Renewal Terms are referred to, collectively, as the “Term.”

3.7 Support and Maintenance. During the Term, the Services will include the provision by Pantry of reasonable on-line support (via email and/or online chat function) for the then current OPS during Pantry’s then current business hours. Pantry will provide Licensee with access to the most up-to-date version of the OPS that is made available to its other similarly situated licensees. The most up-to-date version will include improvements, updates, and bug fixes to the OPS that Pantry in its sole discretion makes generally available to its other similarly situated licensees at no charge (“Fee-Free Improvements”). Licensee and other customers of the OPS may request additional improvements, updates, and bug fixes to the OPS for an additional charge (“Fee-Based Improvements”). Such Fee-Based Improvements may be the subject of a new Order Form negotiated by the Parties and subject to these Terms of Use. Pantry will use commercially reasonable efforts to correct reproducible failures of the OPS to perform in substantial accordance with its then current general specifications. The support and maintenance services described in this Section 3.7 may be referred to, collectively, as the “Support Services.” Services include the Support Services.

3.8 Connectivity. Licensee and End Users are solely responsible for all telecommunication or Internet connections required to access the Services, as well as all hardware and software at Licensee’s site. In addition to other third-party costs that may apply, Licensee agrees to be responsible for all hardware and telecommunications costs, fees and services required for and dedicated to Licensee’s access to the Services.

3.9 Pantry Personnel. Pantry will ensure that all Pantry personnel used to fulfill the Services are (a) fully qualified, competent, and trained and have appropriate experience to carry out their respective obligations (including suitable training for the nature of the Licensee Data for which they may be exposed and related Technical and Organizational Security Measures); (b) adequately supervised to fulfill their role in the performance of the Services; (c) aware of the obligations set forth in these Terms of Use that have an effect upon the performance of the Services; and (d) subject to binding obligations of confidentiality and use at least as protective as

those set forth herein. Pantry shall be responsible for the compliance with these Terms of Use by its employees, contractors, representatives, and Affiliates.

4. Compensation.

4.1 In general. Licensee will pay Pantry the fees associated with the Services as set forth on the applicable Order Form(s). Except as may be provided in an applicable OF, all fees are non-refundable.

4.2 Disputing Fees. Licensee shall provide notice to Pantry of any fee in dispute within fifteen (15) days of receipt of an invoice to avoid suspension of Services according to Section 4.3 below. A Fixed Fee may not be disputed if such Fixed Fee previously appeared in the corresponding OF or other communication agreed to by Licensee. Licensee and Pantry shall negotiate any fee dispute in good faith to promptly resolve any such dispute. Upon the resolution of a fee dispute, any fee remaining shall be due ten (10) days from the date of resolution.

4.3 Late Payment and Suspension of Services. Except for fees under dispute noticed within fifteen days (15) days of an invoice, if a fee remains unpaid forty-five (45) or more days from the due date, Pantry may, in its discretion, and upon notice to Licensee, suspend the Services associated with the unpaid fee(s) until the fee(s) are paid in full. Undisputed fees not paid when due will be subject to late charges equal to the lesser of (a) one and one-half percent (1.5%) per month of the overdue amount or (b) the maximum amount permitted under applicable law.

4.4 Fee Adjustments. For each OF, Pantry may, at its sole discretion, reasonably adjust any or all fees applicable to that OF for Services to be delivered after twelve (12) months from the date of that OF. For any fee adjustment Pantry shall provide Licensee with sixty (60) days' prior written notice. Licensee may terminate these Terms of Use and/or any Services impacted by a fee adjustment, on written notice to Pantry within thirty (30) days of its receipt of notice from Pantry to adjust the fees; provided, however, that if Licensee fails to object to such adjustment in writing within the foregoing thirty (30) days then Licensee will be deemed to have agreed to the adjustment.

4.5 Taxes. In addition to any other payments due under an OF, Licensee agrees to pay, indemnify and hold Pantry harmless from any sales, use, transfer, privilege, tariffs, excise, and all other taxes and all duties, whether international, national, state, or local, however designated, which are levied or imposed by reason of the performance of the Services under these Terms of Use; excluding, however, income taxes on profits which may be levied against Pantry. Pantry may include any such taxes for which it is aware or should reasonably be aware on a regular invoice.

5. Licensee Data Ownership, Privacy, Protection, and License

5.1 Licensee Data. EXCEPT FOR THE LIMITED LICENSE GRANTED IN SECTION 5.2, NOTHING CONTAINED IN THIS AGREEMENT WILL BE CONSTRUED AS GRANTING PANTRY ANY RIGHT, TITLE, OR INTEREST IN THE LICENSEE DATA, AND AS

BETWEEN LICENSEE AND PANTRY, LICENSEE SHALL RETAIN ALL RIGHT, TITLE, AND INTEREST IN AND TO ALL LICENSEE DATA, WHICH SHALL BE DEEMED TO BE CONFIDENTIAL INFORMATION OF LICENSEE.

5.2 License to Pantry for Licensee Data. Licensee grants Pantry and the Listed Subprocessors a non-exclusive, world-wide, royalty-free, license during the Term to use and Process the Licensee Data, and any other documents, information, graphics, data, content, and other materials input by Licensee and End Users into any interface associated with the Services solely to the extent necessary for purposes of performing the Services under these Terms of Use. Pantry will use the License granted herein in Section 5.2 only to provide the Services. Licensee will be responsible for obtaining all rights, permissions, and authorizations necessary to provide Licensee Data to Pantry for use and Processing as contemplated under these Terms of Use. Additionally, Licensee represents and warrants that it (a) has a legitimate and lawful reason for Processing Subject Data and (b) is in compliance with any applicable Data Privacy Regulations.

5.3 Data and Privacy Protection. Pantry will adhere to any and all requirements of Data Privacy Regulations applicable to the Licensee Data. Pantry shall ensure that all Listed Subprocessors comply with any and all requirements of Data Privacy Regulations applicable to the Licensee Data. Pantry shall have in place appropriate and reasonable Technical and Organizational Security Measures that are reflective of current industry best practices and consistent with the type of data being Processed and the Services being provided under these Terms of Use to protect Licensee Data from Data Security Incidents. A description of such measures shall be provided to Licensee upon request and be made available for inspection and review by Licensee upon request. Such Technical and Organizational Security Measures shall:

- (a) reflect the level of harm, damage, and/or distress that might be suffered if Licensee Data was lost, corrupted, and/or leaked;
- (b) ensure that only authorized personnel and End Users who have need to know the Licensee Data for the performance of the Services, access the Licensee Data;
- (c) include provisions for data encryption for portable storage, electronic transfer over a public network, and as otherwise appropriate; and
- (d) include a process for periodically testing and assessing the effectiveness of the measures for ensuring the security of the Processing.

5.4 Data Security Incidents. Pantry agrees to notify Licensee within one (1) day (or shorter if required by an applicable Data Privacy Regulation) after discovery of any Data Security Incident involving Licensee Data. Such notification will include, where possible, the categories and approximate number of Subjects concerned and approximate number of Licensee data records concerned, the impact and likely consequences known by Pantry to Licensee and the affected Subjects of the Data Security Incident, and the corrective action to be taken by Pantry. Pantry shall promptly after discovery implement, at Pantry's expense (to the extent that the Data Security Incident was due to a breach of a Pantry obligation under these Terms of Use), all reasonable corrective measures to remedy the causes of the Data Security Incident; shall consult in good faith with Licensee as regarding what remediation efforts may be necessary and reasonable; and shall reasonably cooperate with Licensee in any remediation efforts undertaken by Licensee. Pantry shall ensure that such remediation efforts undertaken by Pantry take into

account provision for the prevention of recurrence of the same type of Data Security Incident and inform Licensee of all corrective measures implemented and remediation efforts undertaken by Pantry. Licensee agrees to notify Pantry within one (1) day (or shorter if required by an applicable Data Privacy Regulation) after it discovers any Data Security Incident involving Licensee Data or End User Personal and Account Data.

5.5 Cooperation and Assistance. If either Party receives a communication from a Subject, End User, government authority, or other party related to a right under a Data Privacy Regulation, that Party shall notify the other party within five (5) business days (or within a shorter time period if required by an applicable Data Protection Regulation) of such communication and related details. Each Party agrees to provide reasonable cooperation to the other Party in order to assist that other Party in meeting its obligations under applicable Data Privacy Regulations, including without limitation data subject notifications; privacy impact assessments; consultation obligations with government authorities; and disclosures to affected parties, remedial actions, and other requirements related to a Data Security Incident.

5.6 International Transfers Generally. Pantry will provide Licensee a listing of each country and territory in which Licensee Data will be Processed under these Terms of Use. As of the Effective Date of these Terms of Use, Pantry Processes Licensee Data for Licensee sites located in the United States using cloud resources located in the United States and Processes Licensee Data for Licensee sites located in Europe using cloud resources located in Europe. However, because Pantry and Licensee each have individuals and entities located in the United States who may have to access the OPS for regulatory, maintenance, support, or other reasons, some limited Processing of Licensee Data for locations in Europe may occur in the United States. Additionally, Licensee may authorize End Users who may access an OPS from a location outside of the United States or Europe for any given OPS instantiation. Pantry will comply with any additional reasonable instructions from Licensee regarding the location of Processing Licensee Data. Any such instructions and limitations on geographic Processing may be listed in an OF corresponding to the particular Services.

5.7 Transfers from the European Economic Area or Switzerland. For any Subject Data from a Subject in the European Economic Area or Switzerland transferred to Pantry for Processing in a third country that does not provide an adequate level of data protection under GDPR, the Model Terms 2010/87/EU (the “Clauses”) shall apply to the Subject Data transferred. When the Clauses apply to Processing of Subject Data, in the event of a conflict between a provision of the main body of these Terms of Use and a provision of the Clauses, the provision of the Clauses shall apply unless the provision of the main body of these Terms of Use is more protective of Subject Data than the Clauses, in which case the provision of the main body of these Terms of Use shall apply. Terms used in the Clauses that are not specifically defined will have the meaning in the GDPR or its superseding text.

5.8 Feedback. Feedback may take two forms: (a) general feedback that does not relate to an OPS and (b) Feedback About an OPS. Provision of either type of feedback to Pantry is completely voluntary. In no case, without the express, prior, written authorization from Licensee, shall Pantry survey End Users for Feedback About an OPS or actively request opinions from End Users. Pantry has not agreed to and does not agree to treat as confidential any

Feedback Licensee provides to Pantry, and nothing in these Terms of Use will restrict Pantry's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback About an OPS (collectively, "Commercially Exploit"), without compensating or crediting Licensee. Notwithstanding the foregoing, Pantry may not publicly disclose Licensee's name, End Users' names, or any Licensee Data in conjunction with the Feedback About an OPS, without prior approval, unless required by a regulatory authority or other law, such as is required to name inventors in patent applications. For any Feedback About an OPS that is not, at the time of being provided to Pantry, the subject of a verifiable pre-existing intellectual property protection owned by Licensee or other third party (the "Pre-existing Concepts"), Licensee assigns all of its right, title, and interest in and to all ideas, concepts, techniques, inventions, designs (whether ornamental or otherwise), computer programs and related documentation, other works of authorship, and the like, included in the Feedback About an OPS (the "Developments") to Pantry. Licensee agrees to assist Pantry in making, executing, and delivering all application papers, assignments, or instruments, and will perform or cause to be performed such other lawful acts, as Pantry may deem necessary or desirable to evidence Pantry's full and exclusive title to Developments. To the extent a license is required under Licensee's intellectual property rights to make use of the Pre-existing Concepts, the Developments, or any other part of the Feedback About an OPS, Licensee grants Pantry an irrevocable, non-exclusive, perpetual, fully-paid-up, royalty-free license to use and otherwise Commercially Exploit the Pre-existing Concepts, the Developments, and other Feedback About an OPS in connection with Pantry's business, including the enhancement of the Services.

5.9 Aggregated Usage Data. Pantry retains all ownership rights in the Aggregated Usage Data and may utilize Aggregated Usage Data for any purpose related to the operation of the OPS or the business of Pantry. If applicable, Licensee grants Pantry a non-exclusive, perpetual, irrevocable, fully-paid-up, royalty-free license to use, copy, distribute, and otherwise exploit any Aggregated Usage Data for which Licensee has ownership or other rights.

5.10 Disposition of Licensee Data. Licensee acknowledges and agrees that in the normal operation of various OPS Licensee Data may be transferred to a computer system that is not under the control of Pantry, but is controlled by Licensee or a third party authorized by Licensee. Additionally, certain Licensee Data may be protected from deletion by applicable government regulations or other legal restriction. Except for Licensee Data transferred to a non-Pantry controlled system as authorized by Licensee or Licensee Data governed by a regulatory or legal restriction preventing deletion, Pantry shall securely delete any Licensee Data within thirty (30) days of (a) a request of Licensee to delete such Licensee Data or (b) termination of the Services related to the particular Licensee Data. Notwithstanding the foregoing, Pantry will not be required to remove copies of the Licensee Data from its backup media and servers, where doing so would be commercially impracticable; provided that any such retained copies shall continue to be subject to the confidentiality and data security restrictions contained in these Terms of Use.

6. License to the Services

6.1 License. Pantry agrees to provide access to Services and hereby grants Licensee and its End Users a non-exclusive, non-transferable, worldwide license to access and use Pantry's OPS and other Services during the Term in accordance with the terms of this Article 6, these Terms of

Use, and any applicable Order Form, subject to Licensee's payment of all relevant fees under an applicable Order Form.

6.2 To the extent any Pantry software is provided to Licensee or its End Users for installation on its systems for use in connection with the Services, the Pantry software is hereby deemed to be included in the definition of Services and subject to the foregoing license as well as all terms and conditions of these Terms of Use. All software may only be used in support of Licensee's (including its End Users) use of the Services and for no other purpose.

6.3 If any particular instantiation of an OPS or other Service is terminated as per these Terms of Use, the license set forth in this Article 6 for that particular instantiation of Services will also terminate as of the same date. In such a situation, any license to other instantiations of OPS and other Services that have not been terminated shall survive until such Services are terminated.

6.4 Proprietary Rights in Services. Licensee acknowledges and agrees that (i) all Services, are protected by intellectual property rights, as applicable, of Pantry and its vendors/licensors and that Licensee has no right to transfer or reproduce any of the foregoing or any software provided with the Services or prepare any derivative works with respect to, or disclose Pantry's Confidential Information pertaining to, any Services or any part of them and (ii) that Pantry owns all right, title, and interest in and to the Services including any changes, modifications, Improvements (whether Fee-Free or Fee Based) made to the Services performed in connection with these Terms of Use, together with all ideas, architecture, algorithms, models, processes, techniques, user interfaces, database design and architecture, and "know-how" embodying the Services. Under no circumstances will Licensee be deemed to receive title to any portion of the Services, title to which at all times will vest exclusively in Pantry. The Services and these Terms of Use are not a "work made for hire" agreement, as that term is defined in Section 101 of Title 17 of the United States Code. Licensee shall not encumber the Services with any liens, encumbrances, or claims of any individual or entity. Licensee will not use any Confidential Information disclosed by Pantry to Licensee in connection with these Terms of Use to contest the validity of any intellectual property rights of Pantry or its licensors. Any such use of Pantry's Confidential Information will constitute a material, non-curable breach of these Terms of Use.

7. Confidentiality

7.1 Definition of Confidential Information. Each Party agrees that all confidential and proprietary information supplied by or on behalf of one Party, its Affiliates, and its and their employees, contractors, representatives, officers, directors, customers, and agents (collectively, the "**Disclosing Party**") to the other Party, its Affiliates, and its and their employees, contractors, representatives, officers, directors, customers, and agents ("**Receiving Party**") under or in connection with these Terms of Use or any Order Form including, without limitation: (a) source and object code, prices, trade secrets, mask works, databases, hardware, software, designs and techniques, programs, engine protocols, models, displays and manuals, and the selection, coordination, and arrangement of the contents of such materials, (b) any unpublished information concerning research activities and plans, users, marketing or sales plans, sales forecasts or results of marketing efforts, pricing or pricing strategies, costs, operational techniques, strategic plans, and unpublished financial information, including information concerning revenues, profits and

profit margins, (c) information pertaining to new services and products for inclusion in a Order Form under these Terms of Use, (d) patient information, and (e) any non-public or proprietary information related to a Party's business, such as standard operating procedures or information pertaining to its operations, methods, and pricing, ("**Confidential Information**") will be deemed confidential and proprietary to the Disclosing Party, regardless of whether such information was disclosed orally or in writing, intentionally or unintentionally, or unmarked or marked as "confidential" or "proprietary". For the avoidance of doubt, the Services and any related documentation are included in the Confidential Information of Pantry and the Licensee Data is included in the Confidential Information of Licensee. In addition, all confidential or proprietary information provided by either Party to the other pursuant to any non-disclosure agreement that may have been entered into by the Parties prior to the execution of an OF (or during the performance of an OF but subject to such non-disclosure agreement) shall be deemed Confidential Information under these Terms of Use.

7.2 Exclusions. Confidential Information will not include any information or material, or any element thereof, to the extent any such information or material, or any element thereof: (a) has previously become publicly available or is otherwise generally known to the public, unless it has become generally known through a breach of these Terms of Use or a similar confidentiality or non-disclosure agreement; (b) was already rightfully known to the Receiving Party prior to being disclosed by or obtained from the Disclosing Party as evidenced by written records kept in the ordinary course of business of or by proof of actual use by the Receiving Party; (c) has been or is hereafter rightfully received by the Receiving Party from a third person (other than the Disclosing Party) without restriction or disclosure and without breach of a duty of confidentiality to the Disclosing Party; or (d) has been independently developed by the Receiving Party without access to Confidential Information of the Disclosing Party.

7.3 Treatment of Confidential Information. Each Party recognizes the importance of the other's Confidential Information. In particular, each Party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither party would enter into these Terms of Use without assurance that such information and the value thereof will be protected as provided in this Section and elsewhere in these Terms of Use. Accordingly, each Party agrees: (a) the Receiving Party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of Confidential Information solely for the purposes of these Terms of Use; (b) without limiting the foregoing, the Receiving Party will use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of this Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like importance; (c) the Receiving Party may disclose or provide access to its responsible employees, contractors, representatives, officers, directors, customers, and agents ("Authorized Recipients") who have a need to know and may make copies of Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder; (d) the Receiving Party shall ensure that such Authorized Recipients are bound by a contractual or professional obligation of confidentiality no less stringent than that set forth in these Terms of Use and shall instruct such Authorized Recipients of the obligations under these Terms of Use; (e) with respect to Subject Data, Pantry may disclose or provide access to End Users authorized by Licensee to access an OPS and to operators of any third-party system connected to an OPS by authorization of Licensee; (f) the Receiving Party currently has,

and in the future will maintain in effect and enforce, rules and policies to protect against access to, or use or disclosure of, Confidential Information other than in accordance with these Terms of Use; and (g) the Receiving Party will notify the Disclosing Party within one (1) business day of discovery of any unauthorized disclosure or use, and will cooperate with the Disclosing Party to protect, all proprietary rights in and ownership of its Confidential Information.

7.4 Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the Receiving Party, the Receiving Party may disclose Confidential Information in accordance with such law or order or requirement, subject to the following conditions: as soon as practicable after becoming aware of such law, order, or requirement, and prior to disclosing Confidential Information pursuant thereto, the Receiving Party will so notify the Disclosing Party in writing and, if feasible, the Receiving Party will provide the Disclosing Party notice not less than five (5) business days prior to the required disclosure. The Receiving Party will use reasonable efforts not to release Confidential Information pending the outcome of any measures taken by the Disclosing Party to contest, otherwise oppose, or seek to limit such disclosure by the Receiving Party, and any subsequent disclosure or use of Confidential Information that may result from such disclosure. The Receiving Party will reasonably cooperate with and provide reasonable assistance to the Disclosing Party regarding such measures. Notwithstanding any such compelled disclosure by the Receiving Party, such compelled disclosure will not otherwise affect the Receiving Party's obligations hereunder with respect to Confidential Information so disclosed.

7.5 Return of Confidential Information. Except as provided for Licensee Data in Section 5.10 or in the case of Aggregated Usage Data, on (a) termination or expiration of all OFs between the Parties, or (b) earlier written request by the Disclosing Party, the Receiving Party will return or destroy, at the Disclosing Party's option, the Disclosing Party's Confidential Information. Notwithstanding the foregoing, the Receiving Party will not be required to remove copies of the Disclosing Party's Confidential Information from its backup media and servers, where doing so would be commercially impracticable; provided that any such retained copies shall continue to be subject to the confidentiality restrictions contained herein. In addition, the foregoing destruction and return obligation will be subject to any retention obligations imposed on Receiving Party by law or regulation.

7.6 Non-Exclusive Equitable Remedy. Each party acknowledges and agrees that due to the unique nature of the Confidential Information there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a party or third parties to unfairly compete with the other party, resulting in irreparable harm to such party, and therefore, that upon any such breach or any threat thereof, each party will be entitled to seek appropriate equitable and injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity before an arbitrator in accordance with the arbitration provision of these Terms of Use. Any breach of this Article 7 (Confidentiality) will constitute a material breach of the OF and these Terms of Use.

7.7 Except as expressly provided for herein, nothing in these Terms of Use grants either party any right, title or interest in and to the intellectual property, materials or Confidential Information of the other party (either expressly or by implication or estoppel).

8. Term and Termination

8.1 Termination of a subset of Services During the Term. Licensee may terminate a subset of the Services (e.g., the Services of a single OF) (without necessarily terminating these Terms of Use or another instantiation of the Services) at any time with thirty (30) days prior written notice to Pantry.

8.2 Effect of Termination. Expiration or termination of these Terms of Use or any subset of the Services hereunder shall not relieve the Parties of any obligations accruing prior to such expiration or termination (or of any obligations, which by their nature survive such expiration or termination). Upon termination of an OF or termination of a particular Service for any reason:

- (a) Pantry shall cease all relevant Services including Processing of Licensee Data, except for those Services authorized to be completed by Licensee in writing to wind down and/or transition such Services;
- (b) Licensee's and all End User's access to and use of the terminated Services will cease as of the effective date of termination provided, however, that Pantry shall provide Licensee with access to Licensee Data contained in the Services for thirty (30) days after the effective date of termination;
- (c) Licensee will pay to Pantry all undisputed sums due to Pantry for Services through the effective date of such expiration or termination (prorated as appropriate);
- (d) Pantry shall reimburse Licensee for any pre-paid but unused fees as of the date of termination; and
- (e) to the extent requested by Licensee and at Pantry's standard time and materials rates, Pantry will reasonably cooperate with Licensee in transitioning the Licensee Data (except for such data as may be kept as Aggregated Usage Data) back to Licensee and/or Licensee's designee.

9. Regulatory and Other Compliance

9.1 Professional Standards. Pantry shall use its commercially reasonable efforts and shall assign a sufficient number of professionally qualified personnel to perform the Services. Pantry shall perform the Services (i) in conformance with generally accepted professional standards of care and conduct, and (ii) in compliance with all applicable laws, orders, rules and regulations of a governmental agency or a court of competent jurisdiction and any applicable court order or settlement agreement (collectively, "Applicable Laws"). Pantry shall provide to Licensee any relevant Pantry Standard Operating Procedures upon Licensee's request.

9.2 Equal Employment Laws. Each party certifies that, to the extent legally required, it complies with all equal employment opportunity and non-discrimination in employment laws, including but not limited to Executive Order 11246, as amended by Executive Order 11275;

Section 503 of the Rehabilitation Act of 1973, as amended; the Vietnam Era (War) Veteran Readjustment Assistance Act of 1974, as amended; Executive Order 11625, as amended; and all rules and regulations promulgated pursuant to or in connection with any Executive Orders and laws.

9.3 Anti-Kickback Compliance. The parties will also comply to the extent applicable with the United States Federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b), and the related safe harbor regulations. Should any such government regulatory requirements be changed, each party will make best efforts to satisfy the new requirements.

9.4 Anticorruption and Antibribery Compliance. Licensee, its representatives, and agents are bound by all applicable anti-corruption and anti-bribery laws and regulations, including but not limited to, the United States Foreign Corrupt Practices Act (FCPA) and United Kingdom Bribery Act. Pantry represents, warrants and covenants that Pantry shall not cause Licensee or its representatives or agents to be in breach of their responsibilities through any act of Pantry. In performing the Services, Pantry (i) agrees that Pantry has not and shall not, directly or indirectly, offer to make, promise, authorize or accept any payment or anything of value, including bribes, gifts and/or donations to or from any public official, regulatory authorities or anyone else for the purpose of influencing, inducing or rewarding any act, omission or decision in order to secure an improper advantage, including to obtain or retain business, and (ii) shall comply with all applicable anti-corruption and anti-bribery laws and regulations. Pantry shall notify Licensee or its representatives or agents immediately upon becoming aware of any breach under this Section. For the purpose of ensuring compliance with this provision, Pantry agrees that Licensee or its representatives or agents may conduct an investigation or audit to monitor for compliance.

9.5 Equal Opportunity for Veterans. To the extent applicable, Pantry and all approved Pantry subcontractors, except for Pantry's Off-The-Shelf Vendors, shall abide by the requirements of 41 CFR 60 300.5(a), which prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.

9.6 PCI-DSS. Pantry is not PCI-DSS certified. Licensee may NOT submit credit card information to or store such information on Pantry servers, and agrees to indemnify and hold Pantry harmless from any claims that may arise out of Licensee's failure to comply with this provision. Please contact hello@pantry.ai for information about on-site hosting, which requires an additional agreement.

9.7 HIPAA. Pantry is not HIPAA compliant. Licensee may NOT use the OPS to host "protected health information" as such is defined under the federal HIPAA law and related regulations. Storing "protected health information" on our servers constitutes a breach of these Master Terms and is an unauthorized use of the OPS. Licensee agrees to indemnify and hold Pantry harmless from any claims that may arise out of Licensee's failure to comply with this provision.

10. Warranties

10.1 Pantry Warranty. During the Term, Pantry represents and warrants that (i) it has full power, capacity, and authority to enter into these Terms of Use and to perform its obligations hereunder; (ii) the Services will substantially comply with any description thereof in an OF; (iii) all Services shall be performed in a timely, professional and workmanlike manner; (iv) it shall use commercially reasonable efforts to screen the Services for viruses, Trojan horses, worms, and other similar intentionally harmful or destructive code; and (v) the Services shall comply with all Applicable Laws, the OF, and these Terms of Use. In the event of a breach of the warranty in this Section 10.1, Pantry's sole and exclusive liability and Licensee's sole and exclusive remedy will be to have the defective Service performed again, at no additional charge to Licensee. In the event Pantry is unable through reasonable efforts to correct the defective Service within thirty (30) days from receipt of written notice from Licensee of the breach, Licensee may elect to terminate these Terms of Use and receive a pro-rated refund of any pre-paid, unused recurring fees for the non-conforming Services. Additionally, Pantry represents and warrants that it shall comply with the data security provisions of these Terms of Use and any applicable Data Privacy Regulations.

10.2 Licensee Warranty. Licensee represents and warrants that (a) it has full power, capacity, and authority to enter into the OF, and to grant the license set forth in Section 5.3 (Licensee Data); (b) any Licensee Data provided by Licensee to Pantry for use in connection with the Services does not and will not infringe the intellectual property, publicity, or privacy rights of any person and is not defamatory, obscene, or in violation of Applicable Laws; and (c) its use of the Services will be in compliance with all Applicable Laws. Additionally, Licensee represents and warrants that, except as expressly authorized by these Terms of Use or by Pantry otherwise in writing, Licensee will not, and Licensee will not allow any End User or other third party to, (i) permit any third party to access or use the Services other than an End User; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to derive the trade secrets embodied in the Services, except to the extent expressly permitted by applicable law; (iii) use the Services or any Pantry Confidential Information to develop a competing product or service; (iv) use any Service, or allow the transfer, transmission, export, or re-export of any Service or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department or any other government agency; or (v) remove any copyright, trademark, proprietary rights, disclaimer, or warning notice included on or embedded in any part of the Services, including any screen displays, etc., or any other products or materials provided by Pantry hereunder.

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10.3 Disclaimer of Warranties. EXCEPT AS PROVIDED IN THESE TERMS OF USE, THE SERVICES ARE PROVIDED "AS IS" AND "AS-AVAILABLE," WITH ALL FAULTS, AND WITHOUT WARRANTIES OF ANY KIND. EXCEPT AS EXPRESSLY SET FORTH HEREIN, EACH PARTY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, QUALITY OF INFORMATION, AND TITLE/NON-INFRINGEMENT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PANTRY OR ITS AUTHORIZED REPRESENTATIVES WILL CREATE ANY OTHER WARRANTIES OR IN ANY WAY INCREASE THE SCOPE OF PANTRY'S OBLIGATIONS HEREUNDER. THE SERVICES MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET.

LICENSEE ACKNOWLEDGES AND AGREES THAT PANTRY AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT: (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE; OR (II) UNAUTHORIZED USERS (E.G., HACKERS) MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE LICENSEE'S DATA, WEB-SITES, COMPUTERS, OR NETWORKS. EXCEPT AS PROHIBITED BY LAW, PANTRY WILL NOT BE RESPONSIBLE FOR SUCH ACTIVITIES SO LONG AS PANTRY USES EFFORTS AT A LEVEL AT LEAST CONSISTENT WITH INDUSTRY STANDARDS TO PREVENT SUCH ACTIVITIES. LICENSEE IS RESPONSIBLE FOR PRESERVING AND MAKING ADEQUATE BACKUPS OF ITS DATA.

11. Indemnification

11.1 **Pantry Indemnity.** Pantry shall defend, indemnify, and hold harmless Licensee, its Affiliates and its and their respective directors, officers, contractors, agents and employees, from and against any and all losses, damages, liabilities, costs and expenses (including reasonable legal counsel fees and expenses) (collectively, "Losses") relating to the Services provided to Licensee and relating to or arising from any third-party claim, suit, cause of action, demand, or other proceeding (each, a "Claim") alleging: (i) any negligence or reckless or willful act or omission of Pantry, its Affiliates, subcontractors, agents, and/or its employees; (ii) that the Services, or Licensee's licensed use of the Services hereunder, misappropriates, violates, and/or infringes a third party's United States patent, copyright, trade secret rights, or other intellectual property right (a "Claim of Infringement"); (iii) any breach of these Terms of Use by Pantry, its Affiliates, or its and their respective directors, officers, employees, agents or subcontractors; or (iv) any Data Security Incident related to Licensee Data (only to the extent the Data Security Incident was due to a breach of a Pantry obligation under these Terms of Use). The foregoing indemnification obligation of Pantry is contingent upon Licensee promptly notifying Pantry in writing of such claim, permitting Pantry sole authority to control the defense or settlement of such claim and providing Pantry reasonable assistance (at Pantry's sole expense) in connection therewith, provided no settlement of any Claim shall be made requiring the admission of liability by Licensee or payment of sums by Licensee without Licensee's prior written consent. If a Claim of Infringement under this Section 11.1 (Pantry Indemnity) occurs, or if Pantry determines a claim is likely to occur, Pantry will have the right, in its sole discretion, to either (i) procure for Licensee the right or license to continue to use the Services free of the Claim of Infringement, or (ii) modify the Services to make it non-infringing, without loss of material functionality. If neither of these remedies is reasonably available to Pantry, Pantry may, in its sole discretion, immediately terminate the applicable OF and return the prorated portion of any pre-paid, unused fees for the relevant Services. Notwithstanding the foregoing, Pantry will have no obligation with respect to any Claim of Infringement to the extent based upon or arising out of (i) the use or combination of the Services with any hardware, software, products, data, or other materials not provided or authorized by Pantry, to the extent the infringement would not have happened but for such combination, (ii) unauthorized modification or alteration of the Services by anyone other than Pantry, (iii) use of Services in excess of the rights granted in these Terms of Use, or (iv) any specifications or other intellectual property provided by Licensee, including the Licensee Data (collectively, the "Excluded Claims"). The provisions of this Section 11.1 (Pantry Indemnity) state the sole and exclusive obligations and liability of Pantry and subcontractors for any claim of intellectual property infringement arising out of or relating to the Services or these Terms of

Use.

11.2 Licensee Indemnity. Licensee shall defend, indemnify, and hold harmless Pantry, its Affiliates and its and their respective directors, officers, and employees from and against any and all Losses relating to or arising from any third-party claim alleging (i) any negligence or reckless or willful act or omission of Licensee, its Affiliates, agents, and/or its employees, related to the Services and/or the relationship of Licensee to Pantry in connection with the Services, (ii) any breach of these Terms of Use by Licensee, its Affiliates, or its and their respective directors, officers, employees, or agents; (iii) Licensee's use of the Services in breach of these Terms of Use; (iv) claims by third parties arising out of a violation of Data Privacy Regulations by either Licensee or an End User of Licensee; or (v) the Excluded Claims. The foregoing indemnification obligation of Licensee is contingent upon Pantry promptly notifying Licensee in writing of such claim, permitting Licensee sole authority to control the defense or settlement of such claim and providing Licensee reasonable assistance (at Licensee's sole expense) in connection therewith, provided no settlement of any Claim shall be made requiring the admission of liability by Pantry or payment of sums by Pantry without Pantry's prior written consent..

11.3 Licensee and Pantry shall promptly provide each other with written notice of any claim or cause of legal action in connection with the Services known to be served upon it within fifteen (15) calendar days of receipt of such claim or cause of action. Both parties agree to cooperate with each other in the defense of any such claim and shall not settle any such claim without first providing written notice to the other party and obtaining such party's consent. However, Pantry does not need to provide notice to, nor does it need consent from Licensee to settle, any claim or cause of legal action related to the Services that has no direct connection to Licensee (i.e., intellectual property claims unrelated to Licensee's use of the OPS).

12. Limitations on Liability

12.1 Limitation of Liability and Damages. EXCEPT FOR DAMAGES FOR (1) A BREACH OF CONFIDENTIALITY AND USE OBLIGATIONS UNDER THIS AGREEMENT, (2) EITHER PARTY'S INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, (3) LIABILITY ARISING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, (4) FOR EACH PARTY'S INDEMNIFICATION OBLIGATIONS, AND (5) ANY OTHER LIABILITY TO THE EXTENT TO WHICH IT CANNOT BE LAWFULLY EXCLUDED, (A) IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR RELATED TO THIS AGREEMENT (INCLUDING LOSS OF PROFITS, USE, DATA, OR OTHER ECONOMIC ADVANTAGE), HOWSOEVER ARISING, EITHER OUT OF BREACH OF THESE TERMS OF USE (INCLUDING BREACH OF EXPRESS OR IMPLIED WARRANTY), NEGLIGENCE, STRICT LIABILITY, TORT OR ANY OTHER THEORY, EVEN IF THE OTHER PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND (B) THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER PARTY ARISING OUT OF THESE TERMS OF USE OR THE SERVICES IN CONNECTION WITH ANY CLAIM OR TYPE OF DAMAGE (WHETHER IN

CONTRACT OR TORT, INCLUDING NEGLIGENCE) WILL NOT EXCEED THE TOTAL FEES PAID HEREUNDER BY LICENSEE UNDER THESE TERMS OF USE. THIS LIMITATION OF LIABILITY WILL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL OF THEIR ESSENTIAL PURPOSE.

13. General Provisions.

13.1 Affiliates, Subcontractors and Sub-Vendors. Some or all of the Services may be provided by Pantry's Affiliates, agents, subcontractors and information system sub-vendors. The rights and obligations of Pantry may be, in whole or in part, exercised or fulfilled by the foregoing entities. Pantry shall ensure such entities comply with all relevant terms of these Terms of Use and any failure to do so shall constitute a breach by Pantry.

13.2 Insurance. Pantry agrees to bind and maintain, at its expense, with financially sound and reputable insurers, commercially reasonable insurance coverage during the term of an OF and for three years following termination of all OFs governed by these Terms of Use. Specific certificates of insurance evidencing coverage shall be provided to Licensee upon written request. below specified insurance covering the conduct of its business during the term of these Terms of Use and for a period of three (3) years following termination of all OFs and/or P.O.'s hereunder.

13.3 Publicity. Except as set forth herein, Pantry shall not publish or utilize data from the performance of Services without the express prior written consent of Licensee. Pantry shall not use the name of Licensee in any advertising, packaging, or promotional material except with the written permission of Licensee (which approval shall not be unreasonably conditioned, withheld, or delayed) or as may be required by law. Neither Party may issue a press release regarding the Parties' relationship without the prior written approval of the other Party, which approval shall not be unreasonably conditioned, withheld, or delayed.

13.4 Precedence. Except as expressly stated herein, in the case of a conflict between a term in these Terms of Use and any Addendum, the Terms of Use shall prevail. See Section 3.2 regarding precedence with OF's.

13.5 USA Patriot Act Notice. The U.S. federal USA Patriot Act ("USA Patriot Act") provides generally for the operator of a communication host and law enforcement to be able to monitor any content, upon request of the operator. Pantry anticipates fully complying with all its obligations, and availing itself of all its rights, under the USA Patriot Act.

13.6 Force Majeure. Except for the payment of money as described in Article 4 (Compensation) of these Terms of Use (unless the method of payment is affected by such force majeure), neither party will be liable for any failure or delay in performance under these Terms of Use or an OF which is due to any event beyond the reasonable control of such party, including without limitation, fire, explosion, unavailability of utilities or raw materials, Internet delays and failures, telecommunications failures, unavailability of components, labor difficulties, war, riot, act of God, pandemic, export control regulation, laws, judgments or government instructions. Performance time will be considered extended for a period of time equivalent to the time lost because of any such delay or failure to perform; provided, however, in any event, this extension

of time will not exceed fifteen (15) days unless the parties agree otherwise in writing.

13.7 Entire Agreement; Amendment. These Terms of Use set forth the entire agreement between the parties with regard to the subject matter hereof. No other agreements, representations, or warranties have been made by either party to the other with respect to the subject matter of these Terms of Use, except as referenced herein. Any terms and conditions which may appear as pre-printed language or otherwise be on, attached to, or inserted within any order forms, quotes, invoices, bills, or other similar forms or documents issued by Licensee shall be of no force or effect even if such forms or documents are accepted by Pantry. Any changes to these Terms of Use must be agreed in writing and executed by the Parties.

13.8 Governing Law, Venue, and Limitation of Actions. Except as expressly stated herein (e.g., in the Clauses), these Terms of Use will be construed according to, and the rights of the parties will be governed by, the law of the state of Delaware in the United States, without reference to its conflict of laws rules. Except where the provisions of these Terms of Use state otherwise (e.g., in the Clauses), the parties agree that all actions or proceedings arising in connection with these Terms of Use shall be tried and litigated exclusively in the courts located in Delaware, United States of America. This choice of venue is intended by the parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the parties with respect to, or arising out of, these Terms of Use in any jurisdiction other than that specified in this Section. Each party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or theory or to object to venue with respect to any proceeding brought in accordance with this Section. The prevailing party in any action or proceeding will be entitled to recover its reasonable attorneys' fees and costs.

13.9 No Third-Party Beneficiaries. There are no third-party beneficiaries to these Terms of Use.

13.10 Relationship of the Parties. The parties agree that Pantry will perform its duties under each OF and hereunder as an independent contractor. Nothing contained in an OF or Terms of Use will be deemed to establish a partnership, joint venture, association, or employment relationship between the parties. Personnel employed or retained by Pantry who perform duties related to an OF or Terms of Use will remain under the supervision, management, and control of Pantry. Neither party shall have the power or right to bind or obligate the other party, nor shall it hold itself out as having such authority, except to the extent, if at all, specifically provided for in these Terms of Use, Order Form or as authorized in writing.

13.11 Assignment. Neither Party may assign an OF or these Terms of Use without the prior written consent of the other; provided, however, that either Party may assign its rights or delegate its obligations under an OF without such consent to (i) its affiliate or subsidiary or (ii) its successor in interest in connection with any merger, consolidation, or sale of all or substantially all of the assets of such Party.

13.12 Severability. If any of the provisions of these Terms of Use are found or deemed by a court to be invalid or unenforceable, they will be severable from the remainder of these Terms of Use and will not cause the invalidity or unenforceability of the remainder of these Terms of Use.

13.13 Waiver. Neither party will by mere lapse of time without giving notice or taking other action hereunder be deemed to have waived any breach by the other party of any of the provisions of these Terms of Use. Further, the waiver by either party of a particular breach of these Terms of Use by the other party will not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of these Terms of Use.

13.14 Survival. Any term of these Terms of Use which by its nature extends beyond termination of all OFs between the Parties will remain in effect until fulfilled and will bind the parties and their legal representatives, successors, heirs and permitted assigns (by way of example and not limitation, the following provisions will survive termination or expiration of all OFs between the Parties: Section 5.8 (Feedback), Section 5.9 (Aggregated Usage Data), Article 7 (Confidentiality), Section 10.3 (Disclaimer of Warranties), Article 12 (Limitation of Liability and Damages), Article 8 (Termination), and Article 13 (General Provisions)).

13.15 Notices. Any written notice or demand required by these Terms of Use will be sent by registered or certified mail (return receipt requested), personal delivery, overnight commercial carrier, or other guaranteed delivery to the other party at the address set forth in the signature section below. The notice will be effective as of the date of delivery if the notice is sent by personal delivery, overnight commercial courier or other guaranteed delivery, as of five (5) days after the date of posting if the notice is transmitted by registered or certified mail. Any party may change the address at which it receives notices by giving written notice to the other party in the manner prescribed by this Section.

13.16 Electronic Execution. An OF may be accepted in electronic form (e.g., by an electronic or digital signature or other means of demonstrating assent) and Licensee's acceptance will be deemed binding between the parties. Licensee acknowledges and agrees it will not contest the validity or enforceability of an OF and related documents (including these Terms of Use), including under any applicable statute of frauds, because they were accepted and/or signed in electronic form.