

## Victa Cloud Services Terms of Use

THIS SAAS SERVICES AGREEMENT GOVERNS CUSTOMER'S USE OF THE SERVICES. BY CLICKING ON THE ACCEPTANCE BOX OR ACCESSING OR USING THE SITE OR THE SERVICES, CUSTOMER ACKNOWLEDGES AND AGREES THAT ALL SUCH ACCESS AND USE IS SUBJECT TO THIS AGREEMENT. ANY SUCH ACCESS OR USE WILL CONSTITUTE SUCH ACCEPTANCE AND RESULT IN A BINDING AND LEGALLY ENFORCEABLE AGREEMENT BETWEEN CUSTOMER AND VICTA. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A CORPORATION, PARTNERSHIP, ASSOCIATION OR OTHER ENTITY OR GROUP OR IF YOU HAVE AUTHORIZED ANOTHER ENTITY OR INDIVIDUAL TO ACCEPT THESE TERMS ON YOUR BEHALF, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT OR TO HAVE SUCH ENTITY OR INDIVIDUAL BIND YOU TO THIS AGREEMENT.

THE APPLICABLE PROVISIONS OF THIS AGREEMENT ALSO GOVERN ANY FREE TRIAL OF THE SERVICES.

### 1. Services and Restrictions

- 1.1 **Paid Services.** Subject to the terms and conditions of this Agreement, Victa grants to Customer a non-exclusive, non-transferable, worldwide and non-sublicensable right during the term of this Agreement to use the Services for Customer's internal business operations. Victa further grants to Customer the right to allow Permitted Third Parties to use the Services solely in connection with Customer's business relationship with the Permitted Third Party. Any use of Services during the Term shall be (i) in accordance with the Documentation, and (ii) limited to the maximum number of Authorized Users (by user type if applicable), capacity allotment and/or the maximum storage space specified on any Ordering Document (including any enhanced functionality or additional services, if available). Customer's right to use the Services is subject to any use limitations that may be based on the version of the Services for which Customer registers as set forth in the Documentation and/or as set forth in the Ordering Document (collectively, the "Scope Limitations").
- 1.2 **Free Trial.** If Customer registers for a free trial, which may include a proof of concept (PoC), Victa will make the applicable Service available to Customer for its internal business operations on a trial basis free of charge until the earlier of: (a) the end of the free trial period for which Customer registered to use the applicable Service; (b) the start date of any purchased Service subscription ordered by Customer for such Service; or (c) termination by Victa in its sole discretion. Additional trial or PoC terms and conditions may appear on the applicable registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Victa reserves the right, to determine Customer's eligibility for a free trial or PoC, and, subject to applicable laws, to withdraw, terminate or to modify a free trial or PoC at any time without prior notice and with no liability, to the greatest extent permitted under law. ANY DATA ENTERED INTO THE SERVICES, AND ANY CONFIGURATION CHANGES MADE TO THE SERVICES BY OR FOR CUSTOMER, DURING A FREE TRIAL MAY BE PERMANENTLY LOST UNLESS: (A) CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME OR HIGHER TIER SERVICE AS THOSE COVERED BY THE FREE TRIAL OR (B) CUSTOMER EXPORTS SUCH DATA BEFORE THE END OF THE FREE TRIAL PERIOD. It is recommended to review the applicable Documentation for the Services during any free trial period to become familiar with the functionality and features of the Services before making any purchase.
- 1.3 **Restrictions.** The rights to use the Services granted hereunder are contingent upon Customer's and its Authorized Users' compliance with the Scope Limitations, this Agreement and the Victa Acceptable Use Policy. Customer shall not directly or indirectly: (i) make any Services available to anyone other than Customer or its Authorized Users; (ii) offer, use, or otherwise exploit the Services, whether or not for a fee, in any managed service provider (MSP) offering; platform as a service (PaaS) offering; service bureau; or other similar product or offering; (iii) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code, or any software, documentation or data related to the Services; (iv) modify or make derivative works based upon the Services; (v) copy or create Internet "links" to the Services or "frame" or mirror any of the Services; (vi) permit direct or indirect access to or use of any Services or Content in a way that circumvents any usage limit; (vii) use the Services if Customer is a competitor of Victa; or (viii) access the Services in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services.
- 1.4 **General.** Customer's registration for, or use of, the Services shall be deemed to be Customer's agreement to abide by this Agreement for itself and on behalf of its Authorized Users, including any materials available on the Site that are incorporated by reference herein, including registration and tenant set up processes and Victa's privacy and security policies. Customer shall be directly responsible for any violations of this Agreement by any party that it allows to access the Services, including Authorized Users. Support for

paid Services will be provided in accordance with Victa's Support Policy for SaaS services (available at [www.Victa.com/product-terms](http://www.Victa.com/product-terms)). Victa shall not be obligated to provide support services for free trials but may elect to provide Services updates in its sole discretion.

## 2. Customer Responsibilities

- 2.1 Compliance. Customer and its Authorized Users shall use the Services and the Content in accordance with this Agreement and the Victa Acceptable Use Policy. Customer is responsible for all Authorized User activity in connection with the Services and all Authorized Users' compliance with the terms of this Agreement and the Victa Acceptable Use Policy. The Site may contain links to other Victa websites. If an Authorized User chooses to access any other Victa site, Authorized User is responsible for agreeing to the applicable terms of use for such site. If Authorized User does not agree to such terms of use, Authorized User should not access, visit or participate in such sites.
- 2.2 Privacy Policy. Customer acknowledges that the Services are hosted by a third-party provider. Customer should refer to the privacy policy posted by such third party at [www.aws.amazon.com/privacy](http://www.aws.amazon.com/privacy), and the policies referred to therein, which shall apply to the Services. Victa may remove or update its third-party provider at any time and any such successor provider's privacy policy shall apply to the Site and the Services. Victa's Cookie & Privacy Policy shall apply to Customer and Authorized User registration and account administration information only and is located at [www.Victa.com](http://www.Victa.com).
- 2.3 Privacy Compliance. Customers are recommended not to store EEA/Swiss/UK personal data (as defined under EU/Swiss/UK relevant law) or any Content that may be governed by industry specific legislation in the Service. Victa is neither the Data Controller nor the Data Processor (as defined under relevant EU/Swiss law) of any personal data Content inputted by Customer or any Authorized User. If Customer or any Authorized User chooses to input personal data Content, Customer shall remain solely liable and responsible for complying with applicable privacy laws with respect to Customer's and its Authorized Users' use of the Services and the Content, including but not limited to EU General Data Protection Regulation and any other privacy/data protection obligations in relation to the processing of such Content (including but not limited to the obligations to delete data, process it lawfully, and restrictions regarding transfer outside of the EEA/Switzerland/UK, and responding to data subject access requests). All Content used by or within the Services may be stored on servers located outside of the EEA/Switzerland/UK, unless options (if available) are selected and used by the Customer to retain the data on relevant servers within the EEA/Switzerland/UK. Further, Customer and Authorized Users are not permitted to store, maintain, process or transmit sensitive personal information, including but not limited to financial information, country identifications numbers (such as social insurance, social security, driver's license or passport numbers) or Protected Health Information (as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) in the Services.
- 2.4 Responsibility for Content. Customer acknowledges and agrees that (i) Customer has sole responsibility to determine which Authorized Users gain access to the Services and which Content such Authorized Users may access via the Services, (ii) Victa has no obligation to monitor any Content, (iii) Victa does not control, interpret, verify or endorse the Content that Customers or Authorized Users make available on the Services, (iv) Victa is not responsible for the accuracy, completeness, appropriateness, copyright compliance or legality of any Content accessible using the Services, and (v) subject to Section 3, Customer is solely responsible for the uploading and/or deletion of any Content placed on the Site or with the Services by any Authorized User. Customer is solely responsible for the development, content, operation, maintenance, and use of Content including but not limited to responsibility for: (i) any claims relating to Content, including claimed violations of applicable law; and (ii) properly handling and processing notices that are sent to Customer (or any Authorized User) regarding Content, such as by any person claiming that any Content violates such person's rights, including notices pursuant to the Digital Millennium Copyright Act.
- 2.5 Warranties. Customer hereby represents and warrants on behalf of itself and its Authorized Users that (a) it has all of the rights in the Content necessary for the uploading, use, display, publishing, sharing and distribution of the Content (including via Victa applications) in the course of using the Services; and (b) the storage, display, publication, performance, integration, use and transmission of Content through the Services does not violate any law or this Agreement.
- 2.6 Unauthorized Use. Customer must promptly notify Victa in writing of any unauthorized use of all or any portion of the Services; including any tenant or account administration of the Services. Authorized User login credentials are not permitted to be shared among Authorized Users or with any third parties. In the event of any such unauthorized use by any third party that obtained access through Customer or any of its Authorized Users, Customer will immediately notify Victa and take all steps necessary to terminate such unauthorized use. Customer will provide Victa with such cooperation and assistance related to any such unauthorized use as Victa may reasonably request. Customer acknowledges that in order to protect transmission of Content to the Site and the Services, it is Customer's responsibility to use a secure encrypted connection to communicate with the Services.
- 2.7 Permitted Third Parties. Customer is solely responsible for its Permitted Third Parties. If Customer chooses to have a Permitted Third Party access the Site or the Services on its behalf, Customer acknowledges that it, and not Victa, is solely responsible and liable for (i) the acts and omissions of such Permitted Third Party in connection with the Services; (ii) any Content that Customer requests or instructs the Permitted Third Party to include in the Services; and (iii) the issuance, removal and/or deactivation of the credentials issued for such Permitted Third Party. Further, if Customer requests or instructs a Permitted Third Party to import or upload Content to the Services, such actions by the Permitted Third Party shall be deemed to be the actions of Customer.

## 3. Term and Termination

- 3.1 Term. Customer's and its Authorized Users' access to the Services shall remain in effect, unless earlier terminated, for the Services subscription term set

forth in the Ordering Document for such subscription ("Term"). Subscriptions may not be cancelled in whole or in part during any Term. The Term shall automatically renew for renewal terms of the same duration at Victa's then-prevailing rates for the applicable Services, unless and until Customer or Victa elects to non-renew the Term by providing written notice to the other Party at least 45 days prior to the end of the then-current Term.

3.2 **Termination.** Either Party may terminate this Agreement (without resort to court or other legal action) if the other Party fails to cure a material breach within thirty (30) days (ten (10) days in the case of non-payment by Customer) after written notice of such breach. Notwithstanding the foregoing, Victa may terminate this Agreement immediately with respect to any free trial or upon any breach of Section 1.3. Victa may terminate this Agreement if Customer terminates or suspends its business without a successor or becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Victa may terminate Customer's or any individual Authorized User's access to all or any part of the Services at any time if required by applicable law, effective immediately, which may result in the forfeiture and destruction of all information within Customer's subdomain. Customer may request to delete its subdomain from the Site at any time during the Term (which will result in the termination of Customer's and its Authorized Users' access to the Services) by providing a request to support@Victa.com. No refunds are provided upon any such request for termination. If the Services are purchased through an Authorized Reseller, Victa may terminate any right to use the Services pursuant to this Section in the event Victa fails to receive payment for such Services. "

3.3 **Effect of Termination.** Upon any termination or expiration of this Agreement, Customer and its Authorized Users' right to access and use the Services shall automatically cease. Victa will delete all Content associated to Customer's account within six (6) months following such termination or expiration. No refunds or credits of any prepaid fees shall be granted in the event of any termination or expiration. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

#### 4. Disclaimer; Limitation of Liability

4.1 **Disclaimer.** THE SERVICES AND THE SITE ARE PROVIDED "AS IS," "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. Victa AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, PARTNERS, SERVICE PROVIDERS AND LICENSORS DO NOT WARRANT THAT: (I) THE SERVICES OR THE SITE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION; (II) THE SERVICES OR THE SITE WILL BE FREE OF DEFECTS OR ERRORS, (III) THE SERVICES OR THE SITE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; (IV) THAT NEITHER THE SERVICES OR THE SITE WILL NOT HARM COMPUTER SYSTEMS; OR (V) THE RESULTS OF USING THE SERVICES OR THE SITE WILL MEET CUSTOMER'S OR

#### AUTHORIZED USERS' REQUIREMENTS.

4.2 **Limitation of Liability.** Except for: (i) each party's indemnification obligations hereunder; (ii) Customer's breach of Section 1.3 (Restrictions), Section 2 (Customer Responsibilities), or Section 9.8 (Export Control); or (iii) Customer's violation of Victa's intellectual property rights, each Party's maximum cumulative liability for any claims, losses, costs (including attorney's fees) and other damages arising under or related to this Agreement, regardless of the form of action, whether in contract, tort (including but not limited to negligence or strict liability) or otherwise, will be limited to actual damages incurred, which will in no event exceed the greater of (a) one thousand dollars (USD \$1,000); or (b) the aggregate amount of subscription fees paid by Customer for the Services for the twelve month period immediately preceding the date upon which the events giving rise to such claim occurred.

4.3 **Exclusion of Damages.** IN NO EVENT SHALL Victa OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS, VENDORS OR LICENSORS BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, WARRANTY OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SERVICES, INCLUDING FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF GOODWILL, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COMPENSATORY OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, EVEN IF Victa HAD BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES..

4.4 **Free Trial.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, DURING ANY FREE TRIAL THE SERVICES AND THE SITE ARE PROVIDED "AS-IS" AND WITHOUT ANY WARRANTY AND Victa SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES AND THE SITE FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE Victa'S LIABILITY WITH RESPECT TO THE SERVICES AND THE SITE PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED \$1,000. WITHOUT LIMITING THE FOREGOING, Victa AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT CUSTOMER'S AND/OR ITS AUTHORIZED USERS' USE OF THE SERVICES OR THE SITE DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CUSTOMER SHALL BE FULLY LIABLE UNDER THIS AGREEMENT TO Victa AND ITS AFFILIATES FOR (A) ANY DAMAGES ARISING OUT OF CUSTOMER'S AND/OR ITS AUTHORIZED USERS' USE OF THE SERVICES AND/OR THE SITE DURING THE FREE TRIAL PERIOD, (B) ANY BREACH BY CUSTOMER AND/OR ITS AUTHORIZED USERS OF THIS AGREEMENT AND/OR (C) ANY OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

#### 5. Intellectual Property Rights; Indemnification

5.1 **Proprietary Rights.** Victa (and its licensors, as applicable) shall own all right, title and interest, including all related intellectual property rights, in and to the Services (or any underlying technology or content within the Services). Further, Customer's license to use and access the Services will be automatically revoked if Customer violates this Agreement in a manner that violates Victa's or any third party's intellectual property rights. No title or ownership of any proprietary rights related to the Services is transferred to Customer or any Authorized User pursuant to this Agreement. All

intellectual property rights not explicitly granted to Customer or any Authorized User are reserved by Victa. If Customer provides comments, suggestions, or recommendations to Victa with respect to the Services (including without limitation with respect to modifications, enhancements, improvements, other changes to the Services) (collectively, the "Feedback"), Customer hereby grants to Victa a worldwide, royalty free, irrevocable, perpetual license to use and otherwise incorporate any Feedback in connection with the Services.

5.2 **Indemnification by Victa.** Victa shall defend, indemnify and hold Customer harmless from any damages and costs awarded against Customer as a result of a third party claim that the Services, as provided by Victa, infringes upon any third party copyright, trademark or patent ("IP Claim"). Victa will not be liable for any IP Claim arising from or based upon: (i) any unauthorized use of, unauthorized access granted to or unauthorized distribution of the Services; and/or (ii) use of any Content with or in the Services. If the Services become, or, in Victa's opinion, is likely to become, the subject of an IP Claim, Victa may, at its option and expense, either: (i) obtain the right for Customer to continue using the Services in accordance with this Agreement; (ii) replace or modify the Services so that it becomes non-infringing while retaining substantially similar functionality; or (iii) if neither of the foregoing remedies can be reasonably effected by Victa, terminate this Agreement (without need for a ruling by a court or arbitrator) and refund Customer any prepaid fees covering the remainder of the term of the terminated subscription. THIS SECTION 5.2 STATES Victa'S SOLE AND ENTIRE OBLIGATION AND LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE RIGHT AND REMEDY, FOR INFRINGEMENT OR VIOLATION OF INTELLECTUAL PROPERTY RIGHTS.

5.3 **Indemnification by Customer.** Customer shall defend, indemnify and hold harmless Victa, its affiliates and each of their respective employees, contractors, directors, officers, suppliers and representatives from all liabilities, claims, and expenses, including reasonable attorneys' fees, that arise from or relate to any third party claims alleging: (i) violation of any privacy or other rights of any third party or any Authorized User in connection with the Services (except to the extent arising from an IP Claim) or (ii) infringement, of the intellectual property rights of any third party by Customer or any Authorized User (each, a "Customer Claim").

5.4 **Conditions.** Each party's indemnification obligations hereunder are subject to: (i) prompt notification of a claim in writing to the indemnifying party; (ii) consent to allow the indemnifying party to have sole control of the defense and any related settlement negotiations; and (iii) provision of information, authority and assistance as necessary for the defense and settlement of the IP Claim or Customer Claim.

## 6. Fees; Payment and Taxes

6.1 Customer shall pay all fees due within thirty (30) days from the date of Victa's valid invoice therefor, unless otherwise stated on an Ordering Document. Fees are not subject to any right of offset or suspension and all payments shall be non-cancelable, non-refundable and non-creditable. Fees do not include sales, use, value-added or other taxes or duties. Customer agrees to pay all applicable taxes and duties on Fees for which Victa is required to pay or account, exclusive

of any tax on Victa's income. Customer shall directly pay any such taxes or duties assessed against it, unless Customer provides Victa in a timely manner with a valid certificate of exemption or other evidence that items are not taxable. If Customer is required by law or regulation to make any deduction or withholding (whether on account of tax or otherwise) from any payment, Customer shall, notify Victa in writing of such deduction or withholding requirement prior to making the payment to Victa. Customer shall, in accordance with the law, withhold such deduction or withholding taxes from the amount due to Victa, remit the deduction or withholding taxes to the appropriate tax authority, and furnish Victa with proof of payment of such deduction or withholding taxes within thirty (30) days following payment thereof. Where Victa is entitled under any applicable tax treaty to a reduction in the rate of, or the elimination of, applicable withholding tax, the parties agree to cooperate in accordance with applicable law to claim such a reduction. If Customer fails to make any payment when due hereunder, Victa will be entitled to withhold further orders to Customer. If the Customer fails to pay any Fee when due, then Victa may charge Customer interest in an amount of one percent (1%) per month, or such lower rate as may be mandated by applicable law, on the unpaid balance from the due date and/or suspend access to the Services.

## 7. Confidentiality

7.1 Each Party will hold in confidence the other Party's Confidential Information and will not disclose or use such Confidential Information except as necessary to exercise its express rights to perform its express obligations hereunder. Any Party's disclosure of the other Party's Confidential Information may be made only to those of its employees or consultants who need to know such information in connection herewith and who have agreed to maintain the Confidential Information as confidential as set forth herein. Notwithstanding the foregoing, a Party may disclose the other Party's Confidential Information to the extent that it is required to be disclosed in accordance with an order or requirement of a court, administrative agency or other governmental body, provided that such Party, to the extent permitted by law, provides the other Party with prompt notice of such order or requirement in order that it may seek a protective order. Each Party's confidentiality obligations hereunder will continue for a period of three (3) years following any termination of this Agreement, provided, however, that each Party's obligations will survive and continue in effect thereafter with respect to, and for so long as, any Confidential Information continues to be a trade secret under applicable law. The Parties acknowledge and agree that the Services and all pricing information shall be treated as the Confidential Information of Victa.

7.2 "Confidential Information" means non-public information that is disclosed by or on behalf of a Party under or in relation to this Agreement that is identified as confidential at the time of disclosure or should be reasonably understood to be confidential or proprietary due to the nature of the information and/or the circumstances surrounding its disclosure. Confidential Information does not include information which, and solely to the extent it: (i) is generally available to the public other than as a result of a disclosure by the receiving Party or any of its representatives; (ii) was known to the receiving Party prior to the date hereof on a non-confidential basis from a source

other than disclosing Party or its representatives; (iii) is independently developed by the receiving Party without the benefit of any of the disclosing Party's Confidential Information; (iv) becomes lawfully known to the receiving Party on a non-confidential basis from a source (other than disclosing Party or its representatives) who is not prohibited from disclosing the information to the receiving Party by any contractual, legal, fiduciary or other obligation; or (v) was disclosed by the disclosing Party to a third party without an obligation of confidence. In any dispute concerning the applicability of these exclusions, the burden of proof will be on the receiving Party and such proof will be by clear and convincing evidence.

## 8 Definitions

- 8.1 "Agreement" means collectively all the terms, conditions contained or referenced in this document, the Victa Acceptable Use Policy and all other operating rules, notices, policies and procedures that Victa may publish from time to time on the Site.
- 8.2 "Authorized Reseller" means a reseller, distributor or other partner authorized by Victa to sell the Services.
- 8.3 "Authorized User" means (a) in the case of an individual accepting this Agreement on such individual's own behalf, such individual, or (b) an employee or Permitted Third Party of a Customer and (i) who is authorized by Customer to use the Services, (ii) for whom Customer has purchased a subscription (or in the case of any free trial, for whom the trial has been provisioned), and (iii) to whom Customer has supplied a user identification and password. An email alias or group address book may not be designated as an Authorized User.
- 8.4 "Content" means information, data, media or other content provided by Customer or any Authorized User for use with the Services.
- 8.5 "Customer" means the individual person, company, or organization that has purchased or has registered for a trial of the Services.
- 8.6 "Documentation" means the then-current user documentation for the Services, including the metrics available at [www.victa.nl/product-terms](http://www.victa.nl/product-terms).
- 8.7 "Ordering Document" means an order form for the Services either executed between Customer and Victa or an Authorized Reseller and Customer, or an order form completed via Victa's online purchasing portal.
- 8.8 "Permitted Third Party" means any individual that is not an employee of Customer, such as consultants, contractors, customers and agents of Customer, which may include Victa employees.
- 8.9 "Victa" means the Victa entity identified in Table 1 to this Agreement.
- 8.10 "Victa Acceptable Use Policy" means Victa's then-current Hosted Services Acceptable Use Policy regarding Content currently set forth under Legal Policies at [www.qlikcloud.nl](http://www.qlikcloud.nl)
- 8.11 "Services" means the products and services that are ordered by Customer under an Ordering Document and made available online by Victa.
- 8.12 "Site" refers to Victa's website located at [www.victacloud.nl](http://www.victacloud.nl) (and any Victa subdomains made available to Customers).

## 9 General

- 9.1 Entire Agreement; Severability; No Waiver; Headings. This Agreement is the entire agreement between Customer and Victa with respect to the Services, including use of the Site, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Victa and Customer with respect to the Services, including any prior version of this Agreement. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. In addition, this Agreement shall supersede any conflicting or contradictory terms contained in any purchase order, order form, or any other document Customer submits to any of Victa's designated vendors in connection with a purchase of a subscription to the Services, and any such conflicting or contradictory terms will be of no force or effect. Failure to enforce any part of this Agreement shall not constitute a waiver of any right to later enforce that or any other part of this Agreement. The section and paragraph headings in this Agreement are for convenience only and shall not affect their interpretation.
- 9.2 Governing Law; Jurisdiction. This Agreement is governed by the law of the jurisdiction set out in Table 1 corresponding to the Victa entity identified therein as the contracting party, but excluding any conflict of law rules or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded. Any suit, action or proceeding arising out of or relating to this Agreement will be brought before the courts or arbitration boards set out in Table 1 corresponding to the contracting Victa entity, and the Parties hereby expressly and irrevocably submit to the exclusive jurisdiction of such courts or arbitral bodies for the purpose of any such suit, action or proceeding. Notwithstanding anything to the contrary in this Agreement, either Party may at any time seek injunctive or interlocutory relief in a court of competent jurisdiction in order to protect any urgent interest of such Party, including, without limitation, the confidentiality and use restrictions of this Agreement. TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW, CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO A JURY TRIAL REGARDING DISPUTES RELATED TO THIS AGREEMENT.
- 9.3 Test Services. Victa may, in its discretion, periodically provide certain Customers with an opportunity to test additional features or functionality in connection with the Services. Customers are not required to accept these opportunities when provided, and Customer may decline to participate in the testing of such additional features or functionality at any time. Customer acknowledges that such features or functionality are not considered part of the Services under this Agreement, are not supported, are provided "as is" with no warranties of any kind, and may be subject to additional terms. Victa reserves the right at any time, in its sole discretion, to discontinue provision of, or to modify, any such features or functionality

provided for testing purposes.

- 9.4 **Modification.** Victa reserves the right, in its sole discretion, to modify any provision of this Agreement, or to change or update the Services (including without limitation, the availability of any feature or functionality) at any time by posting a notice on the Site or by sending notice via email. Customer's continued use of the Services following notification of any such changes to constitutes acceptance of those changes.
- 9.5 **Third Party Materials.** The Services may include certain open source or other third party software, data, or other materials (the "Third Party Materials") that are separately licensed by their respective owners. Third Party Materials are identified in the Documentation. Victa represents that if the Services are used in accordance with this Agreement, such use shall not violate any license terms for the Third Party Materials. Victa MAKES NO OTHER REPRESENTATION, WARRANTY, OR OTHER COMMITMENT REGARDING THE THIRD PARTY MATERIALS, AND HEREBY DISCLAIMS ANY AND ALL LIABILITY RELATING TO CUSTOMER'S USE THEREOF.
- 9.6 **Statistical Information.** Victa may collect and use certain statistical and usage information relating to the Services, and may share such information with authorized third-party vendors to perform functions on Victa's behalf. This information may include, but is not limited to, size and number of applications, sharing statistics, login statistics, session information (e.g., number, duration, error messages, types/number of users, applications and/or charts used and API usage) and browser configurations. This information will not include any confidential or personally identifiable information of any Authorized User. The collection and use of this information will be governed by Victa's Cookie & Privacy Policy.
- 9.7 **Force Majeure.** Victa shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond Victa's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation.
- 9.8 **Export Control.** Customer agrees at all times to comply with all applicable laws and regulations in its performance of this Agreement, which may include, without limitation, U.S. and E.U. export control laws and regulations, and regulations declared by the U.S. Department of the Treasury Office of Foreign Assets Control, the Council of the E.U. and their counterparts under applicable law ("Export Control Laws"). Customer will indemnify, defend and hold harmless Victa and its respective officers, agents and employees from and against any and all losses, costs, claims, penalties, fines, suits, judgments and other liabilities (including applicable attorney's fees) arising out of, relating to or resulting from Customer's failure to comply with any Export Control Laws.
- 9.9 **Verification and Compliance.** Customer acknowledges that Victa may monitor use of the Services and the Site in order to verify that Customer has not exceeded its permitted number of Authorized Users or violated or circumvented any limitations or restrictions on allocation of users or capacity or reassignment of access to the Service. If Victa becomes aware of any excess usage or violations of allocation restrictions, then Victa may: (a) require Customer to will pay for the excess usage at prevailing rates for the Services; (b) suspend or terminate Customer's access to the Services; or (c) exercise any other remedy that may

be available to Victa. Upon Victa's written request, Customer shall furnish Victa with a signed certification certifying that the Services are being used pursuant to the terms of this Agreement, including any Scope Limitations and/or access and user limitations. With prior reasonable notice, Victa may audit Customer's compliance with this Agreement and/or use of the Services. If such inspections disclose that Customer has accessed or permitted access to Services in a manner that is not permitted under this Agreement, then Victa may terminate this Agreement pursuant to Section 3 and Customer shall be liable for the reasonable costs of the audit in addition to any other fees, damages and penalties Victa may be entitled to under this Agreement and applicable law.

- 9.10 **Government End-Users.** The Services are commercial computer software. If Customer or an Authorized User of the Services is an agency, department or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of the Services, or any related documentation of any kind, including technical data and manuals, is restricted by this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Services were developed fully at private expense. All other use is prohibited.
- 9.11 **Assignment.** Relationship between the Parties. This Agreement is not assignable, transferable or sublicenseable by Customer except with Victa's prior written consent. Victa may assign, transfer or delegate any of its rights and obligations hereunder without consent. No agency, partnership, joint venture, fiduciary, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect.
- 9.12 **Notices.** All notices concerning a default, breach or violation of this Agreement by Victa must be in writing and delivered to Victa: (a) by certified or registered mail; or (b) by an internationally recognized express courier, and shall be addressed to: Victa at 211 S. Gulph Rd., Suite 500, King of Prussia, PA 19406 USA, Attention: Legal Department. All other notices to Victa, including account related communications, will be electronically sent to Victa at CustomerNotices@Victa.com. Unless otherwise specified in writing by the Customer, all notices to Customer shall be sent to the address provided by Customer in the Ordering Document.

## 10. Special Provisions and Exceptions

- 10.1 **Limitations of Liability for Authorized Users in Germany or Austria.**
- 10.1.1 If Authorized User usually resides in Germany or Austria, then Section 4.2 will not apply. Instead, subject to the provisions in 9.1.2, Victa's statutory liability for damages shall be limited as follows: (i) Victa shall be liable only up to the amount of damages as typically foreseeable at the time of entering into the contract in respect of damages caused by a slightly negligent breach of a material contractual obligation (i.e. a contractual duty the fulfillment of which is essential for the proper execution of the contract, the breach of which endangers the purpose of the contract and on the fulfillment of which Customer regularly relies); and (ii) Victa shall not be liable for damages caused

by a slightly negligent breach of a non-material contractual obligation.

- 10.1.2 The aforesaid limitation of liability shall not apply to liability under the German Product Liability Act, liability for assuming a specific guarantee or liability for damages caused by willful misconduct or gross negligence, or any kind of willfully or negligently caused personal injuries.
- 10.1.3 Authorized Users shall take all reasonable measures to mitigate and/or to avoid damages, including, in particular, an obligation for Customer to make back-up copies of data on a regular basis and to carry out security checks.
- 10.1.4 Regardless of the legal grounds giving rise to liability, Authorized User shall not be liable for indirect and/or consequential damages, including, in particular, loss of profit and loss of interest, unless any such damage has been caused by Victa's willful misconduct or gross negligence.
- 10.1.5 To the extent Victa's liability is limited or excluded, the same shall apply in respect of any personal liability of Victa's legal representatives, employees, suppliers, resellers and vicarious agents.

#### 10.2 Modification of Terms for Authorized Users in Germany or Austria.

Authorized User usually resides in Germany or Austria, then Section 9.4 shall not apply. Instead, the following shall apply: Victa reserves the right, in its sole discretion, to modify or replace any of this Agreement, or change, suspend, or discontinue the Services (including without limitation, the availability of any feature, database, or content) at any time by posting a notice on the Site or by sending notice through the Services, via e-mail or by another appropriate means of electronic communication. While Victa will timely provide notice of modifications, it is also Authorized User's responsibility to check this Agreement periodically for changes. If Victa modifies this Agreement, Authorized User may object to this modification within six weeks after Victa has informed Authorized User as described above and notwithstanding anything to the contrary in this Agreement, Authorized User may terminate the Services where Victa does not grant as an exception the continued use under the previous conditions with regards to the objections. Authorized User's continued use of the Services following notification of any changes to this Agreement constitutes acceptance of those changes. Victa will inform Authorized User of the consequences of Authorized User's continued use once the objection period above commences.

#### 10.3 Warranty for Authorized Users in Germany or Austria

- 10.3.1 If Authorized User usually resides in Germany or Austria the Parties agree and acknowledge that the Victa Products, are provided without warranty of any kind, express or implied, including but not limited to, the implied warranties of merchantability, satisfactory quality, and fitness for a particular purpose, whereas Victa shall remedy any defects in kind as part of its ongoing support obligations which are included and fully compensated by the subscription fees. Further, Victa and its vendors disclaim any warranty that the Customer's use of the Victa Products will be uninterrupted or error free. The Customer's use of the Victa Products is solely at its own risk.

- 10.3.2 The Parties agree and acknowledge that the following modifications of Customer's statutory warranty rights shall apply:

(a) Victa shall have no liability for initial material defects of the Software (Sachmängel) regardless of whether they have been caused by Victa's fault (verschuldensunabhängig);

(b) The Customer's (i) right of reduction (Minderung), (ii) set-off and (iii) retention shall be excluded unless, as regards to (ii) and (iii), Customer asserts such rights on the basis of claims that have been asserted by a final court judgment;

(c) Any warranty claims of the Customer against Victa shall become time-barred 12 months after the start of the statutory warranty period; and

(d) For the avoidance of doubt, the Parties agree and acknowledge no further warranty period shall apply in regard to updates or upgrades to the Software that Victa provides during the initial or any renewal term of the subscription licenses. Any damage claim Customer has under an applicable warranty shall be limited by the limitation of liability provision set forth under Section 4.2 of this Agreement.

- 10.3.3 THE LIMITED WARRANTIES IN THIS SECTION DO NOT APPLY TO SOFTWARE OR SERVICES PROVIDED TO CUSTOMER FREE OF CHARGE, OR SOFTWARE THAT HAS BEEN ALTERED BY CUSTOMER, OR TO UPDATES PROVIDED UNDER SUPPORT, TO THE EXTENT SUCH ALTERATIONS CAUSED A DEFECT.

#### 10.4 Third Party Intellectual Property Infringement Indemnification for Authorized Users in Germany or Austria.

If Authorized User usually resides in Germany or Austria then Section 5.2 is supplemented by the following additional sentence: CUSTOMER'S STATUTORY CLAIMS FOR DAMAGES SHALL REMAIN UNAFFECTED, PROVIDED, HOWEVER; THAT ANY SUCH CLAIMS SHALL BE LIMITED BY THE LIMITATION OF LIABILITY AS SET FORTH HEREUNDER.