



## WICKR SAAS AGREEMENT

Your use of the Software is subject to the terms and conditions of the Wickr SaaS Agreement, but only to the extent that all terms and conditions in the Wickr SaaS Agreement are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341 and 41 U.S.C. § 6301), the Contracts Disputes Act of 1978 (41 U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (41 U.S.C. 6405), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Wickr SaaS Agreement or these Service Specific Terms are inconsistent with Federal Law (See FAR 12.212(a)), they shall be deemed deleted and unenforceable as applied to any Orders under these Service Specific Terms.

This Wickr SaaS Agreement (the “**Agreement**”) is by and between Wickr Inc., a Delaware corporation (“**Wickr**”), and [REDACTED], a [REDACTED] (“**Customer**”), and is effective as of [REDACTED] (the “**Effective Date**”). Together, Wickr and Customer are referred to as the “**Parties**” and individually each as a “**Party**.” This Agreement governs Customer’s use of the Service (as defined below) and its distribution of the Service to its Users (as defined below). The Parties hereby agree as follows:

### AGREEMENT

**1. DEFINITIONS.** As used in this Agreement definitions are applicable both to their singular and plural forms as the context may require. In addition to those terms defined throughout the Agreement, the following terms shall have the following meanings:

**1.1 “Documentation”** means, as it relates to the Service, any applicable how-to guides made available on Wickr’s website and tutorials available to the User through the Service.

**1.2 “Feedback”** means all recommendations, feature enhancements and requests, suggestions, comments, and other such feedback provided by Customer or a User to Wickr.

**1.3 “Fees”** means the consideration due from Customer to Wickr, as specified in Exhibit A attached hereto, for Customer’s and its Users’ access to and use of the Service as well as those other obligations of Wickr required by this Agreement.

**1.4 “Intellectual Property Rights”** collectively means all worldwide rights, title and interest, including all patents, patent registrations, patent applications, copyrights, trademarks, trade names, service marks, service names, trade secrets, know-how or other similar right arising or enforceable under any jurisdiction or international treaty.

**1.5 “Privacy Policy”** means that privacy policy applicable to each User’s use of the Service, which can be found [here](#). The Privacy Policy describes what information Wickr will obtain from each User and what Wickr does with that information.

**1.6 “Service”** means that online service provided by Wickr and specified on Exhibit A attached hereto. If more than one Service is identified in Exhibit A, then “Service” shall mean “Services” for purposes of this Agreement.

**1.7 “Supported Platforms”** means those operating systems, clients, and platforms specified on Wickr’s website as being a supported platform.

**1.8 “Term”** has the meaning ascribed to it in Section 11.1.

**1.9 “ToU”** means Wickr’s Terms of Use that govern each User’s use of the Service, which can be found [here](#).

**1.10 “Third Party Components”** means any component of the Service provided by a third party.

**1.11 “Update”** means any update, upgrade, modification, or enhancement of the Service made generally available by Wickr to Wickr’s general user base, excluding any Additional Features (as defined in Section 12.1).

**1.12 “User”** means an individual employee or contractor of Customer that has been registered to access the Service pursuant to process outlined in Section 2.2 below, regardless of whether such User actually uses the Service after the User registers.

### 2. LICENSE.

**2.1** Subject to the terms and conditions of this Agreement and Customer’s payment of the Fees when due, Wickr will make the Service available to Customer for use only by the number of Users specified in Exhibit A attached hereto and only for Customer’s internal purposes. Customer may only authorize Users to use the Service for Customer’s benefit and not for the benefit of or on behalf of any other entity.

**2.2** Upon execution of this Agreement, Customer will provide to Wickr the information requested by Wickr for each User who is to be granted access to the Service. An email will then be delivered to each User prompting that User to provide the necessary information. The User will then download the applicable software client for that User’s preferred Supported Platform. A limited number of Users will be selected by Customer as administrators. Only the administrators will have access to the admin console, which will allow for management of Customer’s implementation of the Service. For administrators only, the “Service” will be deemed to include the admin console. Customer agrees that each User is subject to, and Customer is responsible for obtaining each User’s agreement to, the ToU, which includes the Privacy Policy. Customer is liable for each User’s failure to comply with the ToU. Each User’s use of the Service is further subject to the restrictions set forth in Section 4 below.

**3. OWNERSHIP.** Customer acknowledges that the Service, Documentation, Additional Features, Updates, Feedback, and all other items provided by Wickr to Customer or any User hereunder, including, without limitation, each of their



respective structure, organization, source code, content, visual interfaces, information, graphics, design, trademarks, service marks, and trade names, and all modifications and improvements to each of the foregoing (collectively, the “**Wickr Materials**”), constitute valuable trade secrets of Wickr and/or its suppliers. The Wickr Materials and all Intellectual Property Rights therein are the exclusive property of Wickr and its suppliers. Wickr and its suppliers reserve all rights in and to the Wickr Materials not expressly granted to Customer in this Agreement. Customer will not remove, alter, or obscure any proprietary notices (including copyright notices) of Wickr or its suppliers on any portion of the Service.

#### 4. USE RESTRICTIONS.

**4.1 Restricted Uses.** The Service is only available through the Supported Platforms. Other clients, operating systems, and platforms are not guaranteed to be supported. In addition to those other restrictions included herein, Customer agrees not to or attempt to, or allow any third party to do the same: (a) use the Service for any illegal purpose, in furtherance of illegal activity, or in any manner that does not comply with all applicable laws, regulations, rules, ordinances, and other legal requirements of all applicable jurisdictions; (b) use the Service in any manner that is, or upload or transmit any content that is, unlawful, harmful, threatening, abusing, harassing, stalking, bullying, threatens violence, defamatory, vulgar, obscene, or infringes, misappropriates, or otherwise violates another intellectual property, proprietary, or privacy rights; (c) use the Service in support of or as a part of any organization designated by the United States as a foreign terrorist organization by the United States Secretary of State; (d) use the Service in any manner that breaches any applicable third party terms; (e) use the Service to send or disseminate other people’s private and confidential information, such as credit card numbers or Social Security/National Identity numbers, without that person’s express authorization and permission; (f) use the Service for the purpose of spamming others or sending junk mail, chain letters, or pyramid schemes; (g) use the Service to impersonate others in a manner that does or is intended to mislead, confuse, or deceive others; (h) use the Service to disseminate any viruses, worms, malicious code, or other program designed to interrupt, damage, or limit any software, hardware, and/or data; (i) remove, circumvent, disable, damage or otherwise interfere with security features of the Service, including any technical measures Wickr may use to prevent or restrict unauthorized access to the Service, features that prevent or restrict use or copying of any content accessible through the Service, or features that enforce limitations on use of the Service; (j) intentionally interfere with or damage operation of the Service or any user’s enjoyment of the Service, including by (i) uploading, disseminating, or using any robot, spider, scraper or other automated means to access the Service without Wickr’s express written permission; or (ii) selling, transferring, or allowing another person other than the rightful User to access any account password or use that User’s account; (k) modify, reproduce, copy, adapt, alter, improve, translate, or create derivative works from the Service; (l) reverse engineer, decompile, disassemble, or otherwise attempt to derive

the source code for the Service; (m) merge the Service with other software; (n) sublicense, lease, rent, loan, transfer, or otherwise make available the Service to any third party; (o) use the Service to develop a product that is similar to the Service or to operate a service bureau; (p) publish or disclose any results of any benchmark tests run on the Service or any component thereof; (q) commercialize Customer’s use of the Service; or (r) remove, alter, or obscure any trademark, trade name, logo, slogan, branding, symbol, label, or copyright or other proprietary notice on any portion of the Service (collectively, the “**Restricted Uses**”). Customer further agrees that the Restricted Uses also apply to use of the Service by all Users. Customer will ensure that each User does not use the Service in a manner that is a Restricted Use, and Customer will be liable for each User’s failure to do so.

**4.2 Additional User Terms.** Each User’s use of the Service is further subject to the following terms and conditions, which Customer shall ensure each User complies with and shall be liable to Wickr to the extent a User does not:

(a) Use of the Service may also be governed by the terms and conditions of the store, marketplace, or other source from which the User obtained the Service, if any (the “**App Source**”). Customer acknowledges and agrees that this Agreement is only Customer and Wickr and not the App Source or any of Wickr’s partners, distributors, promoters or service providers (collectively with the App Source, the “**Wickr Partners**”). Should Customer have any issue or claim with respect to the Service, Wickr, and not any Wickr Partner, will be solely responsible for addressing the issue or claim. The Wickr Partners have no obligation or responsibility to provide Customer or any User any warranty, maintenance or support services with respect to the Service.

(b) The Service may allow the submission of content and materials by each User (“**User Data**”). When a User submits User Data to Wickr, Customer hereby grants to Wickr a non-exclusive, royalty-free, sub-licensable, worldwide license to distribute the User Data through the Service on the User’s behalf solely for the purpose of provision of the Service. Customer represents and warrants that it will have obtained all necessary authorizations, licenses, and rights from the Users in order to grant such license. Customer shall be solely responsible for the User Data and the consequences of transmitting that User Data. If Customer is using the Service on a beta, preview, trial, or evaluation basis, the User Data may not be available to Customer or a User after that beta, preview, trial, or evaluation concludes, and Customer and the Users may be required to re-enter the User Data for continued use. Wickr and its suppliers and licensors assume no responsibility whatsoever in connection with or arising from User Data. Wickr and its suppliers and licensors do not endorse and have no control over the content of User Data submitted by other users of the Service. Wickr and its suppliers and licensors reserve the right to prevent Users



from submitting User Data and to restrict or remove User Data for any reason at any time.

(c) Neither Wickr nor any of its suppliers or licensors will be liable for any damages or liability resulting from a User's accounting information. Customer and each User agrees not to sell or transfer or allow another person to access that User's account password, use its account, or to use the Service on any of such User's devices.

(d) The Service may include links to other web sites or services solely as a convenience to Customer and the Users. Wickr nor any supplier or licensor of Wickr does not endorse or make any representations regarding any such linked sites or any information or materials accessible through such linked sites. Wickr disclaims all liability relating to Customer's and each User's use of such linked sites.

(e) Customer agrees that Wickr may terminate or suspend a User's account or access to the Service without prior notice and without liability. Each User's right to use the Service will terminate immediately in the event that that User is in breach of any provision hereof. Upon termination of this Agreement, each user will immediately stop using the Service and delete all copies of the Service in its possession or control.

## 5. MAINTENANCE.

**5.1 Maintenance and Support.** During the Term, Wickr will use commercially reasonable efforts to correct documented and reproducible defects in the then-current version of the Service that are reported to Wickr and that cause the Service not to operate in all material respects in accordance with the applicable Documentation ("**Maintenance**"). As part of the Maintenance, Wickr will update the Service with those Updates that Wickr, in its discretion, makes generally available to its general user base. All Updates shall be created in Wickr's sole discretion and may require additional terms and conditions governing such Update, to which Customer automatically agrees upon its first use of the Update. For purposes of this Agreement, each Update will be considered a part of the Service upon its release. Customer acknowledges that Updates may modify the prior version of the Service in any manner and that Wickr may elect to discontinue providing Updates for particular versions of the Service. Wickr will also use commercially reasonable efforts to provide, during the Term, telephone, email and internet support to Users for the then-current version of the Service ("**Support**"). Support is limited to questions concerning Service installation, configuration, and usage. If additional or varying degrees of Maintenance and/or Support ("**Enhanced Maintenance & Support**") are desired, the Parties will specify the specifics and applicable fees for such Enhanced Maintenance & Support in Exhibit A.

**5.2 Maintenance Limitations.** Wickr is not required to provide Maintenance or Support for problems attributable to: (a) modification, reconfiguration or maintenance of or to the Service by anybody other than Wickr; (b) any factor outside of Wickr's

control, including catastrophes, Customer's or a User's negligence, operator error and environmental conditions; (c) any equipment, whether delivered by Wickr or not, or any Third Party Components or other software not supplied by Wickr; (d) the Service being used in a manner that violates this Agreement; or (e) Customer's misrepresentation of the Service. Furthermore, Wickr will only provide Maintenance and Support for Supported Platforms.

## 6. FEES; PAYMENT; TAXES.

**6.1 Fees.** Customer agrees to pay to Wickr the Fees, which will be billed to Customer according to the schedule set forth in Exhibit A. Payment on each invoice will be due within thirty (30) days of the date of invoice. If no invoice is to be delivered, payment is required when presented to Customer. Customer agrees to pay a late payment fee of 1.5% (or the highest rate permitted by applicable law) on all late payments. Additionally, Customer agrees to pay Wickr's costs of collection, including reasonable attorneys' fees, for all late payments. If Customer is paying on a month-to-month basis, Wickr may increase the Fees at any time by giving written notice of the increase to Customer. If, as set forth in Exhibit A, Customer paid for twelve (12) months' of Fees in advance, Wickr may not increase the Fees until expiration of that twelve (12) month period, and then only by providing written notice of the increase to Customer. Customer acknowledges and agrees that notices of Fee increases may be posted on Wickr's website.

**6.2 Taxes.** If Wickr is required to pay any sales, use or other taxes related to the use or delivery of the Service or its performance hereunder, then such taxes shall be billed to and be paid by Customer; provided, however, that Wickr shall be solely responsible for the payment of taxes based on Wickr's income. Customer will make all payments of the Fees to Wickr free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of the Fees will be Customer's sole responsibility, and Customer will provide Wickr with official receipts issued by the appropriate taxing authority, or such other evidence as Wickr may reasonably request, to establish that such taxes have been paid.

## 7. WARRANTY & DISCLAIMER.

**7.1 General.** Each Party represents and warrants to the other Party that: (a) it is duly organized and validly existing under the laws of the state of its formation and has all requisite power and authority to enter into and perform all of its obligations under this Agreement; (b) the person signing this Agreement on such Party's behalf has been duly authorized and empowered to enter into this Agreement; (c) this Agreement constitutes the legal and binding obligation of that Party, enforceable against it in accordance with its terms; and (d) entering into this Agreement does not and will not (i) violate any applicable law; (ii) result in a breach or constitute a default under any material agreement to which it is a party or by which it is bound; or (iii) require any authorizations, consents, approvals, licenses, exemptions or filings with any third party or governmental authority.



**7.2 Service Warranty.** Wickr warrants that the Service, when used in accordance with this Agreement, the ToU, and the Documentation, will operate substantially as described in the Documentation. If the Service fails to conform to this warranty, Customer shall notify Wickr in writing. Upon such notice, and as Customer's sole and exclusive remedy for a breach of this warranty, Wickr will use reasonable efforts to repair the Service such that it complies with the Documentation. The foregoing warranty shall not apply to the extent any failure of the Service to operate as warranted arises from: (a) any breach of this Agreement or any use of the Service not in accordance with this Agreement, the ToU, the Documentation, or for purposes not intended by Wickr; (b) factor outside of Wickr's control, including catastrophes, Customer's or, as applicable, the User's negligence, operator error or environmental conditions; (c) any use of the Service in combination with other products, equipment, software, or data not supplied or specified in writing by Wickr; (d) any Third Party Component; (e) any use of any release of the Service other than the most current release made available by Wickr; or (f) any modification of the Service by any person other than Wickr (collectively, the "**Exclusions**").

**7.3 Disclaimer. TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, THE EXPRESS WARRANTY IN SECTION 7.2 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICE AND ALL OTHER SERVICES AND MATERIALS PROVIDED BY WICKR PURSUANT TO THIS AGREEMENT, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IN ADDITION, WICKR MAKES NO WARRANTIES WHATSOEVER RELATED TO THE THIRD PARTY COMPONENTS. CUSTOMER UNDERSTANDS THAT THE SERVICE IS ONLY OPERABLE ON THE SUPPORTED PLATFORMS AND THE SERVICE MAY NOT WORK ON OTHER CLIENTS, OPERATING SYSTEMS, OR PLATFORMS. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTY IN THIS AGREEMENT. WICKR DOES NOT WARRANT THE RESULTS OBTAINED FROM THE USE OF THE SERVICE OR THAT ANY USE OF THE SERVICE WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED.**

**8. CONFIDENTIALITY.** It is expected that the Parties may disclose to each other certain information that is identified as confidential information, whether in writing or orally, or that a reasonable person given the circumstances of disclosure would consider to be confidential ("**Confidential Information**"). For the avoidance of doubt, Wickr's Confidential Information includes the Service and Documentation. The terms of this Agreement constitute both Parties' Confidential Information. Each Party recognizes the value and importance of the protection of the other Party's Confidential Information. All Confidential Information of one Party (the "**Disclosing Party**") disclosed to the other Party ("**Recipient**") shall remain the sole property of the Disclosing Party (or its licensors), and the Disclosing Party will own all right, title, and interest, including all Intellectual Property Rights, therein. Except as expressly allowed in this Agreement, both Parties agree not to: (a) use the other Party's

Confidential Information for any purpose other than as contemplated by this Agreement; (b) duplicate in any manner the other Party's Confidential Information; or (c) disclose the other Party's Confidential Information to any third party or to any of their employees not having a need to know same to implement this Agreement, and then only if such third party or employee is subject to written confidentiality restrictions at least as protective as those herein and provided further that Recipient remain liable for any unauthorized disclosure or use of the Disclosing Party's Confidential Information by such third party or employee. Each Recipient agrees to use the same degree of care in protecting the Disclosing Party's Confidential Information as it uses to protect its own information of a like kind, but in no event less than a reasonable degree of care. Recipient shall use the Disclosing Party's Confidential Information solely for the implementation of this Agreement and for no other purpose, whether for Recipient's own benefit or the benefit of any third party. The foregoing restrictions shall not apply to information that Recipient can prove: (i) is or was a part of the public domain; (ii) was in Recipient's lawful possession prior to the disclosure and had not been subject to limitations on disclosure or use; (iii) is entirely independently developed by Recipient without any knowledge or reference to the Disclosing Party's Confidential Information; (iv) is lawfully disclosed hereafter to Recipient, without restriction, by a third party who did not acquire the information from the Disclosing Party; or (v) is required to be disclosed by applicable law or pursuant to a court order; provided, however, that the Recipient promptly notify the Disclosing Party of such required disclosure, assist the Disclosing Party, at the Disclosing Party's expense and request, in its efforts to contest or limit such required disclosure, and only disclose the minimum portion of the Disclosing Party's Confidential Information necessary to comply with such required disclosure. In addition, both Parties acknowledge and agree that the other Party is permitted to disclose the terms of this Agreement and details pertaining to the transactions contemplated hereby to that Party's actual and potential investors, acquirers, and other parties merging with or conducting another similar corporate transaction with such Party for such entity's due diligence purposes; provided, however, that such entities are subject to a non-disclosure agreement with confidentiality restrictions at least as restrictive as those herein. Recipient agrees to return or destroy (and certify in writing to such destruction), within three (3) business days of the termination or expiration of this Agreement or at the Disclosing Party's request and at the Disclosing Party's direction, all documents and other materials embodying Confidential Information, and the Recipient will retain no copies (written, electronic, or otherwise) thereof.

## **9. INDEMNITY.**

**9.1 By Wickr.** Wickr will defend, at its own expense, any action against Customer brought by a third party to the extent that the action is based upon a claim that the Service infringes any Intellectual Property Right enforceable in the United States, and Wickr will pay those costs and damages finally awarded against Customer in any such action that are specifically



attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer notifying Wickr promptly in writing of such action, Customer giving Wickr sole control of the defense thereof and any related settlement negotiations, and Customer cooperating and, at Wickr's expense, assisting in such defense. If the Service becomes, or in Wickr's opinion is likely to become, the subject of an infringement claim, Wickr may, at its option and expense, either (a) procure the appropriate right(s) to the Service; or (b) replace or modify the Service so that it becomes non-infringing and remains functionally equivalent. If, in Wickr's sole opinion, options (a) and (b) are not commercially reasonable, Wickr will notify Customer and either Party may, by providing written notice to the other Party, terminate this Agreement. Notwithstanding the foregoing, Wickr will have no obligation under this Agreement with respect to any infringement claim based upon or arising from any Exclusion. **THIS SECTION 9.1 STATES WICKR'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.**

**9.2 By Customer.** Customer will, at its own cost, indemnify and hold Wickr and its suppliers and licensors harmless from and against any and all liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees, and defend Wickr against any and all third party claims, suits, and other proceedings resulting from, arising out of, or in any way related to: (a) any breach of this Agreement by Customer; (b) any use of the Service by Customer or a User that is a Restricted Use, constitutes an Exclusion, or that fails to conform to the requirements of the ToU; (c) use of the Service by Customer or any User for any unlawful purpose or for any purpose not expressly authorized by this Agreement; or (d) any misrepresentation of the Service by Customer.

**9.3 Indemnification Process.** Each Party's indemnification obligations are conditioned on: (a) the Party seeking indemnification (the "**Indemnitee**") notifying the other Party (the "**Indemnitor**") promptly in writing of the action for which it seeks indemnification (provided that a delay or failure in providing such notice shall only excuse the Indemnitor's indemnification obligation to the extent such delay or failure materially prejudiced its defense of the claim); (b) the Indemnitee giving the Indemnitor sole control of the defense thereof and any related settlement negotiations (provided that the Indemnitor shall not admit any fault, liability, or culpability on the Indemnitee's behalf without the Indemnitee's prior written authorization); and (c) the Indemnitee reasonably cooperating with and, at the Indemnitor's expense and request, assisting in such defense.

**10. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT ALLOWABLE UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL OR INCIDENTAL DAMAGES, INCLUDING ANY LOST INFORMATION, LOST DATA AND LOST PROFITS, ARISING FROM OR RELATING TO THIS AGREEMENT. NEITHER PARTY'S TOTAL**

**CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SERVICE, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID UNDER THIS AGREEMENT IN THE 12 MONTHS IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO LIABILITY. NOTWITHSTANDING THE PRECEDING, THIS SECTION 10 SHALL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATIONS PURSUANT TO SECTION 9 OR EITHER PARTY'S BREACH OF SECTION 4 OR 8. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT WICKR WOULD NOT ENTER INTO THIS AGREEMENT ON THESE TERMS WITHOUT THESE LIMITATIONS ON ITS LIABILITY.**

## **11. TERM AND TERMINATION.**

**11.1 Term.** Unless earlier terminated as provided herein, this Agreement shall commence as of the Effective Date and remain in effect for the initial term specified in Exhibit A attached hereto (the "**Initial Term**"). After the Initial Term, this Agreement will automatically renew for additional periods of one (1) year each (each, a "**Renewal Term**"), unless one Party provides written notice to the other Party at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, as the case may be. The Initial Term and the Renewal Term(s) are collectively referred to herein as the "**Term**".

**11.2 Termination.** In addition to any other rights of termination included in this Agreement: (a) Wickr may terminate this Agreement, effective immediately upon written notice to Customer, if (i) Customer breaches any provision in Section 3, 4, 8, 12.4, or 12.5; or (ii) Customer materially breaches any other provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from Wickr; and (b) Customer may terminate this Agreement, effective immediately upon written notice to Wickr, if Wickr materially breaches any provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof from Customer. In addition, except as limited by applicable law, either Party may terminate this Agreement by written notice to the other Party at any time during the Term upon any voluntary or involuntary bankruptcy or insolvency of the other Party, or if any action or proceeding is instituted against the other Party relating to any of the foregoing and such action or other proceeding is not dismissed within sixty (60) days after institution thereof.

**11.3 Effects of Termination.** Upon termination or expiration of this Agreement: (a) all rights granted in this Agreement will immediately cease to exist; (b) Wickr: (i) may disable Customer's and all Users' access to the Service; and (ii) must return to Customer or destroy all copies of Customer's Confidential Information in its possession or control; and (c) Customer must: (i) promptly cease using the Service; (ii) ensure that all Users cease using the Service; (iii) ensure that all Users delete from their devices the client downloaded by such User to use the Service; (iv) purge from its electronic or other storage facilities or records all Confidential Information of Wickr and its



suppliers; (v) return to Wickr all Confidential Information of Wickr in Customer's possession or control; and (vi) certify in writing to Wickr that it has fully complied with these requirements. If this Agreement is terminated by Wickr without cause and Customer had paid for twelve (12) months of Fees in advance, Customer will refund to Customer that portion of the Fees allocable to the remainder of that twelve (12) month period from the date of termination; otherwise, Fees are non-refundable.

**11.4 Survival.** All provisions of this Agreement that by their nature are intended to survive the termination or expiration of this Agreement shall so survive, including Sections 1, 3, 4, 6, 7.3, 8, 9, 10, 11.3, 11.4, and 12 (excluding 12.2).

## **12. MISCELLANEOUS.**

**12.1 Additional Features.** From time to time, Wickr may develop upgrades, modifications, enhancements, or additional features to the Service ("**Additional Features**"). These Additional Features are not included under this Agreement unless they are released as an Update. If Customer desires to use Additional Features, the Parties must mutually agree to such Additional Features and any corresponding change to the Fees. Additional Features may require additional terms and conditions.

**12.2 Customer Responsibilities.** Customer agrees to provide to Wickr its reasonable cooperation in Wickr's performance of its obligations hereunder, including providing any information and assistance to the extent reasonably requested by Wickr. Such cooperation will be at Customer's sole cost and will be excluded from any calculation of Fees. Customer acknowledges and agrees that Wickr shall not be liable for any failure, delay, or damages arising from or related to Customer's failure or delay in providing such cooperation.

**12.3 Relationship of Parties.** The Parties intend that the relationship between them created under this Agreement is that Customer is an independent contractor of Wickr only, and nothing contained herein is intended to create any other relationship between the Parties. Customer is not to be considered an employee, agent, joint venturer or partner of Wickr for any purpose whatsoever. Neither Party is granted any right or authority to assume or create any obligation or responsibility for, or on behalf of, the other Party or to otherwise bind the other Party in any way.

**12.4 Compliance with Laws.** Each Party will comply with all applicable laws, statutes, ordinances and regulations, including the laws and regulations governing export and import of the Service, data privacy, and regulation of software use. Customer shall not provide, transport, export, re-export, or otherwise make available, whether directly or indirectly and regardless of form, including through visual access, any Service or any technology or technical data used to provide any Service or derived therefrom without Wickr's prior written consent, and in no event: (a) into Cuba, Iran, North Korea, Sudan, Syria, the Crimea region of Ukraine, or any other country subject to United States trade sanctions or embargo, or to individuals or entities controlled by such countries or to nationals or residents of such

countries (other than nationals who are lawfully admitted permanent residents of countries not subject to such sanctions); (b) to anyone on any denied, prohibited, or unverified list maintained by the United States, including the United States Treasury Department's list of Specially Designated Nationals and Blocked Persons, the Foreign Sanctions Evaders List, the Sectoral Sanctions Evaders List, or the United States Commerce Department's Denied Person's or Entities lists; or (c) to anyone that Customer knows or has reason to believe will use the Service and its related technology and technical data in connection with prohibited proliferation-related activities, including biological and chemical weapons, missile, and nuclear applications. Customer represents and warrants that: (i) it is not located in, under the control of, a national or resident of, and shall not use any Service in any such country listed in subsection (a) above; and (ii) it is not prohibited from participating in United States export or re-export transactions by any federal agency of the United States government. Customer represents and warrants that it will not provide access to any User that: (iii) is located in, under the control of, a national or resident of, or intends to use any Service in any such country listed in subsection (a) above; and (iv) is not prohibited from participating in United States export transactions by any federal agency of the United States government.

**12.5 Assignments.** Customer may not assign or delegate, by operation of law or otherwise, any of its rights under this Agreement (including its licenses with respect to the Service) to any third party without Wickr's prior written consent. Any such attempted assignment or delegation shall be void.

**12.6 Notices.** All notices, consents and approvals under this Agreement must be delivered either (a) via email to Customer's registered email address or, if to Wickr, to [legal@wickr.com](mailto:legal@wickr.com); or (b) in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other Party at the address set forth beneath such Party's signature, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either Party may change its address by giving written notice of the new address to the other Party.

**12.7 Governing Law and Venue.** This Agreement and all disputes arising hereunder or relating hereto shall for all purposes be governed and interpreted solely and exclusively by the laws of the State of Delaware without reference to conflict of laws principles. Except for an action for injunctive relief brought pursuant to Section 12.8 below, any action or proceeding arising from or relating to this Agreement shall be brought solely and exclusively in the state or federal courts located in Wilmington, Delaware, and each Party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding and irrevocably waives any objections thereto.

**12.8 Remedies.** Except as otherwise expressly provided herein, the Parties' rights and remedies under this Agreement are cumulative. Customer acknowledges that the Service contains



valuable trade secrets and proprietary information of Wickr and its suppliers and that any breach by Customer of this Agreement may cause irreparable harm to Wickr, for which remedies at law may be inadequate. Accordingly, Customer agrees that, in addition to all other remedies at law or under this Agreement, Wickr may enforce any provision of this Agreement by seeking equitable relief (including an injunction) without the need to post bond or other security or to prove the inadequacy of monetary damages.

**12.9 No Third Party Beneficiaries.** Except as expressly stated herein, each Party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties hereto and their successors and permitted assigns.

**12.10 Government Users.** If any Service is being acquired on behalf of or is to be used by any governmental entity, including the United States Government (a “**Government User**”), then the following provision applies: Each Service is being provided as a “commercial item” as that term is defined in 48 C.F.R. §2.101, consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. §12.212 and 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 and 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, all Services are commercial items provided to the Government User with only those rights customarily provided to all other users as set forth in this Agreement. Title to the Service shall at all times remain with Wickr regardless of the use of any federal, state, or other governmental funds in its development.

**12.11 Currencies.** All amounts due and payable hereunder shall be calculated and paid in United States dollars.

**12.12 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**12.13 Severability.** If any provision of this Agreement is unenforceable, such provision will be modified and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. If such modification is not possible under applicable law, the unenforceable provision shall be stricken and the remainder of the agreement shall continue in full force and effect.

**12.14 Construction.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Agreement. Unless otherwise expressly stated, when used in this Agreement the word “including” means “including but not limited to.” Unless otherwise expressly stated, references to any section numbers in this Agreement shall mean the corresponding sections of this Agreement.

**12.15 Force Majeure.** Neither Party will be liable for any failure to fulfill its obligations hereunder due to causes beyond its reasonable control, including acts or omissions of government or military authority, acts of God, shortages of materials, transportation delays, acts of terrorism, power shortages or outages, earthquakes, fires, floods, labor disturbances, riots, or wars.

**12.16 Entire Agreement.** This Agreement together with all Exhibits attached hereto and other documents referenced herein constitutes the complete and final agreement between the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous understandings, agreements, or other communications between the Parties, oral or written. This Agreement may be amended only in a written document signed by both Parties.

**12.17 Counterparts.** This Agreement may be executed in counterparts, by facsimile, or both, each of which will be considered an original, but all of which together will constitute the same instrument.

*[Signature Page to Follow]*



IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their authorized representatives as of the Effective Date.

**WICKR INC.**

**CUSTOMER**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Jennifer DeTrani

Name: \_\_\_\_\_

Title: General Counsel

Title: \_\_\_\_\_

Address for Notice:

Address for Delivery and Notice:

1459 18<sup>th</sup> St., #313

\_\_\_\_\_

San Francisco CA 94107

\_\_\_\_\_

Attn: Jennifer DeTrani

Attn: \_\_\_\_\_





**EXHIBIT A  
DEAL SPECIFICS**

**Initial Term:** *[To be inserted]*

**Service(s):** *[To be inserted]*

**Fees:** *[To be inserted]*

**Payment Schedule:** *[To be inserted]*

**Usage Limits:** *[To be inserted; e.g., limited to number of Users]*

**Enhanced Maintenance & Support:** *[Scope and applicable fees to be inserted, as applicable]*