

TORQ TECHNOLOGIES MASTER SERVICE AGREEMENT

This Torq Technologies Master Service Agreement ("**Agreement**") is entered into as of this [] day of [], 202[] ("**Effective Date**") by and between **TORQ TECHNOLOGIES INC.**, a Delaware corporation with an address at 205 Detroit Street, Denver, CO 80206, email: legal@torq.io ("**Torq**") and [**CUSTOMER ENTITY**], a company incorporated in [], with an address at [] ("**Customer**"), email: []. The parties herein may be referred to individually as a "**Party**", and collectively as the "**Parties**".

WHEREAS, Torq is the owner, developer and provider of the Services (as defined below); and

WHEREAS, Customer wishes to access and use the Services for its internal business purposes; and Torq agrees to provide the Services to Customer, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS.** The following capitalized terms have the meanings set forth below:

"**Acceptable Use Policy**" means Torq's Acceptable Use Policy attached herein as **Schedule C**.

"**Affiliate**" means, with respect to either Party, any person, organization or entity controlling, controlled by or under common control with, such Party, where "control" means direct or indirect ownership or control of more than 50% of the voting interests of such Party.

"**Channel Partner**" means a Torq-authorized distributor, reseller or other channel partner for the Services.

"**Cloud Services**" means the Product and Support Services.

"**Customer Data**" means any data or information submitted or uploaded to, ingested or transmitted through, the Cloud Services, by or on behalf of Customer.

"**Deliverables**" means any work product to be provided to Customer by Torq as part of the Professional Services, as set out in the applicable SOW.

"**Documentation**" means operational guides or similar documentation provided in connection with the Cloud Services. Unless the context requires otherwise, references herein to Cloud Services shall be deemed to include its Documentation.

"**Force Majeure Event**" means any event beyond the reasonable control of a Party, including but not limited to interruption or failure of the Internet or any utility service, strikes, shortages, riots, fires, acts of God, pandemic or epidemics, war, terrorism or governmental action.

"**Intellectual Property Rights**" means all patent rights (including utility models), copyrights, trademark and service mark rights, trade secret rights, and any other similar proprietary or intellectual property rights (registered or unregistered) throughout the world, together with all applications for any of the foregoing, and all goodwill associated with the foregoing.

"**Order Form**" means an ordering document issued by Torq for the provision of the Services in accordance with the selected Subscription Plan, and agreed to by Customer or Channel Partner by way of signature or issuance of a separate purchase order by Customer or a Channel Partner (as applicable), which Order Form shall hereby be incorporated into this Agreement by reference.

"**Permitted User(s)**" means any employee, contractor, service provider or other representative of Customer who is authorized to access and use the Cloud Services.

"**Product**" means Torq's proprietary security hyperautomation and management software-as-a-service product, including all improvements, updates, upgrades and additions to the foregoing.

"**Professional Services**" means professional services in connection with the Cloud Services, which may include implementation, configuration, consulting and training services.

"**Services**" means the Cloud Services and the Professional Services.

"**SLA**" means Torq's Support and Service Level Agreement attached hereto as **Schedule A**.

"**Statement of Work**" or "**SOW**" means any statement of work executed by Torq and Customer for the provision of Professional Services to Customer, which SOW shall be incorporated into this Agreement by reference.

"**Subscription Plan**" means the inclusions and usage or consumption limitations with respect to the Services purchased, as specified in the applicable Order Form.

"**Subscription Term**", "**Initial Subscription Term**" and "**Renewal Subscription Term**" shall have the meanings set forth in Section 8.2.

"**Support Services**" means technical support services as specified in the SLA.

“Torq AI Terms” means Torq’s attached AI Terms as Schedule D.

2. PERFORMANCE BY AFFILIATES

- 2.1. Any Customer Affiliate may enter into an Order Form and access and use the Services hereunder, provided that such Affiliate is not a direct competitor of Torq, and further provided that Customer shall remain fully liable for each Customer Affiliate’s compliance with the terms of this Agreement. In such event, any reference to “Customer” in this Agreement shall refer to such Customer Affiliate, as applicable.
- 2.2. Torq’s obligations hereunder may be performed by any of its Affiliates. To the extent that any Torq Affiliate performs under this Agreement, Torq shall be equally responsible for such Affiliate’s obligations as if it were the performing Affiliate.

3. ACCESS TO CLOUD SERVICES

- 3.1. Access and Use Rights. Subject to the terms and conditions of this Agreement, Torq grants Customer and its Affiliates (if applicable) during the Subscription Term, a limited, worldwide, non-exclusive, non-transferable, non-sublicensable right to access and use the Cloud Services in accordance with the Documentation for its internal business purposes.
- 3.2. Use Restrictions. As a condition to (and except as expressly permitted by) the access and use rights granted hereunder, Customer shall not, and shall not allow any Permitted User or any third party to, directly or indirectly: (a) sell, license, sublicense, assign, transfer, lease, or otherwise distribute or make available the Cloud Services to any third party; (b) copy, modify, translate or create a derivative work of the Cloud Services; (c) decompile, disassemble, reverse engineer or otherwise attempt to discover the source code or non-literal aspects of the Cloud Services ; (d) remove or alter any trademarks or other proprietary notices related to the Cloud Services; (e) circumvent, disable or otherwise interfere with security-related or technical features of the Cloud Services or features that enforce use restrictions; (f) upload or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Cloud Services; (g) access or use the Cloud Services in any manner in order to circumvent the Subscription Plan, or in any manner designed to circumvent the unique identity requirement of a Permitted User; (h) disclose the results of any testing or benchmark studies to any third party; (i) use the Cloud Services to develop any service or product that is the same as, substantially similar to or otherwise competitive with, the Cloud Services; (j) use the Cloud Services in a manner that violates or infringes any rights of any third party or any applicable laws, including but not limited to privacy rights, intellectual property rights, and export control laws; or (k) use the Cloud Services, including transmitting Customer Data, in a manner that violates Torq’s Acceptable Use Policy.
- 3.3. Permitted Users. When creating a Customer account for use of the Cloud Services (“**Customer Account**”), and when adding Permitted Users as authorized users of said Customer Account, Customer agrees that: (a) all registration information regarding Customer and each Permitted User, as required, shall be accurate and complete; (b) the Cloud Services may be accessed solely by Permitted Users, and Customer shall be responsible for the addition and deletion of Permitted Users from the Customer Account and for ensuring that each Permitted User’s login credentials and password remain confidential and secure; (c) Customer shall ensure that Permitted Users comply at all times with the terms of this Agreement, and shall remain fully responsible for all activities of each Permitted User and/or all activities that occur under the Customer Account; and (d) Customer shall promptly notify Torq in writing upon becoming aware of any unauthorized access or use of the Customer Account.

4. FEES AND PAYMENT

- 4.1. Subscription Fees. In consideration for provision of the Cloud Services, Customer shall pay Torq the fees as specified in the Order Form in accordance with the GSA Schedule Pricelist (“**Subscription Fees**”).
- 4.2. Fees for Professional Services. Customer shall pay Torq fees in respect of any Professional Services, as specified in the applicable Order Form and SOW in accordance with the GSA Schedule Pricelist (“**Professional Services Fees**”; together with the Subscription Fees, the “**Fees**”).
- 4.3. Expansions and Upgrades. Customer may elect to expand and/or upgrade the Subscription Plan at any time. Any such expansion or upgrade shall be purchased for the remainder of the then-current Subscription Term. Any Order Form issued with respect thereto shall be incorporated into this Agreement by reference.
- 4.4. Overages. Customer’s use of the Cloud Services may be subject to certain usage limitations as set out in the Order Form and/or Documentation (e.g. maximum cases per month for use of Torq AI). Customer acknowledges that exceeding these usage limitations may incur additional fees.
- 4.5. Reserved.
- 4.6. Payment Terms. Unless expressly stated otherwise in this Agreement or in any Order Form or SOW: (a) Reserved; and (b) all Fees are payable, and shall be invoiced in advance; and (c) all Fees shall be paid within thirty (30) days of receipt of invoice. Any Fees not paid when due will accrue interest at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- 4.7. Taxes

- 4.7.1. Torq shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k). Customer shall provide a valid tax exemption certificate if claiming a tax exemption.
- 4.7.2. To the extent that Torq is required to collect and remit any Taxes owed by Customer, Torq shall invoice Customer, as a separate line item, the amount of any such tax. For tax calculation purposes, Torq shall use Customer's address stated in the preamble of this Agreement as the address of the user of the Services. Customer shall be solely responsible for the collection of Taxes and remittance thereof to the relevant tax authorities arising from the extension of the use of such Services to Customer's employees, third party contractors and consultants located in multiple states. Neither Party shall have any responsibility or obligation to report or pay to any taxing authority any personal property or intangible taxes or any tax on income that may be imposed by a taxing authority against the other Party in connection with the Services.
- 4.7.3. Reserved.

5. CUSTOMER DATA, SECURITY AND PRIVACY

- 5.1. **Ownership.** As between the Parties, Customer is, and shall be, the sole and exclusive owner of all Customer Data. Customer grants Torq and its Affiliates during the Subscription Term, a worldwide, non-exclusive, non-assignable (except as provided herein), non-sublicensable, non-transferable, royalty-free license to access, use, and process any Customer Data to: (a) provide the Services to Customer; (b) address technical or security issues; (c) comply with applicable law and regulations; (d) investigate any claim that the Customer Data violates any terms of this Agreement; and (e) as expressly permitted in writing by Customer.
- 5.2. **Security.** Torq implements appropriate technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of Customer Data, as set forth in Appendix 3 to the DPA and in accordance with Torq's security policies available at <https://securitytrust.torq.io/> ("**Security Documentation**"), as may be updated from time to time, provided that any change to any such measures or policies shall not materially diminish the existing measures in place as of the Effective Date.
- 5.3. **Privacy.** The Parties agree to comply with the terms of the Data Processing Addendum attached hereto as **Schedule B** ("**DPA**"), which shall form an integral part of this Agreement. Personal Data processed by Torq in its capacity as a data controller (or equivalent term under applicable data protection laws) shall be subject to Torq's privacy policy (<https://torq.io/privacy/>) (as updated from time to time). Torq shall provide Customer with no less than thirty (30) days' prior written notice of any material changes to such privacy policy (as defined under GSAM 552.212-4(w)(1)(vi)).
- 5.4. **Customer Compliance.** Customer hereby represents and warrants that: (a) Customer has obtained and shall maintain all rights, licenses, consents, permissions, power and/or authority, necessary to grant the rights herein to any Customer Data, including by providing all required notices and obtaining and maintaining legal bases to allow Torq to process personal data; and (b) Customer Data shall comply, and be subject to, Torq's Acceptable Use Policy. Customer shall be solely responsible for Customer Data, and other than Torq's security, data protection and confidentiality obligations expressly set forth in Sections 05.2, 5.3 and 11 respectively, Torq assumes no responsibility or liability for Customer Data.

6. SUPPORT SERVICES AND PROFESSIONAL SERVICES

- 6.1. **Support Services.** Subject to Customer remaining current on payment of all Subscription Fees hereunder, Customer shall be entitled to receive Support Services in connection with its use of the Cloud Services during the Subscription Term, in accordance with the Order Form and SLA.
- 6.2. **Professional Services.** Customer may elect to purchase Professional Services in connection with the Services, as set forth in the Order Form and/or the SOW.

7. ADDITIONAL CLOUD SERVICE TERMS

- 7.1. **Third Party Services.** Customer's use of any third party products, services, applications and/or tools which interoperate with the Cloud Services ("**Third Party Services**"), shall be governed solely by the terms applicable to such Third Party Service as agreed between Customer and said third party provider. Customer shall be solely responsible for the use of any Third Party Service, including the transfer, collection, processing, modification and/or deletion of Customer Data. Torq assumes no responsibility and disclaims all liability and warranties with respect to any Third Party Service and Customer's use thereof.
- 7.2. **Torq AI.** Customer agrees that if it elects to use any artificial intelligence (AI) features and functionalities made available by Torq as part of the Cloud Services ("Torq AI"), the attached Torq AI Terms, in addition to the terms of this Agreement, shall govern use thereof. The use of Government data for the purpose of training Artificial Intelligence/Machine Learning (AI/ML) models and systems is prohibited without explicit written authorization from the Federal agency contracting officer. Customer's use of Torq AI shall be in accordance with the Subscription Plan and Section 4.4.
- 7.3. **Third Party Components.** Customer hereby acknowledges that the Cloud Services may use or include third party open source software, files, libraries or components which are subject to third-party open source license terms. A list of such components may be updated from time to time by Torq. Requests for receiving such open source list and their respective license terms may be forwarded to legal@torq.io. If there is a conflict between any open source license and the terms of this Agreement,

the open source license terms shall prevail but solely in connection with the related third party open source software. Torq makes no warranty or indemnity hereunder with respect to any third party open source software.

- 7.4. **Usage Data.** Customer agrees that Torq may collect and process information regarding the performance, security, access to and use of the Services by Customer, including product usage and support metrics, analytics, logs and intelligence ("**Usage Data**") for its internal business purposes, including to develop, improve, analyze secure and operate the Services, in each case without derogating from Torq's confidentiality, security and privacy obligations hereunder and in accordance with applicable law, and Torq's privacy policy (<https://torq.io/privacy/>).
- 7.5. **Pre-Released Services.** Torq may, at its sole discretion and from time to time, make available to Customer pre-released alpha or beta versions of certain services, as agreed between the Parties ("**Pre-Released Services**"). The warranty, indemnification and SLA terms in this Agreement shall not apply to any Pre-Released Services. In no event shall the total aggregate liability of Torq and its Affiliates in connection with the Pre-Released Services exceed one hundred United States Dollars (US \$100).

8. TERM AND TERMINATION

- 8.1. **MSA Term.** This Agreement commences on the Effective Date and shall continue in full force and effect while any Order Form and/or SOW is in effect, unless earlier terminated in accordance with the terms hereunder, in which case all Order Forms and SOWs then in effect shall automatically terminate.
- 8.2. **Subscription Term for Cloud Services.** The initial term for Customer's use of the Cloud Services shall be as set forth in the applicable Order Form, unless terminated earlier in accordance with the terms herein ("**Initial Subscription Term**"). The Initial Subscription Term may renew for successive additional terms as agreed between the Parties at least sixty (60) days prior to the end of the then-current term (each additional term, a "**Renewal Subscription Term**"; Renewal Subscription Term together with the Initial Subscription Term, "**Subscription Term**").
- 8.3. **Termination for Breach.** When the Customer is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Torq shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. In the event of termination by Customer for a material breach by Torq hereunder, Torq shall provide a prorated refund of any Fees pre-paid by Customer for the remaining period of the Subscription Term or under the terminated Order Form, as applicable, subject to Torq's right to set-off any outstanding payments owed to Torq.
- 8.4. Reserved.
- 8.5. **Effect of Termination.** Upon termination of this Agreement for any reason: (a) any and all rights granted hereunder shall automatically terminate; (b) Customer shall cease to access and use the Cloud Services and the Documentation; (c) Customer shall pay to Torq any outstanding Fees that have accrued as of termination (whether billed for or yet to be billed in accordance with issued Order Forms and/or SOWs); and (d) unless otherwise expressly agreed between the Parties, Torq shall delete all retained Customer Data in accordance with Torq's data retention policy. Termination shall not affect any rights and obligations accrued as of the date of termination nor shall it limit either Party from pursuing any other remedies available to it under applicable law. For the sake of clarity, unless otherwise explicitly set forth in this Agreement, any and all Fees paid or payable by Customer to Torq as of the termination date shall be non-refundable and without any right of set-off or cancellation.
- 8.6. **Survival.** The provisions of this Agreement that, by their nature, are intended to survive the termination of this Agreement in order to achieve the fundamental purposes of this Agreement (including but not limited to provisions relating to "Access to Cloud Services", "Intellectual Property", "Confidentiality", "Warranties; Disclaimer", "Limitation of Liability", and "Miscellaneous"), shall so survive.

9. PURCHASES VIA CHANNEL PARTNERS

If Customer is purchasing the Services through a Channel Partner, the following shall apply:

- 9.1. The Subscription Plan shall be determined with reference to the ordering document entered into between Torq and Channel Partner ("**Channel Partner Order Form**"), and Torq shall have no responsibility or liability, and Channel Partner shall be solely responsible, for any discrepancy between the Subscription Plan under such Channel Partner Order Form on the one hand, and the order issued by Customer to Channel Partner on the other hand; in such a case, Customer shall seek redress or realization or enforcement of such rights solely with such Channel Partner and not Torq.
- 9.2. Customer shall pay the applicable fees for the Services to the Channel Partner, as agreed between Customer and Channel Partner.
- 9.3. Torq may suspend or terminate Customer's access and use of the Services in accordance with the Contract Disputes Act if Customer fails to make timely payment of fees to Channel Partner.
- 9.4. If Customer is entitled to a refund under the terms and conditions of this Agreement, then, unless Torq specifies otherwise, Torq shall refund any applicable fees to Customer through the Channel Partner (and under no circumstances shall Torq be required to refund more than it received from Channel Partner).
- 9.5. Channel Partner shall not be authorized to make any promises or commitments on Torq's behalf, and Torq shall not be bound by any obligations to Customer other than as set forth in this Agreement.

10. INTELLECTUAL PROPERTY

- 10.1. Torq Property. As between the Parties, all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Services, and any and all improvements, derivative works, and/or modifications thereto regardless of inventorship or authorship, are owned solely and exclusively by Torq or its licensors. For the avoidance of doubt, except for the rights granted herein in Section 3.1 above, Customer is granted no other right or license to the Cloud Services, whether by implied license, estoppel, exhaustion, operation of law, or otherwise. Any rights not expressly granted herein are hereby reserved by Torq and its licensors.
- 10.2. Right to Use Deliverables. Subject to Customer's compliance with the terms of this Agreement, Torq grants Customer a limited, non-exclusive, non-transferable, non-sublicensable right to use the Deliverables for the duration of the Subscription Term, solely in connection with the Services.
- 10.3. Feedback. If Customer elects to provide any suggestions or feedback relating to the Services (collectively, "**Feedback**"), Customer acknowledges and agrees that Torq may use, modify, commercially exploit, and/or incorporate into the Services the Feedback (but excluding any Customer Confidential Information contained in the Feedback) without any obligation, payment, or restriction. Torq acknowledges that the ability to use this Agreement and any Feedback provided as a result of this Agreement in advertising is limited by GSAR 552.203-71.

11. CONFIDENTIALITY

Each Party and/or its Affiliates ("**Recipient**") may have access to certain non-public business and/or proprietary information and materials of the other Party and/or its Affiliates ("**Discloser**"), whether in tangible or intangible form ("**Confidential Information**"), prior to or after the Effective Date. Confidential Information includes, without limitation: (a) any information related to Discloser's business, such as cost data, pricing methodologies, price lists, business plans and opportunities, marketing plans, financial and accounting information, forecasts and valuations, market share data, sales volumes, discounts, and budgets; (b) business information relating to actual or potential customers, suppliers, products and services; (c) technical data, computer programs and software code (including firmware and source code), ideas, inventions, algorithms, know-how, analyses, specifications, processes, techniques, formulas, designs and drawings, architectures, and other technology and intellectual property; and (d) any other information which would reasonably be deemed to be of a confidential or proprietary nature in light of the circumstances of its disclosure. Customer acknowledges that the Product embodies Confidential Information of Torq, and Torq acknowledges that Customer Data is Confidential Information of Customer. As between the parties, Discloser is and shall remain the exclusive owner of all right, title, and interest (including without limitation all intellectual property rights) in and to its Confidential Information. Confidential Information shall not include information and material which: (a) at the time of disclosure by Discloser to Recipient hereunder, is in the public domain; (b) after disclosure by Discloser to Recipient hereunder, becomes part of the public domain through no fault of Recipient; (c) was rightfully in the Recipient's possession at the time of disclosure by Discloser hereunder, and which is not subject to prior continuing obligations of confidentiality; (d) is rightfully disclosed to Recipient by a third party having the lawful right to do so; or (e) independently developed by Recipient without use of, or reliance upon, Confidential Information received from Discloser. Recipient shall not disclose or make available Discloser's Confidential Information to any third party, except to its employees, contractors, advisers, agents and investors, subject to substantially similar written confidentiality undertakings and provided that Recipient shall remain fully liable for such disclosures. Recipient shall take commercially reasonable measures, at a level at least as protective as those taken to protect its own Confidential Information of like nature (but in no event less than a reasonable level), to protect Discloser's Confidential Information within its possession or control, from disclosure to a third party. Recipient shall use Discloser's Confidential Information solely for the purposes expressly permitted under this Agreement. In the event that Recipient is required to disclose Confidential Information of Discloser pursuant to any law, regulation, or governmental or judicial order, Recipient shall (a) promptly notify Discloser in writing of such law, regulation or order, (b) reasonably cooperate with Discloser in opposing such disclosure, (c) only disclose to the extent required by such law, regulation or order (as the case may be). Upon termination of this Agreement or otherwise upon written request by Discloser, Recipient shall promptly return or destroy the Confidential Information (as directed by Discloser) and certify compliance therewith in writing, provided however that Notwithstanding the foregoing, Recipient may retain a copy of the Confidential Information for legal, audit, insurance, regulatory or compliance purposes, provided that the terms of this clause shall continue to apply to any retained Confidential Information. Notwithstanding anything in this Agreement to the contrary, the pricing and payment terms under this Agreement are confidential and Recipient shall not disclose such Confidential Information to any third party (except to its accountants, lawyers, and potential investors) without Discloser's prior express written consent. Torq recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor.

12. WARRANTIES; DISCLAIMER

- 12.1. Mutual. Each Party represents and warrants that: (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, and has the full power and authority to enter into this Agreement, and grant the rights hereunder and assume the obligations set forth herein; (b) the execution and performance of this Agreement will not conflict with other agreements to which it is bound, nor violate applicable law; (c) it has obtained, and shall maintain and comply with, all necessary consents, approval, or authorization of any governmental or regulatory authority or other third party for execution and performance of this Agreement; and (d) it complies and shall comply at all times with any and all applicable laws and regulations (including, without limitation, all applicable privacy, data protection and export laws).
- 12.2. Torq Performance Warranty. Torq represents and warrants that under normal authorized use as permitted under this Agreement, the Product shall perform in material conformance with the Documentation. As Customer's sole and exclusive remedy and Torq's sole liability for breach of this warranty, Torq shall use commercially reasonable efforts to repair any error in the Product in accordance with the SLA. The warranty set forth in this Section shall not apply if the error results from or is otherwise attributable to: (a) modification of the Product by any persons other than Torq or its authorized contractors; (b) use

of the Product other than in accordance with the Documentation or this Agreement; (c) any fault in any Customer or third party software, systems, services, hardware or other equipment used in conjunction with the Product; (d) Customer's negligence or willful misconduct; (e) any Force Majeure Event.

- 12.3. Torq Professional Services Warranty. Torq represents and warrants that the Professional Services shall be performed in a timely and professional manner, consistent with generally-accepted professional standards. As Customer's sole and exclusive remedy and Torq's sole liability for breach of this warranty, Torq shall re-perform the non-conforming portions of the Professional Services in a timely manner.
- 12.4. OTHER THAN AS EXPLICITLY STATED IN THIS AGREEMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TORQ DOES NOT WARRANT THAT THE SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, NOR THAT THE SERVICES WILL OPERATE ERROR-FREE OR BE ACCURATE AT ALL TIMES. OTHER THAN THE WARRANTIES EXPLICITLY STATED IN THIS AGREEMENT, TORQ EXPRESSLY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, AND/OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING ANY WARRANTY, REPRESENTATION OR STATEMENT MADE BY ANY TORQ PERSONNEL OR ANY OTHER THIRD PARTY, INCLUDING ANY CHANNEL PARTNER.

13. LIMITATION OF LIABILITY

- 13.1. No Indirect Damages. EXCEPT FOR THE EXCLUDED CLAIMS SET FORTH IN SECTION 13.3 BELOW, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT FOR: (A) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; (B) ANY LOSS OF PROFITS, BUSINESS, OPPORTUNITY, REVENUE, CONTRACTS, ANTICIPATED SAVINGS, OR WASTED EXPENDITURE; (C) ANY LOSS OF, OR DAMAGE OR INTERRUPTION TO, DATA, NETWORKS, INFORMATION SYSTEMS, REPUTATION OR GOODWILL; AND/OR (D) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.
- 13.2. Liability Cap. EXCEPT FOR THE EXCLUDED CLAIMS SET FORTH IN SECTION 13.3 BELOW, THE COMBINED AGGREGATE LIABILITY OF EACH PARTY UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE TO TORQ DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE GIVING RISE TO LIABILITY. NOTWITHSTANDING THE FOREGOING, THE COMBINED AGGREGATE LIABILITY OF EACH PARTY ARISING IN CONNECTION WITH A MATERIAL BREACH BY SUCH PARTY OF ANY OF ITS OBLIGATIONS UNDER SECTIONS 5.2 AND 5.3 (SECURITY AND PRIVACY) SHALL NOT EXCEED THE GREATER OF (A) FIVE TIMES (5X) THE FEES PAID OR PAYABLE TO TORQ DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE GIVING RISE TO LIABILITY; OR (A) ONE MILLION UNITED STATES DOLLARS (US \$1,000,000).
- 13.3. Excluded Claims. THE FOREGOING LIMITATIONS OF LIABILITY UNDER SECTIONS 13.1 AND 13.2 ABOVE SHALL NOT APPLY FOR ANY LIABILITY ARISING OUT OF: (A) CUSTOMER'S BREACH OF ANY USE RESTRICTION UNDER SECTION 3.2 AND/OR INFRINGEMENT OF TORQ'S INTELLECTUAL PROPERTY RIGHTS; (B) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 11 (BUT EXCLUDING ANY BREACH OF CONFIDENTIALITY ARISING UNDER SECTIONS 5.2 AND 5.3); (C) TORQ'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 14; (D) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (E) PERSONAL INJURY OR DEATH RESULTING FROM TORQ'S NEGLIGENCE; (F) FRAUD; OR (G) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.
- 13.4. Conditions. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; (B) EVEN IF A PARTY HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES OR COSTS; (C) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (D) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY (INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, MISREPRESENTATION, RESTITUTION OR OTHERWISE).

14. INDEMNIFICATION

- 14.1. IP Infringement Claims. Torq agrees to have the right to intervene to defend, at its expense, any third party action or suit brought against Customer alleging that the Product, when used as permitted under this Agreement and in accordance with the Documentation, infringes the intellectual property rights of a third party ("**IP Infringement Claim**"), and Torq will pay any damages awarded in a final court judgment against Customer that are attributable to any such IP Infringement Claim, provided that: (a) Customer promptly notifies Torq in writing of such IP Infringement Claim; and (b) Customer grants Torq the sole authority to handle the defense or settlement of any such IP Infringement Claim and provides Torq with all reasonable information and assistance, at Torq's expense. Torq shall not be bound by any settlement entered into by Customer without Torq's prior written consent. Should the Product (in whole or in part) become, or in Torq's opinion is likely to become, the subject of an IP Infringement Claim, then Customer permits Torq, at Torq's sole discretion and expense, to: (a) obtain for Customer the right to continue accessing and using the Product (or part thereof); (b) replace or modify the Product (or part thereof) to avoid the IP Infringement Claim; or (c) if options (a) and (b) are not, in Torq's opinion, commercially feasible, terminate this Agreement upon written notice to Customer, and provide a prorated refund for any fees pre-paid by Customer. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

- 14.2. Exceptions. Torq shall have no liability under this Section to the extent that the IP Infringement Claim is based on or results from: (a) any modification to the Product not made by Torq or its authorized contractors; (b) use of the Product not in accordance with the Documentation or this Agreement; and/or (c) Customer Data.
- 14.3. Sole Remedy. This Section represents Torq's sole obligation and liability, and Customer's sole remedy, for claims of actual or alleged infringement.

15. INSURANCE

Torq shall maintain during the Subscription term the following insurance coverages with a reputable insurer with AM Best rating of A-:

- 15.1. Commercial General Liability in an amount not less than two million United States Dollars (US \$2,000,000) per claim and in the aggregate; The Commercial General Liability Insurance shall also include Umbrella Excess Liability Insurance in an amount of two million United States Dollars (US \$2,000,000) per occurrence and in the aggregate.
- 15.2. Workers Compensation and Employer Liability with limits no less than the minimum amount required by applicable law;
- 15.3. Professional Liability (Errors and Omissions) combined Cyber Liability in an amount not less than five million United States Dollars (US \$5,000,000) per claim and in the aggregate.

Upon request, Torq shall provide to Customer applicable certificates evidencing such insurance coverages. Torq agrees that the requirements under this Section in respect of insurance coverage shall not limit its liability under the MSA.

16. MISCELLANEOUS

- 16.1. Entire Agreement; Amendments. This Agreement and its Schedules represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes and replaces all prior and contemporaneous oral or written understandings and statements by the Parties with respect to such subject matter. This Agreement may only be modified or supplemented by a written instrument duly signed by both Parties.
- 16.2. Order of Precedence. Except as otherwise explicitly stated in an Order Form, this Agreement supersedes the following, each of which shall be deemed void and of no effect: (a) any shrink-wrap, click-wrap, or similar non-negotiated terms of use that accompany the Cloud Services, even if use requires "acceptance" thereof; and (b) any terms or conditions (whether printed, hyperlinked, or otherwise) in any purchase order or other standardized business forms, which purport to supersede, modify or supplement this Agreement or an Order Form. In the event of any discrepancy or ambiguity in the Agreement and any Order Form or SOW, the terms of this Agreement shall prevail, unless the terms of the Order Form and/or SOW expressly and specifically note that terms set forth herein are being amended, in which case the terms of the Order Form and/or SOW shall control as to such provision.
- 16.3. Assignment. This Agreement may not be assigned, in whole or in part, by either Party without the prior express written consent of the other Party not to be unreasonably withheld, except however that either Party may assign this Agreement in whole to: (a) an Affiliate; or (b) a successor in connection with a merger, consolidation, or acquisition of all or substantially all of the assigning Party's assets or business relating to this Agreement in accordance with the provisions set forth at FAR 42.1204. Any assignment in contravention of this Section will be null and void. Subject to the provisions of this Section, this Agreement will bind and benefit each Party and its respective successors and assigns.
- 16.4. Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and is hereby disclaimed. Notwithstanding the foregoing, each Party may seek equitable relief in any court of competent jurisdiction.
- 16.5. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) such provision shall be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such illegality, invalidity or unenforceability), and shall be substituted (in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.
- 16.6. Waiver; Remedies. No failure or delay on the part of either Party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Except as may be expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or will be deemed, exclusive of any other right or remedy under this Agreement, at law, or in equity, but will be cumulative of such other rights and remedies.
- 16.7. Relationship. The relationship of the Parties is solely that of independent contractors, and nothing in this Agreement shall be construed to create a relationship of employer and employee, principal and agent, joint venture, partnership, association, or otherwise between the Parties. Neither Party has any authority to enter into agreements of any kind on behalf of the other Party and neither Party will create or attempt to create any obligation, express or implied, on behalf of the other Party.
- 16.8. Publicity. may use Customer's name and on Torq's website and in its promotional materials to state that Customer is a customer of Torq to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

- 16.9. No Third Party Beneficiaries. Except as expressly stated otherwise herein, there shall be no third party beneficiaries of or under this Agreement.
- 16.10. Export Compliance. Each Party shall be responsible for complying with Export Control Laws, in connection with the Services. Customer represents and warrants that: (a) it is not a resident of (or will use the Services in) a country that the U.S. government has embargoed for use of the Services, nor is an entity named on the U.S. Treasury Department's list of Specially Designated Nationals or any other applicable trade sanctioning regulations of any jurisdiction; and (b) its country of residence and/or incorporation (as applicable) is the same as the country specified in the contact and/or billing address provided to Torq. Customer shall not transfer, export, re-export, import, re-import or divert the Services in violation of any Export Control Laws (as defined below), and shall not transfer, export, re-export, import, re-import or divert any the Services to Lebanon, Syria, Iran, Iraq, Sudan, Yemen, Cuba, or North Korea (or other countries specifically designated in writing by Torq from time to time). For the purposes herein, "**Export Control Laws**" means all applicable export and re-export control laws applicable to Customer and/or Torq or its Affiliates, as well as the United States' Export Administration Regulations (EAR) maintained by the US Department of Commerce, trade and economic sanctions maintained by the US Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations (ITAR) maintained by the US Department of State.
- 16.11. Force Majeure. In accordance with GSAR Clause 552.212-4(f), neither Party shall be liable by reason of any failure or delay in the performance of its obligations, other than payment obligations, due to a Force Majeure Event.
- 16.12. Notices. All notices or other communications provided for in connection with this Agreement shall be in writing and shall be given in person, by courier, registered mail, or by email, addressed as set forth in the preamble above. All notices and other communications shall be deemed delivered as follows: (a) if delivered by courier service, one (1) business day after sending; (b) if sent by registered mail, three (3) days after sending; (c) if sent by email, upon receipt of delivery confirmation.
- 16.13. Electronic Communications. By using the Services, Customer agrees to receiving electronic communications from Torq, including notices or other information related to the Services. Customer acknowledges that these electronic communications are part of its relationship with Torq and its use of the Services. Customer agrees that such electronic communications will satisfy any legal communication requirements, including that such communications be in writing.
- 16.14. Counterparts. This Agreement may be executed electronically and in any number of counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, Torq and Customer have caused this Agreement to be executed by their respective duly authorized officers or representatives as of the Effective Date.

TORQ TECHNOLOGIES INC.

By: _____

Name: _____

Title: _____

[CUSTOMER]

By: _____

Name: _____

Title: _____

SCHEDULE A

SUPPORT AND SERVICE LEVEL AGREEMENT (SLA)

1. DEFINITIONS

“Actual Availability” means the total time (in minutes) in any given calendar month, that the Product is available for use by Customer, as reported in Torq’s monthly reports delivered to Customer or as reported on Torq’s website at <https://status.torq.io/>. Actual Availability shall be calculated as set forth in Section 2.1 below.

“Error” means a bug, defect, or error that causes the Product to fail to perform in all material respects in accordance with the functionality set forth in Torq’s Documentation.

“Monthly Fee” means the annual Subscription Fees divided by twelve (12).

“Resolution” means the resolution provided by Torq that causes the Product to perform once again in all material respects in accordance with the functionality described in the Documentation.

“Scheduled Availability” means the total time (in minutes) in any given calendar month.

“Scheduled Maintenance” means the total time (in minutes) in any given calendar month that the Product is not available to Customer due to the planned service outages during which Torq may perform network upgrades and infrastructure changes, including those to improve the availability, security and performance of service. Any Scheduled Maintenance (a) for which Torq failed to provide notice as required hereunder; or (b) that occurs outside of the Scheduled Maintenance hours as set forth in Section 3.2 below, shall constitute **Unscheduled Downtime**.

“Severity Level” means the classification of an Error based on the definitions set forth in Section 3.1.

“Service Level Credits” means credits made available to Customer as a result of Torq’s failure to meet the Availability Guarantee during any calendar month of the Subscription Term.

“Support Services” means support services provided by Torq to respond to and resolve Errors at no additional charge, as set forth in Section 3.

“Support Standards” means Response Time and Targeted Time to Restore/Workaround as set forth in Section 3.3.

“Targeted Time to Restore/Workaround” means a temporary code fix or workaround or an effective alternative way of achieving the documented results.

“Unscheduled Downtime” means the total time (in minutes) in any given calendar month, that Customer is unable to access the Product entirely, but excluding the total time (in minutes) that Customer is unable to access the Product due to: (a) Scheduled Maintenance; (b) a Force Majeure Event; (c) use of the Product by Customer other than as authorized under the Agreement or Documentation; (d) any Customer or third-party software, systems, services, hardware or other equipment; and/or (e) Customer Data.

“Update” means a written notification provided by Torq to Customer on the status of the Error and the estimated time for Resolution.

2. AVAILABILITY GUARANTEE AND SERVICE LEVEL CREDITS

- 2.1 **Availability Guarantee.** Torq shall use commercially reasonable efforts to provide Actual Availability equal to 99.9% for each calendar month period during the Subscription Term of the applicable Order Form (“**Availability Guarantee**”), as measured and monitored by Torq. Actual Availability will be calculated on a monthly basis using the following formula:

$$[(X - Y) / X] * 100 = \%$$

Where: X = Scheduled Availability and Y = Unscheduled Downtime

2.2 Scheduled Maintenance

- 2.2.1 **Notice.** Torq shall provide Customer with at least seventy-two (72) hours advance written notice of any Scheduled Maintenance. Torq will provide such notices to Customer via its support portal. Notwithstanding the foregoing, should Customer contact Torq, email permissible, requesting that Torq delay such Scheduled Maintenance for at least forty-eight (48) hours, Torq shall use commercially reasonable efforts to delay such Scheduled Maintenance for such period.
- 2.2.2 **Scheduled Maintenance Hours.** Torq shall use commercially reasonable efforts to schedule Scheduled Maintenance during the hours between 10:00 P.M. and 6:00 A.M Eastern Standard Time (EST).
- 2.2.3 **Limit on Scheduled Maintenance.** Scheduled Maintenance shall not exceed fifteen (15) cumulative hours in any calendar month.

2.3 Service Level Credits

- 2.3.1 **Calculation.** If Torq in any given calendar month during the Subscription Term fails to achieve the Availability Guarantee, Torq will provide Customer with a Service Level Credit, calculated as follows:

$X * Y$

Where: X = the Monthly Fee; and Y = the percentage corresponding with the Actual Availability during the calendar month during which Torq failed to achieve the Availability Guarantee, as set forth in the following table:

Actual Availability	Service Level Credit
Under 99.5% but greater than or equal to 98.0%	5%
Under 98.0% but greater than or equal to 95.0%	10%
Below 95.0%	25%

- 2.3.2 **Requests.** In order to receive a Service Level Credit, Customer shall submit a request to support@torq.io within forty-five (45) days following the end of the month during which the Availability Guarantee was not met. Customer's failure to provide the request within the aforementioned timeframe will disqualify Customer from receiving a Service Level Credit. The aggregate maximum number of Service Level Credits to be issued by Torq to Customer for any and all Unscheduled Downtime periods that occur during the Initial Subscription Term or any Renewal Subscription Term (as applicable), shall not exceed twenty percent (20%) of the Subscription Fees due to Torq for the Cloud Services during the Initial Subscription Term or Renewal Subscription Term, as applicable.

- 2.3.3 **Credit Issuance.** Service Level Credits will be credited towards Customer's next Order Form for any Renewal Subscription Term and will be deducted from Customer's next billing cycle/invoice. Service Level Credits will not entitle Customer to any refund or other payment from Torq. Notwithstanding this, Customer shall be entitled to receive a refund of the outstanding Service Level Credits from Torq, which were not utilized upon termination of this Agreement.

3. **SUPPORT SERVICES FOR ERROR RESOLUTION**

- 3.1 **Error Reporting.** Torq shall provide online and remote support to the Customer on a 24x7x365 basis via email support@torq.io.
- 3.2 **Error Severity Levels.** In the event of an Error, Customer shall, at the time it reports such Error to Torq, designate in good faith the Severity Level for such Error, using the definitions set forth in the table below. Torq may modify the designation of such incident.

Severity Level (SL)	Definition
SL1	An Error that renders the Product completely inoperative with no alternative available.
SL2	An Error that has a high impact on key portions of the Product, operating components and activities adversely impacted while operating in a production environment.
SL3	An Error that constitutes a change in behavior in the Product where urgency and impact is medium, with some business impact on the Product in a production environment, resulting in some functionality loss on Customer's use of the Product. The Product is usable but does not provide a function in the most convenient or expeditious manner.
SL4	An Error in the Product where urgency and impact is low, with little or no impact on the quality, performance or functionality of Customer's use of the Product.

- 3.3 **Error Resolution.** Provided that Customer has submitted a support ticket alerting Torq of any Error, Torq shall use commercially reasonable efforts to comply with the Support Standards set forth in the table below for the corresponding Severity Level. "Response Time" shall be measured from the time an Error is reported to Torq by Customer and Torq's acknowledgement of the Error. "Targeted Time to Restore/Workaround" shall be measured from the moment an Error is reported to Torq by Customer and Torq delivers to Customer the workaround. For issues where the root cause includes issues outside of the Torq system, the Targeted Time to Restore times shall not apply.

Severity Level (SL)	Response Time	Targeted Time to Restore/Workaround	Parties Commitment	Updates
SL1	1 hour	Work until resolved	Torq and Customer will commit the necessary resources around the clock for Error Resolution, to obtain workaround or reduce the severity of the Error.	2 hours
SL2	4 hours	48 hours	Torq and Customer will commit the necessary resources around the clock for Error Resolution, to obtain workaround or reduce the severity of the Error	12 hours
SL3	8 hours	96 hours	Torq and Customer will commit an engineer during normal business hours for Resolution, to obtain workaround or reduce the severity of the Error	24 hours
SL4	2 business days	N/A	Torq and Customer will handle the case during Business Hours to obtain a Resolution or workaround or to reduce the severity of the Error, if applicable	In response to Customer's request

- 3.4 Escalation. If, in Customer's good faith determination, a SL1 or SL2 Error is not progressing toward resolution within the timeframes above, then at Customer's request, Torq will escalate the Error (and provide notice of such escalation to Customer) within its management structure within the following timeframes:

Severity	Escalation Time
SL1	2 hours after incident was reported
SL2	8 hours after incident was reported

- 3.5 Exclusions. For the sake of clarity, the foregoing response and resolution obligations shall not apply with respect to any Errors resulting from the following:

- 3.5.1 Modification of the Product by persons other than Torq or Torq's authorized third parties;
- 3.5.2 Use of the Product other than in accordance the Documentation or the Agreement;
- 3.5.3 Any fault in any Customer or third party equipment, software or other technology used in conjunction with the Product;
- 3.5.4 Customer's negligence or willful misconduct; and/or
- 3.5.5 Any Force Majeure Event;

3.6 Customer Responsibilities

- 3.6.1 Customer agrees to receive communications from Torq via e-mail, online chat, video calls, and other reasonable formats.
- 3.6.2 Customer's technical support contact shall cooperate with Torq during the provision of Support Services under this SLA.
- 3.6.3 Customer shall report to Torq all material problems with the Product and shall implement any reasonable corrective procedures provided by Torq reasonably promptly after receipt.
- 3.6.4 In order to receive remote support, Customer may be required to grant permission access to Torq via the Product.
- 3.6.5 Customer shall be solely responsible for its information technology infrastructure, including computers, servers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of Third-Party Services.

SCHEDULE B

US DATA PROCESSING ADDENDUM

1. INTERPRETATION AND DEFINITIONS

1.1. **Interpretation.** The headings contained in this DPA are for convenience only and shall not be interpreted to limit or otherwise affect the provisions of this DPA. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Agreement and/or the applicable Data Protection Laws and Regulations.

1.2. Definitions

"Business", "Business Purpose", "Consumer", "Contractor", "Commercial Purpose", "Controller", "Processor", "Sell", "Sensitive Data", "Share", and "Service Provider" have the meanings set forth under applicable Data Protection Laws and Regulations.

"Data Protection Laws and Regulations" means, insofar as they are applicable to the Processing of Personal Data under this DPA, any United States federal and state privacy and data protection laws which regulate the general purpose Processing of Personal Data, in each case as amended or superseded from time to time.

"Instructions" means the written, documented instructions issued by Customer to Torq directing Torq to perform a specific or general action regarding Personal Data (including, but not limited to, instructions to provide the Services under the Agreement and instructions under this DPA).

"Personal Data" means any information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, to or with an identified or identifiable natural person, which is Processed by Torq solely on behalf of Customer under the Agreement and this DPA.

"Sub-processor" means any third party service provider that is engaged by Torq to carry out specific Processing activities of Personal Data.

2. PROCESSING OF PERSONAL DATA

2.1. **Roles of the Parties.** The Parties acknowledge and agree that with regards to the Processing of Personal Data under the Agreement, Customer may be a Business (or a Controller) or a Service Provider (or Processor) acting on behalf of a third party (as applicable), and Customer appoints Torq as its Service Provider or Processor (as applicable) to Process Personal Data for the Business Purposes identified in Section 2.5 below.

2.2. **Details of Processing.** Details relating to the nature and purposes, and duration of the Processing, as well as the types of Data Subjects and Personal Data Processed are specified in **Appendix 1** (Details of the Processing).

2.3. **Customer's Obligations.** Customer shall comply with the Data Protection Laws and Regulations, the Agreement and this DPA, including without limitation when providing Instructions to Torq for the Processing of Personal Data. Customer shall have sole responsibility for the means by which Customer acquires Personal Data. Without limitation, Customer shall comply with any and all transparency-related obligations (including, without limitation, displaying any and all relevant and required privacy notices or policies), and shall have any and all required legal bases in order to collect, Process and transfer to Torq the Personal Data, and to authorize the Processing by Torq of the Personal Data under this DPA. Torq shall not be liable in the event of any claim brought by a third party, including, without limitation, a Data Subject, arising from any act or omission of Torq, to the extent that such is a result of Customer's instructions.

2.4. **Torq's Processing of Personal Data.** Torq shall Process Personal Data on behalf of Customer as necessary to provide the Services for the purposes specified in the Agreement and this DPA, all in accordance with the Instructions and Data Protection Laws and Regulations. Notwithstanding the foregoing, Torq shall promptly notify Customer if Torq determines that it can no longer meet its obligations under Data Protection Laws and Regulations. Torq will not: (i) Sell or Share Personal Data; or (ii) retain, use, or disclose Personal Data: (a) for any purpose other than for the specific purpose of performing the Services; (b) outside of the direct business relationship between the Parties; or (c) for a Commercial Purpose other than providing the Services to Customer; and (iii) combine Personal Data with other Personal Data sourced by Torq received from or on behalf of another customer except as permitted under the Agreement and Data Protection Laws and Regulations. Torq certifies that it understands the foregoing restrictions set out in this Section and will comply with them.

2.5. **Compliance Management.** Torq agrees that it will provide Customer with reasonable assistance and cooperate with Customer to ensure that Torq is Processing Personal Data in a manner consistent with Customer's obligations under Data Protection Laws and Regulation.

3. ASSISTANCE AND COOPERATION OBLIGATIONS

3.1. **Data Subject Rights.** If Torq receives a request from a Data Subject to exercise any of its rights under Data Protection Laws and Regulations, Torq shall, to the extent legally permitted, promptly notify Customer and redirect the Data Subject to Customer to enable Customer to respond directly to said request.

- 3.2. Cooperation Obligation. Taking into account the nature of the Processing, Torq shall use commercially reasonable efforts to assist Customer by appropriate technical and organizational measures, insofar as possible, for the fulfillment of Customer's obligations under applicable Data Protection Laws, including obligations related to the security of Processing Personal Data and notification of a Personal Data Incident (as defined below), provided Customer shall, to the extent permitted under Data Protection Laws and Regulations, reimburse Torq for reasonable costs arising from Torq's assistance, where the assistance exceeds reasonable commercial efforts and resources.

4. SUB-PROCESSORS

Sub-processing. Customer acknowledges that Torq updated list of Sub-processors is as set forth herein under **Appendix 2**, as updated from time to time, provided Torq: (a) notifies Customer upon any new or replacement Sub processor; and (b) imposes data protection and Processing requirements on such Sub-processor that are no less protective of the standards set forth in this DPA. Torq shall remain liable to Customer for any acts, errors, or omissions of its Sub-processors.

5. DATA SECURITY

- 5.1. Security Controls. Torq will implement and maintain the same level of protection of the Data Subjects' rights as required under Data Protection Laws and Regulations. Torq shall implement and maintain appropriate and reasonable security procedures and practices to protect Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. At a minimum, these measures should include, but are not limited to, encryption, confidentiality, integrity, availability and resilience of Torq's Services that contain or otherwise Process Personal Data.
- 5.2. Torq's Personnel. Torq will take appropriate steps to ensure compliance with Section this Section 4 by its employees, contractors, and vendors to the extent applicable to their scope of performance, including ensuring that all personnel authorized to Process Personal Data have agreed to an appropriate obligation of confidentiality.

6. THIRD-PARTY CERTIFICATIONS AND AUDITS

- 6.1. Audit Reports and Certifications. Upon request, Torq shall supply a confidential summary copy of relevant audit reports to Customer to allow Customer to verify Torq's compliance with its obligations under this DPA and the audit standards against which it has been assessed. If Customer cannot reasonably verify Torq's compliance with this DPA, Torq shall provide written responses to any reasonable request by Customer for additional information regarding its Processing activities under this DPA, provided that such right may only be exercised once annually during the Subscription Term.
- 6.2. On-site Audits. To the extent Customer cannot reasonably verify Torq's compliance with this DPA pursuant to Section **Error! Reference source not found.** above, or where required under applicable Data Protection Laws and Regulations, Customer may, no more than once annually during the term of the Agreement, and subject to providing Torq reasonable written notice of any audit, at least thirty (30) days in advance, conduct on-site audits to assess Torq's compliance with the terms of this DPA, at Customer's expense. Customer acknowledges that Torq has a multi-tenant cloud environment and that any on-site audit shall be limited to Torq's corporate headquarters or any other mutually-agreed upon Torq location. Audits shall be conducted during Torq's regular business hours and shall not impact Torq's Services or business operations. Audits may be conducted by Customer's personnel or another third party auditor mandated by Customer (provided that such auditor is not a competitor of Torq), subject to adequate confidentiality undertakings and provided that such audits shall be restricted to information applicable to Customer's use of the Services under the Agreement.

7. PERSONAL DATA INCIDENT MANAGEMENT AND NOTIFICATION

After becoming aware of any loss of, unauthorized access to, or unauthorized disclosure of Personal Data transmitted, stored or otherwise Processed by Torq or its Sub-processors ("**Personal Data Incident**"), Torq will notify Customer without undue delay (not to exceed seventy-two (72) hours), and take all reasonable steps to remediate the impact of the Personal Data Incident. Torq shall provide all such reasonable information and cooperation to Customer in order for Customer to fulfil its Personal Data Incident reporting obligations under applicable laws.

8. RETURN AND DELETION OF PERSONAL DATA

Subject to the Agreement and Torq's data retention policies, Torq shall, at Customer's election, delete or return the Personal Data to Customer during and/or at the end of the provision of the Services, and shall delete existing copies unless applicable law requires storage of the Personal Data. In any event, to the extent allowed by applicable law, Torq may retain a copy of the Personal Data for evidentiary purposes, for the establishment, exercise or defense of legal claims and/or otherwise to comply with applicable laws and regulations. If Customer requests the Personal Data to be returned, Personal Data shall be returned in the format generally available for Torq's customers

APPENDIX 1 - DETAILS OF THE PROCESSING

1. Nature and Purpose of Processing. Torq will Process the Personal Data in order to provide the Services to Customer, all as agreed by the Parties under the Agreement. Torq will use Personal Data in compliance with Customer's Instructions, and any applicable laws to which Torq is subject.
2. Duration of Processing. Torq will Process Personal Data for the duration of the provision of the Services as set forth in the Agreement, unless otherwise agreed upon in writing.
3. Categories of Data Subjects. The categories of data subjects relating to the Personal Data that will be Processed by Torq are dependent on Customer, and may include the following categories:
 - 4.1 Users authorized by Customer to access and use the Services;
 - 4.2 Customer's employees, agents, advisors and freelancers;
 - 4.3 Customer's customers, prospects, business partners and vendors, and any of their respective employees; and
 - 4.4 Any other third party individual whose Personal Data is provided by the Customer in connection with its use of the Services.
4. Type of Personal Data. When setting up a user account and using the Services to hyperautomate and manage security processes and cases, Customer may submit different types of Personal Data to the Services for Processing by Torq. The types of Personal Data Processed by Torq will be determined by Customer at its sole discretion depending how Customer chooses to use the Services, but may include the following: full name, email address, avatar, account age, IP address, browser cookie/tag data, geographical data (imprecise), unique personal identifier.

APPENDIX 2 – SUB-PROCESSOR LIST

Third Party Service Providers

Torq engages third-party service providers to carry out processing activities in order to provide the Services. These Sub-processors are identified below with a description of the purpose of their processing activities, the security measures they implement, and their respective locations.

Torq engages the following Sub-processors to host Customer Data or provide other infrastructure that helps with the delivery of our Services:

Sub-processor Name	Security Measures	Purpose of Data Processing	Data Location
Google LLC (Google Cloud Provider)	https://cloud.google.com/trust-center/security?hl=en	Data Hosting, including business intelligence	USA
Amazon Web Services, Inc.	https://docs.aws.amazon.com/whitepapers/latest/aws-overview/security-and-compliance.html	Data Hosting, including business intelligence	USA

Torq engages the following Sub-processors to provide certain functionalities within the Services or which otherwise have access to Personal Data Processed through the Services:

Sub-processor Name	Security Measures	Purpose of Data Processing	Data Location
Zendesk, Inc.	https://www.zendesk.com/trust-center/	Customer support ticketing	USA
Atlassian Pty Ltd.	https://www.atlassian.com/legal/security-measures#access-control	Customer support ticketing	USA
Functional Software, Inc. (Sentry)	https://sentry.io/security/	Error Tracking and performance monitoring for web UI	USA
Intercom R&D Unlimited Company	https://trust.intercom.com/	Customer service and communications	USA
MailGun Technologies, Inc.	https://www.mailgun.com/security/	Email notification services	USA
Elasticsearch BV	https://www.elastic.co/docs/deploy-manage/security	Search functionality	USA
Slack Technologies, LLC	https://slack.com/security-practices	Customer support and communications	USA

Torq also engages the following third party service providers as Sub-processors to provide certain AI functionalities within the Services, if enabled in Customer's account:

Sub-processor Name	Security Measures	Purpose of Data Processing	Data Location
Microsoft, Inc. (Azure OpenAI)	https://azure.microsoft.com/en-us/products/ai-services/openai-service	AI model provider	USA
Google LLC (Vertex AI)	https://cloud.google.com/vertex-ai/docs/general/vertexai-security-controls	AI model provider	USA
OpenAI, L.L.C.(OpenAI)	https://openai.com/security-and-privacy/	AI model provider	USA
Amazon Web Services, Inc. (Amazon Bedrock)	https://aws.amazon.com/bedrock/security-compliance/	AI model provider	USA

Torq Affiliates

Torq's Affiliates may process Personal Data to the extent required to provide the Services:

Torq Entity	Location
Torq Technologies Ltd.	Israel
Torq Technologies Inc.	USA
Torq Technologies UK Limited	England and Wales

SCHEDULE C

TORQ ACCEPTABLE USE POLICY (AUP)

This Acceptable Use Policy (“**AUP**”) forms an integral part of the Torq Technologies Master Service Agreement (“**Agreement**”), and describes activities that are prohibited in connection with Customer’s use of the Services, in addition to the restrictions set forth in the Agreement. In the event of a conflict between the AUP and the terms of the Agreement, this AUP will take precedence to the extent required to resolve such conflict. Capitalized terms used below but not defined in this AUP have the meaning set forth in the Agreement.

The following activities are prohibited:

- Illegal activities. Customer may not use the Services to engage in any illegal activity or violate any laws, or encourage, promote, facilitate or instruct others to do either of the foregoing.
- Graphic and Harmful Content. Customer may not use the Services to post, upload, share, store, or otherwise distribute content that is graphically violent or obscene, sexually explicit, indecent, defamatory, libelous, harassing, stalking, hateful, abusive, or that promotes self-harm, terrorist activity, misinformation, or otherwise encourages any illegal, tortious or inappropriate conduct.
- Child Exploitation. Customer may not use the Services to post, upload, share, or store content that exploits or abuses children, including but not limited to images or depictions of child abuse or sexual abuse, or that present children in a sexual manner.
- Hateful or Discriminative Content. Customer may not use the Services to promote, encourage, support or facilitate hate speech, violence, or discrimination based on race, ethnicity, national origin, religion, sex, sexual orientation, age, disability, or medical condition.
- Intellectual Property. Customer may not use the Services to misappropriate or infringe the intellectual property of Torq or any third party, including without limitation any copyright, trademark, patent, trade secret, moral rights, or any other intellectual property right or proprietary or contractual right.
- Privacy and Confidential Information. Customer may not post, upload, share, or store content or otherwise use the Services in a manner that violates or compromises any individual’s privacy or other similar legal rights, including sharing another’s personally identifiable information, sensitive personal information, or confidential information without the appropriate consent (evidence of which may be requested).
- Malicious and Deceptive Conduct. Customer may not use the Services to upload, share, or store malicious software, malware, viruses or other harmful code. Customer may not use the Services in any way that facilitates “spoofing” or “phishing” or is deceptive, false, misleading or fraudulent in any manner, including impersonating other individuals or organizations or otherwise attempting to mislead others as to the identity of the originator of content or a communication.
- Disruption of the Services. Customer may not use the Services in any manner which interferes with or otherwise negatively impacts any aspect of the Services or other infrastructure of Torq, or any third party services that are integrated or connected to the Services. Customer may not attempt to gain unauthorized access to the Services or related systems or networks or to defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any protection or monitoring mechanisms of the Services, nor probe, scan, or test the vulnerability of any system or network. Customer may not access (or attempt to access), tamper with, or search any portion of the Services and/or its underlying system, network and technology, by any means other than through the interface that is provided by Torq in connection with the Services (e.g. scraping, spidering or crawling).
- Use Restrictions. Customer may not attempt to disrupt or overwhelm Torq’s infrastructure by imposing unreasonable requests or burdens on our resources (such as using “bots” or other automated systems to send requests to our servers at a rate beyond what could be sent by a human user during the same period of time), or use the Services in a way to avoid incurring fees or exceed usage limitations (such as using nested workflows to enable one workflow to be used for multiple use cases). Without limiting the generality of the foregoing, Customer’s use of the Services may be subject to other limitations as set in the Order Form and/or Documentation, including but not limited to reasonable limits on input and output sizes for automated operations, the number of inbound calls permitted to the public APIs within a specified period of time, the amount of tasks being processed in parallel at a given point in time and being queued for processing, the maximum allowed time for performing certain automated actions, and the number of permitted instances of step runners. Customer acknowledges that exceeding these limitations may incur additional fees and/or affect the operation of the Services or may result in suspension of the Services until compliance has occurred.

In addition to any other remedies that may be available to Torq, in case Torq suspects that Customer’s use of the Services and/or any other activities are in violation of this AUP, the Agreement or applicable law, Torq may (i) remove such violating content, in whole or in part; and/or (ii) terminate or suspend Customer’s account or access to the Services in accordance with the Contract Disputes Act, without advance notice and without liability to Torq.

SCHEDULE D

TORQ AI TERMS

These Torq AI Terms ("**Torq AI Terms**") form an integral part of the Torq Technologies Master Service Agreement ("**Agreement**"). These Torq AI Terms apply to Customer's use of any artificial intelligence (AI) features and functionalities made available by Torq as part of the Services ("**Torq AI**"). Capitalized terms used below which are not defined herein will have the meaning set forth in the Agreement. In the event of a conflict with the Agreement and these Torq AI Terms, the Torq AI Terms will take precedence to the extent required to resolve such conflict.

1. Description of Torq AI. Torq AI includes the following features and functionalities:

- Torq Hyperautomation™ includes AI features to assist users in building workflows, such as AI Workflow Builder, AI Code Completion and AI Data Transformation.
- Torq HyperSOC™, Torq's case management module built on Torq Hyperautomation, includes Torq's Socrates AI Analyst and AI case summary.

For further information on the above functionalities, please refer to Torq's Documentation.

2. Input and Output. Customer may submit certain data, content or information to Torq AI for processing ("**Input**") and receive results generated by Torq AI based on the Input ("**Output**"). Input and Output will be deemed Customer Data, and will be subject to the rights, restrictions and obligations applicable thereto as set forth in the Agreement. Customer hereby represents and warrants that it has all rights, licenses, permissions and/or authority required to provide Input to Torq AI. Customer will be solely responsible for all Input and use of Output, including using independent human review to evaluate the accuracy and appropriateness of the Output for Customer's use case. Customer acknowledges that: (a) due to the nature of machine learning and the technology powering Torq AI, Output may not be unique to Customer, and Torq AI may generate the same or similar output for third parties; and (b) Customer has no right, title or interest in or to any such similar third parties' outputs or results.

3. Third Party Model Providers. Torq AI utilizes AI models provided by the third parties listed in Torq's sub-processor list, as may be updated from time to time ("**Third Party Model Providers**"). Customer acknowledges that Third Party Model Providers will use Input and Output (including any personal data included in any Input) as necessary to provide Torq AI and to comply with applicable laws and enforce policies. By using Torq AI, Customer agrees to use Torq AI in accordance with the usage policies of each Third Party Model Provider, and to ensure that its users comply with the same, including *inter alia*, the following policies:

- Microsoft Azure OpenAI: <https://learn.microsoft.com/en-us/legal/cognitive-services/openai/code-of-conduct>
- Google Vertex AI: <https://policies.google.com/terms/generative-ai/use-policy>
- OpenAI: <https://openai.com/policies/usage-policies/>
- Amazon Bedrock: https://aws.amazon.com/aup/?utm_source=chatgpt.com

4. Processing of Personal Data. If Customer elects to include personal data in any Input: (a) such processing activities will be governed by the Data Processing Agreement entered into between Torq and Customer as part of the Agreement; and (b) all Third Party Model Providers will be deemed Sub-processors of Torq.

5. No Training. Torq does not use any Customer Data, nor does Torq permit any third party to use Customer Data, to train or fine-tune any AI model used to provide Torq AI.

6. Torq AI Use Restrictions. In addition to Customer's obligations and restrictions pertaining to Customer's use of the Services, Customer will not, nor allow any third party to, directly or indirectly: (a) use Torq AI in any way to develop any models or any product or service which is the same as, substantially similar to or otherwise competitive with Torq AI or the Services; (b) mislead any person that any Output was solely human generated; (c) discover, extract or attempt to discover or extract the underlying components of Torq AI, or use web scraping or other data extraction methods to extract data from Torq AI; (d) use Torq AI in a manner which violates any technical documentation, usage guidelines or other parameters of Torq and its Third Party Model Providers (including Torq's Acceptable Use Policy, or as otherwise appended to the Agreement, and applicable usage policies of each Third Party Model Provider), or in a manner which bypasses any protective measures; and/or (e) use Torq AI to infringe any third party rights or violate any applicable laws, including but not limited to privacy rights, intellectual property rights, and sanctions and export control laws. In the event that any Input is alleged to be unlawful or otherwise in breach of these Torq AI Terms, Customer acknowledges that Torq may disclose Input and/or Output to law enforcement or other governmental authorities, or in response to any court order.

7. NO WARRANTIES. TORQ WARRANTS THAT THE TORQ AI WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING TORQ DISCLAIMS ALL WARRANTIES REGARDING TORQ AI, OUTPUT AND/OR ANY RESULTS OBTAINED FROM USING TORQ AI. TORQ AI IS PROVIDED "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE", WITHOUT ANY WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND TORQ EXPRESSLY DISCLAIMS ALL SUCH WARRANTIES OR REPRESENTATIONS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUALITY, COMPLETENESS, NON-INFRINGEMENT, RELIABILITY, AVAILABILITY AND PERFORMANCE. TORQ DOES NOT WARRANT OR REPRESENT THAT TORQ AI AND/OR OUTPUT WILL BE UNINTERRUPTED, ERROR OR BUG FREE, NON-OFFENSIVE, NON-INFRINGEMENT, NON-HARMFUL ACCURATE, LAWFUL OR APPROPRIATE. CUSTOMER'S USE OF AND RELIANCE UPON TORQ AI, THE OUTPUT AND/OR ANY RESULTS THEREOF ARE ENTIRELY AT CUSTOMER'S OWN DISCRETION AND RISK, AND TORQ AND ITS LICENSORS

(INCLUDING THIRD PARTY MODEL PROVIDERS) WILL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER IN CONNECTION WITH ANY OF THE FOREGOING.

8. Reserved.
9. Usage and Payment. Customer's use of Torq AI may be subject to certain usage limitations. Torq reserves the right to monitor Customer's use of Torq AI and limit or suspend Customer's usage of Torq AI if Torq reasonably believes that such usage surpasses these usage limitations, and/to charge Customer additional fees for any such overage. Any such additional payment for overages will be in accordance with the pricing set forth in the applicable ordering document executed by Torq and Customer.
10. Service Levels Not Applicable. Notwithstanding anything in the Agreement, any downtime of Torq AI that due to a Third Party Model Provider will not be deemed unscheduled downtime for the purpose of calculating service levels and availability of the Services.
11. Pre-Released Services. If Torq AI is made available as a pre-released service, Customer's use thereof will be governed by applicable terms addressing use of pre-released services set forth in the Agreement.
12. Changes to Torq AI. Customer acknowledges that due to the uncertain and evolving nature of technologies powering Torq AI, Torq may change existing Torq AI capabilities provided that such changes do not materially downgrade the functionality of existing Torq AI. In addition, Torq may introduce new Torq AI features and functionalities from time to time, in respect of which advance notice will be given to Customer.