



STANDARD MASTER SUBSCRIPTION AGREEMENT (SaaS)

THIS AGREEMENT GOVERNS YOUR ACQUISITION AND USE OF TURBONOMIC SOFTWARE-AS-A-SERVICE. IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM OR OTHER DOCUMENT THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES. YOU MAY NOT ACCESS THE SERVICES IF YOU ARE OUR DIRECT COMPETITOR, EXCEPT WITH OUR PRIOR WRITTEN CONSENT. YOU MAY NOT ACCESS THE SERVICES FOR PURPOSES OF MONITORING THEIR AVAILABILITY, PERFORMANCE, OR FUNCTIONALITY, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES. THIS AGREEMENT IS EFFECTIVE BETWEEN YOU AND TURBONOMIC AS OF THE DATE OF YOU ACCEPTING THIS AGREEMENT.

1. DEFINITIONS

1.1. Affiliate means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2. Agreement means this Standard Master Subscription Agreement.

1.3. Beta Services means Turbonomic services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

1.4. Documentation means the applicable Service's documentation, and its usage guides and policies, as updated from time to time, accessible via <https://support-turbonomic.force.com/TurbonomicCustomerCommunity/s/documentation> or logging in to the applicable Service.

1.5. Malicious Code means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

1.6. Marketplace means an online directory, catalog or marketplace of applications that interoperate with the Services, including, for example, the AWS marketplace located at <https://aws.amazon.com/marketplace>, the Microsoft Azure Marketplace located at https://portal.azure.com/#blade/Microsoft_Azure_Marketplace/, and any successor websites.

1.7. Non-Turbo Application means a Web-based, mobile, offline or other software application functionality that is provided by You or a third party and interoperates with a Service, including, for example, an application that is

developed by or for You, is listed on a Marketplace, or is identified as non-Turbo by a similar designation.

1.8. Order Form means an ordering document or online order specifying the Services to be provided hereunder that is entered into between You and Us or any of Our Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

1.9. Purchased Services means Services that You or Your Affiliate purchase under an Order Form, as distinguished from those provided pursuant to a free trial.

1.10. Services means the SaaS services that are ordered by You under an Order Form or provided to You under a free trial, and made available online by Us as described in the Documentation.

1.11. User means an individual who is authorized by You to use a Service, for whom You have purchased a subscription (or in the case of any Services provided by Us without charge, for whom a Service has been provisioned), and to whom You (or, when applicable, Us at Your request) have supplied a user identification and password (for Services utilizing authentication). Users may include, for example, Your employees, consultants, contractors and agents.

1.12. We, Us or Our means Turbonomic, Inc. described in Section 12 (Who You Are Contracting With, Notices, Governing Law and Jurisdiction) and our Affiliates.

1.13. You or Your means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity which have signed Order Forms.

2. **FREE TRIAL**

If You register for a free trial, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s), or (c) termination by Us in our sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

NOTWITHSTANDING SECTION 8 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

Please review the applicable Service's Documentation during the trial period so that You become familiar with the features and functions of the Services before You make Your purchase.

3. **OUR RESPONSIBILITIES**

3.1. **Provision of Purchased Services.** We will (a) make the Purchased Services available to You pursuant to this Agreement and the applicable Order Forms, (b) provide applicable Turbonomic standard support for the Services to You, (c) use commercially reasonable efforts to make the Services available during 8:00 AM to 6:00 PM, Monday through Friday, U.S. Eastern time, except for: (i) planned downtime (of which We shall give advance electronic notice as provided in the Documentation), and (ii) any unavailability caused by circumstances beyond Our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Our employees), Internet service provider failure or delay, Non-Turbo Application or denial of service attack.

3.2. **Beta Services.** From time to time, We may make Beta Services available to You at no charge. You may choose to try such Beta Services or not in Your sole discretion. Beta Services are intended for evaluation purposes and not for production use, are not supported, and may be subject to additional terms. Beta Services are not considered "Services" under this Agreement, however, all restrictions, Our reservation of rights and Your obligations concerning the Services, and use of any related Non-Turbo Applications, shall apply equally to Your use of Beta Services. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a BetaService.

4. **USE OF SERVICES**

4.1 **Subscriptions.** Unless otherwise provided in the applicable Order Form or Documentation, (a) Services are

purchased as subscriptions, (b) subscriptions may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions.

4.2 **Your Responsibilities.** You will (a) be responsible for Users' compliance with this Agreement, Documentation and Order Forms, (b) use commercially reasonable efforts to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use, (c) use Services only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (d) comply with terms of service of any Non-Turbo Applications with which You use Services.

You will not (a) make any Service available to, or use any Service for the benefit of, anyone other than You or Users, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service or Non-Turbo Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Non-Turbo Application to store or transmit Malicious Code, (e) interfere with or intentionally overburden the Service, (f) attempt to gain unauthorized access to or disrupt the integrity of any Service or its related systems or networks or any third-party data contained therein, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, (h) use any of Our Services to access or use any of Our intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (i) copy a Service or any part, feature, function or user interface thereof, (j) frame or mirror any part of any Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation, (k) access any Service in order to build a competitive product or service or to benchmark with a Non-Turbo product or service, or (l) reverse engineer any Service (to the extent such restriction is permitted by law). Any use of the Services in breach of this Agreement, Documentation or Order Forms, by You or Users that in Our judgment threatens the security, integrity or availability of Our services, may result in Our immediate suspension of the Services, however We will use commercially reasonable efforts under the circumstances to provide You with notice and an opportunity to remedy such violation or threat prior to such suspension.

5. **FEES AND PAYMENT FOR PURCHASED SERVICES**

5.1. **Fees.** You will pay all fees specified in Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable except as

expressly provided herein, and (iii) quantities purchased cannot be decreased during the relevant subscription term.

5.2. Invoicing and Payment. You will provide Us with valid and updated credit card information, or with a valid purchase order or alternative document reasonably acceptable to Us. If You provide credit card information to Us, You authorize Us to charge such credit card for all Purchased Services listed in the Order Form for the initial subscription term and any renewal subscription term(s) as set forth in Section 11.2 (Term of Purchased Subscriptions). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.

5.3. Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.2 (Invoicing and Payment).

5.4. Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue (or 10 or more days overdue in the case of amounts You have authorized Us to charge to Your credit card), We may, without limiting Our other rights and remedies, accelerate Your unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Our services to You until such amounts are paid in full. We will give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 12.2 (Manner of Giving Notice) for billing notices, before suspending services to You.

5.5. Payment Disputes. We will not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.6. Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this Section 5.6, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on

Our income, property and employees.

5.7. Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features.

6. PROPRIETARY RIGHTS AND LICENSES

6.1. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We and Our licensors reserve all of Our/their right, title and interest in and to the Services, including all of Our/their related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

6.2. License to Diagnostic and Usage Data. You acknowledge that the Services will store certain information about their operation and usage, including without limitation the performance of the IT system the Services are managing, your infrastructure topology, configuration data, faults in the Services, and Users' usage of the features of the Services (collectively, "Metrics"). If the Metrics include any personal information, such personal information will be treated in accordance with Turbonomic's Privacy and Cookie Policy located at <https://www.turbonomic.com/privacy-policy/>, and no interruption of service is required to gather such detailed diagnostics. You hereby grant to Us a perpetual, irrevocable, sublicenseable, and royalty-free right to use the Metrics in any manner (subject to Turbonomic's Privacy and Cookie Policy and Section 7 below), and you will not interfere with the collection or transmission of such information to Turbonomic.

6.3. License to Use Feedback. You grant to Us and Our Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Our and/or Our Affiliates' services any suggestion, enhancement request, recommendation, correction or other feedback provided by You or Users relating to the operation of Our or Our Affiliates' services.

6.4. Federal Government End Use Provisions. We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

7. **CONFIDENTIALITY**

7.1. **Definition of Confidential Information.**

“Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes your IT performance data; Our Confidential Information includes the Services; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2. **Standard of Care.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, We may disclose the terms of this Agreement and any applicable Order Form to a subcontractor or Non-Turbo Application Provider to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.

7.3. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the

Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

8. **REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

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

8.2. **Our Warranties.** We warrant that during an applicable subscription term (a) We will not materially decrease the overall security of the Services, (b) the Services will perform materially in accordance with the applicable Documentation, and (c) We will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Your exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.

8.3. **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WE MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RESULTS YOU MAY OBTAIN BY USING THE SERVICES. BETA SERVICES ARE PROVIDED “AS IS,” EXCLUSIVE OF ANY WARRANTY WHATSOEVER. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

9. **MUTUAL INDEMNIFICATION**

9.1. **Indemnification by Us.** We will defend You against any claim, demand, suit or proceeding made or brought against You by a third party alleging that any Service infringes or misappropriates such third party’s intellectual property rights (a “Claim Against You”), and will indemnify You from any damages, attorney fees and costs finally awarded against You as a result of, or for amounts paid by You under a settlement approved by Us in writing of, a Claim Against You, provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defense and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Our warranties under “Our Warranties” above, (ii) obtain a license for Your continued use of that Service in accordance with this

Agreement, or (iii) terminate Your subscriptions for that Service upon 30 days' written notice and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim Against You arises from a Non-Turbo Application or Your use of the Services in violation of this Agreement, the Documentation or applicable OrderForms.

9.2. Indemnification by You. You will defend Us against any claim, demand, suit or proceeding made or brought against Us by a third party alleging that Your use of the Services is in violation of the Agreement, the Documentation, Order Form or applicable law (each a "Claim Against Us"), and You will indemnify Us from any damages, attorney fees and costs finally awarded against Us as a result of, or for any amounts paid by Us under a settlement approved by You in writing of, a Claim Against Us, provided We (a) promptly give You written notice of the Claim Against Us, (b) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (c) give You all reasonable assistance, at Your expense.

9.3. Exclusive Remedy. This Section 9 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section 9.

10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

10.2. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN

CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

11.1. Term of Agreement. This Agreement commences on the date You first accept it and continues until all subscriptions hereunder have expired or have been terminated.

11.2. Term of Purchased Subscriptions. Term of Subscriptions. The term of each subscription shall be as specified in the applicable Order Form.

11.3. Termination. A party may terminate this Agreement for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

11.4. Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 11.3 (Termination), We will refund You any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Us in accordance with Section 11.3, You will pay any unpaid fees covering the remainder of the term of all Order Forms. In no event will termination relieve You of Your obligation to pay any fees payable to Us for the period prior to the effective date of termination.

11.5. Surviving Provisions. The sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Surviving Provisions" and "General Provisions" will survive any termination or expiration of this Agreement.

12. WHO YOU ARE CONTRACTING WITH, NOTICES, GOVERNING LAW AND JURISDICTION

12.1. General. Who You are contracting with under this Agreement, who You should direct notices to under this Agreement, what law will apply in any dispute or lawsuit arising out of or in connection with this Agreement, and which courts have jurisdiction over any such dispute or lawsuit, depend on where You are domiciled.

If You are domiciled in:	You are contracting with:	Notices should be addressed to:	The governing law is:	The courts having exclusive jurisdiction are:
The United States of America, Canada, Mexico or a Country in Central or South America or the Caribbean	Turbonomic, Inc., a Delaware corporation	Turbonomic, Inc., 500 Boylston Street, 7 th Floor, Boston, MA 02116, Attn: General Counsel, with a copy to general.counsel@turbonomic.com	Massachusetts and controlling United States federal law	Boston, Massachusetts, U.S.A.
A Country in Europe, the Middle East or Africa	Turbonomic, Inc., a Delaware corporation	Turbonomic, Inc., 500 Boylston Street, 7 th Floor, Boston, MA 02116, Attn: General Counsel, with a copy to general.counsel@turbonomic.com	Massachusetts and controlling United States federal law	Boston, Massachusetts, U.S.A.
A Country in Asia or the Pacific region	Turbonomic, Inc., a Delaware corporation	Turbonomic, Inc., 500 Boylston Street, 7 th Floor, Boston, MA 02116, Attn: General Counsel, with a copy to general.counsel@turbonomic.com	Massachusetts and controlling United States federal law	Boston, Massachusetts, U.S.A.

12.2. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim (“Legal Notices”), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to You will be addressed to the relevant billing contact designated by You. All other notices to You will be addressed to the relevant Services system administrator designated by You.

12.3. **Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

12.4. **No Agency.** For the avoidance of doubt, We are entering into this Agreement as principal and not as agent for any other Turbonomic company. Subject to any permitted Assignment under Section 13.5, the obligations owed by Us under this Agreement shall be owed to You solely by Us and the obligations owed by You under this Agreement shall be owed solely to Us.

13. GENERAL PROVISIONS

13.1. **Publicity.** You grant us the right to add your name and company logo to our customer list and website.

13.2. **Export Compliance.** The Services, other technology

We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use any Service in a U.S. embargoed country or in violation of any U.S. export law or regulation.

13.3. **Anti-Corruption.** You agree that You have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If You learn of any violation of the above restriction, You will use reasonable efforts to promptly notify Our Legal Department at general.counsel@turbonomic.com.

13.4. **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) is void.

In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form, (2) this Agreement, and (3) the Documentation.

13.5. Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (together with all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.6. Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

13.7. Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

13.8. Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

13.9. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.