



ON-PREMISES SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS ON-PREMISES SOFTWARE LICENSE AGREEMENT (THIS “**Agreement**,” AS FURTHER DEFINED BELOW) BEFORE USING SAILPOINT’S SOFTWARE. BY DOWNLOADING OR USING SAILPOINT’S SOFTWARE OFFERINGS OR RECEIVING THE BENEFIT OF OTHER SERVICES (EACH AS FURTHER DEFINED BELOW), YOU (THE “**Customer**”) SIGNIFY ACCEPTANCE, AND AGREE TO THE TERMS AND CONDITIONS, OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT ACCESS, DOWNLOAD OR USE ANY SOFTWARE OR BEGIN ANY OTHER SOFTWARE OFFERING OR OTHER SERVICES. IF CUSTOMER HAS A FULLY EXECUTED AGREEMENT WITH SAILPOINT THAT EXPRESSLY GOVERNS CUSTOMER’S USE OF, OR ACCESS TO, SOFTWARE OFFERINGS OR OTHER SERVICES, THAT AGREEMENT SHALL SUPERSEDE THIS AGREEMENT.

WHEREAS, SailPoint is the provider of Software Offerings and Other Services, and Customer wishes to obtain a license to use the Software and receive the benefit of other Software Offerings and possibly Other Services pursuant to the Terms and Conditions of this Agreement; and

WHEREAS, the parties desire that this Agreement govern Customer’s use of Software purchased under any Order (as defined below) that Customer may place with SailPoint or a Partner (as defined below), from time to time.

Terms and Conditions

1. Definitions

“**Affiliate**” is an entity that controls, is controlled by or shares common control with SailPoint or Customer, where the control arises from either (a) a direct or indirect ownership interest of more than 50% or (b) the power to direct or cause the direction of the management and policies, whether through the ownership of voting stock by contract, or otherwise, equal to that provided by a direct or indirect ownership of more than 50%.

“**Agreement**” means the above introduction and recitals, these Terms and Conditions, any exhibits or addenda to this Agreement incorporated by reference herein, as well as any Orders arising under this Agreement.

“**Documentation**” means the user guides and release notes provided or made available by SailPoint to Customer regarding the use or operation of the Software Offerings.

“**Identity Cube**” means a unique collection of identity data for an individual human or a non-human bot that will be granted access to and/or represents an identity managed by the Software. Although Identity Cubes for user accounts that have been deactivated may remain in the identity management system, those inactive Identity Cubes will not be included in the number of Identity Cube licenses in use by Customer.

“**License**” means the license to Software granted in the first sentence of Section 2.1 (License Grant) hereof.

“**Order**” means the schedule, quote or quotation, statement of work or other document(s) by which Customer orders Software Offerings and/or Other Services pursuant to this Agreement.

“**Other Services**” means, collectively or individually, any training services described in Section 7.1 (Training Services) and Professional Services as defined in and governed by Section 7.2 (Professional Services) appearing in an Order. As used in this Agreement, the term “Other Services” does not include Software Support nor any SaaS Services (as defined in the applicable SaaS Agreement available at the Customer Agreements landing page on SailPoint’s website at <https://www.sailpoint.com/legal/>).

“**Partner**” means a reseller or distributor that has an agreement with SailPoint that authorizes Partner to resell Software Offerings and/or Other Services.

“**Partner Order**” means, specifically, any Order entered into by and between Customer and a Partner (“**Partner Order**”).

“**Perpetual License**” means a license to access and use Software within the scope of Section 2.1 (License Grant) below on a perpetual basis, and if and as available for purchase from SailPoint, specifically identified on an Order at time of purchase as a Perpetual License.

“**Software**” means the object code version of the specific SailPoint computer software licensed to Customer under an Order as Term License Software or Perpetual License Software, including any updates, modifications, new versions or releases.

“**Software Offering**” means the Software and Software Support provided to Customer pursuant to an Order.

“**Software Support**” means the Software support and maintenance services provided for the Software to Customer in accordance with this Agreement (including the applicable Order) as described in the SailPoint Support and Maintenance Policy

found at the Customer Agreements landing page under Associated Documentation on SailPoint's website at <https://www.sailpoint.com/legal/>.

"Term License" means a license to install and use Software within the scope of Section 2.1 (License Grant) below on a subscription basis for finite period of time typically measured in multiple annual increments and stated on an Order at time of purchase as the applicable Term.

"Term" means the period(s) specified in an Order during which Customer will have a License (and/or access to Software Support or Other Services), as the same may be renewed or extended in accordance with the Order and Section 10.1 (Agreement & Term Renewal) hereof.

2. Grants.

- 2.1. License Grant.** During the Term of any Software License purchased by Customer and subject to these Terms and Conditions, SailPoint grants Customer a limited, non-exclusive, non-transferable (except as otherwise set forth herein), non-sublicensable license to (a) install, execute, copy, display or otherwise use the Software solely for Customer's internal business purposes and in accordance with the Documentation and solely for the number of Identity Cubes specified on one or more Orders and (b) use the Documentation solely with and for the Software. Customer may make a reasonable number of copies of the Software in machine-readable form solely for archive or backup purposes in accordance with Customer's standard archive or backup policies and procedures. Customer's use of the Software to manage greater than the number of Identity Cubes included in a purchased License is prohibited and any such use will be subject to additional License fees.
- 2.2. Third Party Use.** The Software may only be used by employees of Customer or contractor/agents of Customer who are acting on behalf of Customer by providing implementing, consulting or outsourcing services and are under a written agreement with Customer that will protect the Software similarly to the protections and restrictions stated under this Agreement.

3. Title and Restrictions

- 3.1. Title and Copyright.** This Agreement confers no ownership rights to Customer and is not a sale of any rights in the Software, the Documentation, or the media on which either is recorded or printed. Customer does not acquire any rights, express or implied, in the Software or the Documentation, other than those rights as a licensee specified in this Agreement. All Software and Documentation furnished by SailPoint, and all copies thereof made by Customer and all compilations, derivative products, programmatic extensions, patches, revisions, and updates made by either party, and any, patent rights, copyrights, trade secrets, trademarks, trade names, service marks, designs or design marks or proprietary inventions, designs and information included within any of the items described above are and shall remain the property of SailPoint or SailPoint's licensors, as applicable. Customer agrees not to claim or assert title to or ownership of the Software or the Documentation. Customer will not remove or alter any copyright or proprietary notice from copies of the Software or the Documentation, and copies made by or for Customer shall bear all copyright, trade secret, trademark and any other intellectual property right notices appearing on the original copies.
- 3.2. Restrictions.** Customer will not, nor allow any third party to, reverse engineer, decompile or attempt to discover any source code or underlying ideas or algorithms of any Software. Except as mutually agreed to in writing as an exception under this Agreement, Customer will not, nor allow any third party to modify, lease, lend, use for timesharing or service bureau purposes or otherwise use or allow others to use Software for the benefit of any third party. Customer agrees to promptly report to SailPoint any violations of these provisions by Customer's employees, consultants or agents of which Customer is aware.

4. Orders and Delivery

- 4.1. Orders.** Customer may purchase a license to a Software Offering and/or Other Services by either (a) entering into an Order with SailPoint directly or (b) entering into an Order with a Partner that is subsequently acknowledged by SailPoint to Customer in writing (including by SailPoint sending a delivery notice to Customer via email). Customer may order additional Software Offerings and/or Other Services by executing a follow-on Order as contemplated in this Section 4.1. All Software Offerings and/or Other Services ordered by Customer through either SailPoint or a Partner shall be governed exclusively by this Agreement and, subject to Section 13.6 (Assignment), the applicable Order.
- 4.1.1. Orders with SailPoint.** A purchase order issued by Customer shall be in writing and identify the Software being ordered, the shipping and invoicing locations, and shall be subject to acceptance by SailPoint. In the event Customer does not issue a purchase order, a new Order shall be executed by Customer and SailPoint to evidence the Order.
- 4.1.2. Partner Orders.** All Partner Orders will be subject to pricing mutually agreed to between Customer and Partner.
- 4.2. Delivery.** SailPoint shall fulfill Orders by delivering Software and Documentation via access to electronic download, subject to the receipt by SailPoint of all required documentation. Customer's Order shall be considered delivered on the

date that SailPoint emails Customer instructions for downloading the Software and Documentation. Thereafter, Customer shall be responsible for and bear all expenses (including without limitation, taxes) related to making the permitted number of copies of the Software and distributing the copies as permitted in this Agreement. Customer will be the importer of record for the Software.

5. Price and Payment

5.1. Price. The fees and payment schedule for the Software Offering and Other Services are as set forth in an Order. The fees required to be paid hereunder do not include any amount for taxes, duties or import/export fees. If withheld by a government entity, Customer shall reimburse SailPoint and hold SailPoint harmless for all sales, use, VAT, excise, property, or other taxes or levies, duties or import/export fees which SailPoint is required to collect or remit to applicable tax authorities (including any interest or penalties thereon). Unless Customer provides SailPoint a valid exemption certification from the applicable taxing authority, Customer shall pay to SailPoint or its agents the amount of the tax.

5.2. Payment.

5.2.1. Direct Purchases from SailPoint. Unless otherwise provided in the Order, SailPoint shall invoice Customer for all fees described therein on or promptly following the Order effective date. For any Software Offering or Other Services ordered by Customer directly through SailPoint, Customer shall pay all invoices within thirty (30) days from date of invoice. Except as expressly provided otherwise herein, fees are non-refundable, non-cancellable and not subject to set-off. If any fees remain unpaid by their due date, in addition to any other rights or remedies it may have under this Agreement or by matter of law, (i) SailPoint reserves the right to suspend any Software Offering and/or Other Services upon thirty (30) days written notice to Customer until the amounts are paid in full and (ii) the unpaid fees may accrue interest at the rate of the lesser of one and one-half percent (1.5%) of the outstanding balance per month or the maximum rate permitted by law from the date the fees were due until the date paid. Further, Customer shall be responsible for all costs and expenses associated with SailPoint's collection of the fees, including, without limitation, reasonable attorneys' fees that SailPoint may incur in connection with the collection efforts. Suspension or termination pursuant to this section shall not release Customer of its payment obligations under this Agreement or extend the term of the applicable Order. All fees are in U.S. currency. Customer's obligations to pay fees incurred prior to the expiration of termination of this Agreement shall survive the expiration or termination of this Agreement

5.2.2. Purchases Through a Partner. For any Software Offering and/or Other Services ordered by Customer through a Partner, the pricing and payment terms will be established through a Partner Order and all payments will be made directly to Partner. If a Partner is entitled to terminate or suspend any Software Offering and/or Other Services ordered by Customer pursuant to a Partner Order and Partner notifies SailPoint of the event, SailPoint may suspend or terminate the Software Offering or Other Services identified by the Partner. Subsequently, if Partner notifies SailPoint that Customer is entitled to reinstatement of the Software Offering or Other Services ordered by Customer pursuant to the Partner Order, and Customer is otherwise in compliance with the terms of this Agreement, SailPoint shall reinstate the Software Offering or Other Services as soon as reasonably practicable. SailPoint shall not be liable to Customer or to any third party for any liabilities, claims, or expenses arising from or relating to any suspension or termination of any Software Offering or Other Services in accordance with this Section 5.2.2.

6. Software Support.

Subject to Customer's payment of all applicable fees, SailPoint shall provide Software Support to Customer in accordance with the terms and conditions of this Agreement during the Term of any Order that includes an entitlement to Software Support. SailPoint provides Software Support and associated Documentation in the English language.

7. Other Services.

7.1. Training Services. SailPoint will provide training services on a per-quote basis as requested by Customer. Customer shall approve SailPoint's quote prior to the commencement of any training services. If Customer purchases Professional Services other than as part of a subscription plan, SailPoint will invoice Customer monthly in arrears as SailPoint provides training services based on an approved quote. Unless otherwise stated in the Order, the training services shall exclude travel and living expenses.

7.2. Professional Services. Customer may purchase professional services ("**Professional Services**") from SailPoint on a time and materials basis. The following terms and conditions shall apply to professional services performed for Customer by or on behalf of SailPoint:

- a. **Scope of Professional Services.** Professional Services will be documented in a Statement of Work ("**SOW**"). The Software provided under this Agreement is not custom software but is standard commercial software and the scope of Professional Services provided hereunder shall consist solely of (i) program planning, (ii) Software deployment assistance, (iii) interface adapter efforts, and/or (iv) formal or non-formal software training. Professional Services provided to Customer by SailPoint shall not constitute works for hire.

- b. **Term of Professional Services.** Professional Services will begin and terminate on the dates or times described in a mutually executed SOW, unless earlier terminated in accordance with this Agreement.
- c. **Fees and Expenses.** Fees for Professional Services are described in a SOW or an Order. SailPoint may issue invoices on a monthly basis for Professional Services actually performed or in accordance with a payment schedule documented in a SOW or Order. SailPoint shall invoice Customer, and Customer shall pay, all actual and reasonable expenses for travel, food and lodging which are directly related to the performance of Professional Services.
- d. **Termination or delay of Professional Services.** Customer may terminate Professional Services by giving ten (10) days prior written notice to SailPoint; termination shall be effective ten (10) days after SailPoint's receipt of the notice. If Customer delays the scheduled start of contracted Professional Services, Customer shall reimburse SailPoint for any actual non-refundable costs incurred (including for expenses and contractors) due to the delay. If Customer terminates Professional Services before the agreed end of a Professional Services engagement as set forth in a mutually executed SOW, Customer shall pay SailPoint for any Professional Services completed but not yet paid for prior to the termination date, as well as reasonable and actual costs (including for expenses and contractors) incurred by SailPoint through the effective date of the termination.
- e. **SailPoint Proprietary Information.** All SailPoint Proprietary Information and all right, title and interest, including, without limitation, all patents, copyrights, and trade secret rights anywhere in the world, and all other intellectual property and rights in connection therewith shall be the sole property of and remain with SailPoint or its licensors, as applicable. SailPoint Proprietary Information includes, but is not limited to, Software and related documentation and any modifications thereto developed in whole or in part by Professional Services. Except for the license use rights otherwise expressly provided in this Agreement, no right, title or interest in SailPoint Software is granted hereunder.
- f. **Independent Contractors.** SailPoint is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations, including but not limited to, Worker's Compensation Insurance. Nothing herein shall form or be construed to form a joint venture or partnership.
- g. **Performance Standards.** SailPoint's performance of Professional Services under this Agreement will be conducted with standards of practice common in the industry for similar services. While performing Professional Services at Customer's site, SailPoint will comply with all applicable Customer network and safety rules, guidelines and policies that do not conflict with the terms of this Agreement and any attachments hereto
- h. **Consent to Subcontract.** Customer hereby consents for SailPoint to subcontract Professional Services to persons or companies qualified and certified by SailPoint to provide Other Services on SailPoint's behalf.

8. Software Warranty and Conditions.

- 8.1. **Product Warranty.** SailPoint warrants that the Software will materially conform to the accompanying Documentation for a period of ninety (90) days from the date of initial delivery. If during the warranty period the Software does not materially conform to the Documentation, then Customer's exclusive remedy under this provision will be to have SailPoint, at SailPoint's sole expense and option, either repair, replace, or refund (on a pro rata basis) the amount paid by Customer for the nonconforming Software as follows. If SailPoint elects to provide a refund as the remedy for nonconforming Software for which Customer has paid Term License fees for the current annual period, then SailPoint shall refund to Customer an amount equal to the license fees paid by Customer for the remainder of the current annual period of the Term License, pro-rated from the date SailPoint received Customer's written notice detailing the nonconforming Software ("**Notification Date**"). If SailPoint elects to provide a refund as the remedy for nonconforming Software for which Customer has paid the applicable Perpetual License fee, then SailPoint shall refund to Customer (i) for the Perpetual License, an amount equal to a pro-rated portion of the Perpetual License fee calculated from the Notification Date using five-year straight line depreciation from the date of the applicable Perpetual License purchase and (ii) an amount equal to the fees paid by Customer for the remainder of the current paid-up period of Software Support for the nonconforming Software, pro-rated from the Notification Date. If SailPoint refunds the applicable fees in accordance with the foregoing, Customer's license to use the nonconforming Software shall be revoked and Customer shall comply with the obligations set forth in Section 10.3 (Effect of Termination) below. This warranty shall not apply if: (a) the Software is not used in accordance with SailPoint's Documentation and instructions; (b) the Software nonconformance has been caused by any of Customer's malfunctioning equipment or Customer-provided software; or (c) Customer has made modifications to the Software not expressly authorized in writing by SailPoint.
- 8.2. **Warranty Disclaimer. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES AND IS THE ONLY WARRANTY GRANTED BY SAILPOINT WITH RESPECT TO THE SOFTWARE OFFERING, DOCUMENTATION OR OTHER SERVICES. REGARDING THIS AGREEMENT OR ANY SOFTWARE LICENSED HEREUNDER, THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR SATISFACTORY QUALITY. SAILPOINT DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SOFTWARE OR THAT ALL SOFTWARE DEFECTS CAN BE CORRECTED.**

9. Confidentiality.

- 9.1. Treatment of Confidential Information.** Each party acknowledges that while this Agreement remains in effect, it may be entrusted with information from the other and agrees that it shall use commercially reasonable efforts to protect the confidentiality thereof. As used in this Agreement, “**Confidential Information**” means all proprietary, non-public information disclosed by a party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), directly or indirectly, which, (a) if in written, graphic, machine-readable or other tangible form, is marked as “confidential” or “proprietary,” (b) if disclosed orally or by demonstration, is identified at the time of initial disclosure as confidential and is confirmed in writing to the Receiving Party to be “confidential” or “proprietary” within thirty (30) days of the disclosure, or (c) reasonably appears to be confidential or proprietary because of the circumstances of disclosure and the nature of the information itself, terms of this Agreement, each Order, Other Services and Documentation, business and marketing plans, technology and technical information, product designs, and business processes of either party.
- 9.2. “Confidential Information”** does not include information that:
- is known publicly at the time of the disclosure by the Disclosing Party or becomes known publicly after disclosure through no fault of the Receiving Party;
 - is known to the Receiving Party at the time of disclosure by the Disclosing Party due to previous receipt from a source that was not bound by confidentiality obligations to the Disclosing Party at that time; or
 - is independently developed by the Receiving Party without use of or reference to the Confidential Information as demonstrated by the written records of the Receiving Party.
- 9.3.** The Receiving Party shall not (a) use the Confidential Information of the Disclosing Party except to exercise its rights and perform its obligations under this Agreement or (b) disclose the Confidential Information to any third party, except those of its employees, service providers, agents, and representatives who are subject to confidentiality obligations at least as stringent as the obligations set forth herein and have a “need to know” in order to carry out the purpose of this Agreement. The Receiving Party shall use at least the same degree of care it uses to protect its own confidential information of like nature, but not less than a reasonable degree of care, to protect the Confidential Information of the Disclosing Party.
- 9.4.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent the disclosure is required by law or order of a court or other governmental authority; provided that the Receiving Party shall use commercially reasonable efforts to promptly notify the Disclosing Party prior to the disclosure to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict the disclosure.
- 9.5. Remedies.** The parties agree that monetary damages may be insufficient to fully compensate either party for its losses in the event the other party violates the confidentiality provisions of this Agreement. Upon any actual or threatened violation by the Receiving Party, the Disclosing Party may be entitled to seek preliminary and other injunctive relief against the violation, in addition to any other rights or remedies that the Disclosing Party may have at law or in equity.

10. Term and Termination.

- 10.1. Agreement & Term Renewal.** This Agreement shall be in effect during the Term of any Order governed by this Agreement and shall continue in effect for so long as there is an Order arising under this Agreement with a current Term unless the Agreement or all Orders are terminated as set forth herein. At the end of an Order’s Term, Customer may renew the Term by executing a follow-on Order referencing this Agreement with fees to be agreed between: (i) SailPoint and Customer for Software Offering(s) or Other Services purchased by Customer directly through SailPoint; or (ii) Partner and Customer for Software Offering(s) or Other Services purchased by Customer through a Partner.
- 10.2. Termination.** This Agreement and any Order(s) executed hereunder may be terminated (i) by mutual agreement of SailPoint and Customer, (ii) by either party if the other party commits a material breach of this Agreement and fails to cure the breach within thirty (30) days following receipt of breach notice, or (iii) by either party if the other party becomes insolvent or is adjudged as bankrupt; makes an assignment for the benefit of creditors; has a receiver appointed; or files a petition of bankruptcy.
- 10.3. Effect of Termination.** Upon termination of this Agreement or expiration or termination of an Order, all rights granted to Customer for the License(s) purchased under the Order shall cease and Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) uninstall and delete all copies of the Software together with all Documentation and other materials associated with the Software from all systems operated by or on behalf of Customer, (iii) cease using the Software Support associated with the applicable License(s), and (iv) give SailPoint a written certification that Customer has complied with all of the foregoing obligations. If this Agreement is terminated by Customer for an uncured material breach by SailPoint pursuant to Section 10.2 (Termination), Customer has a paid up Term License for Software, and as of the effective date of the termination there is time remaining in the current paid-up annual period of the Customer’s current Term and/or for separately purchased upgraded Software Support, then SailPoint will refund to Customer a portion of the prepaid fees on a pro-rata basis calculated from the effective date of termination to the end of the paid up annual period. In the event Customer purchased a Perpetual License, SailPoint will refund to Customer an amount equal to the pro rata portion of the applicable Perpetual License fees calculated from the effective date of the termination using a five-

year straight-line depreciation from the date of the Customer's original purchase of the Perpetual License. Expiration or termination of this Agreement for any reason other than termination by Customer for an uncured material breach by SailPoint pursuant to Section 10.2 (Termination) shall not relieve Customer of the obligation to pay all future amounts due under all current Orders.

10.4. Survival. Upon termination of this Agreement, all of the parties' respective rights and obligations hereunder shall cease, except that the sections of the Agreement entitled: "Title and Restrictions", "Payment", "Warranty Disclaimer", Intellectual Property Indemnification", "Limitation of Liability", "Confidentiality", "Effect of Termination", and "General" shall survive the termination.

11. Intellectual Property Indemnification.

11.1. Indemnification. Subject to Section 11.2 (Indemnity Process) below, SailPoint will defend Customer from all claims, demands, suits, or proceedings brought against Customer by a third party alleging that the Software, as provided by SailPoint to Customer under this Agreement, infringes any patent, copyright, or trademark or misappropriates any trade secret of that third party (each, an "**Infringement Claim**"). SailPoint will indemnify Customer for all damages and costs (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction, authorized arbitral panel, or paid to a third party in accordance with a written settlement agreement signed by SailPoint, in connection with an Infringement Claim. In the event an Infringement Claim is brought, or in SailPoint's reasonable opinion is likely to be brought, SailPoint may, at its option: (a) procure the right to permit Customer to continue use of the Software, (b) replace or modify the Software with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, or (c) if SailPoint determines that neither of the foregoing options are reasonably practicable, terminate the License and, if Customer is timely on payments for a Term License to the Software, refund any prepaid fees for the infringing Software paid by Customer to SailPoint for the period of time from the date the infringing Software was returned through the end of the paid up portion of the current Term (or if Customer has paid for a Perpetual License to the Software, the pro-rata refund shall be based on a five-year straight line depreciation from date of original purchase of the Perpetual License to the affected Software through the date of return). Notwithstanding the foregoing, SailPoint shall have no liability for any Infringement Claim of any kind to the extent that it relates to Software or portions or components thereof (i) not supplied by SailPoint, (ii) made in whole or in part in accordance to Customer specifications, (iii) modified by a party other than SailPoint after delivery to Customer, (iv) used in combination with any other product, process, materials, service, or device, if the infringement would have been avoided by the use of the Software without the other product, process, materials, service, or device, or (v) where Customer continues use of the infringing Software following SailPoint's supplying a modified, amended or replacement version of the Software, or (vi) use of the Software other than in accordance with the Documentation and this Agreement. Customer will reimburse SailPoint for any reasonable out of pocket expenses incurred by SailPoint if the cause of the infringement is attributable to Customer's actions as stated in this paragraph. THE INDEMNIFICATION OBLIGATIONS SET FORTH IN THIS SECTION 11.1 ARE CUSTOMER'S EXCLUSIVE REMEDY AND SAILPOINT'S SOLE LIABILITY WITH RESPECT TO SAILPOINT'S INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

11.2. Indemnity Process. With respect to claims for indemnification pursuant to Section 11.1 (Indemnification) above, Customer must (a) promptly notify SailPoint of the claim (provided that any failure to provide prompt written notice will only relieve the SailPoint of its obligations to the extent its ability to defend the claim is materially prejudiced by the failure), (b) give SailPoint sole control of the defense and settlement of the claim (provided that SailPoint shall not consent to entry of any judgment or admission of any liability of Customer without the prior written approval of Customer), and (c) provide reasonable assistance, cooperation, and required information with respect to the defense and settlement of the claim, at SailPoint's expense. At its own expense, Customer may retain separate counsel to advise it regarding the defense or settlement of the claim.

12. Limitation of Liability.

12.1. Liability Limit. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE SOFTWARE, LICENSE OR THE SOFTWARE SUPPORT PROVIDED PURSUANT TO THIS AGREEMENT EXCEED THE LICENSE FEES PAID AND/OR PAYABLE BY CUSTOMER TO SAILPOINT UNDER THE ORDER GIVING RISE TO THE CLAIM FOR THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. FOR OTHER SERVICES, IN NO EVENT SHALL EACH PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNT OF FEES PAID AND/OR PAYABLE FOR THE OTHER SERVICES BY CUSTOMER TO SAILPOINT UNDER THE ORDER GIVING RISE TO THE CLAIM FOR THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. NOTWITHSTANDING THE LIMITATIONS SET FORTH IN THIS SECTION 12.1, NEITHER PARTY EXCLUDES OR LIMITS ITS LIABILITY FOR:

- a. EITHER PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 11 (INTELLECTUAL PROPERTY INDEMNIFICATION);
- b. DAMAGES FOR DEATH, BODILY INJURY OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY EITHER PARTY'S NEGLIGENCE;

- c. DAMAGES RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD;
- d. A PARTY'S MISAPPROPRIATION OR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR OTHER UNAUTHORIZED USE OF THE OTHER PARTY'S TECHNOLOGY OR INTELLECTUAL PROPERTY RIGHTS;
- e. DAMAGES RESULTING FROM EITHER PARTY'S BREACH OF SECTION 9 (CONFIDENTIALITY); OR
- f. CUSTOMER'S PAYMENT OBLIGATIONS.

12.2. Consequential Damages. FURTHERMORE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ITS LICENSORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, RELIANCE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS) WHETHER ARISING FROM CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF THE DAMAGES. NOTWITHSTANDING THE IMMEDIATELY PRECEDING SENTENCE, THE FOLLOWING SHALL BE EXCLUDED FROM THE LIMITATIONS SET FORTH IN THIS SECTION 12.2:

- a. DAMAGES FOR DEATH, BODILY INJURY OR DAMAGE TO TANGIBLE PROPERTY CAUSED BY EITHER PARTY'S NEGLIGENCE;
- b. DAMAGES RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD;
- c. A PARTY'S MISAPPROPRIATION OR INFRINGEMENT OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR OTHER UNAUTHORIZED USE OF THE OTHER PARTY'S TECHNOLOGY OR INTELLECTUAL PROPERTY RIGHTS; AND
- d. DAMAGES RESULTING FROM EITHER PARTY'S BREACH OF SECTION 9 (CONFIDENTIALITY).

12.3. Acknowledgment. THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN WILL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN ARE REFLECTED IN THE PRICING AND BUT FOR THE LIMITATIONS AND EXCLUSIONS, SAILPOINT WOULD NOT HAVE MADE THE OTHER SERVICES AVAILABLE TO CUSTOMER.

13. General

13.1. U.S. Government Restriction Rights. The Software is provided with "RESTRICTED RIGHTS." Use of the Software by the U.S. Government constitutes acknowledgment of SailPoint's proprietary rights in it. The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted herein.

13.2. Regulatory/Export Compliance. Customer acknowledges and agrees that the Software is subject to the export control laws, rules, regulations, restrictions and national security controls of the United States and other applicable foreign agencies (the "**Export Controls**"), and agrees not to export or re-export, or allow the export or re-export of the Software or any copy or portion thereof in violation of the Export Controls. Customer hereby represents that (i) Customer is not an entity or person to which shipment of Software is prohibited by the Export Controls; and (ii) Customer will not export, re-export or otherwise transfer the Software to (a) any country subject to a United States trade embargo, (b) a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Software is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

13.3. Anti-Bribery/Corruption. Neither party (a) has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement or (b) has made, paid, given, or agreed to make, pay, or give any bribe, kickback, payment, gift, or thing of value to any foreign government official or other person in violation of applicable laws related to the prevention of corruption, including the U.S. Foreign Corrupt Practices Act of 1977, as amended ("**Anti-Corruption Laws**") in connection with this Agreement Both parties agree to comply with Anti-Corruption Laws in relation to this Agreement. If either party learns of any violation of the foregoing restriction, the party will use reasonable efforts to promptly notify the other party.

13.4. Severability. Should any provision of this Agreement be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

- 13.5. Notice.** Except as otherwise expressly permitted in this Agreement, notices under this Agreement shall be in writing and shall be deemed to have been given (a) five (5) business days after mailing if sent by registered or certified U.S. mail, (b) when personally delivered, or (c) one (1) business day after deposit for overnight delivery with a recognized courier for U.S. deliveries (or three (3) business days for international deliveries).
- 13.6. Assignment.** Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, (a) either party may assign this Agreement to any party that acquires all or substantially all of its related business by merger, sale of stock or assets, or a similar transaction, and (b) SailPoint may subcontract its obligations hereunder to a third party, provided that SailPoint shall remain liable for any breach thereof.
- 13.7. Entire Agreement.** This Agreement together with the documents incorporated hereto by reference, constitute the entire agreement between the parties on the subject matter hereof and supersede all previous oral and written communications, representations, understandings and agreements by the parties concerning the subject matter of this Agreement. Customer agrees that its purchase of the Software is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by SailPoint with respect to future functionality or features. No terms, provisions or conditions contained in any purchase order, sales confirmation, or other business form or announcement that either party may use in connection with the transactions contemplated by this Agreement will have any effect on the rights or obligations of the parties under, or otherwise modify, this Agreement. This includes but is not limited to any terms (including those requiring SailPoint's payment of fees to a third party) that are presented to SailPoint by or on behalf of Customer as part of Customer's vendor registration, invoicing, or other similar process, even if SailPoint has accepted the terms as a technical matter or continued to act after being presented with them to facilitate Customer's payment or otherwise. If there is any conflict between the terms of this Agreement and any Order or similar ordering document with a Partner, the terms of this Agreement shall control unless SailPoint and Customer expressly agree otherwise in the applicable Order or other document signed by both parties by specific reference to the section(s) of this Agreement that are intended to be modified. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by authorized representatives of both parties hereto. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision and a waiver of any breach of this Agreement shall not constitute a waiver of any other or subsequent breach.
- 13.8. Governing Law.** This Agreement is governed by the laws of the State of Texas, excluding any of its conflict of law principles that would apply laws of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply.
- 13.9. Injunctive Relief; Attorney Fees.** Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to, a breach of the "Title and Restrictions" or "Confidentiality" sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies. If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney fees, court cost and other collection expenses, in addition to any other relief it may be awarded.
- 13.10. Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond the party's reasonable control, including acts of God, acts of government, computer related attacks, hacking, or acts of terror, service disruptions involving hardware, software, or power systems not within the party's possession or reasonable control (each a "**Force Majeure Event**"). Notwithstanding the foregoing, Customer shall remain liable for the payment of all amounts required to be paid pursuant to an applicable Order, regardless of the occurrence or persistence of a Force Majeure Event.
- 13.11. Deployment Verification.** Upon reasonable advance notice to Customer and not to unreasonably interfere with Customer's normal business operations, SailPoint has the right to verify Customer's use of the Software against Customer's current entitlement under all active Orders. SailPoint shall not conduct a verification more frequently than once per year unless agreed otherwise in an Order.
- 13.12. Independent Contractors; No Third-Party Beneficiaries.** The parties have the status of independent contractors, and nothing in this Agreement nor the conduct of the parties will be deemed to place the parties in any other relationship. Except as provided in this Agreement, neither party shall be responsible for the acts or omissions of the other party or the other party's personnel. There are no third-party beneficiaries under this Agreement.
- 13.13. Interpretation.** For purposes of interpreting this Agreement:
- i. unless the context otherwise requires, the singular includes the plural, and the plural includes the singular;
 - ii. unless otherwise specifically stated, the words "herein," "hereof," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section or paragraph;
 - iii. the words "include" and "including" will not be construed as terms of limitation, and will therefore mean "including but not limited to" and "including without limitation";

- iv. unless otherwise specifically stated, the words “writing” or “written” mean preserved or presented in retrievable or reproducible form, whether electronic (including email but excluding voice mail) or hard copy; and
- v. the captions and section and paragraph headings used in this Agreement are inserted for convenience only and will not affect the meaning or interpretation of this Agreement.

End of Terms and Conditions