



MASTER SUBSCRIPTION AGREEMENT

This Master Subscription Agreement (this “**Agreement**”) governs the relationship between Serenova, LLC (“**Serenova**”, “**we**”, “**us**” and “**our**”) and you, the organization or entity subscribing to our Service (in either case, “**you**”, “**your**”). Capitalized terms used in this Agreement are defined below.

You may not access the Service if you are our direct competitor, except with our prior written consent. In addition, you may not access or use 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 us as of the date on which you execute the Order Form in which this Agreement is referenced. This Agreement governs all Order Forms and Statements of Work between the parties.

You acknowledge that we may change the Services from time to time in order to provide updates or additional or different features; provided, however, that we will not materially reduce the functions or features of the Service without your prior consent.

TABLE OF CONTENTS

1. [Definitions](#)
2. [Provision of the Services](#)
3. [Use of the Services](#)
4. [Third Party Products and Services](#)
5. [Fees and Payment for Purchased Services](#)
6. [Proprietary Rights](#)
7. [Confidentiality](#)
8. [Warranties and Disclaimers](#)
9. [Indemnification](#)
10. [Limitation of Liability](#)
11. [Term and Termination](#)
12. [Notices, Governing Law and Jurisdiction](#)
13. [General Provisions](#)

1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity. “**Agreement**” means this Master Subscription Agreement and any exhibits, schedules, and addenda hereto, and each Order Form.

“**Certified Third-Party Products**” means any product, service or license available for purchase directly from Serenova that is not a Serenova Platform or Professional Service provided by Serenova. Certified Third Party Products as defined herein includes implementation, support, and similar services provided by or through Serenova’s Third Party partners to support Your order of Certified Third-Party Products. Your purchase of Certified Third-Party Products may require that you agree to additional terms and conditions, which may be specified in an Order Form or require Your acceptance (electronically or otherwise) prior to accessing the Certified Third Party Product. For the avoidance of doubt, when this Agreement refers to Third Party products, services, or applications and does not specifically use the defined term “Certified Third-Party Products”, then the meaning is any Third Party provided product or service that may be integrated or interoperable with the Service or Certified Third Party Product but it not provided by Serenova pursuant to this Agreement or an Order Form hereunder.

“**Malicious Code**” means code, files, scripts, agents, or programs intended to harm, including, but not limited to, viruses, worms, time bombs, and Trojan horses.



“**Order Form**” means each order form entered into between you (or any of your Affiliates) and us (or any of our Affiliates) from time to time describing the Services. By entering into an Order Form hereunder, your Affiliates are bound by the terms of this Agreement as if they were an original party hereto, and you and your Affiliates are jointly and severally liable for compliance with the terms and conditions of this Agreement and any Order Form. Order Forms are deemed incorporated herein by reference.

“**Product List**” means the description of available products and services and features provided in the Product Descriptions and Usage Fees available at www.serenova.com/contracts.

“**Professional Services**” means professional services, such as implementation, provided by Serenova to You Customers related to provision of the Service under an Order Form or Statement of Work hereunder.

“**Purchased Services**” means Services that you or your Affiliates purchase from us under an Order Form, as distinguished from Services provided pursuant to a free trial.

“**Serenova Platforms**” means the portions of the Service that are Serenova hosted contact center platforms only, which are CxEngage and the Classic Platform. Serenova’s Classic platform(s) may be referred to as LiveOps Engage and/or LiveOps Phone Panel (hereinafter “Classic Platform”). Serenova reserves the right to expand the definition of Serenova Platforms when new platforms or products are developed or acquired for release.

“**Service(s)**” means any distinct, subscription-based, hosted, supported and operated on-demand solution provided by Serenova under an Order Form, including the Serenova Platforms and Certified Third Party Products, all as may be further described in the “Product Descriptions & Usage Fees” document available at: <https://www.serenova.com/contracts> as may be updated from time to time by Serenova.

“**Subscription Term**” means, for any Order Form, the subscription period identified in such Order Form, unless terminated earlier as provided herein.

“**Third Party**” means entities or individuals other than you or Serenova or our respective Affiliates.

“**Update**” means a new version of the Software containing functional enhancements, modifications, extensions, error corrections or bug fixes. Updates may occur automatically, while others may require you to schedule and implement the changes and, in such case,, we will provide you with advance notice.

“**Users**” means individuals within your organization whom you authorize to use the Services, and for whom subscriptions to a Service have been ordered under an Order Form, and to whom you or we supply user identifications and passwords.

“**User Guide**” means the online user guide for that portion of the Service comprised of Serenova’s CxEngage platform, accessible at <https://docs.cxengage.net>, as we may update from time to time.

“**Your Data**” means all electronic data or information submitted by you or Users to or through the Purchased Services or Software, and all derivatives thereof.

[Back to Top](#)

2. PROVISION OF THE SERVICES

2.1. Our Responsibilities. We will make the Purchased Services available to you pursuant to this Agreement and the relevant Order Forms during your Subscription Term and in accordance with applicable laws and government regulations.

2.2. Our Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, and our use of Your Data is governed by our Privacy Policy, the current version of which is found here: <http://www.serenova.com/privacy-policy>. Serenova is an industry-agnostic



service provider. You are responsible for Your Data and will collect and maintain all personal data contained in Your Data in compliance with applicable data privacy and protection laws.

2.3. Data Retrieval. Serenova can retrieve and export Your Data for a fee under a Statement of Work hereunder. The amount of Your Data requiring retrieval and exportation will determine the fee for performance of Professional Services required. You must provide at least sixty (60) days written notice of a request for retrieval and exportation of Your Data. Once Your Data is extracted it will be permanently deleted from our systems after sixty (60) days from the date it was delivered.

2.4 Cardholder Data. For Customers that use the CxEngage platform to process credit card information, known as cardholder data (“CHD”), it is Customer’s responsibility to identify and delete all CHD processed through the CxEngage platform. Customer is responsible for training Users to identify and delete all CHD. Users with the appropriate permissions, such as those with an administrator role will be able to delete CHD within the CxEngage platform.

[Back to Top](#)

3. USE OF THE SERVICES

3.1. Subscriptions. Unless otherwise specified in the applicable Order Form, (a) Services are purchased as a subscription providing you a right to access and use the Services during the applicable Subscription Term, (b) additional Services may be added during the applicable Subscription Term under the applicable Order Form, and can be prorated for the remainder of the Subscription Term in effect at the time the additional subscriptions are added, and (c) any added Services will terminate on the same date as the pre-existing subscriptions. Only your Users may access Purchased Services. You agree that your purchases hereunder are neither contingent on our delivery of future functionality or features nor dependent on any oral or written comments that we made regarding future functionality or features.

3.2. Usage Limits. Services are subject to usage limits that are specified in Order Forms. Unless otherwise specified in an Order Form, (a) a User’s password may not be shared with any other individual, and (b) except as set forth in an Order Form, a User identification may only be reassigned to a new individual replacing one who will no longer use the Service. If you are using Serenova’s Classic Platform, You must give Serenova at least thirty days (30) advance notice if your concurrent call volume is expected to exceed Your normal volume by more than ten percent (10%) so that Serenova has time to prepare our systems accordingly. We reserve rights to seek to reduce your usage if required. If, notwithstanding our efforts, you are unable or unwilling to abide by a usage limit requested by Serenova, you will execute an Order Form for additional quantities of the applicable Services promptly upon our request, and/or pay any invoice for excess usage in accordance with Section 5.2 (Invoicing and Payment).

3.3. Your Responsibilities. You will (a) be responsible and liable for Users’ compliance (or noncompliance) with this Agreement, (b) be responsible for the accuracy, quality and legality of Your Data and of the means by which you acquired Your Data, and your use of Your Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify us promptly upon learning of any such unauthorized access or use, (d) use the Services only in accordance with the User Guide and all applicable laws and government regulations, and (e) comply with terms of service of any Certified Third Party Products or other Third Party applications with which you use Services. You shall, where required by law, inform third parties of the collection, storage or processing of any communications, personal information or other information, to ensure that any required parties have opted in to such collection, storage or processing, and to otherwise comply with all applicable data protection and privacy law concerning the collection, storage and processing of personal information concerning such third parties.

3.4. Your Usage Restrictions. You may not (a) make the Services available to, or use any Service for the benefit of, anyone other than you or Users, unless expressly stated otherwise in an Order Form, (b) sell, resell, license, sublicense, distribute, make available, rent or lease the Services, (c) use the Services 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 the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the



Services or Third Party data contained therein, (f) attempt to gain unauthorized access to the Services or their related systems or networks, (g) permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, or use any of our Services to access or use any of our intellectual property except as permitted under this Agreement or an Order Form, (h) copy a Service or any part, feature, function or user interface thereof, (i) frame or mirror any part of any Service, other than framing on your own intranets or otherwise for your own internal business purposes, (j) access any Service in order to build a competitive product or service or to benchmark with a Third Party product or service, (k) modify or create derivative works of the Services, or (l) reverse engineer any Service (to the extent necessary for your use of the Service and as permitted by applicable law). Serenova reserves the right to establish an Acceptable Use Policy that you must comply with. Any use of the Services in breach of this Agreement or Order Forms by you or Users may result in our immediate suspension of the Services; however, we will use commercially reasonable efforts to notify you of the suspension in advance, and if the breach can be cured, with an opportunity to cure the breach in accordance with Section 11.3 (Termination for Cause).

3.5. E911 Services. THE SERVICES DO NOT INCLUDE E911 OR 911 SERVICE. THE SERVICES ARE INTENDED TO SUPPORT CONNECTIVITY TO SERENOVA'S PLATFORM ONLY AND DO NOT PROVIDE FULL-SERVICE INBOUND AND OUTBOUND CALLING. SERENOVA SPECIFICALLY DISCLAIMS ANY RESPONSIBILITY FOR PROVIDING ACCESS TO E911/911 SERVICES. YOU ACKNOWLEDGES AND WILL INFORM ALL USERS THAT VOICE COMMUNICATIONS SERVICES DO NOT INCLUDE E911/911 ACCESS.

[Back to Top](#)

4. THIRD PARTY PRODUCTS

4.1. Use of Certified Third Party Products. Serenova may from time to time make certain Certified Third Party Products available to you, as may be indicated on the Product List or described in an Order Form. It is Your sole responsibility to manage any exchange of Your Data with the Third Party provider. Serenova does not warrant Certified Third Party Products. No purchase of a Certified Third Party Products is required to use the Serenova Platform(s).

4.2. Certified Third Party Products and Your Data. If You order a Certified Third Party Product pursuant to an Order Form hereunder, you acknowledge that we may allow providers of those Certified Third Party Products to access Your Data as required for the operation of such Certified Third Party Products. We are not responsible for any disclosure, modification or deletion of Your Data resulting from any such access by a Certified Third Party Product or its provider.

4.3. Third Party Terms and Conditions. Certain Certified Third Party Products are subject to separate terms and conditions. You must agree to those terms and conditions before accessing applicable Certified Third Party Products, and you must ensure that Users comply with such terms and conditions. We may modify, remove or replace Certified Third Party Products and components thereof from time to time.

4.4. Integration with Third Party Applications. The Service may contain features designed to interoperate with Third Party products and services (e.g., email, text messaging, or customer relationship management applications). To use such features, you may be required to obtain access to certain third party applications or subscriptions from their providers or to grant us access to your account(s) with such Third Party service providers. We cannot guarantee the continued availability of such Service features, and may cease providing them without entitling you to any refund, credit, or other compensation, if for example and without limitation, the provider of a Third Party product or service ceases to make the third party product or service available for interoperation with the corresponding Service features in a manner acceptable to us.

4.5. Third Party applications and Your Data. If you enable or authorize enablement of Third Party applications for use with Service, you acknowledge that we may allow providers of those Third Party applications to access Your Data as



required for the interoperation of such Third Party applications with the Service. We are not responsible for any disclosure, modification or deletion of Your Data resulting from any such access by a Third Party application or its provider. You may allow a Third Party service provider other than Serenova's providers to use or access the Service solely for purposes of providing products or services to you, provided that such service provider has contractually agreed to maintain the confidentiality of the Service under terms no less restrictive than as set forth herein, and you are responsible and liable for such service provider's compliance with the terms of this Agreement governing such use.

[Back to Top](#)

5. FEES AND PAYMENT FOR PURCHASED SERVICES

5.1. Fees. You will pay all fees specified in all Order Forms. Except as otherwise specified herein or in an Order Form, (a) fees are based on Services purchased regardless of whether such Services are utilized by you, (b) payment obligations are non-cancelable and fees paid are non-refundable, and (c) the quantities of Services purchased cannot be decreased during the relevant Subscription Term.

5.2. Invoicing and Payment. You agree to pay for the Service and all Services ordered under this Agreement as set forth in the Order Form or Statement of Work to the Agreement. You will provide us 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 for the initial subscription term and any renewal subscription term(s) as set forth in Section 11.2 (Term of Purchased Subscriptions). Such charges will be made in advance, in accordance with the 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 within 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 charges are not received from you by the due date, then, at our discretion, (a) such 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, from the date such payment was due until the date paid, 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 7 days prior notice that your account is overdue, in accordance with Section 12.1 (Manner of Giving Notice), 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) if you are disputing the applicable charges reasonably and in good faith and notify us of the dispute within the original time for payment, along with all reasonable information supporting your dispute, and are cooperating diligently with us to resolve the dispute.

5.6. Taxes. Unless otherwise stated, our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (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, the appropriate amount will be invoiced to and paid by you, unless you provide us with a valid tax exemption certificate authorized by the appropriate taxing authority. We are solely responsible for taxes assessable against us based on our income, property and employees.



[Back to Top](#)

6. PROPRIETARY RIGHTS

6.1. Reservation of Rights in Services. Subject to the limited rights expressly granted hereunder, between you and us, we reserve all rights, title and interest in and to the Services, and to our proprietary platform that we use to provide the Services (including software, hardware, firmware, and all other applications and technology), and all related intellectual property rights. No rights are granted to you hereunder other than as expressly set forth herein.

6.2. License to Host Your Data and Applications. You grant us, our Affiliates and applicable contractors a worldwide, limited-term license to host, copy, transmit and display Your Data, and any Third Party applications and program code created by or for you using a Service or for use by you with the Services, as reasonably necessary for us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, we acquire no right, title or interest from you or your licensors under this Agreement in or to any of Your Data, Third Party Application or such program code.

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 our or our Affiliates' products and 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.

[Back to Top](#)

7. CONFIDENTIALITY

7.1. Definition of Confidential Information. "**Confidential Information**" means all confidential information that you may disclose to us, or that we may disclose to you, in connection with this Agreement. The party disclosing Confidential Information is the "**Disclosing Party**", and the party receiving Confidential Information is the "**Receiving Party**". Confidential Information may be exchanged orally or in writing, and may be either designated as confidential, or reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes, but is not limited to, Your Data; our Confidential Information includes, but is not limited to, the Services and the terms and conditions of this Agreement and all Order Forms. However, Confidential Information (other than Your Data) does not include any information that (a) is or becomes generally known to the public without breach by the Receiving Party of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to receipt from the Disclosing Party, and without breach of any obligation owed to the Disclosing Party, (c) is received by the Receiving Party from a Third Party, without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party as demonstrated by its records kept in the ordinary course, and without use of the Disclosing Party's Confidential Information.

7.2. Protection of Confidential Information. The Receiving Party must (a) use the same degree of care to protect the Disclosing Party's Confidential Information that it uses to protect the confidentiality of its own confidential or proprietary information (but in no event less than reasonable care), (b) not use the Disclosing Party's Confidential Information for any purpose outside the scope of this Agreement, and (c) except as otherwise authorized by the



Disclosing Party in writing, limit access to the Disclosing Party's Confidential Information to those of the Receiving Party's and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed agreements with the Receiving Party protecting the confidentiality of the Disclosing Party's Confidential Information containing protections no less stringent than those herein. You may not disclose the terms of this Agreement or any Order Form to any Third Party other than in confidence to your Affiliates and your legal counsel and accountants (or similar advisors), and you will remain responsible for their compliance with this Section 7.

7.3. Compelled Disclosure. The Receiving Party may disclose the Disclosing Party's Confidential Information if it is compelled by law to do so, provided it notifies the Disclosing Party in advance of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the Disclosing Party's request and expense, if the Disclosing Party wishes to contest the disclosure. If we are compelled by law to disclose your Confidential Information as part of a civil proceeding to which you are a party, and you are not contesting the disclosure, you will reimburse us for our reasonable cost and expense incurred in compiling and providing secure access to your Confidential Information.

[Back to Top](#)

8. WARRANTIES AND DISCLAIMERS

8.1. Our Warranties. We represent and warrant that (a) we have validly entered into this Agreement and have the legal power to do so, (b) the Services will be provided materially in accordance with the terms of this Agreement, (c) we will use commercially reasonable efforts to not transmit Malicious Code to you, provided it is not a breach of this subpart (c) if you or a User uploads a file containing Malicious Code into the Services and later downloads that file containing Malicious Code. For any breach of a warranty in this Section 8.1, your exclusive remedy, and our sole liability, will be as provided in Section 11.3 (Termination for Cause).

8.2. Your Warranties. You represent and warrant that (a) you have validly entered into this Agreement and have the legal power to do so, (b) you will not knowingly transmit Malicious Code through the Services, (c) you will comply with all applicable local, state, national and international laws, treaties, regulations and conventions in connection with your use of the Services, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data, and (d) all Users' workstations and network access comply with then-current Serenova network requirements, and use of the Service by Users is in accordance with the terms of this Agreement.

8.3. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERENOVA DOES NOT WARRANT THAT ANY ASPECT OF THE SERVICE: (I) WILL OPERATE ERROR-, BUG- OR DEFECT-FREE, OR IS FREE OF COMPUTER VIRUSES OR SIMILAR CONTAMINATION OR DESTRUCTIVE FEATURES; (II) IS SUITABLE FOR YOUR PARTICULAR INDUSTRY OR INTENDED USE; (III) WILL COMPLY WITH LAWS OR REGULATORY GUIDELINES THAT ARE APPLICABLE TO YOU; OR (IV) WILL BE TIMELY, COMPLETELY SECURE OR UNINTERRUPTED.

8.4. Non-GA Services. From time to time we may invite you to try, at no charge, our products or services that are not generally available to our customers ("**Non-GA Services**"). You may accept or decline any such trial in your sole discretion. Any Non-GA Services will be clearly designated as beta, pilot, limited release, developer preview, non-production or by a description of similar import. Non-GA Services are provided for evaluation purposes and not for production use, are not supported, may contain bugs or errors, and may be subject to additional terms. NON-GA SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. We may discontinue Non-GA Services at any time in our sole discretion and may never make them generally available.

[Back to Top](#)



9. INDEMNIFICATION

9.1. Indemnification by Us. We will defend you from and against any claim, demand, suit, or proceeding made or brought against you by a Third Party alleging that the use of the Services as permitted hereunder infringes or misappropriates such Third Party's intellectual property rights (a "**Claim Against You**"), and will indemnify you for any damages, attorney fees and costs finally awarded against you as a result of, and for amounts paid by you under a court-approved settlement approved by us in writing of, a Claim Against You, provided that 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 (provided that we may not settle any Claim Against You unless the settlement unconditionally releases you of all liability), and (c) provide to us all reasonable assistance, at our expense. In the event of a Claim Against You, or if we reasonably believe the Services may infringe or misappropriate, we may in our sole discretion and at no cost to You (i) modify the Services so that they no longer infringe or misappropriate, without breaching our warranties under Section 8.1, (ii) obtain a license for your continued use of the Services in accordance with this Agreement, or (iii) terminate your subscriptions for such Services upon 30 days written notice and refund to you any prepaid fees covering the remainder of the term of such subscriptions after the effective date of termination. The foregoing defense and indemnification obligations do not apply to the extent a Claim Against You arises from (1) a Third Party Application, (2) your use of the Services in violation of this Agreement, (3) our use of Your Data in accordance with the terms of this Agreement, or (4) your use of Your Data. This Section 9.1 states our sole liability, and your sole and exclusive remedy, for any claims or allegations of intellectual property infringement.

9.2. Indemnification by You. If instructed by us to you in writing, you will defend us against any claim, demand, suit or proceeding made or brought against us by a Third Party that (a) arises from or relates to any failure of E911 or 911 service used in conjunction with Your use of the Service or (b) arises from or relates to Your Data or your use of the Services in breach of this Agreement, including allegations related to infringement of the intellectual property rights of a Third Party or a violation of applicable law (a "**Claim Against Us**"). You will indemnify us and hold us harmless from any damages, attorney fees and costs finally awarded against us, or for any amounts paid by us in settlement as a result of a Claim Against Us. We will promptly give you written notice of the Claim Against Us. Customer's indemnification obligations in this Section 9.2 shall apply regardless of who may be at fault or otherwise responsible under any statute, rule, or theory of law, including but not limited to theories of strict liability, and including but not limited to claims relating to the Telephone Consumer Protection Act, the Communications Act, FCC rules and regulations, or similar state and federal laws.

[Back to Top](#)

10. LIMITATION OF LIABILITY

10.1. Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

10.2. Limitation of Liability. IN NO EVENT WILL SERENOVA AND ITS AFFILIATES' LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FROM ANY CAUSE OF ACTION WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EXCEED THE AMOUNTS PAID BY YOU TO SERENOVA OR A SERENOVA AFFILIATE PURSUANT TO THE ORDER FORM UNDER WHICH THE LIABILITY AROSE DURING THE 12 MONTHS PRECEDING THE CAUSE OF ACTION. THE FOREGOING LIMITATION WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.



10.3. Exceptions. Damages caused by your breach of Section 7 (Confidentiality), or damages caused by your breach of Section 6 (Proprietary Rights), and amounts payable pursuant to your indemnification obligations in Section 10 (Mutual Indemnification), are not limited by Section 10.

[Back to Top](#)

11. TERM AND TERMINATION

11.1. Term of Agreement. This Agreement commences on the date you accept it and continues until all Services subscriptions purchased under Order Forms have expired or been terminated. If you elect to use the Services for a free trial period and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

11.2. Term of Purchased Subscriptions. Services subscriptions purchased by you commence on the Subscription Term start date specified in the applicable Order Form and continue for the Subscription Term specified therein. Purchased Subscriptions are non-cancellable prior to the expiration of the specified Subscription Term. Except as otherwise specified in the applicable Order Form, all Services subscriptions will automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 60 days before the end of the relevant Subscription Term. The Services pricing during any such renewal term will be as set forth in the Order Form.

11.3. Termination for Cause. Either party may terminate this Agreement: (a) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such 30-day period, or (b) upon notice 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. Termination for Convenience. You may terminate this Agreement for convenience upon 60 days written notice to us and by immediately paying a termination fee equal to the minimum commitments of recurring fees owed through the end of the then-current term and including all fees owed under Statements of Work executed prior to the date of termination.

11.5. Payment upon Termination. If this Agreement is terminated by us for cause in accordance with Section 11.3, you will pay any unpaid fees covering the remainder of the subscription term of all Order Forms. In no event will any termination relieve you of the obligation to pay any fees payable to us for the period prior to the effective date of termination.

11.6. Your Data upon Termination. If the Services do not permit you to download your Data directly, then prior to termination or within thirty days after termination of this Agreement, you may request that Serenova return Your Data. Additional fees are associated with such retrieval and export, which fees will be quoted to you and provided for in a Statement of Work hereunder. Thereafter, we will have no obligation to maintain or provide any of Your Data and will delete all of Your Data in our systems or otherwise in our possession or under our control.

11.7. Surviving Provisions. Your payment obligations, and Sections 6 (Proprietary Rights), 7 (Confidentiality), 8.3 (Disclaimer), 9 (Indemnification), 10 (Limitation of Liability), 11.5 (Payment upon Termination), 11.6 (Your Data upon Termination), 11.7 (Surviving Provisions), 12 (Notices, Governing Law and Jurisdiction) and 13 (General Provisions) will survive any termination or expiration of this Agreement. Our remedies are cumulative, and our exercise of a remedy is without prejudice to our other available remedies.

[Back to Top](#)

12. NOTICES, GOVERNING LAW AND JURISDICTION

12.1. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder must be in writing and will be deemed to have been given upon: (a) personal delivery, (b) the seventh business day after mailing, (c) the second business day after sending by confirmed facsimile, (d) the second business



day after sending by overnight commercial courier, or (e) the first business day after sending by email (provided email will not be sufficient for notices of termination or an indemnifiable claim). Notices to us must be addressed to 7300 FM 2222, Building 3, Austin, TX 78730, Attn. CFO, with a copy to our Legal Department, and notices to you will be addressed to the contact designated by you in the Order Form.

12.2. Governing Law and Jurisdiction. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of Texas, without regard to conflicts of law rules. Each party irrevocably agrees that the federal and state courts located in Austin, Texas shall have jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims). Each party irrevocably submits to such jurisdiction and irrevocably waives any objections based on inconvenient forum. Notwithstanding the foregoing, each party shall have the right to seek (i) equitable relief pursuant to Section 13.11, and (ii) the enforcement of judgments, in any court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

[Back to Top](#)

13. GENERAL PROVISIONS

13.1. 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 may not permit Users to access or use Services in a U.S. embargoed country (currently Cuba, Iran, North Korea, Sudan, Syria and Crimea) or in violation of any U.S. export law or regulation.

13.2. Anti-Corruption. You acknowledge 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 foregoing restriction. If you learn of any violation of the foregoing restriction, you will use reasonable efforts to promptly notify our Legal Department at legal@serenova.com.

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

13.4. No Third-Party Beneficiaries. There are no Third Party beneficiaries to this Agreement *except* certain of our licensors and suppliers are third-party beneficiaries of this Agreement and have the right to enforce this Agreement against you.

13.5. Amendment; Waiver. No amendment, modification or waiver of any provision of this Agreement, nor consent to any departure therefrom, will in any event be effective unless it is in writing and signed by the parties hereto, and then such amendment, modification, waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No failure or delay by either party in exercising any right, power or privilege hereunder will operate as a waiver thereof nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13.6. Invalidity; Severability. If any term or provision of this Agreement should be declared invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Agreement will be unimpaired and the invalid, illegal or unenforceable term or provision will be replaced by such valid term or provision as comes closest to the intention underlying the invalid term or provision.

13.7. Legal Fees. If either party employs lawyers to enforce any rights arising out of or relating to this Agreement, the prevailing party will recover its reasonable legal fees, costs and expenses from the non-prevailing party.



13.8. Force Majeure. We will not be in default of this Agreement or be liable for any delay, failure in performance, or interruption of service resulting directly or indirectly from any cause beyond our reasonable control.

13.9. Assignment. Neither this Agreement nor any right or obligation hereunder may be assigned or otherwise transferred by you, directly or indirectly, by operation of law or otherwise, without our prior written consent (which consent may not be unreasonably withheld). We may assign our rights and obligations under this agreement without requiring your consent.

13.10. Entire Agreement. This Agreement, including all Order Forms and our Privacy Policy, and any exhibits or schedules, constitutes the entire agreement between you and Serenova, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter herein.

13.11. Equitable Relief. The parties acknowledge that any breach or threatened breach of any of the terms and/or conditions set forth in Sections 6 (Proprietary Rights) and 7 (Confidentiality) of this Agreement may result in substantial, continuing and irreparable injury to the non-breaching party for which the non-breaching party may not be adequately compensated by monetary damages alone. Therefore, the parties agree that, in addition to any other remedy that may be available to the non-breaching party, the non-breaching party will be entitled to seek injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach of the terms of Sections 6 or 7 of this Agreement, without needing to post a bond.

13.12. Section Headings. The section headings used herein are for convenience only and shall not affect the interpretation of any provision of this Agreement.

13.13. Publicity. We may issue a press release announcing the execution of this Agreement. Both parties must approve all other public announcements made regarding the terms of this Agreement; provided, however, that the general existence of this Agreement is not confidential. Further, you acknowledge and agree that case studies, reference programs and similar publicity items may be undertaken by us and you will provide all commercially reasonable cooperation to facilitate such programs.