

ETHENA, INC. TERMS AND CONDITIONS AGREEMENT

This Terms and Conditions Agreement ("**Agreement**") is entered into by and between Ethena, Inc., a Delaware corporation ("**Ethena**") and the entity accessing any Services, as defined below ("**Customer**" or "**you**").

Ethena provides anti-harassment and gender inclusivity training modules via email and browser based app (the "**Content**") and related training reports (the "**Reports**", collectively with the Content, the "**Services**"), and the Customer wants Ethena to provide the Content to the Customer's employees.

This Agreement permits Customer to purchase subscriptions to online software-as-a-service products and other services from Ethena pursuant to any ordering documents, online registration, order descriptions or order confirmations referencing this Agreement ("**Order Form(s)**") and sets forth the basic terms and conditions under which those products and services will be delivered. This Agreement will govern Customer's initial purchase on the Effective Date as well as any future purchases made by Customer that reference this Agreement.

The "**Effective Date**" of this Agreement is the date which is the earlier of (a) Customer's initial access to any Service (as defined below) through any online provisioning, registration or order process or (b) the effective date of the first Order Form referencing this Agreement.

Modifications to this Agreement: From time to time, Ethena may modify this Agreement. Unless otherwise specified by Ethena, changes become effective for Customer upon renewal of Customer's current Subscription Term (as defined below) or entry into a new Order Form. Ethena will use reasonable efforts to notify Customer of the changes through communications via Customer's account, email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a Subscription Term or entering into a new Order Form, and in any event continued use of the Services after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version. If Ethena specifies that changes to the Agreement will take effect prior to Customer's next renewal or order (such as for legal compliance or product change reasons) and Customer objects to such changes, Customer may terminate the applicable Subscription Term and receive as its sole remedy a refund of any fees Customer has pre-paid for use of the applicable Services for the terminated portion of the Subscription Term.

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT OR ACCESSING OR USING ANY SERVICES, YOU ARE AGREEING TO BE BOUND BY ALL TERMS, CONDITIONS, AND NOTICES CONTAINED OR REFERENCED IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE DO NOT USE ANY SERVICES. FOR CLARITY, EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT. THIS AGREEMENT CONTAINS MANDATORY ARBITRATION PROVISIONS THAT REQUIRE THE USE OF ARBITRATION TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS. PLEASE READ IT CAREFULLY.

1. **DEFINITIONS.** Capitalized terms used in this Agreement are defined in this Section 1 or in the section where they are first used.

"**Affiliate**" means any entity under the control of Customer where "control" means ownership of or the right to control greater than 50% of the voting securities of such entity.

"**Contractor**" means an independent contractor or consultant who is not a competitor of Ethena.

"**Customer Data**" means any data of any type that is submitted to the Services by or on behalf of Customer, including without limitation: (a) data submitted, uploaded or imported to the Services by Customer (including from Third Party Platforms), (b) data provided by or about Customer's Employees, and (c) any Response Data.

"**Documentation**" means any documentation provided by Ethena to Customer in connection with the Services.

"**Feedback**" means comments, questions, suggestions or any other feedback relating to any Ethena product or service.

"**Ethena App**" means any mobile application or desktop client software included in the applicable Service that is made available by Ethena.

"**Permitted User**" means an employee of Customer or its Affiliate who is a Training Recipient.

"**Privacy Policy**" refers to Ethena's Privacy Policy which is available on www.goethena.com.

"**Response Data**" means all information, data and responses submitted to the Service by Customer's employees.

"**Sensitive Personal Information**" means any information that if disclosed could result in substantial harm, embarrassment, inconvenience or unfairness, including but not limited to any of the following: (i) credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards ("**PCI DSS**"); (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act ("**HIPAA**"); or (iii) any other personal data of an EU citizen deemed to be in a "special category" (as identified in EU General Data Protection Regulation or any successor directive or regulation).

"**Services**" shall have the meaning set forth above.

"**Training**" means anti-harassment and gender inclusivity training.

"**Third-Party Platform**" means any software, software-as-a-service, data sources or other products or services not provided by Ethena that are integrated with Services as described in the Documentation.

2. ETHENA SERVICES.

2.1. Access to Services; Training Recipients. Subject to the terms of this Agreement, the Documentation and any scope of use restrictions designated in the applicable Order Form, Ethena agrees to provide the Service to Customer's Training Recipients, solely for Customer's use in connection with the Training of its Training Recipients. Use of and access to the Services is permitted only by Permitted Users. Customer will upload Customer's employees who Customer wishes to receive the Content ("**Training Recipients**") and, Customer is responsible for keeping this list up to date. The number of Training Recipients will be used to determine the Fee.

2.2. API Keys; Passwords. If Customer is given API keys or passwords to access the Services on Ethena's systems, Customer will require that all Permitted Users keep API keys, user ID and password information strictly confidential and not share such information with any unauthorized person. User IDs are granted to individual, named persons and may not be shared. If Customer is accessing the Services using credentials provided by a third party (e.g., Google), then Customer will comply with all applicable terms and conditions of such third party regarding provisioning and use of such credentials. Customer will be responsible for any and all actions taken using Customer's accounts and passwords. If any Permitted User who has access to a user ID is no longer an employee (or Contractor) of

Customer, then Customer will immediately delete such user ID and otherwise terminate such Permitted User's access to the Service.

- 2.3. Ethena Apps.** To the extent Ethena provides Ethena Apps for use with the Services, subject to all of the terms and conditions of this Agreement, Ethena grants to Customer a limited, non-transferable, non-sublicensable, non-exclusive license during any applicable Subscription Term to use the object code form of the Ethena Apps internally, but only in connection with Customer's use of the Service and otherwise in accordance with the Documentation and this Agreement.
- 2.4. Contractors and Affiliates.** Customer may permit its Contractors and its Affiliates' employees and Contractors to serve as Permitted Users, provided Customer remains responsible for compliance by such individuals with all of the terms and conditions of this Agreement, and any use of the Services by such individuals is for the sole benefit of Customer.
- 2.5. General Restrictions.** Customer will not (and will not permit any third party to): (a) distribute, sell, rent, lease, provide access to or sublicense the Services to a third party; (b) use the Services to provide, or incorporate the Services into, any product or service provided to a third party; (c) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the Services, except to the extent expressly permitted by applicable law (and then only upon advance notice to Ethena); (d) copy or modify the Services or any Documentation, or create any derivative work from any of the foregoing; (e) remove or obscure any proprietary or other notices contained in the Services or on any reports or data printed from the Services; or (f) publicly disseminate information regarding the performance of the Services. Customer agrees and covenants that the Training Recipients and any other of Customer's employees or consultants who may have access to the Service are legally bound by provisions substantially similar to those in this Section 2 and that Customer shall be legally responsible to Ethena for the fulfillment by such persons of their obligations.
- 2.6. Ethena APIs.** If Ethena makes access to any Application Program Interfaces ("APIs") available as part of the Services, Ethena reserves the right to place limits on access to such APIs (e.g., limits on numbers of calls or requests). Further, Ethena may monitor Customer's usage of such APIs and limit the number of calls or requests Customer may make if Ethena believes that Customer's usage is in breach of this Agreement or may negatively affect the Services (or otherwise impose liability on Ethena).
- 2.7. Updates.** This Agreement applies to any and all updates, upgrades, supplements, add-on components, or Internet-based services components of the Service that Ethena may provide or make available to Customer after the Effective Date. Ethena reserves the right to prohibit or discontinue participation in product upgrades and may require additional fees for Service updates, upgrades and/or any associated activities.
- 2.8. Training Recipient Questions.** As required by California law, Ethena will respond within two (2) business days to any questions directed by Training Recipients to Ethena. Ethena has no obligation to share either the questions or the answers with the Customer or any person or entity other than the Training Recipient who asked the question. In addition, **Customer agrees that it will indemnify Ethena in connection with any such answers**, in accordance with Section 3.6.

3. CUSTOMER DATA.

- 3.1. Rights in Customer Data.** As between the parties, Customer will retain all right, title and interest (including any and all intellectual property rights) in and to the Customer Data as provided to Ethena. Subject to the terms of this Agreement, Customer hereby grants to Ethena a perpetual, non-exclusive, transferable, sublicensable, irrevocable license to use, copy, modify, transmit, publicly display, publicly perform and prepare derivative works of the Response Data, for any purposes whatsoever, including, providing, improving and developing the Service. For the avoidance of doubt, Ethena shall

not disclose any Response Data in a manner that identifies the Ethena or the individual Training Recipients.

3.2. Aggregated Anonymous Data . Notwithstanding anything to the contrary herein, Customer agrees that Ethena may obtain and aggregate technical and other data about Customer's use of the Services that is non-personally identifiable with respect to Customer ("**Aggregated Anonymous Data**"), and Ethena may use the Aggregated Anonymous Data to analyze, improve, support and operate the Services and otherwise for any business purpose during and after the term of this Agreement, including without limitation to generate industry benchmark or best practice guidance, recommendations or similar reports for distribution to and consumption by Customer and other Ethena customers. For clarity, this Section 3.2 does not give Ethena the right to identify Customer as the source of any Aggregated Anonymous Data.

3.3. Reports. Customer will be entitled to obtain Reports of various Response Data, provided, however, that Ethena shall not provide Customer with any Response Data that may contain Sensitive Personal Information.

3.4. Storage of Customer Data. Ethena does not provide an archiving service. Ethena agrees only that it will not intentionally delete any Customer Data from any Service prior to termination of Customer's applicable Subscription Term. Ethena expressly disclaims all other obligations with respect to storage.

3.5. Customer Obligations.

3.5.1. In General. Customer is solely responsible for the accuracy, content and legality of all Customer Data. Customer represents and warrants to Ethena that Customer has all necessary rights, consents and permissions to collect, share and use all Customer Data as contemplated in this Agreement (including granting Ethena the rights in Section 3.1 (Rights in Customer Data)) and that no Customer Data will violate or infringe (i) any third party intellectual property, publicity, privacy or other rights, (ii) any Laws, or (iii) any terms of service, privacy policies or other agreements governing the Customer Properties or Customer's accounts with any Third-Party Platforms. Customer will be fully responsible for any Customer Data submitted to the Services by any Person as if it was submitted by Customer.

3.5.2. No Sensitive Personal Information. Customer specifically agrees not to use the Services to collect, store, process or transmit any Sensitive Personal Information. Customer acknowledges that Ethena is not a Business Associate or subcontractor (as those terms are defined in HIPAA) or a payment card processor and that the Services are neither HIPAA nor PCI DSS compliant. Ethena will have no liability under this Agreement for Sensitive Personal Information, notwithstanding anything to the contrary herein.

3.5.3. Compliance with Sexual Harassment Laws Customer represents and warrants that it will comply with all applicable federal, state and local employment laws related to the Service, including but not limited to implementation and distribution of a sexual harassment policy, implementation of related internal investigation procedures, and monitoring and ensuring compliance by its employees with sexual harassment laws and related training requirements.

3.5.4. Compliance with Other Laws. Customer agrees to comply with all applicable Laws in its use of the Services and that it has obtained all necessary rights to grant the license set forth in Section 3.1. Without limiting the generality of the foregoing, Customer will not engage in any unsolicited advertising, marketing, or other activities using the Services, including without limitation any activities that violate the Telephone Consumer Protection Act of 1991, CAN-SPAM Act of 2003 or any other anti-spam laws and regulations.

- 3.6. Indemnification by Customer.** Customer shall, at its sole expense, indemnify, defend and hold Ethena, its affiliates, and its and their respective officers, directors, employees and agents harmless from and against any and all liabilities, losses, damages, claims and expenses (including reasonable attorney's fees) (collectively, "**Losses**"), resulting from any third-party claim arising out of or relating to Customer's use of the Service, including without limitation, any and all Losses resulting from (a) the nature or content of the Response Data, (b) Customer's failure to comply with applicable law, (c) claims brought by Customer's employees, (d) Customer's breach of the terms and conditions of this Agreement, or (e) acts or omissions of the Ethena with respect to the Service; provided that Customer will not settle any claim without Ethena's prior written consent, unless the settlement fully and unconditionally releases Ethena and does not require Ethena to pay any amount, take any action, or admit any liability, and further provided that Ethena shall have the right, at its option, to defend itself against any such third-party claim or to participate in the defense thereof by counsel of its own choice.
- 3.7. Publicity.** Customer hereby grants Ethena a limited license to use Customer's name and logo solely for the purpose of identifying Customer as a user of the Service and attributing any Feedback provided by Customer.
- 3.8. EU-U.S. Privacy Shield.** This Section 3.6 applies only if Customer has entered into this Agreement with Ethena, Inc. as set forth above. Ethena, Inc. participates in the EU-U.S. Privacy Shield framework. For more information, please see Ethena's EU-U.S. Privacy Shield Statement, available at <https://www.GoEthena.com> or a successor URL.

- 4. SECURITY.** Ethena agrees to use commercially reasonable technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of any Service or Customer Data. However, Ethena will have no responsibility for errors in transmission, unauthorized third-party access or other causes beyond Ethena's control.

5. OWNERSHIP

- 5.1. Ethena Technology.** This is a subscription agreement for access to and use of the Services. Customer acknowledges that it is obtaining only a limited right to the Services and that irrespective of any use of the words "purchase", "sale" or like terms in this Agreement, no ownership rights are being conveyed to Customer under this Agreement. Customer agrees that Ethena or its suppliers retain all right, title and interest (including all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Services and all Documentation, professional services deliverables and any and all related and underlying technology and documentation and any derivative works, modifications or improvements of any of the foregoing, including as may incorporate Feedback (collectively, "**Ethena Technology**"). Except as expressly set forth in this Agreement, no rights in any Ethena Technology are granted to Customer. Further, Customer acknowledges that the Services are offered as an on-line, hosted solution, and that Customer has no right to obtain a copy of any of the Services, except for the Ethena Apps in the format provided by Ethena.

- 5.2. Feedback.** Customer, from time to time, may submit Feedback to Ethena. Customer hereby assigns to Ethena all right, title and interest, including all related intellectual property rights, in and to all such Feedback, and Ethena may freely use or exploit Feedback in connection with any of its products or services.

6. FEES AND PAYMENT.

- 6.1. Fees.** All fees are as set forth in the applicable Order Form and will be paid by Customer within thirty (30) days of invoice. Except as expressly set forth in Section 8 (Limited Warranty) and Section 12 (Indemnification), all fees are non-refundable. The rates in the Order Form are valid for the initial twelve (12) month period of each Subscription Term and thereafter may be subject to an automatic

adjustment increase of up to ten percent (10%) per year. Customer is responsible for paying all Taxes, and all Taxes are excluded from any fees set forth in the applicable Order Form. If Customer is required by Law to withhold any Taxes from Customer's payment, the fees payable by Customer will be increased as necessary so that after making any required withholdings, Ethena receives and retains (free from any liability for payment of Taxes) an amount equal to the amount it would have received had no such withholdings been made. Any late payments will be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

6.2. Payment Via Credit Card. Customer will be required to provide information regarding its credit card or other payment instrument. Customer represents and warrants to Ethena that such information is true and that it is authorized to use the payment instrument. Customer will promptly update its account information with any changes (for example, a change in billing address or credit card expiration date) that may occur. If any payment due from Customer under this Agreement becomes past due, Ethena may charge Customer a late payment charge equal to the lesser of (a) one and one-half percent (1.5%) per month, compounded monthly, or (b) the maximum rate permitted under applicable law on the past due balance. Customer shall reimburse Ethena for all reasonable costs and expenses incident to the collection of overdue amounts hereunder, including but not limited to reasonable attorneys' fees. If Customer disputes any Fees, it must provide written notice to the Ethena of such dispute within ten (10) days after the date of the invoice. If you are purchasing the Services via credit card, debit card or other payment card ("**Credit Card**"), the following terms apply:

6.2.1. Stripe Processing. Payment processing services are provided by Stripe and are subject to the Stripe Connected Account Agreement, which includes the Stripe Terms of Service (collectively, the "**Stripe Services Agreement**"). By agreeing to these terms or continuing to use the Service, you agree to be bound by the Stripe Services Agreement, as the same may be modified by Stripe from time to time. As a condition of the Ethena's enabling payment processing services through Stripe, Customer agrees to provide Stripe and, if necessary, the Ethena, accurate and complete information about Customer and its business.

6.2.2. Recurring Billing Authorization. By providing Credit Card information and agreeing to purchase any Services, Customer hereby authorizes Ethena (or its designee) to automatically charge Customer's Credit Card on the same date of each calendar month (or the closest prior date, if there are fewer days in a particular month) during the Subscription Term for all fees accrued as of that date (if any) in accordance with the applicable Order Form. Customer acknowledges and agrees that the amount billed and charged each month may vary depending on Customer's use of the Services and may include subscription fees for the remainder of Customer's applicable billing period and overage fees for the prior month.

6.2.3. Invalid Payment. If a payment is not successfully settled due to expiration of a Credit Card, insufficient funds, or otherwise, Customer remains responsible for any amounts not remitted to Ethena and Ethena may, in its sole discretion, either (i) invoice Customer directly for the deficient amount, (ii) continue billing the Credit Card once it has been updated by Customer (if applicable) or (iii) terminate this Agreement.

6.2.4. Termination of Recurring Billing. In addition to any termination rights set forth in this Agreement, Customer may terminate the Subscription Term by sending Ethena notice of non-renewal in accordance with Section 7.1 (Subscription Term and Renewals) or, if Customer's Subscription Term is on a monthly basis (or if otherwise permitted by Ethena), by terminating via the "Settings" page on the Dashboard, with termination effective at the end of the current Subscription Term.

6.2.5. Payment of Outstanding Fees. Upon any termination or expiration of the Subscription Term, Ethena will charge Customer's Credit Card (or invoice Customer directly) for any outstanding

fees for Customer's use of the Services during the Subscription Term, after which Ethena will not charge Customer's Credit Card for any additional fees.

- 6.3. Taxes.** All amounts payable under this Agreement do not include VAT, sales tax, use tax, withholding tax, foreign export duties or other similar taxes, duties, levies and charges, all of which (other than income tax attributable to Ethena's income) shall be paid by Customer.

7. TERM AND TERMINATION.

- 7.1. Term and Renewals.** The Term of this Agreement will commence on the Effective Date and will continue for the initial period of one (1) year. Thereafter, the Term of this Agreement shall automatically renew for additional periods equal to the initial Term, unless either party provides the other with written notice of non-renewal at least thirty (30) days prior to the end of the then-current Term. **If Customer cancels, previous Fees will not be refunded, but Customer will receive the Service until the end of the Term that Customer paid for.**

- 7.2. Termination for Cause.** Either party may terminate this Agreement (including all related Order Forms) with immediate effect if the other party (a) fails to cure any material breach of this Agreement (including a failure to pay fees) within ten (10) days after written notice; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter).

- 7.3. Suspension of Service.** If Customer's account is thirty (30) days or more overdue, in addition to any of its other rights or remedies (including but not limited to any termination rights set forth herein), Ethena reserves the right to suspend Customer's access to the applicable Service (and any related services) without liability to Customer until such amounts are paid in full. Further, Ethena may immediately suspend access to the Service if Customer materially breaches this Agreement (except for Customer's non-payment of Fees) until such breach is cured. Such a suspension of Service shall not relieve Customer from its obligations to pay all amounts due under this Agreement.

- 7.4. Effect of Termination.** Termination or expiration of this Agreement shall not affect any rights or obligations of the parties, including the payment of amounts due, which have accrued up to the date of such termination or expiration. All licenses and other rights to use the Service shall terminate upon any termination or expiration of this Agreement, and Customer will immediately cease any and all use of and access to all Services (including any and all related Ethena Technology) and delete (or, at Ethena's request, return) any and all copies of the Documentation, any Ethena passwords or access codes and any other Ethena Confidential Information in its possession. Provided this Agreement was not terminated for Customer's breach, Customer may retain and use internally copies of all reports exported from any Service prior to termination. Customer acknowledges that following termination it will have no further access to any Customer Data input into any Service, and that Ethena may delete any such data as may have been stored by Ethena at any time. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law or otherwise.

- 7.5. Survival.** The following Sections will survive any expiration or termination of this Agreement: 2.5 (General Restrictions), 3 (Customer Data, including Indemnification by Customer), 5 (Ownership), 6 (Fees and Payment), 7 (Term and Termination), 8 (Limited Warranty), 11 (Limitation of Remedies and Damages), 12 (Indemnification), 13 (Confidential Information) and 14 (General Terms).

8. LIMITED WARRANTY.

- 8.1. Limited Warranty.** Ethena warrants, for Customer's benefit only, that each Service will operate in substantial conformity with the applicable Documentation. Ethena's sole liability (and Customer's sole and exclusive remedy) for any breach of this warranty will be, at no charge to Customer, for Ethena to use commercially reasonable efforts to correct the reported non-conformity, or if Ethena determines such remedy to be impracticable, either party may terminate the applicable Subscription Term and Customer will receive as its sole remedy a refund of any fees Customer has pre-paid for use of such Service for the terminated portion of the applicable Subscription Term. The limited warranty set forth in this Section 8.1 will not apply: (i) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (ii) if the error was caused by misuse, unauthorized modifications or third-party hardware, software or services, or (iii) to use provided on a no-charge, trial or evaluation basis.
- 8.2. Warranty Disclaimer.** EXCEPT FOR THE LIMITED WARRANTY IN SECTION 8.1, ALL SERVICES, DOCUMENTATION AND ANY AND ALL OTHER MATERIAL PROVIDED BY COMPANY TO CUSTOMER UNDER THIS AGREEMENT ARE PROVIDED "AS IS". NEITHER ETHENA NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. ETHENA DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES ETHENA WARRANT THAT IT WILL REVIEW THE CUSTOMER DATA FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER DATA WITHOUT LOSS OR CORRUPTION. ETHENA SHALL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, THIRD-PARTY PLATFORMS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF ETHENA. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. COMPANY MAKES NO GUARANTEE AS TO THE RESULTS OR OUTCOMES OF USING THE SERVICE. CUSTOMER BEARS THE ENTIRE RISK AS TO THE OPERATION OF THE SERVICE, INCLUDING BUT NOT LIMITED TO ENSURING THAT: (i) THE SERVICE MEETS THE REQUIREMENTS OF ANY APPLICABLE FEDERAL, STATE OR LOCAL LAWS REGARDING SEXUAL HARASSMENT TRAINING; (ii) ITS EMPLOYEES DO NOT "OVERRIDE" ANY ASPECT OF THE TRAINING; and (iii) ITS EMPLOYEES ARE ACCURATELY IDENTIFIED AND THEIR TRAINING IS ACCURATELY TRACKED.

9. TARGET AVAILABILITY.

- 9.1. Target Availability.** Ethena will use commercially reasonable efforts to make each Service available with an uptime of 99% of each calendar month ("*Target Availability*").
- 9.2. Exclusions.** The calculation of uptime will not include unavailability to the extent due to: (a) use of the Service by Customer in a manner not authorized in this Agreement or the applicable Documentation; (b) general Internet problems, force majeure events or other factors outside of Ethena's reasonable control; (c) Customer's equipment, software, network connections or other infrastructure; (d) third party systems, acts or omissions; or (e) Scheduled Maintenance or reasonable emergency maintenance. "*Scheduled Maintenance*" means Ethena's scheduled routine maintenance of the Services for which Ethena notifies Customer at least twenty-four (24) hours in advance. Scheduled Maintenance will not exceed eight (8) hours per month. Ethena typically performs Scheduled Maintenance once per month.
- 9.3. Sole Remedy for Failure to Meet Target Availability.** If there is a verified failure of a Service to meet Target Availability in two (2) consecutive months, then Customer may terminate the applicable

Subscription Term by sending written notice of termination within thirty (30) days after the end of the second such month, in which case Ethena will refund to Customer any fees Customer has pre-paid for use of such Service for the terminated portion of the applicable Subscription Term. This termination and refund right is Customer's sole and exclusive remedy, and Ethena's sole and exclusive liability, for Ethena's failure to meet the Target Availability.

10. NO SUPPORT OBLIGATION. Ethena has no obligation under this Agreement to maintain the Service or assist any Ethena or employee with the procurement, installation, maintenance or use of the Service. Because the Service is provided "as is", no updates, customization services or support services are provided or required to be made available to Ethena and/or the Service. In addition, Customer is solely responsible for any technical requirements necessary for access to the Service. Notwithstanding the foregoing, Ethena may elect to assist Customer with any technical issues encountered with the Service, provided that Customer provided written Notice of such issues within two (2) business days of the discovery of such issue.

11. LIMITATION OF REMEDIES AND DAMAGES.

11.1. Consequential Damages Waiver. EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), IN NO EVENT WILL EITHER PARTY OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL OR EXEMPLARY DAMAGES OR FOR LOSS OF PROFITS OR REVENUES OR LOSS OF DATA, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR CUSTOMER'S USE OF, OR THE RESULTS OBTAINED FROM, THE SERVICE, DOCUMENTATION, OR ANY OTHER MATERIAL PROVIDED BY ETHENA TO CUSTOMER UNDER THIS AGREEMENT.

11.2. Liability Cap. ETHENA'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO ETHENA DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT.

11.3. Excluded Claims. "Excluded Claims" means any claim arising (a) from Customer's breach of Section 2.5 (General Restrictions); or (b) under Section 3.5 (Customer Obligations) or 3.6 (Indemnification by Customer).

11.4. Nature of Claims and Failure of Essential Purpose. The parties agree that the waivers and limitations specified in this Section 11 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

11.5. Customer Acknowledgement. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE DISCLAIMER OF WARRANTIES, LIMITATIONS ON LIABILITY AND LIMITED REMEDIES CONTAINED IN THIS AGREEMENT ARE FUNDAMENTAL PARTS OF THE BASIS OF COMPANY'S BARGAIN HEREUNDER, INCLUDING THE PRICING OF THE SERVICE, AND COMPANY WOULD NOT PROVIDE THE SERVICE TO CUSTOMER ABSENT SUCH LIMITATIONS.

12. INDEMNIFICATION FOR INTELLECTUAL PROPERTY CLAIMS. Ethena will defend Customer from and against any claim by a third party alleging that a Service when used as authorized under this Agreement infringes a U.S. patent, U.S. copyright, or U.S. trademark and will indemnify and hold harmless Customer from and against any damages and costs finally awarded against Customer or agreed in settlement by Ethena (including reasonable attorneys' fees) resulting from such claim, provided that Ethena will have received from Customer: (i) prompt written notice of such claim (but in any event notice in sufficient time

for Ethena to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Customer. If Customer's use of a Service is (or in Ethena's opinion is likely to be) enjoined, if required by settlement or if Ethena determines such actions are reasonably necessary to avoid material liability, Ethena may, in its sole discretion: (a) substitute substantially functionally similar products or services; (b) procure for Customer the right to continue using such Service; or if (a) and (b) are not commercially reasonable, (c) terminate this Agreement and refund to Customer the fees paid by Customer for the portion of the Subscription Term that was paid by Customer but not rendered by Ethena. The foregoing indemnification obligation of Ethena will not apply: (1) if such Service is modified by any party other than Ethena, but solely to the extent the alleged infringement is caused by such modification; (2) if such Service is combined with products or processes not provided by Ethena, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of such Service; (4) to any action arising as a result of Customer Data or any third-party deliverables or components contained within such Service; (5) to the extent the alleged infringement is not caused by the particular technology or implementation of the Service but instead by features common to any similar product or service; or (6) if Customer settles or makes any admissions with respect to a claim without Ethena's prior written consent. THIS SECTION 12 SETS FORTH ETHENA'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

13. CONFIDENTIAL INFORMATION. Each party (as "*Receiving Party*") agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party ("*Disclosing Party*") constitute the confidential property of the Disclosing Party ("*Confidential Information*"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any Ethena Technology, performance information relating to any Service, and the terms and conditions of this Agreement will be deemed Confidential Information of Ethena without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Ethena, the subcontractors referenced in Section 17.8 (Subcontractors)), provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 15 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 15. The Receiving Party's confidentiality obligations will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

14. GENERAL TERMS.

14.1.No Assignment . This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign or delegate this Agreement or any rights or obligations under this Agreement without the advance written consent of the other party, except that either party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all

or substantially all of such party's assets or voting securities. Any attempt to transfer or assign this Agreement except as expressly authorized under this Section 14.1 will be null and void.

14.2. Severability. If any provision of this Agreement will be held invalid or unenforceable by a court, the remaining provisions of this Agreement will remain in full force and effect, and the provision or portion thereof affected will be construed so as to be enforceable to the maximum extent permissible by law.

14.3. Governing Law; Dispute Resolution.

14.3.1. Informal Dispute Resolution. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, whether arising in contract, tort or otherwise, ("*Dispute*"), the parties shall first use their best efforts to resolve the Dispute. If a Dispute arises, the complaining party shall provide written notice to the other party in a document specifically entitled "Initial Notice of Dispute," specifically setting forth the precise nature of the dispute ("*Initial Notice of Dispute*").

Following receipt of the Initial Notice of Dispute, the parties shall consult and negotiate with each other in good faith and, recognizing their mutual interest, attempt to reach a just and equitable solution of the Dispute that is satisfactory to both parties ("*Dispute Resolution*"). If the parties are unable to reach a resolution of the Dispute through Dispute Resolution within thirty (30) days of the receipt of the Initial Notice of Dispute, then the Dispute shall subsequently be resolved by arbitration as set forth below.

14.3.2. ARBITRATION. IN THE EVENT THAT A DISPUTE BETWEEN THE PARTIES CANNOT BE SETTLED THROUGH DIRECT DISPUTE RESOLUTION, AS DESCRIBED ABOVE, THE PARTIES AGREE TO SUBMIT THE DISPUTE TO BINDING ARBITRATION. BY AGREEING TO ARBITRATE, THE PARTIES AGREE TO WAIVE THEIR RIGHT TO A JURY TRIAL. The arbitration shall be conducted before a single neutral arbitrator, before JAMS in Massachusetts. The arbitration shall be administered by JAMS in accordance with this document and the JAMS Streamlined Rules and Procedures for the Arbitration, with one addition: The limitation of one discovery deposition per side shall be applied by the arbitrator, unless it is determined, based on all relevant circumstances, that more depositions are warranted. The arbitrator shall consider the amount in controversy, the complexity of the factual issues, the number of parties and the diversity of their interests and whether any or all of the claims appear, on the basis of the pleadings, to have sufficient merit to justify the time and expense associated with the requested discovery.

The arbitration will occur in Massachusetts, but the parties may choose to appear by person, by phone, by another virtual means, or through the submission of documents.

The arbitrator will issue a ruling in writing. Any issue concerning the extent to which any dispute is subject to arbitration, the applicability, interpretation, or enforceability of this agreement shall be resolved by the arbitrator. To the extent state law is applicable, the arbitrator shall apply the substantive law of Massachusetts.

All aspects of the arbitration shall be treated as confidential and neither the parties nor the arbitrators may disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. The result of the arbitration shall be binding on the parties and judgment on the arbitrator's award may be entered in any court having jurisdiction. The arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

14.3.3. Choice of Law and Jurisdiction - Massachusetts. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, regardless of its conflicts of laws principles. The parties exclude the application of the 1980 United Nations Convention on the International Sale of Goods and the application of the Uniform Computer Information Transactions Act. Any action shall be brought exclusively in a court of competent jurisdiction in Boston, Massachusetts, and the parties consent and submit to the personal jurisdiction and venue such a court.

14.3.4. Construction. This agreement must be construed as if it was jointly written by both parties.

14.3.5. No Joinder or Class Action. Both parties agree that each may bring or participate in claims against the other only in their respective individual capacities, and not as a plaintiff or class member in any purported class. No arbitration or claim under this agreement shall be joined to any other arbitration or claim, including any arbitration or claim involving any other current or former user of the services, and no class arbitration proceedings shall be permitted. In the event of any dispute concerning the validity or enforceability of this provision, such claim must be adjudicated by a court and not by an arbitrator.

14.3.6. Injunctive Relief. Customer acknowledges that its breach of certain provisions of this Agreement will cause irreparable harm to Ethena for which monetary relief would be insufficient, and hereby agrees that Ethena will be entitled to injunctive relief as well as such further relief as may be granted by a court of competent jurisdiction in the event of such breach or threatened breach of Accordingly, notwithstanding the above provisions, Ethena may apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

14.4. Notice. Any notice or communication required or permitted under this Agreement will be in writing to the parties at the addresses set forth below or at such other address as may be given in writing by either party to the other in accordance with this Section and will be deemed to have been received by the addressee (i) if given by hand, electronic mail or fax, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

14.5. Amendments; Waivers. Except as otherwise provided herein, no supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement will be for administrative purposes only and will have no legal effect.

14.6. Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Customer acknowledges that the Services are on-line, subscription-based products, and that in order to provide improved customer experience Ethena may make changes to the Services, and Ethena will update the applicable Documentation accordingly.

14.7. Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after the signing of this Agreement and that are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or

diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

- 14.8.Subcontractors** . Ethena may use the services of subcontractors and permit them to exercise the rights granted to Ethena in order to provide the Services under this Agreement, provided that Ethena remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement and (ii) for the overall performance of the Services as required under this Agreement.
- 14.9.Subpoenas.** Nothing in this Agreement prevents Ethena from disclosing Customer Data to the extent required by law, subpoenas, or court orders, but Ethena will use commercially reasonable efforts to notify Customer where permitted to do so.
- 14.10. Independent Contractors.** The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
- 14.11. Export Control.** Customer will not export, directly or indirectly, the Service or any technical data of Ethena to any country for which the U.S. Government requires an export license or other governmental approval without first obtaining such license or approval.
- 14.12. Government End-Users.** Elements of the Services are commercial computer software. If the user or licensee of the Services is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. All Services were developed fully at private expense. All other use is prohibited.
- 14.13. Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will be considered one and the same agreement. This Agreement may be delivered by facsimile or electronic PDF transmission, and facsimile or electronic copies of executed signature pages shall be binding as originals.

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

ETHENA, INC.

CUSTOMER

By: _____

Name: Roxanne Petraeus

Date: _____

By: _____

Name: _____

Date: _____

Contact Email for Notices:

Contact Email for Notices: