



# Customer Agreement

Last Updated: May 30, 2018

This Customer Agreement (this “**Agreement**”) is entered between you (the “**Customer**”) and Highfive Technologies, Inc. (“**Highfive**”). To make it easier to read this Agreement, Highfive may refer to either of us as a “**Party**” and collectively as the “**Parties**.” The terms “**you**,” “**your**,” and “**yours**” mean you, the purchaser of the Service (as defined below). The terms “**we**,” “**us**,” and “**our**” refer to Highfive.

By purchasing and using Highfive’s video conferencing and screen sharing system (the “**Service**”), including the Software (as defined below), and the accompanying leased Highfive devices and Dolby devices, if applicable (collectively, the “**Hardware**”), you agree to be bound by this Customer Agreement, as well as terms and policies available on our website at [www.highfive.com/terms/](http://www.highfive.com/terms/)(the “**Terms**”), including the Privacy Policy available at [www.highfive.com/privacy/](http://www.highfive.com/privacy/)and Sales Terms and Conditions at [www.highfive.com/saleterms/](http://www.highfive.com/saleterms/) or shared with you otherwise, all of which are considered a part of and incorporated into this Agreement.

If we make any changes to this Agreement, we will notify you by updating the “Last Updated” date above on the Terms and either through the Service, in an email notification, or by other means. Such changes will be effective upon your use of the Service after such notification, except any material changes will only be effective upon

the earlier of (i) thirty (30) days after such notification, and (ii) your continued use of the Service once you know about the changes.

Now for the details you have been waiting for:

## **1. Rights, Restrictions and Responsibilities.**

**1.1. Use of Service.** Highfive grants you a non-exclusive, non-transferable, non-sublicensable, revocable license to use solely in connection with the Service during the Term (as defined below) of this Agreement (i) all web-based software, applications, and technologies incorporated in the Service, and (ii) all software embedded in or otherwise running on the Hardware (collectively, the “Software”). Any corrections, bug fixes, new features or functions (the “Updates”) added to the Service by us in our discretion during the Term of this Agreement are subject to this Agreement. For clarity, Updates will not include any new versions of the Service that we market or sell separately. We reserve the right to suspend the Service or terminate the Agreement if you breach this Agreement or you or your Users (as defined below) misuse the Service.

**1.2. Third-Party Licenses.** Portions of our Service rely on software and hardware that we license from third-parties (the “Third Party Components”). Don’t worry, we’ve made sure you have the right to use any such Third Party Components as part of the Service at no additional cost to you. However, our third party licensors and suppliers retain all rights in such Third Party Components. Your use of the Dolby devices is subject to the terms available at

[http://dcpcfg.dolbyvoice.com/Dolby\\_Voice\\_Client\\_EULA.html](http://dcpcfg.dolbyvoice.com/Dolby_Voice_Client_EULA.html)

**1.3. Restrictions.** You agree not to (and not permit anyone who obtains access to your Network (as defined below), the Hardware or our Service directly or indirectly), reverse engineer, copy, modify, create a derivative work of, hack or otherwise attempt to gain unauthorized access to any part of the Service, or otherwise attempt to discover the source code or algorithms of our software or hardware. You also agree to not sell, assign, sublicense or otherwise transfer any right in the Service to anyone else or remove any proprietary notices or labels that are part of the Service. “Network” means the network, created in whole or in part by use of the Service and “Users” means anyone given access to the Service or the Hardware through you or by you in any fashion, including without limitation by the provision of an access link, using a dial-out feature or otherwise

**1.4. Customer Responsibilities.** Similarly, please use the Service only in accordance with all specifications available on our Terms, through the Service or provided otherwise by us (the “Specifications”). And, of course, it is your responsibility to comply with all applicable laws in your use of the Service. You are also solely responsible for (i) the operation, performance and security of your own equipment, networks and other computing resources used to connect to the Service, (ii) maintaining the confidentiality of your account information and passwords, and (iii) all usage of the Service by you and your Users. You will notify us immediately of any unauthorized use of the Service or any other breach of security of which you become aware.

## **2. Orders, Pricing, Shipping and Returns.**

**2.1. Orders.** You may purchase any number of subscriptions to our Service using our then-current ordering processes, including any ordering

document or online form we make available (the "Order"). We will require that you execute a separate Order each time you purchase one or more subscriptions to our Service and you must enter into a separate agreement with us for each such Order. The Order is subject to acceptance and verification by us in our discretion. All information provided by or on behalf of you in connection with the Order must be current, complete and accurate and you are responsible for keeping such information updated.

By placing an Order, you: (i) authorize us to bill your payment instrument; (ii) are agreeing to this Agreement, on behalf of yourself or the entity you represent in connection with the purchase; (iii) you represent and warrant that you have the authority to agree to this Agreement on behalf of yourself or the entity you represent, and that you are of sufficient legal age to purchase and use our Service.

**2.2. Prices and Payment.** Your access to the Service is contingent upon your payment of the applicable fees set forth on our website at [www.highfive.com/pricing/](http://www.highfive.com/pricing/). Depending on the order, we will calculate and charge sales tax (which you are responsible for paying) in accordance with applicable laws. Prices for our Service do not include the costs of shipping and delivering the Hardware to you. Please note that all prices and taxes are subject to change at any time.

**2.3. Unlimited Plan.** Some of Highfive's Services may include an unlimited usage plan. We reserve the right to convert an unlimited plan to a metered plan, at any time, and for any reason at our sole discretion.

**2.4. Erroneous Product Information.** In our marketing, advertising, offering, and sale of the Services, we attempt to describe your Services as accurately as possible. Nevertheless, we do not warrant that any such information

about Services, including the related Software and Hardware, is accurate, complete, reliable, current, or error-free. It is possible that such may be inaccurate or out-of-date, such as listing erroneous or out-of-date pricing information or referring to services or features that are no longer available. Such information is provided only for your convenience and is not part of this agreement, or any other agreement with Highfive.

**2.5. Shipping and Delivery.** The estimated arrival or delivery date is not a guaranteed delivery date for the Hardware. Refused deliveries will be returned to our warehouse. It may take up to forty five (45) days for the returned items to be identified as refused and processed for a refund. Unless agreed to by the parties in writing, Highfive shall select the method of shipment of and the carrier for Hardware. Any time quoted for delivery is an estimate only; provided, however, that Highfive shall use commercially reasonable efforts to deliver all Hardware on or before the requested delivery date. Highfive shall not be liable for any delays, loss or damage of the Hardware in transit. Highfive may, in its sole discretion, without liability or penalty, make partial shipments of Hardware to the Customer. The Customer shall pay for all shipping charges, insurance costs, taxes, duties and fees.

**2.6. Returns and Exchanges.** If, for any reason, you are not completely satisfied with our Service, you may cancel the Service and return the Hardware within thirty (30) days of purchase for a full refund (unless you previously used the Service on a “free trial” or similar basis). To initiate a refund and return your Hardware, please contact your Highfive sales representative or email us at [info@highfive.com](mailto:info@highfive.com). If for any reason you would like to exchange the Hardware delivered to you, we may in our sole discretion agree to

exchange the Hardware (same version) so as long as you pay the related shipping and delivery costs. We will of course comply with our obligations under the warranty section below.

### **3. Ownership, Privacy, Security.**

**3.1. Service and Hardware.** Except for the rights granted in this Agreement, you have no right, title, license or interest in or to the Service, Hardware or Software or any intellectual property rights related to the Service, Software or Hardware. As between you and Highfive, Highfive owns and reserves all rights with respect to the Service and Hardware and Software and all intellectual property rights related to the Service, Software, and the Hardware. You will lease the physical Hardware (including the Software inside) upon payment of the applicable fees. You are responsible for loss, repair, replacement and other costs, damages, fees and charges if you do not return the Hardware to us in an undamaged condition. You hereby assign to Highfive all of your interest in any feedback you share with us related to the Service, Software or Hardware.

**3.2. Customer Content.** As between you and Highfive, you retain all rights to any and all content, files, documents, recordings, and other information shared, displayed, saved, or uploaded on the Service under this Agreement (the "Customer Content") and Highfive will not have any right in or to in such Customer Content, except that you hereby grant to Highfive a non-exclusive, worldwide, royalty-free, license to use, modify, reproduce, display, share, and distribute Customer Content, only as may be necessary to provide the Service or enforce this Agreement or as required by applicable law. You warrant that you have the right to grant such license and no Customer Content infringes on the rights of any third party. You

will comply with all laws related to the Customer Content. Protecting the privacy of our Customers and their Users is very important to us and we will protect your information in accordance with our Privacy Policy available at [www.highfive.com/privacy/](http://www.highfive.com/privacy/).

**3.3. Usage Data.** We may collect and analyze data and other information relating to the usage of the Service (the “Usage Data”) for product development, diagnostic and corrective purposes, but will not disclose such Usage Data to any third parties except in aggregated or other de-identified form, other than to certain trusted third parties who help us provide, improve, protect or promote the Service. Highfive owns and reserves all rights with respect to such Usage Data.

**3.4. Security.** We will use commercially reasonable technical, organizational and administrative security measures to keep Customer Content and Usage Data protected in accordance with industry standards. We will not monitor you or your Users’ use of the Service, and will not view, access or process any Customer Content, except: (i) for the sole purpose of providing and improving the Service, as directed or instructed by you and your Users, (ii) as permitted in this Agreement, and/or (iii) for compliance with our policies, applicable law, regulation, or governmental requests.

#### **4. Term and Termination.**

**4.1. Term.** This Agreement will be effective until the expiration of the term set forth in the Order (the “Termination Date”) and will be automatically renewed, at the price listed on our [pricing](#) page for your comparable subscription or bundle type, for additional terms of one year (the initial term as well as any additional terms, the “Term”) unless (1) the Customer provides written notice to Highfive within 30 days of the end of the

then-current Term of its wish to terminate the Service and return the Hardware, or (2) this Agreement is terminated earlier pursuant to Section 4.2. If you subsequently purchase additional subscriptions, we may offer you the option to extend the Termination Date of this Agreement upon payment of applicable pro-rated fees such that your access to the Service and the underlying customer agreement will terminate on the same date. Any unreturned Hardware will be charged at individual device prices at the time of termination and the price can change without notice.

**4.2. Early Termination.** We may suspend or modify your use of the Service at any time if we reasonably believe that you have breached Sections 1.3 or 1.4 above or Section 5 below. Either Party may terminate this Agreement if the other Party breaches this Agreement and fails to cure such breach within ten (10) days following receipt of written notice of such breach. If you terminate this Agreement pursuant to this Section 4.2 based on a breach of this Agreement by Highfive, then we will refund you a pro-rated (on a monthly basis) portion of the upfront fees you paid under this Agreement. If we terminate this Agreement pursuant to this Section 4.2, then (i) we will not owe you any refunds, and (ii) we will have the right to terminate the customer agreements for any other subscriptions for the Service you have purchased.

**4.3. Effect of Termination.** Upon expiration or termination of this Agreement, you will immediately discontinue access to and use of the Service and the license granted to you under Section 1.1 above will terminate. Sections 1.3, 1.4, 1.5, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of this Agreement will survive any expiration or termination.

## **5. Acceptable Use Policy.**

**5.1. High Risk Use.** YOU ACKNOWLEDGE THAT THE SERVICE IS NOT DESIGNED, MANUFACTURED, INTENDED, OR RECOMMENDED FOR USE FOR ANY HIGH-RISK OR FAIL-SAFE PURPOSE OR ACTIVITY, INCLUDING WITHOUT LIMITATION CONTACTING OR COMMUNICATING WITH EMERGENCY SERVICE PROVIDERS OR FIRST RESPONDERS, OR IN ANY ENVIRONMENT WHERE FAILURE, INTERRUPTION, MALFUNCTION, ERROR, OR UNAVAILABILITY COULD RESULT IN SUBSTANTIAL LIABILITY OR DAMAGES, PHYSICAL HARM OR PERSONAL INJURY, DEATH OR DISMEMBERMENT, OR PROPERTY OR ENVIRONMENTAL DAMAGE. YOU REPRESENT AND WARRANT THAT YOU AND YOUR USERS WILL NOT USE THE SERVICE FOR ANY SUCH PURPOSE OR ACTIVITY OR IN ANY SUCH ENVIRONMENT.

**5.2. Customer Legal Compliance.** You represent and warrant that in all use and usage of the Service, you will at all times comply with all applicable laws, including but not limited to the rules, policies and regulation of the Federal Communications Commission ("FCC"), and all laws relating to Do-Not-Call provisions; unsolicited marketing; telemarketing; faxing; telemarketing; email marketing; spamming or phishing; data security or privacy; international communications; account or debt collection; recording of calls or conversations; export control; export of technical or personal data; end user, end-use, and destination restrictions imposed by the United States or foreign governments; consumer protection; pornography; trade practices; false advertising; unfair competition; anti-discrimination; harassment; defamation; intellectual property; or securities.

**5.3. Unsolicited Advertisements and TCPA Compliance.** Certain

communication practices – including without limitation, the placing of unsolicited calls; the placing of commercial messages; the sending of unsolicited facsimile, internet facsimile, SMS, or other messages; and the use of certain automated telephone equipment to place certain calls – is regulated in the United States by the Federal Telephone Consumer Protection Act of 1991 (also known as the “TCPA”) (available at <https://www.fcc.gov/document/telephone-consumer-protection-act-1991>), the Junk Fax Prevention Act of 2005, and under a number of similar state, municipal or local laws, regulations, codes, ordinances and rules. You agree, represent and warrant that:

5.3.a. You or your Users are the creators of the Customer Content of, and are solely responsible for determining the destination(s) and recipient(s) of, all outbound communications made using the Service, be it through calls, voicemail, text, fax, spam, solicitations, or commercial messages that you may send and/or receive using the Service (“Customer Communication”);

5.3.b. All Customer Content, provided for transmission through the will be provided solely for lawful purposes, and in no event shall any Customer Communication or any Customer Content thereof be in violation of the TCPA or any other law; and

5.3.c. No unsolicited advertisements, commercial messages, solicitations, marketing or promotional materials, or commercial messages or content will be transmitted or distributed in the form of facsimiles or internet facsimiles through the Services.

At our sole option and without further notice, we may use technologies and procedures, including without limitation, filters, that may block or terminate such unsolicited advertisements without delivering them. You agree to indemnify and hold harmless Highfive, and any third-party provider(s) from any and all third party claims, losses, damages, fines, or penalties arising: (i) out of your violation or alleged violation of the TCPA or Junk Fax Prevention Act or any similar regulation or legislation; or (ii) otherwise related to any Customer Content or Customer Communication.

**5.4. Recording Conversations or Calls.** Certain features of the Service may allow you or Users of the Service to record calls or other communications. The notification and consent requirements relating to the recording of calls, and/or other communications may vary from state to state, and country to country. You should consult with an attorney prior to recording any call as some states or countries may require callers or Users to obtain the prior consent of all parties to a recorded call, or other communication before the caller or user may record the call, or other communication. You represent, covenant, and warrant that you will review all applicable laws before you use or allow use of the Service to record any calls or other communications and will at all times comply with all applicable laws. You agree to inform all Users that they are obligated to comply with all laws

relating to their use of the call recording feature of the Service. Violations of the call recording laws may be subject to criminal or civil penalties.

Highfive expressly disclaims all liability with respect to your recording of telephone conversations and/or calls. You agree to indemnify and hold harmless Highfive, and any third-party provider(s) from any and all third party claims, losses, damages, fines, or penalties arising out of your or your Users violation or alleged violation of any call recording laws. Highfive stores recorded calls for a minimum of 180 days, though we reserve the right to change the length of time we store recordings at any time. Links to access calls are not password protected, and anyone who has the link can access the recording.

**5.5. Prohibited Use of the Service.** Neither you nor any User may use or allow use of the Service in any of the following ways:

- 5.5.a. in any manner or for any purpose that is fraudulent, malicious, deceptive, dishonest, abusive, obscene, threatening, harassing, tortious, improper, defamatory, libelous, slanderous, or in violation of any law;
- 5.5.b. to intentionally send or transmit unsolicited or “junk” or “spam” advertisements, communications, or messages (commercial or otherwise) without consent, including without limitation through email, voicemail, SMS, facsimile, or internet facsimile;
- 5.5.c. to harvest or otherwise collect information about others, including without limitation email addresses or personally-identifiable information, without their consent;
- 5.5.d. to intentionally engage in blasting or broadcasting bulk communications, advertisements, or messages (e.g., sending

hundreds of messages simultaneously), including without limitation through email, voicemail, SMS, facsimile, or internet facsimile;

5.5.e. to perform auto-dialing or “predictive” dialing (i.e., non-manual dialing or using a software program or other means to continuously dial or place out-bound calls) in violation of applicable law;

5.5.f. to transmit any communication that would violate any applicable law, including but not limited to the Telephone Consumer Protection Act, the Junk Fax Prevention Act of 2005, the rules governing the DoNotCall Registry, Canadian Unsolicited Telecommunications Rules;

5.5.g. to intentionally transmit or store any material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or any other programs or materials that may be harmful or dangerous;

5.5.h. to transmit misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongfully obtain anything of value, including by creating a false Caller ID identity or forged email/SMS address or header or by otherwise attempting to mislead others as to the identity of the sender or the origin of any outbound Customer Communication;

5.5.i. to infringe, misappropriate, or otherwise violate the foreign or domestic IP Right or proprietary right of any party, including without limitation by transmitting or storing any material that might infringe, misappropriate, or otherwise violate any such right;

5.5.j. to violate the right of privacy, personality, or publicity of any party, including without limitation by transmitting or storing any material that might violate any such right;

- 5.5.k. to violate any law regarding the transmission of technical data or information or software through the Service;
- 5.5.l. to contact or communicate with any emergency service providers or first responders; or
- 5.5.m. in any manner that interferes with Highfive's ability to provide high quality products or services to other customers.

A breach of obligations in this Section 5.5 constitutes a material breach of this Agreement, as applicable, such that Highfive may suspend the Service, terminate the Agreement immediately, or take any other action Highfive deems necessary to enforce the terms of this Section.

**5.6. Prohibited Acts.** You represent, warrant, covenant, and agree that neither you nor any User shall do any of the following during the term of this Agreement:

5.6.a. transfer, rent, lease, sell or otherwise in any way give access to the Hardware to any third party except as expressly permitted hereunder;

5.6.b. transmit, upload, distribute in any way, or store any corrupted file or material that contains viruses, time bombs, Trojan horses, worms, malware, spyware, or any other programs or materials that may be harmful or dangerous or may damage the operation of the

Service or another party's computers, devices, equipment, systems, or networks;

5.6.c. take advantage of, bypass, exploit, or otherwise avoid your obligations or the provisions, restrictions, and prohibitions set forth in this Agreement (or attempt to do so);

5.6.d. interfere with or disrupt networks or systems connected to the Service;

5.6.e. sell; resell; distribute; lease; export; import; or otherwise grant or purport to grant rights to third parties with respect to the Service, the Software and the Hardware or any part thereof without Highfive's prior written consent;

5.6.f. display or use of any Highfive trademark or logo, including the "Highfive Mark" in any manner in violation of Highfive's then-current policies on its trademark and logo usage or without Highfive's express, prior written permission, to be granted or denied in Highfive's sole discretion,

5.6.g. display or use of any third party trademark or logo without the prior, written consent of the third party that owns the third party trademark or logo;

5.6.h. undertake, direct, attempt, cause, permit, or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling, or hacking of the Service, the Software or Hardware, or part thereof;

5.6.i. defeat, disable, or circumvent any protection mechanism related to the Service;

5.6.j. intercept, capture, sniff, monitor, modify, emulate, decrypt, or

redirect any communication or data used by Highfive for any purpose, including without limitation by causing any product to connect to any computer server or other device not authorized by Highfive or in any manner not authorized in advance in writing by Highfive;

5.6.k. allow any service provider or other third party – with the sole exception of Highfive’s authorized maintenance providers acting with Highfive’s express, prior authorization – to use or execute any software commands that facilitate the maintenance or repair of any software or hardware used in conjunction with the Service;

5.6.l. gain access to or use (or attempt to gain access or use) any device, system, network, account, or plan in any unauthorized manner (including without limitation through password mining);

5.6.m. engage in or to allow trunking or forwarding of your Highfive telephone or facsimile number to (an)other number(s) capable of handling multiple simultaneous calls, or a key system; or

5.6.n. violate or take any action to jeopardize, limit, or interfere with Highfive’s intellectual property rights, including without limitation intellectual property rights in the Service, the Software and the Hardware.

A breach of obligations in this Section 5.6 constitutes a material breach of this Agreement, as applicable, such that Highfive may suspend service, terminate the Agreement immediately, or take any other action Highfive

deems necessary to enforce the terms of this Section.

## **6. Warranties and Disclaimers.**

**6.1. Service Availability.** Highfive will use its best efforts consistent with other companies like us to keep the Service up and running, but no one is perfect. The Service may be temporarily unavailable for scheduled or unscheduled maintenance. We will use reasonable efforts to provide advance notice of any scheduled service disruption. Highfive does not warrant that the Service will be uninterrupted or error free. Highfive does warrant that the Service will function in all material respects as provided in the Specifications (unless of course you used the Service in a manner inconsistent with the Specifications or this Agreement, including using the Service outside of the United States, Canada, Europe, and Australia/New Zealand).

**6.2. Hardware Warranties.** Highfive warrants that during the Term of this Agreement the Hardware will be free from material defects in materials and workmanship and will function in all material respects as provided in the Specifications (unless of course you used the Hardware in a manner inconsistent with the Specifications or this Agreement, including using them outside of the United States or Canada, Europe, and Australia/New Zealand or damaged the Hardware yourself). Otherwise, you use the Hardware at your own discretion and risk. Your sole and exclusive remedy for a breach of the warranty set forth in this Section 6.2 is for Highfive to, at its expense, either repair or replace the Hardware at issue.

**6.3. Disclaimer of Warranties.** Except as set forth in this Agreement, Highfive disclaims all warranties, express, implied, statutory, or otherwise, including any implied warranty of merchantability, fitness for a particular purpose, non-infringement, or title. Highfive assumes no responsibility for any damages to Customer's hardware, software, or other materials.

## **7. Indemnity.**

**7.1. Indemnification by Highfive.** We agree to indemnify you, your affiliates, and their employees, officers, directors, successors, assigns, agents for all losses (including reasonable attorneys' fees) relating to any third party claims alleging that use of the Service or the Hardware as permitted under this Agreement infringes or misappropriates the intellectual property rights of a third party; provided that you (i) promptly give us written notice of such claim, (ii) give us sole control of the defense and settlement of the claim (provided that we may not settle or defend any claim unless it unconditionally releases you of all liability), and (iii) provide us all reasonable assistance, at our expense.

**7.2. Indemnification by Customer.** You agree to indemnify Highfive, its affiliates, and their employees, officers, directors, successors, assigns, agents for all losses (including reasonable attorneys' fees) relating to any third party claims arising out of your (or your employees, agents, or Network Users') (i) grossly negligent acts or intentionally committed wrongful acts; (ii) use of the Service in any manner not authorized in the Specifications; or (iii) any breach of this Agreement; provided that we (i) promptly give you written notice of such claim, (ii) give you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless it unconditionally releases us of all liability), and

(iii) provide you all reasonable assistance, at your expense.

**8. Limitation of Liability.** Except for damages arising from either Party's

indemnification obligations hereunder and breach by Customer of Section 1.3, 1.4 or 5 above, neither Party will be liable for: indirect, incidental, exemplary, special, or consequential, damages; loss or corruption of data; or loss of revenues, profits, goodwill, or anticipated sales or savings. Except for damages arising from Highfive's indemnification obligation hereunder, in no event will Highfive's total cumulative liability to Customer and anyone who uses the Service through Customer's account exceed the aggregate amount Customer has paid to Highfive to purchase the Service during the prior twelve (12)-month period.

**9. Confidentiality.** Business or technical information (collectively, "Confidential

Information") provided by one of us (the "Discloser") to the other (the "Recipient") will be kept confidential by the Recipient and may not be used or disclosed except to perform this Agreement. Confidential Information does not include information that (a) is or was lawfully received by the Recipient from another party without confidentiality obligations, (b) becomes available in the public domain through no action or inaction of the Recipient, or (c) is developed independently by the Recipient without reference to the Discloser's Confidential Information. If legally permissible, Recipient will provide Discloser prompt written notice if legally compelled to disclose Discloser's Confidential Information.

**10. Export Laws.** You may not remove or export from the United States or allow the

export or re-export of the Service or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are

“commercial items” and according to DFAR section 252.227 7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**11. Miscellaneous Legal Stuff.** This Agreement is the entire agreement between you and us and supersedes all prior agreements and understandings about your use of our Service. In the event of a conflict between this Agreement and any other terms posted on the Terms, the terms of this Agreement shall govern. There are no third-party beneficiaries to this Agreement. Communications we send to you electronically will be deemed to be in writing. Any notice you provide to us under this Agreement will be in writing and sent by overnight courier or certified mail (receipt requested) to the address above. If any provision of this Agreement is found unenforceable, this Agreement will be construed as if it had not been included. Highfive may assign this Agreement without the consent of Customer. You may not assign this Agreement without our consent unless you assign it in connection with a merger, acquisition or sale of your assets upon delivering prior written notice to us. No failure or delay by us in exercising any right under this Agreement will constitute a waiver of that right. The headings used in this Agreement are for convenience of reference only and do not affect the meaning or construction of this Agreement. This Agreement is governed by the laws of California without reference to conflicts of law rules. For any dispute relating to this Agreement, the Parties consent to personal jurisdiction and the exclusive

venue of the courts in San Mateo County, California, except that either Party may elect to resolve the dispute through binding non-appearance-based arbitration through an established alternative dispute resolution provider they both agree on.

**12. Contacting Highfive.**

If you have any questions or concerns about the Service or this Agreement, please contact us at [legal@highfive.com](mailto:legal@highfive.com).