
MEMO

APPROVED
8/8/2022



DATE: August 3, 2022
FROM: Matney M. Ellis
Procurement Director
TO: Board of County Commissioners
SUBJECT: Agreement – Ivy.ai, Inc

A handwritten signature in black ink, appearing to read "Matney M. Ellis", with a long horizontal flourish extending to the right.

Submitted for your approval and execution is the attached agreement between the Board of County Commissioners of Tulsa County on behalf of Tulsa County Information Technology and Ivy.ai, Inc. Inc. for subscription and service of chatbots beginning August 8, 2022 through August 7, 2023 at a yearly rate of \$5,000.00 as further described in the attached.

Respectfully submitted for your approval and execution.

MME / jdf

SUBMITTED FOR: The August 8, 2022 BOCC meeting agenda.

CMF# 20221553



IVY.AI SERVICE ORDER

This Service Order, which incorporates our Online Subscription Agreement – Version 2.1 located online at <https://ivy.ai/iosa/> (the “Agreement”), is made between the customer named below (“you”) and Ivy.Ai, Inc. (“Ivy,” or “we”). This Service Order is effective **August 8, 2022** (the “Effective Date”). All capitalized terms not defined in this Service Order have the meanings given in the Agreement.

Ivy Primary Contact	Customer Primary Contact
Neil Bisson neil@ivy.ai (202)812-7355 1281 E. Magnolia St. Unit D-B7 Fort Collins, CO 80524	Beau B Blackford bblackford@tulsacounty.org (918) 596-5223 218 W. 6th Street Tulsa, Oklahoma 74119
	Customer Billing Contact
	Beau B Blackford bblackford@tulsacounty.org (918) 596-5223 218 W. 6th Street Tulsa, Oklahoma 74119

1. **IVY BOTS:** Subject to the terms of the Agreement, under this Service Order you are ordering (and we agree to provide) a subscription for you to deploy chatbots for the following content areas:

- **Live Chat and ticketing system**

This service does not include any Artificial Intelligence, machine learning chatbot features or access to its data.

2. **AUTHORIZED CHANNELS:** The Ivy Live Chat will be made accessible through the following channels:

- Web: By submitting a question through the chat tool to be deployed on the relative university websites
- SMS: By text message through a University SMS provider (Twilio, Trumpia, or purchase of Ivy shortcode)

3. **SUPPORT SERVICES:** The following Support Services are included with your subscription:

- Launch Assistance. We will assist you with initial installation, implementation and configuration of the Ivy Live Chat Portal to get them ready for use by your users.
- Technical Support. Our staff is available to answer questions and provide technical and operational assistance.
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All Ivy.ai services are continuously monitored and technical support services are available via the Ivy.ai Help Center 24/7/365. The Ivy.ai support team responds to tickets submitted in the Help Center during regular business hours: Monday through Friday, 8:00 a.m. to 5:00 p.m. MST, excluding federal and state holidays (USA).

4. **TERM:** The initial term of your subscription is for 12months from the Effective Date, unless one of us cancels by giving written notice at least 30 days prior to the end of the current term or one of us terminates this Service Order as provided in the Agreement.



5. **FEES:** In exchange for your subscription, you will pay us Fees in the amount of \$5,000.00 per year. These Fees will be due and payable on an annual basis, in advance, with our initial invoice delivered on the Effective Date. Thereafter and including for each renewal term, Ivy will issue an invoice for the annual Service Fees forty-five (45) days prior to each anniversary of the Effective Date. You will pay all invoices in accordance with the Agreement (net 30 terms).

6. **ADDITIONAL TERMS:** Notwithstanding Section 15.d of the Agreement, the parties agree that this Service Order and the Agreement will be governed by and construed in accordance with the laws of the State of Oklahoma and the sole jurisdiction and venue for actions related to this Agreement will be the state or federal courts located in Oklahoma.

By executing this Service Order, you agree to be bound by this Service Order and the Online Subscription Agreement – Version 2.1 located online at <https://ivy.ai/iosa/>, which together constitute a binding agreement between you and us. This Service Order may not be modified except by the execution of a new, written Service Order signed by both of us.

Ivy.ai, Inc.	Tulsa County
<i>Mark McNasby</i>	<i>Hayden Keith</i>
Mark McNasby, CEO	
August 1, 2022	

Attest: *Nicholas Williams* 

APPROVED AS TO FORM:
Nicholas Williams Digitally signed by
 Nicholas Williams
 Date: 2022.08.02
 15:44:56 -05'00'
 ASSISTANT DISTRICT ATTORNEY



Exhibit A

Sources of Content and Data

INSERT URLS INCLUDED IN SCOPE

Ivy Online Subscription Agreement

VERSION 2.1

IVY.AI, INC. (“Ivy” or “we”) provides subscriptions to our chatbots (the “**Bots**”), as well as the Services described below, subject to the terms and conditions of this agreement (this “**Agreement**”).

1. Acceptance. By executing a Service Order with us or our reseller, you also accept the terms of this Agreement. You should read this Agreement carefully for the terms and conditions that govern your use of the Bots and our Portal (as defined below) and your receipt of the Services. The individual executing the Service Order on your behalf represents and warrants to us that he or she is fully and duly authorized to agree to be bound by this Agreement on your behalf.

2. Our Services.

a. Services. During the Term, we will use commercially reasonable efforts to provide the following services (the “**Services**”): (i) the hosting, management and operation of our Bots and our Portal for remote electronic access and use by you, your Admin Users and your End Users in accordance with the authorizations granted below; (ii) the Support Services described in Section 4; (iii) the Professional Services described in Section 5; and (iv) any other services we agree to provide in your Service Order.

b. Changes. We may make any changes to our Bots and our Portal that we deem necessary or useful to improve the Bots or the Portal or for any other reason, but we will not make any changes to the Bots or the Portal that would materially adversely affect the features and functionality of the Bots or the Portal that are available to you.

c. Subcontractors. We may, in our discretion, engage subcontractors to perform Services under this Agreement, but such subcontractors will be bound by confidentiality terms, duties or obligations that are substantially equivalent to Section 7 below, and we will remain liable for any act or omission by such subcontractors that would be a breach or violation of this Agreement. We will share the names of these subcontractors with you upon request.

d. Suspension of Services. We may suspend or deny your, any Admin User’s or any End User’s access to or use of all or any part of the Ivy IP (as defined below) without any liability to you or others, if (i) we are required to do so by law or court order, (ii) you, any Admin User or any End User have accessed or used the Ivy IP beyond the scope of the

rights granted under this Agreement, (iii) you, any Admin User or any End User are or have been involved in any fraudulent, misleading or unlawful activities relating to or in connection with the Ivy IP, (iv) you or any Admin User have failed to comply with the limitations and restrictions described in Sections 3.a, 3.c or 5, or (v) you or any Admin User have otherwise failed to comply with this Agreement and have failed to cure such breach within 10 days after we provide written notice to you. Our remedies in this Section are in addition to, and not in lieu of, our termination rights in Section 11 or any other rights or remedies under this Agreement, at law or in equity.

3. Right to Access and Restrictions.

a. License to Bot Deployment Code. Subject to your payment of the applicable fees listed on your Service Order, and so long as you and your Admin Users otherwise comply with this Agreement, we grant you, during the Term, a limited, non-exclusive and non-transferable right and license, without the right to sub-license, to copy and deploy on your own website the HTML/Javascript code we provide to you for purpose of making the Bots accessible for interaction with individuals on your website (the “Code”) solely in accordance with the Documentation. You must not (i) use the Code for any other purpose, (ii) modify or create derivative works or improvements of the Code, or (iii) disclose or make the Code available to any other person or entity.

b. Authorization. Subject to your payment of the applicable fees listed on your Service Order, and so long as you and your Admin Users otherwise comply with this Agreement, we authorize you, during the Term, and on a non-exclusive and non-transferable basis, to:

1. interact with (and permit Admin Users and End Users to interact with) the Bots described in your Service Order, solely for the Permitted Use, solely in the form in which we have provided the Bots, and solely in accordance with the Documentation, through one or more of the following channels that have been identified as “Authorized Channels” on your Service Order (“**Authorized Channels**”):

- a messaging or chat tool deployed on your website using the Code;
- e-mail;
- SMS text message;
- an Amazon Alexa skill;
- Facebook Messenger; and
- any other channel that is described on your Service Order; and

2. access and use, by and through your Admin Users only, the online portal we provide to our customers for interacting with us, our Bots and our Services (the

“Portal”), solely for your internal business purposes, solely in the form in which we have provided the Portal, and solely in accordance with the Documentation.

c. Limitations and Restrictions. You must not, and you must not permit any other person or entity to, access or use the Ivy IP except as we’ve specifically allowed in this Agreement and, in the case of any third-party materials (including open source components) (**“Third-Party Materials”**) we provide to you, as allowed in the applicable third-party license agreement. You and your Admin Users must not do any of the following:

1. Copy the Ivy IP (except to the extent expressly provided in Section 3.a);
2. modify, adapt, translate or create derivative works or improvements of the Ivy IP;
3. make the Ivy IP available (e.g., rent, sell, sublicense, distribute or transfer) to any other person or entity (except as expressly provided in Section 3.b.i above), including through any time-sharing, service bureau or software as a service arrangement;
4. reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive, gain access to or discover the source code of the Ivy IP or the underlying structure, ideas, know-how or algorithms relevant to the Ivy IP;
5. input, upload, transmit or otherwise provide to or through the Bots, the Portal or our Services any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
6. bypass, breach or disable any security device, copy control or digital rights management tool, or other protection used by our Bots or our Portal;
7. damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner our Bots, our Portal or our Services or our ability to provide services to any third party;
8. access or use the Ivy IP in any way that infringes, misappropriates or otherwise violates any intellectual property right, privacy right or other right of any third party, or that violates any applicable law or regulation;
9. access or use the Ivy IP for purposes of benchmarking or competitive analysis, developing, producing, marketing, distributing, licensing or selling any product or service that may compete with our Bots or our Portal, or disclosing to Ivy’s competitors, for any purpose, otherwise non-public information about our Bots or our Portal; or
10. knowingly aid or assist any End User in taking any of the actions prohibited by this Section 3.c.

You must immediately notify us should you learn that you, any Admin User or any End User has taken any action prohibited by this Section 3.c.

4. **Support Services.** Your subscription comes with the support services (“**Support Services**”) described in your Service Order and our Service Level Agreement available online at <https://ivy.ai/sla>, as may be updated from time to time (the “SLA”), which is incorporated into this Agreement by reference. Support Services will be provided in accordance with, and subject to the terms and conditions set forth in, the SLA. You must provide all information and assistance that we reasonably request in connection with providing such Support Services. For the avoidance of doubt, unless otherwise expressly agreed to by us in a Service Order, our Support Services do not include: (a) after-hours support, (b) support for software or hardware that is not ours, (c) on-site training or assistance, or (d) performance of any professional, customization or consulting services.

5. **Professional Services.** If you require additional professional, customization, consulting or other services, then you and we (or you and our reseller) will mutually agree upon and describe such services (the “**Professional Services**”) in one or more statements of work to this Agreement (“**Statements of Work**”). Each Statement of Work will be effective, incorporated into and form a part of this Agreement. If there is a conflict between this Agreement and any Statement of Work, the terms of this Agreement will control, unless the Statement of Work expressly states that a specific provision of this Agreement is superseded by a specific provision of the Statement of Work. Each Statement of Work will include, without limitation, (a) a description of the deliverables that we will furnish to you (the “**Deliverables**”), (b) the specifications (“**Specifications**”) for each Deliverable, (c) your tasks and responsibilities (“**Your Responsibilities**”), and (d) the fees and payment terms applicable to such Statement of Work. You understand and agree that our performance is dependent on your timely and effective satisfaction of Your Responsibilities and your timely decisions and approvals. You will be solely responsible for securing all rights, licenses or approvals to grant us access to or use of any Third-Party Materials (including any third party data, software or other technology) necessary for our performance of the Professional Services. We will abide by the terms and conditions of such permissions, licenses or approvals if you provide written copies prior to the commencement of the applicable Professional Services. Additionally, subject to your payment of the applicable fees listed on the Statement of Work, and so long as you and your Admin Users otherwise comply with this Agreement, we grant you, during the Term, a limited, non-exclusive, non-transferable right and license, without the right to sub-license, to use the Deliverables in connection with your use of our Services, our Bots and our Portal, subject to any further limitations or restrictions in the applicable Statement of Work.

6. **Uptime Commitment.** We will use commercially reasonable efforts to keep the Bots and the Portal available in accordance with the Availability / Service Commitment set forth in the SLA, subject to the terms and conditions set forth in the SLA. As your exclusive remedy and our sole liability and obligation for our failure to meet this availability commitment, upon your

written request we will credit you 2% of your annual Fee paid under the applicable Service Order for each month where we fail to meet this availability commitment.

7. Confidentiality.

a. General. During the Term and for a period of five years thereafter, each receiving party (each, a “**Recipient**”) will hold in strict confidence any proprietary or confidential information (collectively, “**Confidential Information**”) of the other party (the “**Discloser**”) and will not disclose Discloser’s Confidential Information to any third party (other than our subcontractors as permitted in Section 2.c above) nor use the Discloser’s Confidential Information for any purpose except for carrying out its obligations or exercising its rights under this Agreement. All non-public information related to the Ivy IP and the features, functionality and performance thereof are all our Confidential Information, and Your Data (including, for the avoidance of doubt, all End User Data) is your Confidential Information.

b. Exceptions. These restrictions will not restrict the use or disclosure of information disclosed by one party to the other that (i) is or becomes publicly known other than as a result of any act or omission by the Recipient, (ii) is lawfully received by the Recipient from a third party not in a confidential relationship with the Discloser, or (iii) was already rightfully known by the Recipient prior to receipt thereof from the Discloser. Additionally, the Recipient may disclose the Discloser’s Confidential Information to the extent it is required to be disclosed pursuant to applicable law or the valid order of a court or governmental agency, provided that the Recipient must give the Discloser reasonable prior written notice to permit the Discloser to challenge or limit such required disclosure.

c. Trade Secret Protection. Notwithstanding the foregoing, each party’s confidentiality obligations will survive with respect to the other party’s Confidential Information that is a trade secret for so long as such Confidential Information continues to be a trade secret under applicable law.

d. Our Additional Obligations Regarding Your Confidential Information. If FERPA or GDPR are applicable to your business, we will reasonably cooperate with you and promptly make available to you upon request any of your Confidential Information in our possession as necessary to satisfy FERPA or GDPR access requirements. In addition to our obligations upon termination under Section 11.c below, and subject to our rights under Sections 10.d and 10.e below, upon your request at any time during the Term, we will promptly destroy or return to you your Confidential Information, whether in our possession or in the possession of any of our subcontractors; provided, however, that (x) we may retain Confidential Information in our backups, archives and disaster recovery systems until such Confidential Information is deleted in the ordinary course (so long as it remains subject to all confidentiality and other applicable requirements of this Agreement), and (y) you acknowledge that our return or destruction of certain of Your Data may affect the quality or functionality of our Bots, our Portal or our Services, and we

will not be liable to you for any resulting issues due to insufficient or incomplete data or inputs.

8. Data Security.

a. **Security Program.** We will maintain and implement a written data security program that contains commercially reasonable administrative, technical, and physical safeguards to protect against anticipated threats or hazards to the security, confidentiality or integrity of Your Data (including, for the avoidance of doubt, all End User Data) that we process on your behalf, including the unauthorized or accidental acquisition, destruction, loss, alteration or use of, and the unauthorized access to, Your Data.

b. **Review of Security Program.** We will review and, as appropriate, revise our data security program at least annually or whenever there is a material change in our business practices that may reasonably affect the security or integrity of Your Data.

c. **Physical and Environmental Security.** We will ensure that our information processing facilities that handle, process, and store Your Data are housed in secure areas and protected by perimeter security, such as barrier access controls that provide a physically secure environment from unauthorized access, damage, and interference.

d. Security Breaches.

1. We will promptly report to you any unauthorized acquisition, access, use or disclosure of Your Data maintained on servers owned or otherwise licensed by us from a third party (e.g., Google Cloud) (each, a “**Security Breach**”). We will also use diligent efforts to remedy any such Security Breach in a timely manner and deliver to you a root cause assessment and future incident mitigation plan with regard to each Security Breach.

2. If any such Security Breach results from our material breach of this Agreement or any act or omission on our part or the part of any of our personnel that constitutes gross negligence or willful or intentional misconduct, we will reimburse you for all reasonable costs and expenses you may incur in providing any notification of such Security Breach required by applicable law.

e. **Data Backup and Disaster Recovery.** Throughout the Term, we will maintain or cause to be maintained commercially reasonable disaster avoidance procedures designed to safeguard Your Data, our processing capability and the availability of our Bots and our Portal. Without limiting the foregoing, we will conduct or have conducted daily backups of Your Data and perform or cause to be performed other periodic backups of Your Data and store such backups in a commercially reasonable location and manner.

f. **Reputable Hosting Provider.** During the Term, we may provide our hosting services using Google Cloud (“**Google Cloud**”) or such other hosting provider that implements

and maintains commercially reasonable security programs, policies, procedures, controls and technologies. You consent to our use of Google Cloud to provide our hosting services and acknowledge and agree that Google Cloud's (i) security programs, policies, procedures, controls and technologies, and (ii) data backup and disaster recovery policies and procedures, are consistent with industry best practices thereby resulting in compliance with the requirements of this Section 8.

9. Fees and Payment.

a. Fees. You will pay to us or (where applicable) to our Reseller the fees and charges described in your Service Order and Statement of Work (the "**Fees**") in accordance with your Service Order and Statement of Work and this Section. Except as otherwise expressly provided in this Agreement, all payment obligations are non-cancelable and all Fees once paid are non-refundable.

b. Taxes. The Fees do not include taxes and similar assessments. We or (where applicable) our Reseller will pass along to you the cost of all applicable sales and excise (and other similar) taxes, duties and charges of any kind imposed by a governmental authority on amounts payable under this Agreement, other than taxes imposed on our or (where applicable) our Reseller's income. If you are exempt from such taxes, you must provide to us or (where applicable) our Reseller a true, up-to-date and complete copy of your direct pay permit or exemption certificate.

c. Payment. You will make all payments in US dollars. Invoiced amounts are due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information and notifying us or (where applicable) our Reseller of any changes to that information.

10. Intellectual Property Rights.

a. Ivy IP. We (or the respective rights holders in any Third-Party Materials) own all right, title and interest in and to our name, logos and other trademarks, our Services, the Code, our Bots, our Portal, the Training Data, the Deliverables and the Documentation, including all new versions, updates, revisions, improvements and modifications of the foregoing, the look and feel, ideas, algorithms, methods and concepts underlying or embedded in the foregoing and all related intellectual property rights (the "**Ivy IP**"). To the extent we develop corrections, enhancements, improvements, derivative works or software relating to the Ivy IP based upon ideas, suggestions or joint contributions submitted by you to us, you hereby irrevocably assign your rights to such ideas or suggestions or joint contributions to us, together with all intellectual property rights in or relating thereto. We are not granting you any right, license or authorization with respect to any of the Ivy IP or any Third-Party Materials except as we've specifically provided in Sections 3 and 5 above. We and the respective rights holders in any Third-Party Materials reserve all other rights in and to the Ivy IP and any Third-Party Materials.

b. Your Data. As between you and us, you are and will remain the sole and exclusive owner of all right, title and interest in and to all of Your Data (including, for the avoidance of doubt, all End User Data), including all intellectual property rights relating to Your Data, subject only to the rights you grant to us in Sections 10.c, 10.d and 10.e.

c. Right to Use Your Data. You grant all such rights and permissions in or relating to Your Data: (i) to us and our subcontractors as are necessary to perform the Services and provide our Bots and Portal to you; and (ii) to us as are necessary to enforce this Agreement and exercise our rights and perform our obligations under this Agreement.

d. Right to Use Outputs. Additionally, you agree we may use a version of the Outputs that has all Personally-Identifiable Information removed for our internal research purposes, to improve the quality of our analytics, and to improve our algorithms, and that this right will survive any expiration or termination of this Agreement. We will not (and any transferees of such materials will not) attempt in any way to re-identify any data included in such materials except with your prior written consent.

e. AI Model Improvements. To the extent Ivy makes any improvements to its algorithms (“**Improvements**”) based upon its Bots’ processing of Your Data and the resulting “machine learning” or “training” of its algorithms, or to the extent Ivy or its subcontractors develop or generate any Training Data based upon the Bot’s processing of Your Data, you agree that Ivy exclusively owns all right, title and interest in and to the Improvements or Training Data, including all related intellectual property rights. You specifically acknowledge and agree that any Improvements and Training Data may be used for the benefit of Ivy’s other customers. Improvements and Training Data do not and will not under any circumstances contain any of your Confidential Information or any Personally-Identifiable Information of your Admin Users or End Users.

11. Term and Termination.

a. Term. The initial term of this Agreement and any renewal provisions are as indicated in your Service Order. The initial term and each renewal term are referred to in this Agreement as the “**Term**.”

b. Termination. In addition to any other termination rights described in this Agreement or your Service Order or Statement of Work, this Agreement may be terminated at any time by either party, effective when that party provides written notice to the other, if the other party materially breaches this Agreement and such breach (i) is incapable of cure, or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice regarding such breach.

c. Effect of Termination. If this Agreement is terminated or expires, then: (i) except as provided in Sections 10.d and 10.e above, all rights, licenses and authorizations granted by one party to the other will immediately terminate, (ii) we may disable your and your

Admin Users' access to the Bots and our Portal, and (iii) except as provided in Sections 10.d and 10.e above and in Section 11.d below, we each will cease all use of the other party's Confidential Information and promptly destroy (or at such other party's request return) all of the other party's Confidential Information, except that each party may retain Confidential Information in its backups, archives and disaster recovery systems until such Confidential Information is deleted in the ordinary course (so long as it remains subject to all confidentiality and other applicable requirements of this Agreement).

d. Post-Termination Data Retrieval. Unless otherwise instructed by you in writing, during the 30 day period following the expiration or termination of this Agreement, we will retain and allow you to retrieve a copy of any of Your Data then in our possession, exportable to you in a mutually agreeable format.

e. Surviving Terms. Sections 3.c (Limitations and Restrictions), 7 (Confidentiality), 10 (Intellectual Property Rights), 11.c (Effect of Termination), 12.b (Your Assurances), 12.f (Disclaimer of Warranties), 13 (Indemnification), 14 (Limitations of Liability), 15 (Miscellaneous), 16 (Definitions) and this Section will survive any expiration or termination of this Agreement.

12. Assurances; Disclaimer.

a. Mutual. Each party represents and warrants to the other that: (i) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses and authorizations it grants and is required to grant under this Agreement; and (ii) it will comply with all applicable federal and state laws, statutes, rules and regulations in the performance of its obligations or exercise of its rights hereunder.

b. By You. You represent and warrant to us that (i) you own, or have the legal right to use and permit us to access and use as contemplated by this Agreement, Your Data (including, for the avoidance of doubt, all End User Data) and all Linked Assets, and (ii) the collection and use of all of Your Data (including, for the avoidance of doubt, all End User Data) as contemplated by this Agreement is consistent with and in compliance with your own privacy policy and all applicable federal and state laws, rules and regulations, including but not limited to FERPA.

c. By Us Regarding Our Services. We warrant that we will perform all Services in a timely, professional and workmanlike manner, using adequate resources and appropriately qualified personnel, and consistent with the highest standards of quality in our industry.

d. By Us Regarding Our Bots and Portal. We warrant that: (i) the Bots and Portal will at all times during the Term substantially conform in all material respects to the specifications set forth in your Service Order and the Documentation, (ii) we have used and will continue to use reasonable efforts consistent with industry best practices to

ensure that our Bots and our Portal do not contain (and will not introduce) any Harmful Code into any of your devices, software, systems or telecommunications equipment, (iii) we have all necessary rights to possess, use, and authorize you, your Admin Users and your End Users to use in accordance with this Agreement our Bots and our Portal, and (iv) our Bots and our Portal as provided to you under this Agreement comply with all applicable federal, state and local laws, rules and regulations.

e. **Warranty Limitations.** The warranties in Section 12.d above do not apply to any non-conformance resulting from: (i) your use of the Bots or Portal in a manner inconsistent with this Agreement or the Documentation, (ii) the operation of or access to your or a third party's system or network, or (iii) any Third-Party Materials. Additionally, if we breach the warranty in Section 12.d(i) above, we will, within a commercially reasonable period of time, at our sole option, and at our sole cost and expense, either (x) modify, fix or correct the Bots or the Portal to remedy such non-conformity, or (y) replace the non-conforming portion of the Bots or the Portal, in each case without causing a material loss of features or functionality of the Bots or the Portal. If we do not cure the breach as provided in the preceding sentence within a commercially reasonable period of time after our receipt of written notice from you regarding the breach (which in all cases will be a period of no less than 30 days following our receipt of such notice), then you may, effective upon your written notice, terminate this Agreement and we will promptly refund to you, on a *pro rata* basis, the share of any Service Order Fees prepaid by you for the future portion of the Term that would have remained but for such termination. THE REMEDIES DESCRIBED IN THIS SECTION 12.e ARE YOUR SOLE REMEDIES AND OUR ENTIRE OBLIGATION AND LIABILITY TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY BREACH OF THE WARRANTY PROVIDED IN SECTION 12.d(i).

f. **Disclaimer of Warranties.** EXCEPT FOR THE EXPRESS LIMITED WARRANTIES PROVIDED IN THIS SECTION 12, ALL SERVICES AND ALL IVY IP ARE PROVIDED "AS IS" AND WE HEREBY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

13. Indemnification.

a. **By Us.** We will defend, indemnify and hold you harmless from any loss, damage or expense (including reasonable attorneys' fees) finally awarded by a court of competent jurisdiction, or paid in accordance with a settlement agreement signed by you, in connection with any third-party claim alleging that your use of the Ivy IP as permitted hereunder infringes upon any U.S. patent, copyright or trademark of such third party, or

misappropriates the trade secret of such third party (each, an “**Infringement Claim**”). Notwithstanding the foregoing, we will have no liability or obligation to the extent any Infringement Claim is based upon or arises out of: (i) the use of the Ivy IP, as applicable, in combination with any software or hardware not expressly authorized by us, (ii) any modifications or configurations made to the Ivy IP, as applicable, by anyone other than us or our subcontractors without our prior written consent, (iii) any design specifications requested by you, (iv) any use by you of the Ivy IP that is outside the scope of the licenses granted herein.

b. Mitigation. If the Ivy IP is, or in our opinion is likely to be, the subject of an Infringement Claim, we may, at our option and our sole cost and expense: (i) obtain the right for you to continue to use the Ivy IP as contemplated by this Agreement, (ii) modify or replace the Ivy IP to make the Ivy IP (as so modified or replaced) non-infringing, without causing a material loss of features or functionality, or (iii) if the remedies in clauses (i) and (ii) are not feasible within commercially reasonable standards, then we may terminate this Agreement upon written notice and promptly refund to you, on a *pro rata* basis, the share of any Service Order Fees prepaid by you for the future portion of the Term that would have remained but for such termination.

c. Procedures. You must immediately notify us of any Infringement Claim, and provide reasonable cooperation to us (at our expense) in the defense of the claim. We will not enter into a settlement of any such claim in a manner that impose any liability on you without your prior written consent.

14. Limitations of Liability.

a. Exclusion of Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (i) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT; (ii) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE BOTS OR PORTAL (OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 6), OR (iii) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

b. Cap on Monetary Liability. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY

AND OTHERWISE, EXCEED THE GREATER OF (i) \$100,000, OR (ii) TWO TIMES THE AGGREGATE AMOUNT PAID TO IVY HEREUNDER DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST CLAIM HEREUNDER (NOT TO EXCEED \$500,000). THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

c. Exceptions to Limitations. The exclusions and limitations in this Section 14 will not apply to your violation of the limitations and restrictions set forth in Section 3 (Right to Access and Authorization) and Section 5 (Professional Services), a party's breach of Section 7 (Confidentiality), your payment obligations under Section 9 (Fees and Payment), a party's obligations under Section 12.b (Your Assurances) or Section 13 (Indemnification), or liability for a party's fraud, gross negligence or willful or intentional misconduct.

15. Miscellaneous.

a. Entire Agreement. This Agreement, each Service Order and each Statement of Work constitute the entire agreement, and supersede all prior negotiations, understandings or agreements (oral or written), between the parties regarding the subject matter of this Agreement (and all past dealing or industry custom).

b. Counterparts. Any Service Order or Statement of Work may be executed in one or more counterparts, each of which will be an original, but taken together will constitute one and the same instrument. Execution of a facsimile copy (including PDF) or execution through electronic means will have the same force and effect as execution of an original.

c. Amendment, Severability and Waiver. No change, consent or waiver under this Agreement will be effective unless in writing and signed by the party against which enforcement is sought. Any delay or failure of either party to enforce its rights, powers or privileges under this Agreement, at any time or for any period, will not be construed as a waiver of such rights, powers and privileges, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If any provision of this Agreement is determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

d. Governing Law and Venue. Unless otherwise specified in your Service Order, this Agreement will be deemed to have been made in, and will be governed by and construed in accordance with the laws of, the State of Florida, without regard to its conflicts of law provisions, and the sole jurisdiction and venue for actions related to this Agreement will be the state courts located in the state of Florida, and both parties consent to the exclusive jurisdiction of such courts with respect to any such action.

e. Notices. All notices under this Agreement will be in writing and may be delivered by electronic mail in portable document format (.pdf), certified or registered mail, overnight courier, or personal delivery, in each case to the address or e-mail address specified in the most recent Service Order (or to such other address or e-mail address specified by a party pursuant to the provisions of this Section).

f. Assignment. Neither party may assign, delegate or otherwise transfer its rights or obligations under this Agreement without the other party's prior written consent; provided, however, that either party may assign, delegate or otherwise transfer this Agreement without restriction: (i) in whole or in part to its affiliates, or (ii) in its entirety to an entity in good financial standing that acquires all or substantially all of the assigning party's business or assets to which this Agreement pertains, whether by merger, reorganization, acquisition, sale, stock sale or otherwise. This Agreement will be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties.

g. No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

h. Relationship of the Parties. The relationship between the parties is that of independent, contracting parties. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever.

i. Force Majeure. Neither party will be liable for any delays or non-performance of its obligations arising out of causes not within such party's reasonable control, including, without limitation, actions or decrees of governmental authorities, criminal acts of third parties, earthquakes, flood, and other natural disasters, war, terrorism, acts of God, or fire (a "**Force Majeure Event**"), except to the extent that the delay or non-performance was not reasonably safeguarded against (in accordance with industry standards).

j. Equitable Remedies. Each party acknowledges and agrees that a breach or threatened breach (i) by you of the limitations and restrictions in Section 3 (Right to Access and Authorization) or Section 5 (Professional Services), or (ii) by either party of any of its obligations under Section 7 (Confidentiality) would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including in a restraining order, an injunction, specific performance and any other relief that may be available from any court of competent jurisdiction, without any requirement to post a bond or other security, or to prove actual damages or that

monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

16. Other Definitions.

The terms “**you**” and “**your**” as used throughout this Agreement refers to the party (other than Ivy or its Reseller) entering into the Service Order or Statement of Work to obtain a subscription to our Bots, our Portal and our Services. In addition, capitalized terms that are used in this Agreement have the meanings described below:

“Admin User” means each of your employees that has been granted valid access credentials to log in to the Portal.

“Documentation” means the online, electronic and written documentation we make available to you which describe the functionality, components, features or requirements of the Code, the Bots and the Portal.

“End User” means each individual who interacts with the Bots through an Authorized Channel.

“End User Data” means any information, data or other content of or about End Users that is collected via the Bots. End User Data may include, without limitation, Personally-Identifiable Information of End Users that such End Users have input and submitted to the Bot through an Authorized Channel. Training Data is not and shall not be deemed to be “End User Data”.

“FERPA” means the Family Educational Rights and Privacy Act and its corresponding implementing regulations.

“GDPR” means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 or any successor European Union data protection framework.

“Harmful Code” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (a) computer, software, firmware, hardware, system or network or (b) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby.

“Linked Assets” means any of your or any third party’s digital assets, software tools, applications or databases, or other Third-Party Materials that you or your Admin Users upload to or use in conjunction with the Bots or our Services.

“Permitted Use” means accessing and presenting Your Data, including querying and connecting to Linked Assets to retrieve Your Data from Linked Assets, in each case in connection with the internal requirements of your business in the ordinary course of such business.

“Personally-Identifiable Information” means individually identifiable information about a natural person, including, without limitation, (a) a first and last name, (b) a home or other physical address, including the street name and name of a city or town, (c) e-mail address, (d) telephone number(s), (e) any other identifier that permits the physical or online contacting of a specific individual, and/or (f) information concerning an individual maintained in personally-identifiable form in combination with an identifier described in clauses (a)-(e) of this definition.

“Outputs” means the outputs and results of the Bots’ processing of Your Data, such as the automatically-generated text or voice responses to inquiries submitted by End Users to the Bots. Training Data is not and shall not be deemed to be "Outputs."

"Reseller" means our authorized reseller, OEM or other channel partner with which you are choosing to contract directly for a subscription to our Bots, Portal and Services.

“Service Order” means the order form, proposal, purchase order, service order or similar document executed by you and us (or by you and our Reseller), which incorporates the terms of this Agreement by reference and which, in turn, is incorporated into this Agreement for all purposes.

"Training Data" means the weighted, tagged, labeled, and/or categorized text and other similar metadata that is a byproduct of the Bots processing of Your Data and other data and that is used to train, tune and/or improve the algorithms or machine learning models underlying the Bots.

“Your Data” means information, data and other materials that are collected, uploaded or otherwise received, directly or indirectly, from you, an Admin User or an End User by or through the Bots, our Portal or our Services in connection with this Agreement. Your Data includes all End User Data and Outputs. Training Data is not and shall not be deemed to be "Your Data."

If your Service Order references a prior version of this Ivy Online Subscription Agreement, please [click here](#) to review version 1.1.