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# MEMO

APPROVED  
3/18/2024



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DATE: March 12, 2024  
FROM: Matney M. Ellis  
Procurement Director  
TO: Board of County Commissioners  
SUBJECT: Agreement – Opus 2

A handwritten signature in black ink that reads "Matney M. Ellis". The signature is written in a cursive style and is positioned to the right of the "TO:" field.

Submitted for your approval and execution is the attached agreement between the Board of County Commissioners of the County of Tulsa, Oklahoma on behalf of Tulsa County Procurement Department and Opus 2 for eighty (80) Hosted Enterprise Licenses to annotate software to be used for in-document collaboration during contract review from March 1, 2024, to February 28, 2025, for a cost of \$25,000 as further described in the attached.

Respectfully submitted for your execution and approval.

MME / adr

SUBMITTED FOR: The March 18, 2024 BOCC meeting agenda.

CME# 20240414

## OPUS 2 ENTERPRISE LICENCE

ORDER DETAILS	
Opus 2	Opus 2 International Limited, 5 New St Square, London EC4A 3BF, England
Customer Name and Address	Tulsa County Tulsa, 74103, Oklahoma
Customer Contact	Matney Ellis matney.ellis@tulsacounty.org
Effective Date	The date on which this Order Form is executed

SUBSCRIPTION LICENCE	
Subscription Licence Scope and Fee	Subscription Licence Fee: U\$ 25,000/annum. To be invoiced in full on the Effective Date and payable immediately. Subscription Licence Fee includes up to 80 Users ("User Allowance").
Initial Term	12 months term from 1 March 2024 to 28 February 2025. The Agreement will terminate automatically on the expiry of the Initial Term without the need for notice; no auto-renewal.

Support email address: [support@annotate.com](mailto:support@annotate.com)

Support, updates and maintenance are included as part of this Agreement. Business Hours: 9:00am to 5:30pm (GMT), Monday to Friday. Support is contactable through email at support@annotate.com, on the web by entering a support request ticket at: www.annotate.com/support and via the telephone on +1 (415) 5349612. Support will be provided to authorised Customer contacts only.

### Acceptance

Opus 2 requires written confirmation of acceptance of our fees and terms as set out above prior to commencement of the Agreement. Such confirmation acts as acceptance of this Order and your assent to be bound by this Agreement as of the Effective Date. This Order Form is subject to and governed by the Customer Terms of Service appended to this Order Form, GDPR Addendum Hosted (<https://www.annotate.com/docs/annotate-gdpr-addendum-hosted.pdf>), and all terms referenced therein (collectively the "Agreement"). Save for the terms of the Agreement, no other terms and conditions apply.

\*\*Notwithstanding anything to the terms and conditions attached to this Order Form, this agreement does not automatically renew. This agreement may be renewed only upon written agreement of the parties.

Authorised representative of the Customer:		Authorised representative of Opus 2 International Limited	
Signature:		Signature:	 <small>Charlie Harrel (Apr 10, 2024 16:50 GMT+1)</small>
Full Printed Name:	Stan Sallee	Full Printed Name:	Charlie Harrel
Job Title:	Chairman	Job Title:	Chief Operating Officer
Date:	3/18/2024	Date:	Apr 10, 2024

APPROVED AS TO FORM/ LEGALITY

  
Assistant District Attorney

ASSISTANT DISTRICT ATTORNEY

Andrew C. Mihelich

Attest:   
Michael Willis, County Clerk by Kenneth Yates, Chief of Staff



CMF# 20240414

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# HOSTED CUSTOMER TERMS OF SERVICE

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## Hosted Customer Terms of Service

These Customer Terms of Service (the “**Customer Terms**”) describe your rights and responsibilities when using Annotate’s hosted online workplace productivity tools and platform (the “**Services**”). Please read them carefully. If you are a Customer (defined below), these Customer Terms govern your access and use of our Services. If you are being invited to a workspace set up by a Customer, the User Terms of Service (the “**User Terms**”) govern your access and use of the Services.

On first login each Authorised User (as defined below) may be required to read and accept User Terms before being able to fully access and use the Annotate Software.

In addition to these Customer Terms:

The API Terms of Service (“**API Terms**”) apply to your use of the API Software (if you use the API Software).

### ***These “Customer Terms” Form a Part of a Binding “Contract”***

These Customer Terms (or, if applicable, your written agreement with us) and any Order Form(s) (defined below), the Privacy Policy, the API Terms (as applicable) and GDPR Data Processing Addendum (along with all of its exhibits) which are all available at <https://www.annotate.co/legal-terms.html> together form a binding “**Agreement**” or “**Contract**” between the Customer and us. If any additional terms in the Order Form have been agreed between us and the Customer to apply to the Customer, those terms are also incorporated herein by reference and form part of the Contract. “We,” “our” and “us” refers to Annotate Software Limited. **In the event of any inconsistency or conflict between any of the parts that form the Agreement the Order Form terms shall prevail.**

Reference to “Annotate” in these Terms of Service means Opus 2 International Limited

### ***Your Agreement on Behalf of the “Customer”***

If you purchase subscription(s), submit an Order Form for Services, invite users to access the Services, or use or allow use of the Services following notification of these Customer Terms or a notification to these Customer Terms, you acknowledge your understanding of the then-current Contract and agree to the Contract on behalf of Customer. Please make sure you have the necessary authority to enter into the Contract on behalf of Customer before proceeding.

### ***Who is “Customer”?***

“Customer” is the organization that you represent in agreeing to the Contract. If your workspace is being set up by someone who is not formally affiliated with an organization, Customer is the individual who creates the Annotate Account Installation. Once the Customer has created the Annotate Account Installation, the Customer can create Workspaces, Topics and Chats, invite other individuals to join these Workspaces, Topics and Chats, and give individuals the ability to create their own Workspaces, Topics or Chats. The Customer is the Account Owner and has ultimate control in respect of Authorised Users’ account access and privileges as further outlined later in these terms. For example, if you signed up to our Services using a personal email address and invited a couple of friends to work on a project but haven’t formed a company yet, you are the Customer.

### ***Defined Terms***

Annotate Service means: The provision by Annotate of any Services related to the use of the Annotate Software by Customer.

Annotate Software is all software comprised within the Annotate Services but not including additional software supplied by the Customer, software comprising third party integrations or Non- Annotate Products.

An Annotate Account Installation is an instance of the Annotate product.

Effective date means: The date on which the Customer accepts and signs the Order Form provided by Annotate.

A Workspace is: A workspace is a named digital space where users within Annotate can be invited to create, share, discuss, review, link and verify the facts on documents.

A Topic is: A topic is a named group chat-driven space where users can quickly share, discuss and review documents with other users in real time.

A Chat is: A chat conversation can be held between two or more users directly or within a workspace, topic or document. Users can be explicitly invited to a chat or may be able to chat in a specific workspace or topic depending on the workspace or topic configuration and user's security rights.

The Account Owner is: the individual or organisation (as applicable) that is the Customer as defined in these Customer Terms. The Customer has ultimate control in respect of the Annotate Account Installation including but not limited to setting, amending or removing functionality within a Workspace, Topic or Chat (as may be permitted under this Contract), enabling, reinstating, amending or revoking Authorised Users' account access and privileges, and other related matters as set out in these Customer Terms.

Hosted means: Annotate storing the software and data within its own managed server environment so that Customer can access the Annotate Service over the Internet.

Permitted Designated Servers: as specified on the applicable Order Form.

Permitted Authorised Users: as specified on the applicable Order Form.

Plan means: A subscription procured to access the Services, which may be on a paid for or free basis.

### ***Signing Up Using a Corporate Email Domain***

If you signed up for a plan using your corporate email domain, your organization is Customer, and Customer can modify the provision of the Services and functionality (including your role and access) and otherwise exercise its rights under the Contract. If Customer elects to replace you as the representative with ultimate authority for the Annotate Account Installation, we will provide you with notice following such election and you agree to take any actions reasonably requested by us or Customer to facilitate the transfer of authority to a new representative of Customer.

### ***What This Means for the Customer, and for Us***

Individuals authorised by Customer to access the Services (an "**Authorised User**") may submit content or information to the Services, such as documents, messages or files ("**Customer Data**"), and the Customer may exclusively provide us with instructions on what to do with it. For example, the Customer may provision or deprovision access to the Services, enable or disable third party integrations, manage permissions, retention and export settings, and other such matters. These choices and instructions may result in the access, use, disclosure, modification or deletion of certain or all Customer Data.

Customer will (a) inform Authorised Users of all Customer policies and practices that are relevant to their use of the Services and of any settings that may impact the processing of Customer Data; and (b) ensure the transfer and processing of Customer Data under the Contract is lawful.

### ***Ordering Subscriptions***

A subscription allows an Authorised User to access the Services. No matter the role, a subscription is required for each Authorised User. A subscription may be procured through the Services interface, or in some cases, via an order form entered into between Customer and us (each, an "**Order Form**"). Each Authorised User must agree to the User Terms and any additional terms (where applicable) to activate their subscription. Subscriptions commence when we make them available to Customer and continue for the term specified in the Services "check-out" interface or in the Order Form, as applicable. Each subscription is for a single Authorised User for a specified term and is personal to that Authorised User. We sometimes enter into other kinds of ordering arrangements, but that would need to be spelled out and agreed to in an Order Form. During an active subscription term, adding more subscriptions is fairly easy. Unless the Order Form says otherwise, Customer may procure more subscriptions at the price stated in the Order Form and all will terminate on the same date.

### ***License***

Customer's licence to use the Software shall be effective from the Effective Date and shall remain in effect for the duration of the Contract as specified on the Order Form. The Customer's licence to use the Software shall end on expiry or termination of the Contract. Whether or not stated as being subject to Annotate's acceptance in the Order Form, Annotate reserves the right to reject any order that the Customer may place before delivery of the service that is the subject of the Order Form.

Customer's licence is limited to the use of the Software by the Customer solely for its own business purposes and to procure the Annotate Services.

Each Authorised User will be issued with a link to register their username and password to enable them to access and use the Annotate Software.

Customer shall under no circumstances sublicense, disclose, market, rent, lease, or offer remote computing services, networking, batch processing or transfer of, the Software to any third party, or permit any person or entity to have access to the Software by means of a time-sharing agreement.

Customer agrees that it will not and shall ensure that its users (Authorised or otherwise) will not:

- (a) attempt to disassemble, decompile or reverse engineer (save to the extent such right may not be excluded under applicable law), translate, modify, lease, rent, loan, redistribute, sub-lease, sublicense, resell or create derivative works from any aspect of the Annotate Service and Annotate Software;
- (b) access or use the Annotate Software to perform any unlawful activity or to store or transmit or otherwise use any illegal content;
- (c) introduce any Virus into the Annotate Software or Annotate's systems;
- (d) provide or otherwise make available the Annotate Software to any person other than Authorised Users agreed by Annotate;
- (e) access or use the Annotate Software for any unlawful purpose in an unlawful manner, or in violation of any applicable laws, licence or third-party rights; or
- (f) access or use the Annotate Software in any way that interrupts, damages, impairs the functionality of, or that renders the Annotate Software less efficient.

### ***Purchasing Decisions***

We may share information about our future product plans because we like transparency. Our public statements about those product plans are an expression of intent, but do not rely on them when making a purchase. If Customer decides to buy our Services, that decision should be based on the functionality or features we have made available today and not on the delivery of any future functionality or features.

### ***Feedback is Welcome***

The more suggestions our customers make, the better the Services become. If Customer sends us any feedback or suggestions regarding the Services, there is a chance we will use it, so Customer grants us (for itself and all of its Authorised Users and other Customer personnel) an unlimited, irrevocable, perpetual, sublicensable, transferable, royalty-free license to use any such feedback or suggestions for any purpose without any obligation or compensation to Customer, any Authorised User or other Customer personnel. If we choose not to implement the suggestion, please don't take it personally. We appreciate it nonetheless.

### ***Non-Annotate Products***

If a Customer incorporates third party software or applications ("Non-Annotate Product) to complement their use of the Services (subject always to these Customer Terms), then the Customer agrees that THESE NON-ANNOTATE PRODUCTS ARE NOT OUR SERVICES, SO WE DO NOT WARRANT OR SUPPORT THEM, AND, ULTIMATELY, CUSTOMER (AND NOT US) WILL DECIDE WHETHER OR NOT TO ENABLE THEM. ANY USE OF A NON-ANNOTATE PRODUCT IS SOLELY BETWEEN CUSTOMER AND THE APPLICABLE THIRD-PARTY PROVIDER.

If a Non- Annotate Product is enabled for Customer's Annotate Account Installation, please be mindful of any Customer Data that will be shared with the third-party provider and the purposes for which the provider requires access. We will not be responsible for any use, disclosure, modification or deletion of Customer Data that is transmitted to, or accessed by, a Non-Annotate Product.

### ***Privacy Policy***

Please review our [Privacy Policy](#) for more information on how we collect and use data relating to the use and performance of our websites and products.

### **Use of the Services**

Customer must comply with the Contract and ensure that its Authorized Users comply with the Contract and the User Terms. We may review conduct for compliance purposes, but we have no obligation to do so. We aren't responsible for the content of any Customer Data or the way Customer or its Authorized Users choose to use the Services to store or process any Customer Data. Customer shall be responsible for all content and for how Customer and its authorized users use any such content. The Services are not intended for and should not be used by anyone under the age of 16. Customer warrants that Customer is over 16 years old and must ensure that all Authorized Users are over 16 years old. Customer is solely responsible for providing high speed internet service for itself and its Authorized Users to access and use the Services.

### **Our Removal Rights**

If we believe that there is a violation of the Contract that can simply be remedied by Customer's removal of certain Customer Data or Customer's disabling of a Non-Annotate Product, we will, in most cases, ask Customer to take direct action rather than intervene. However, we may directly step in and take what we determine to be appropriate action, if Customer does not take appropriate action, or if we believe there is a credible risk of harm to us, the Services, Authorized Users, or any third parties.

### **Payment Obligations**

#### **Payment Terms**

For Customers that purchase our Services, fees are specified at the Services interface "check-out" and in the Order Form(s) — and must be paid on the dates specified in the Order Form at the time of purchase as required at the Services interface. Payment obligations are non-cancelable and, except as expressly stated in the Contract, fees paid are non-refundable. For clarity, in the event Customer downgrades any subscriptions from a paid plan to a free plan, Customer will remain responsible for any unpaid fees under the paid plan, and Services under the paid plan will be deemed fully performed and delivered upon expiration of the initial paid plan subscription term. If we agree to invoice Customer by email, full payment must be received within thirty (30) days from the invoice date. Fees are stated exclusive of any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "Taxes"). Customer will be responsible for paying all Taxes associated with its purchases, except for those taxes based on our net income. Should any payment for the Services be subject to withholding tax by any government, Customer will reimburse us for such withholding tax.

### **Credits**

We will use commercially reasonable efforts to make the Services available at least 98% of the time in the aggregate, in any full calendar month during the term of this Agreement, net of Permitted Downtime and net of other circumstances not reasonably in our control (SLA). "Permitted Downtime" means scheduled, emergency or other reasonable maintenance, or other circumstances beyond or reasonable control (including Customer's or any of its End Users' use of the Opus 2 Software in a manner inconsistent with the Contract or documentation provided or made available to Customer or Users, or internet or other network traffic problems or outages arising in or from networks or infrastructure not provided by us or in our control) which results in downtime. We cannot and do not guarantee that access to the Annotate Software will be continuous or error free. We will not be liable for any loss suffered because of Annotate Software being unavailable (including, without limitation, as a result of Permitted Downtime) . If we fail to meet the SLA, Customer shall be entitled to request a credit against future services fees ("Service Credits"), in accordance with the following table:

<b>% Availability</b>	<b>Service Credits (as applicable)</b>
Above 98%	None as SLA achieved
95% to 98%	1.2% of the Annual Licence Fee
90% to 94.99%	2.4% of Annual Licence Fee
Below 90%	3.6% of Annual Licence Fee

Any credits that may accrue to Customer's account will be the Customer's sole and exclusive remedy in respect of our inability to meet the SLA, shall expire following expiration or termination of the applicable Contract, will have no currency or exchange value, and will not be transferable or refundable. Credits accrued to a workspace on a free subscription plan will expire if the workspace's plan is not upgraded to a paid plan within ninety (90) days of accrual, unless otherwise specified.

### **Downgrade for Non-Payment**

If any fees owed to us by Customer (excluding amounts disputed reasonably and in good faith) are thirty (30) days or more overdue, we may, without limiting our other rights and remedies, downgrade any fee-based Services to free plans until those amounts are paid in full, so long as we have given Customer ten (10) or more days' prior notice that its account is overdue. Notwithstanding the second paragraph of the "Providing the Services" section below, Customer acknowledges and agrees that a downgrade will result in a decrease in certain features and functionality and potential loss of access to Customer Data, as illustrated in the Pricing Plans.

## **Our Responsibilities**

### ***Providing the Services***

We will (a) make the Services available to Customer and its Authorized Users as described in the Contract; and (b) not use or process Customer Data for any purpose without Customer's prior written instructions; provided, however, that "prior written instructions" will be deemed to include use of the Services by Authorized Users and any processing related to such use or otherwise necessary for the performance of the Contract.

We confirm that (a) the Services will perform materially in accordance with the description in the Contract, and (b) subject to the "Non-Annotate Products" and "Downgrade for Non-Payment" sections, we will not materially decrease the functionality of a Service during a subscription term. For any breach of a warranty in this section, Customer's exclusive remedies are those described in the sections titled "Termination for Cause" and "Effect of Termination".

### ***Support Services***

We will always try and ensure you are able to use the Services to the fullest extent but like with everything, there may be times when you have issues or need support. Our support services and commitments differ depending on whether you are on a free plan or one of our paid plans.

Free plans: If you're using the Service on a free plan, you should report any issues to us by sending us a message through the Annotate Website, or by sending an email to [support@annotate.com](mailto:support@annotate.com). We'll look in to the issue and get back to you as soon as we can, but we are unable to give a timeframe for either response or resolution of the issue.

Paid Plan: if you're using the Services on a paid plan, you should report any issues to us by sending us a message through the Annotate Website, or by sending an email to [support@annotate.com](mailto:support@annotate.com). For critical issues (i.e. those issues which are preventing you from materially being able to access core elements of the Services), we'll endeavor to get back to you within one working day (or quicker if we can depending on how long it takes to investigate the issue) and for all other issues, we'll get back to you as soon as we can.

For certain plans we offer enhanced telephone support services and if this is included within your Subscription, details will be included on the Order Form.

We'll do our best to fix the problem, but our support services do not extend to resolving any issues arising out of or related to: (i) customer environment factors such as but not limited to hardware or server issues, network issues and operating system issues, (ii) unusual external physical factors affecting customer facilities and infrastructure such as inclement weather conditions that cause electrical or electromagnetic stress or a failure of electric power, air conditioning or humidity control; neglect; misuse; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use; (iii) use of the Software that deviates from any operating procedures as specified in the Documentation; (iv) Third Party Products, other than the interface of the Software with the Third Party Products; (v) Modified Code; (vi) issues relating to Software offered as a Service ("SaaS"), or other "X"aaS offerings; (vii) any customized deliverables created by Annotate, Annotate partners or third-party service providers specifically for Customer as part of consulting services; and (viii) use of the Software with unsupported tools (i.e., APIs, interfaces or data formats other than those included with the Software and supported as set forth in the Documentation. Customer may request assistance from Annotate for such problems, for an additional fee.

We reserve the right to update, upgrade or modify the Annotate Software periodically. Any such updates, upgrades or modifications: (i) will be made available during the Initial Term or any Renewal Term at no charge to Customer to the extent generally made available to licensees without an additional charge; and (ii) will not materially reduce the functionality of the Annotate Software. We will not charge Customer for any upgrade unless Customer agrees in writing to pay for such upgrade and such upgrade is not generally made available to other customers of ours without additional charge.

In the event that we suspect that a reported problem may be related to Modified Code, we may, in our sole discretion: (i) request that the Modified Code be removed; and/or (ii) inform Customer that additional assistance may be obtained by Customer directly from various product discussion forums or by engaging our professional services

group for an additional fee.

### ***Protecting Customer Data***

The protection of Customer Data is a top priority for us, so we will maintain administrative, physical, and technical safeguards. Those safeguards will include measures for preventing unauthorised access, use, modification, deletion and disclosure of Customer Data by our personnel. Before sharing Customer Data with any of our third-party service providers, we will ensure that the third party maintains, at a minimum, reasonable data practices for maintaining the confidentiality and security of Customer Data and preventing unauthorised access. Customer (not us) bears sole responsibility for adequate security, protection and backup of Customer Data when in Customer's or its representatives' or agents' possession or control or when Customer chooses to use unencrypted gateways to connect to the Services. We are not responsible for what Customer's Authorised Users or Non-Annotate Products do with Customer Data. That is Customer's responsibility.

### ***Annotate's Affiliates***

We may leverage our employees, those of our corporate affiliates and third-party contractors (the "**Annotate's Affiliates**") in exercising our rights and performing our obligations under the Contract. We will be responsible for the Annotate Affiliates' compliance with our obligations under the Contract.

### **Ownership and Proprietary Rights**

#### ***Your ownership rights***

As between us on the one hand, and Customer and any Authorised Users on the other, Customer will own all Customer Data. Subject to the terms and conditions of the Contract, Customer (for itself and all of its Authorised Users) grants us and the Annotate Affiliates a worldwide, non-exclusive, limited term license to access, use, process, copy, distribute, perform, export and display Customer Data, and any Non-Annotate Products created by or for Customer, only as reasonably necessary (a) to provide, maintain and update the Services; (b) to prevent or address service, security, support or technical issues; (c) as required by law or as permitted under the terms of the Contract; and (d) as expressly permitted in writing by Customer. Customer represents and warrants that it has secured all rights in and to Customer Data from its Authorised Users as may be necessary to grant this license.

#### ***Our ownership rights***

As between Annotate and Customer, all Intellectual Property Rights in and to each of the Annotate Service and the Annotate Software belong to Annotate or its licensors and, other than the limited licence set forth in the Contract and these On-Premise Terms, Customer shall not acquire any right or interest in or title to any part of the Annotate Service and Annotate Software.

We own and will continue to own our Services, including all related intellectual property rights. We may make software components available as part of the Services. We grant to Customer a non-sublicensable, non-transferable, non-exclusive, limited license for Customer and its Authorised Users to use the object code version of these components, but solely as necessary to use the Services and in accordance with the Contract and the User Terms. All of our rights not expressly granted by this license are hereby retained.

### **Term and Termination**

#### ***Contract Term***

As further described below, a free subscription continues until terminated, while a paid subscription has a term that may expire or be terminated. The Contract remains effective until all subscriptions ordered under the Contract have expired or been terminated or the Contract itself terminates. Termination of the Contract will terminate all subscriptions and all Order Forms.

#### ***Auto-Renewal***

Unless stated otherwise in the Order Form, on expiry of the Term (as specified in the Order Form), this Contract may be renewed, as agreed between the Parties in writing, for additional periods equal to one (1) year, or the preceding term (each such agreed renewal being a "renewal term"), whichever is shorter; and (b) we reserve the right to increase prices payable during the renewal term and details of any increase will be notified to you prior to the start of the renewal term. If the Parties agree to a renewal in writing, Customer shall be deemed to have accepted the increased pricing. Unless otherwise agreed in writing, all Services shall cease on the expiry of the term / renewal (as applicable) unless a further renewal has been agreed.



### ***Termination for Cause***

We or Customer may terminate the Contract on notice to the other party if the other party materially breaches the Contract and such breach, if it is curable, is not cured within thirty (30) days after the non-breaching party provides notice of the breach. Customer is responsible for its Authorised Users, including for any breaches of this Contract caused by its Authorised Users. We may terminate the Contract immediately on notice to Customer if we reasonably believe that the Services are being used by Customer or its Authorised Users in violation of applicable laws.

### ***Termination Without Cause***

Customer may terminate its free subscriptions immediately without cause. We may also terminate Customer's free subscriptions without cause, but we will provide Customer with thirty (30) days prior written notice.

### ***Effect of Termination***

Upon any termination for cause by Customer, we will refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by us, Customer will pay any unpaid fees covering the remainder of the term of those subscriptions after the effective date of termination. In no event will any termination relieve Customer of the obligation to pay any fees payable to us for the period prior to the effective date of termination.

### **Data Portability and Deletion**

We are custodians of Customer Data. During the term of a workspace's subscriptions, Customer will be permitted to export or share certain Customer Data from the Services; provided, however, that because we have different products with varying features and Customer has different retention options, Customer acknowledges and agrees that the ability to export or share Customer Data may be limited or unavailable depending on the type of Services plan in effect and the data retention, sharing or invite settings enabled. Following termination or expiration of a workspace's subscriptions, we will have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in our systems or otherwise in our possession or under our control.

### **Representations Disclaimer of Warranties**

Customer represents and warrants that it has validly entered into the Contract and has the legal power to do so. Customer also warrants that it has obtained and shall maintain all necessary licenses, consents and permissions necessary to perform its obligations under this Agreement, where applicable (including without limitation all necessary licenses, consents and permissions necessary for the content to be stored, accessed, shared, amended and annotated using the Annotate Software). Customer further represents and warrants that it is responsible for the conduct of its Authorised Users and their compliance with the terms of this Contract and the User Terms and Customer undertakes that it shall supervise and control access use of the Annotate Software Authorised Users in accordance with the terms of this Agreement

Annotate warrants to Customer only that:

- (a) it will perform professional services (if any) under this Agreement with reasonable care and skill; and
- (b) the Annotate software will perform materially in accordance with its then-current published specifications.

EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, THE SERVICES AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND WE EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND REPRESENTATIONS OF EVERY KIND OR DESCRIPTION, WHETHER IMPLIED BY STATUTE, COMMON LAW OR OTHERWISE, TO THE EXTENT PERMITTED BY LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR THAT DATA OR CONTENT WILL NOT BE LOST OR COMPROMISED, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGES THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE.

### **Limitation of Liability**

OTHER THAN IN CONNECTION WITH A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT WILL EITHER CUSTOMER'S OR ANNOTATE'S OR ANNOTATE'S AFFILIATES AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT OR THE USER TERMS (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER HEREUNDER IN THE SIX (6) MONTHS PRECEDING THE LAST EVENT GIVING RISE TO LIABILITY. THE FOREGOING WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THE "PAYMENT TERMS" SECTION ABOVE AND THERE IS NO RIGHT OF SET-OFF.

IN NO EVENT WILL EITHER CUSTOMER OR ANNOTATE OR ANNOTATE'S AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOST PROFITS OR REVENUES (WHETHER ARISING DIRECTLY OR INDIRECTLY), LOSS OF GOODWILL OR REPUTATION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY OR, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER AND LIMITATION OF LIABILITY WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

Customer is responsible for all login credentials, including usernames and passwords, for administrator accounts as well the accounts of your Authorised Users. We will not be responsible for any damages, losses or liability to Customer, Authorised Users, or anyone else, if such information is not kept confidential by Customer or its Authorised Users, or if such information is correctly provided by an unauthorised third-party logging into and accessing the Services.

The limitations under this "Limitation of Liability" section apply with respect to all legal claims or actions, whether in contract, tort or otherwise, and to the extent permitted by law. The provisions of this "Limitation of Liability" section allocate the risks under this Contract between the parties, and the parties have relied on these limitations in determining whether to enter into this Contract and the pricing for the Services.

### **Our Indemnification of Customer**

We will defend Customer from and against any and all third party claims, actions, suits, proceedings, and demands alleging that the use of the Services as permitted under the Contract infringes or misappropriates a third party's intellectual property rights (a "**Claim Against Customer**"), and will indemnify Customer for all reasonable attorney's fees incurred and damages and other costs finally awarded against Customer in connection with or as a result of, and for amounts paid by Customer under a settlement we approve of in connection with, a Claim Against Customer; provided, however, that we will have no liability if a Claim Against Customer arises from (a) Customer Data or Non-Annotate Products; and (b) any modification, combination or development of the Services that is not performed by us, including in the use of any application programming interface (API). Customer must provide us with prompt written notice of any Claim Against Customer and allow us the right to assume the exclusive defense and control and cooperate with any reasonable requests assisting our defense and settlement of such matter. This section states our sole liability with respect to, and Customer's exclusive remedy against us and Annotate's Affiliates for, any Claim Against Customer.

### **Customer and/or Authorised User Breach**

Subject to the Oklahoma Governmental Tort Claims Act 51 O.S. 151, et seq., Customer shall be liable for any and all losses, demands, claims, damages, costs, expenses (including without limitation consequential losses, legal costs and expenses) and liabilities suffered or incurred directly or indirectly by Annotate as a result of:

Customer and/or Authorised Users' use of Customer Data, the Annotate Software and Annotate Service or any non-performance or performance of this Agreement. Customer shall provide Annotate with reasonable assistance should Annotate decide to conduct any investigation into any complaint or other matter related to the Customer's performance or observance of its obligations under this Agreement and/or the actions or omissions of any user of the Annotate software.

### **Limitations on Indemnifications**

Notwithstanding anything contained in the two preceding sections, (a) an indemnified party will always be free to choose its own counsel if it pays for the cost of such counsel; and (b) no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if (i) the third party asserting the claim is a government agency, (ii) the settlement arguably involves the making of admissions by the indemnified parties, (iii) the settlement does not include a full release of liability for the indemnified parties, or (iv) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

### **Confidentiality**

#### ***Confidential Information***

Each party ("**Disclosing Party**") may disclose "**Confidential Information**" to the other party ("**Receiving Party**") in connection with the Contract, which is anything that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, as well as non-public business, product, technology and marketing information. Confidential Information of Customer includes Customer Data. If something

is labeled "Confidential," that's a clear indicator to the Receiving Party that the material is confidential. Notwithstanding the above, Confidential Information does not include information that (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party.

#### ***Protection and Use of Confidential Information***

The Receiving Party will (a) take at least reasonable measures to prevent the unauthorised disclosure or use of Confidential Information, and limit access to those employees, affiliates and contractors who need to know such information in connection with the Contract; and (b) not use or disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of this Contract. Nothing above will prevent either party from sharing Confidential Information with financial and legal advisors; provided, however, that the advisors are bound to confidentiality obligations at least as restrictive as those in the Contract.

#### **Compelled Access or Disclosure**

The Receiving Party may access or disclose Confidential Information of the Disclosing Party if it is required by law including the Oklahoma Open Records Act, 51 O.S. 24A.1.

#### **Survival**

The sections titled "Feedback is Welcome," "Non-Annotate Products," "Our Removal Rights," "A Condition of Use," "Payment Terms," "Credits," "Annotate Affiliates," "Ownership and Proprietary Rights", "Effect of Termination," "Data Portability and Deletion," "Representations; Disclaimer of Warranties," "Limitation of Liability," "Our Indemnification of Customer," "Customer's Indemnification of Us," "Limitations on Indemnifications," "Confidentiality" and "Survival," as well as all of the provisions under the general heading "General Provisions," will survive any termination or expiration of the Contract.

#### **General Provisions**

#### ***Publicity***

Customer (whether Customer is using the Services on a paid or free plan) grants us the right to use Customer's company name and logo as a reference for marketing or promotional purposes on our website and in other public or private communications with our existing or potential customers, subject to any of the Customer's standard trademark usage guidelines as the Customer may provide to us from time-to-time. We don't want to list customers who don't want to be listed, so Customer may send us an email to [support@annotate.com](mailto:support@annotate.com) stating that it does not wish to be used as a reference.

#### ***Force Majeure***

Neither us nor Customer will be liable by reason of any failure or delay in the performance of its obligations on account of events beyond the reasonable control of a party, which may include denial-of-service attacks, a failure by a third-party hosting provider or utility provider, strikes, shortages, riots, fires, acts of God, war, terrorism, and governmental action.

#### ***Relationship of the Parties; No Third-Party Beneficiaries***

The parties are independent contractors. The Contract does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. There are no third-party beneficiaries to the Contract.

#### ***Email and Notices***

Except as otherwise set forth herein, all notices under the Contract will be by email. Notices to Annotate will be sent to [contact@annotate.com](mailto:contact@annotate.com), except for legal notices, such as notices of termination or an indemnifiable claim, which must be sent to [legal@annotate.com](mailto:legal@annotate.com). Notices will be deemed to have been duly given (a) the day after they are sent, in the case of notices via email; and (b) the same day, in the case of notices through the Services.

#### ***Modifications***

As our business evolves, we may change these Customer Terms and the other components of the Contract (except

any Order Forms). If we make a material change to the Contract, we will provide Customer with reasonable notice prior to the change taking effect, either by emailing the email address associated with Customer's account or by messaging Customer through the Services. Customer can review the most current version of the Customer Terms at any time by visiting this page and by visiting the most current versions of the other pages that are referenced in the Contract. The materially revised Contract will become effective on the first day of the renewal subscription term (where a renewal is agreed in writing between the Parties as set out above in these Customer), and all other changes will become effective upon posting of the change. If Customer (or any Authorised User) accesses or uses the Services after the effective date that use will constitute Customer's acceptance of any revised terms and conditions.

### ***Waiver***

No failure or delay by either party in exercising any right under the Contract will constitute a waiver of that right. No waiver under the Contract will be effective unless made in writing and signed by an authorised representative of the party being deemed to have granted the waiver.

### ***Severability***

The Contract will be enforced to the fullest extent permitted under applicable law. If any provision of the Contract is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Contract will remain in effect.

### ***Assignment***

Except with respect to the Annotate Affiliates, neither party may assign or delegate any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign the Contract in its entirety (including all Order Forms), without consent of the other party, to a corporate affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Customer will keep its billing and contact information current at all times by notifying us of any changes. Any purported assignment in violation of this section is void. A party's sole remedy for any purported assignment by the other party in breach of this section will be, at the non-assigning party's election, termination of the Contract upon written notice to the assigning party. In the event of such a termination by Customer, we will refund Customer any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, the Contract will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

### ***Governing Law and Jurisdiction***

The Contract, and any disputes arising out of or related hereto, will be governed exclusively by and construed in accordance with English law, without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods. Each party irrevocably submits to the exclusive jurisdiction of the English courts with respect to any dispute or matter arising out of or connected with this Contract.

### ***Entire Agreement***

The Contract, including these Customer Terms and all referenced pages and Order Forms, if applicable, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Without limiting the foregoing, the Contract supersedes the terms of any online agreement electronically accepted by Customer or any Authorised Users. However, to the extent of any conflict or inconsistency between the provisions in these Customer Terms and any other documents or pages referenced in these Customer Terms, the following order of precedence will apply: (1) the special terms set out in any Order Form (if any), (2) the Customer Terms and (3) finally any other documents or pages referenced in the Terms. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order, vendor onboarding process or web portal, or any other Customer order documentation (excluding Order Forms) will be incorporated into or form any part of the Contract, and all such terms or conditions will be null and void.

# 21 - Agreement - Procurement - Opus 2 CMF# 20240414

Final Audit Report

2024-04-10

Created:	2024-04-10
By:	Carlos Carvalho (ccarvalho@opus2.com)
Status:	Signed
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## "21 - Agreement - Procurement - Opus 2 CMF# 20240414" History

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