Terms of Service

These Terms of Service are between BaishanCloud North America Corporation., its Parents，Affiliates and subsidiaries, (together, “BaishanCloud”) and the other signatory to the applicable Service Agreement (“Customer”). The parties agree as follows:

1. **DEFINITIONS**

1.1 “Customer Content” means all software, data, text, images, audio, video, photographs, non-BaishanCloud or third party’s applications, and other content and material, in any format, provided by Customer or any of Customer users that are stored in, or run on or through, the Services. Services under this Terms of Service, BaishanCloud Software, other BaishanCloud products and services, and BaishanCloud intellectual property, and all derivative works thereof, do not fall within the meaning of the term “Customer Content.”

1.2“Services” means the particular BaishanCloud services ordered by Customer and identified on the Service Agreement.

1.3“Service Agreement” means an agreement, fully executed by the parties and accepted by BaishanCloud, evidencing, the Services ordered by Customer.

1.4“Operative Documents” means Service Agreement(s), the Service Level Agreement(s), the Private Policy, the GDPR Compliance and the Acceptable Use Policy.

1.5“Site” means “https://www.intl.baishancloud.com/” and including any sub-domains or other related BaishanCloud products and services, which are owned, controlled or managed by BaishanCloud.

**2. AMENDMENTS.**

2.1 Any term of these Terms of Service, the Private Policy, the GDPR Compliance and the Acceptable Use Policy may be amended, modified or waived by BaishanCloud as services and privacy practices change, or as required by applicable legal or regulatory requirements. Such change will be effective immediately upon notice to Customer. Customer use of the Site and Services after notice of changes will be deemed Customer’s acceptance of the changes.

2.2 The Service Agreement and Service Level Agreement may only be amended in a writing signed by both parties.

2.3 IF CUSTOMER DOES NOT AGREE TO THE AFOREMENTIONED AMENDMENTS, OR THE PROVISIONS OF THESE TERMS OF SERVICE, OR ARE NOT SATISFIED WITH THE SITE, CUSTOMER’S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE CUSTOMER USE OF THE SITE OR THE SERVICES.

**3、SERVICE AGREEMENT**

A Customer may order Services from BaishanCloud pursuant to a Service Agreement for itself and on behalf of one or more of its Affiliates, subject to these Terms of Service. The particular Service Agreement will become binding on the parties on the later date that such documents are signed by Customer and BaishanCloud (such date, with respect to a particular Service Agreement, the “Effective Date”). A description of the Services, including Usage requirements, can be found in the Service Agreement. Notwithstanding the foregoing, BaishanCloud solely warrants that the Services will be provided at the levels specified in the Service Level Agreement, if any. Customer’s sole and exclusive remedy with respect to such warranty, as well as any interruption, suspension, failure, defect, impairment or inadequacy of the Service, is specified in the Service Level Agreement.

**4、USE OF THE SERVICES**

4.1 Customer will use the Services and any tools, features, content, material, or information found on the Site solely for lawful purposes. Customer will not allow any third party to access the Site through Customer account, upload to, distribute to, or otherwise disseminate through the Site any material or information of any kind that is libelous, defamatory, obscene, pornographic, abusive, or otherwise violates any law or infringes or violates any rights of any other person or entity, or contains a solicitation of funds, advertising, or a solicitation for goods or services.

4.2 BaishanCloud has no obligation to, and does not and cannot, review every item of material or information that Customer and users other than Customer made available through the Site, and BaishanCloud is not responsible for any content of this material or information. However, BaishanCloud reserves the right to delete, move, or edit any material or information that it deems, in its sole discretion, unacceptable, libelous, defamatory, obscene, pornographic, abusive, or otherwise in violation of any law or that infringes or violates any rights of any other person or entity. Further, BaishanCloud reserves the right at all times to disclose any material or information as necessary to satisfy any law, regulation, or governmental request.

4.3 The Services may enable Customer to link to, transmit Customer content to, or otherwise access third parties’ websites, platforms, content, products, services, and information. BaishanCloud does not control and are not responsible for such third parties’ websites, platforms, content, products, services, and information.

**5. FEES AND PAYMENTS.**

5.1 Customer will pay all fees and charges for Services as specified on the Service Agreement. Regardless of the actual Usage of Services, all payment obligations are committed for the Term (as defined below) and non-cancelable, and all amounts paid are nonrefundable. Payment terms are net 30 days from the invoice date, without offsets or deductions of any kind, and payment is due in US dollars. If Customer believes, in good faith, that invoice is incorrect, Customer must give BaishanCloud written notice within 30 days of the date of the invoice containing the amount in question to be eligible to receive an adjustment or credit for the disputed amount. Such notice must contain a detailed description of the Fees and charges in question and the good faith basis for disputing such amounts. Customer agrees to promptly remit payment for all other amounts and irrevocably waives its right to challenge any amount not disputed during such a 30-day period. Nothing in this section will be deemed to limit BaishanCloud’s right to seek judicial intervention at any time regarding any such disputed amount.

5.2 BaishanCloud’s Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities. Customer is responsible for payment of all such taxes, levies, or duties, except for taxes based solely on BaishanCloud’s income. If BaishanCloud has the legal obligation to pay or collect any such amounts for which Customer is responsible, the appropriate amount will be invoiced to and paid by Customer, unless Customer provides BaishanCloud with a valid tax exemption certificate authorized by the appropriate taxing authority covering such amount.

**6. DISCLAIMER OF WARRANTIES**

6.1 BAISHANCLOUD DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT BAISHANCLOUD WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CUSTOMER’S REQUIREMENTS OR EXPECTATIONS. BAISHANCLOUD IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CUSTOMER’S CONTENT OR THIRD PARTY’S CONTENT OR SERVICES PROVIDED BY THIRD PARTIES.

6.2 TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE.

**7. LIMITATION OF LIABILITY**

7.1. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR ANY LOSS OF REVENUE, PROFITS (EXCLUDING FEES UNDER THE SERVICE AGREEMENT), SALES, DATA, DATA USE, GOODWILL, OR REPUTATION.

7.2. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF BAISHANCLOUD AND BAISHANCLOUD’S AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID FOR THE SERVICES UNDER THE SERVICE AGREEMENT GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY UNDER SUCH SERVICE AGREEMENT.

**8. INDEMNIFICATION**

8.1. If a third party makes a claim against either Customer or BaishanCloud (“Recipient” which may refer to Customer or BaishanCloud depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, hardware, or material (collectively, “Material”) furnished by either Customer or BaishanCloud (“Provider” which may refer to Customer or BaishanCloud depending on which party provided the Material) and used by the Recipient infringes the third party’s intellectual property rights, the Provider, at the Provider’s sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following:

a. notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law);

b. gives the Provider sole control of the defense and any settlement negotiations; and

c. gives the Provider the information, authority and assistance the Provider needs to defend against or settle the claim.

8.2. If the Provider believes or it is determined that any of the Material may have violated a third party’s intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may end the license for, and require the return of, the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material. If such return materially affects BaishanCloud’s ability to meet obligations under the relevant order, then BaishanCloud may, upon 30 days prior written notice, terminate the order. If such Material is third party technology and the terms of the third-party’s license do not allow BaishanCloud to terminate the license, then BaishanCloud may, upon 30 days prior written notice, end the Services associated with such Material and refund any unused, prepaid fees for such Services.

8.3. The Provider will not indemnify the Recipient if the Recipient (a) alters the Material or uses it outside the scope of use identified in the Provider’s user or program documentation or Service Specifications, or (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to the Recipient. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any Material not furnished by the Provider. BaishanCloud will not indemnify Customer to the extent that an infringement claim is based on Third Party Content or any Material from a third party’s portal or other external source that is accessible or made available to Customer within or by the Services (e.g., a social media post from a third party’s blog or forum, a third-party’s Web page accessed via a hyperlink, marketing data from third party data providers, etc.).

8.4. This Section 8 provides the parties’ exclusive remedy for any infringement claims or damages.

**9. DATA PROTECTION.**

To the extent that Content includes personal data (as defined by applicable data protection and privacy laws), BaishanCloud will treat the Content in accordance with the Privacy Policy and the GDPR Compliance.

**10. NOTICES**

Any Notice sent to a party must be sent to the authorized person for such party listed on the Service Agreement using the listed physical or electronic mailing address.

11 SUBCONTRACTING AND TRANSFER.

BaishanCloud may permit any other BaishanCloud parent, subsidiary or affiliated company, to perform any of BaishanCloud’s obligations hereunder, provided that BaishanCloud remains primarily liable for the performance of its obligations. Customer may transfer any of its rights and obligations hereunder to an entity which is acquiring all or substantially all of Customer’s business or assets with prior notice to BaishanCloud, and in all such events the person or entity to whom the Operative Documents is assigned by Customer must agree in writing to be bound by all of the terms of the Operative Documents. The Operative Documents will be binding upon and inure to the benefit of all successors and permitted transferees of the Parties, who will be bound by all of the obligations of their predecessors or transferors.

**12.TERM AND TERMINATION**

12.1 The initial term of a Service Agreement will begin on the Effective Date and will continue for the period set forth in the Service Agreement (“Initial Term”). A Service Agreement will automatically renew for successive periods equal in length to the Initial Term (each, a “Renewal Term”), unless either party notifies the other of its intent not to renew at least 30 days prior to the expiration of the then-current Initial Term or Renewal Term, as applicable. If the Initial Term or any Renewal Term would otherwise expire prior to the end of a calendar month, such term will continue, uninterrupted, until the end of that calendar month. The Initial Term and all Renewal Terms are collectively referred to as the “Term.”

12.2 BaishanCloud will have the right immediately to terminate Customer’s use of the Service in the event of any conduct by Customer which BaishanCloud, in its sole discretion, considers to be unacceptable, or in the event of any breach by Customer of this agreement.

**13. MARKETING.**

Each party may use the other party’s name, trade name, trademarks, icons, and logos (collectively, the “Brands”) to refer publicly to the other, orally and in writing, as a customer/vendor of the other solely in connection with the Services and only during the Term. Any other use of a party’s Brands requires such party’s prior written consent.

 **14. CONFIDENTIALITY.**

14.1 If the parties are subject to an effective nondisclosure or confidentiality agreement with rights and obligations at least as favorable to BaishanCloud as this section, then that agreement will be deemed to supersede in its entirety the language of this section until such time as that agreement no longer applies to the then-current exchange of information.

14.2 “Confidential Information” is non-public information that includes, but is not limited to, any Service Agreement, and any Service Level Agreement; information concerning a party’s (the “Disclosing Party”) pricing terms, operations, methods of doing business, technologies, technical designs, research and development, know-how, trade secrets, software source code, computer programs, algorithms, technical specifications and data, testing and bench-marking procedures and results, customers, personnel, financial information and other confidential or proprietary information belonging to or provided by or on behalf of the Disclosing Party, or information the party receiving such information (the “Receiving Party”) should reasonably know are confidential to the Disclosing Party. The term “Confidential Information” as used in this section does not include information that (i) was or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its directors, officers, employees, agents, contractors or advisors ("Representatives"); (ii) was or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its Representatives, provided such source is not bound by a confidentiality obligation with the Disclosing Party;(iii) was within the Receiving Party's possession prior to it being furnished to the Receiving Party by or on behalf of the Disclosing Party, provided the source of such information was not bound by a confidentiality obligation owed to the Disclosing Party with respect thereto; or (iv) is Content.

14.3 Each party agrees that it will not use, modify, copy, or disclose the Confidential Information to any third party, except as required by law or the executive branch. The Receiving Party may disclose the Disclosing Party’s Confidential Information to the Receiving Party’s Representatives solely as necessary to meet their obligations under these Terms of Service. The Receiving Party will also ensure that all Representatives are aware of the confidential and/or proprietary nature of the Confidential Information and have themselves an obligation of confidentiality providing no less restrictive and substantially the same protections as are provided under these Terms of Service. The Receiving Party will take measures to protect Confidential Information at least as stringent as those measures that it takes to protect the confidentiality and security of its own confidential information of a similar nature, but in no event will the Receiving Party use less than reasonable care.

**15.EXPORT**

Customer acknowledges that the Services are designed with capabilities for Customer to access the Services without regard to geographic location and to transfer or otherwise move Customer content between the Services and other locations such as user workstations. Customer is solely responsible for the authorization and management of user accounts across geographic locations, as well as export control and geographic transfer of Customer’s content.

**16.LAW GOVERNING PERFORMANCE AND DISPUTES**

These Terms of Service and the Operative Documents, Customer performance under it, and any disputes arising under it will be governed exclusively by the laws of the United States of America and the State of California, without giving effect to their conflict of laws principles. Customer expressly consents to the exclusive forum, jurisdiction, and venue of the Courts of the State of California and the United States District Court for the Northern District of California in any and all actions, disputes, or controversies relating to this agreement.

**17. ENTIRE AGREEMENT.**

These Terms of Service and the Operative Documents constitute the entire agreement among the parties with respect to the subject matter hereof and no party shall be liable or bound to any other party in any manner by any warranties, representations, covenants or otherwise, except as specifically set forth in these Terms of Service and the Operative Documents.

**18. CONFLICTING TERMS.**

If the terms of these Terms of Service and the Operative Documents conflict in any manner, then the controlling priority of the agreements will be in the following order: the Service Agreement, the Service Level Agreement, these Terms of Service, and then the Acceptable Use Policy.

**19 FORCE MAJEURE**

Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, acts of God, terrorism, earthquake, flood, embargo, riot, sabotage, labor shortage or governmental act or failure of the Internet (not resulting from the actions or omissions of BaishanCloud), provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If either party is unable to execute this Agreement for a period of thirty (30) consecutive days as a result of a continuing force majeure event, the other party may cancel the Service upon written notice and no termination fees shall apply. This Section does not excuse either party’s obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer’s obligation to pay for the Services.

**20. TITLES AND SUBTITLES.**

The titles and subtitles used in these Terms of Service are used for convenience only and are not to be considered in construing or interpreting any of the provisions contained herein.

**21. RELATIONSHIP OF THE PARTIES.**

Nothing in these Terms of Service or the Operative Documents is intended to, nor shall it be construed to, create any agency, partnership, or joint venture relationship between the parties.