

**DECART.AI**  
**TERMS OF SERVICE**

*Last Updated: 20 November, 2023*

These *Decart.AI* Terms of Service, along with any other terms and policies referenced herein (which are incorporated herein by reference and form an integral part hereof) as amended from time to time (these "**Terms**") constitute a legally binding agreement as of the Effective Date (as defined below), governing your access to, use of, and registration with, the Service (defined below). These Terms are between Decart AI Inc ("**Company**") and you, either individually, or on behalf of your employer or any other entity which you represent ("**Customer**"). These Terms and the Order (defined below) are collectively referred to as this "**Agreement**".

Company and Customer may be collectively referred to herein as the "**Parties**", and each individually as a "**Party**". If you are an individual representing your employer or another entity, you hereby represent that (i) you have full legal authority to bind your employer or such entity (as applicable) to this Agreement; and (ii) after reading and understanding this Agreement, you agree to this Agreement on behalf of your employer or the respective entity (as applicable), and this Agreement shall bind your employer or such entity (as the case may be). PLEASE NOTE THAT YOU ARE DEEMED AS AN AUTHORIZED REPRESENTATIVE OF YOUR EMPLOYER OR AN ENTITY (AS APPLICABLE) IF YOU ARE USING YOUR EMPLOYER OR AN ENTITY'S EMAIL ADDRESS IN REGISTERING INTO THE SERVICE.

CUSTOMER ACKNOWLEDGES THAT THESE TERMS ARE BINDING, AND YOU AFFIRM AND SIGNIFY YOUR CONSENT TO THESE TERMS, BY EITHER: (I) CLICKING ON A BUTTON OR CHECKING A CHECKBOX FOR THE ACCEPTANCE OF THESE TERMS; OR (II) REGISTERING TO, USING OR ACCESSING THE SERVICE, WHICHEVER IS EARLIER (THE "**EFFECTIVE DATE**"). IF YOU DO NOT AGREE TO COMPLY WITH, AND BE BOUND BY, THESE TERMS OR DO NOT HAVE AUTHORITY TO BIND YOUR EMPLOYER OR ANY OTHER ENTITY (AS APPLICABLE), PLEASE DO NOT ACCEPT THESE TERMS OR ACCESS OR USE THE SERVICE.

**1. DEFINITIONS.** The following capitalized terms have the meanings set forth below:

"**Affiliate**" means, with respect to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with such Party, whereby "control" means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise.

"**Content**" means any text, data, information, reports, files, images, graphics, software code, or other content.

"**Customer Content**" means any Input and Output.

"**Documentation**" means the Service-related operational guides or manuals, which Company provides or makes available to Customer, in any form or medium. Documentation does not include any marketing, or other publicly available, materials. Unless the context requires otherwise, references in this Agreement to the "Service" shall be deemed to include the Documentation as well.

"**DPA**" means the *Data Processing Agreement* (or *DPA*), available at <https://decart.ai/dpa>.

"**Input**" means any Content submitted by Customer to the Service.

"**Intellectual Property Rights**" means any and all rights, titles, and interests (under any jurisdiction or treaty, whether protectable or not, whether registered or unregistered, and whether vested, contingent, or future) in and to inventions, discoveries, works of authorship, designs, software, technical information, databases, know-how, mask works, methods, branding, technology, and other intellectual property (collectively, "**Intellectual Property**"), and includes but is not limited to patents, copyrights and similar authorship rights, moral (and similar personal) rights, mask work rights, data and database rights, trade secret rights and similar rights in confidential information and other non-public information, design rights, trademark, service mark, trade name, trade dress and similar branding rights, as well as: (i) all applications, registrations, renewals, reexaminations, extensions, continuations, continuations-in-part, provisionals, substitutions, divisions or reissues of or for the foregoing; and (ii) all goodwill associated with the foregoing.

"**Law**" means any federal, state, foreign, regional or local statute, regulation, ordinance, or rule of any jurisdiction.

"**Order**" means an order form, ordering document, online order, or similar agreement for the provision of Services to which these Terms are attached, hyperlinked, or otherwise incorporated by reference.

"**Other Services**" means, as the case may be, Support Services and/or any other services (other than the Service) provided by or on behalf of Company pursuant to this Agreement.

"**Output**" means any Content which is generated and provided to Customer through the use of Service in response to Customer's Input.

"**Service**" means Company's API, known as Decart API. Decart API allows you to run chat inference jobs to complete textual conversations.

"**Service Content**" means any Content (excluding Customer Content) appearing on or in, or otherwise provided or made available via, the Service.

"**Service Scope**" means any Service-related usage or consumption limitations, entitlements, and parameters (for example, number of Users, available features and functionalities, etc.) specified in the Order.

"**Sensitive Data**" means any (i) categories of data enumerated in Article 9(1) of the European Union's General Data Protection Regulation (Regulation 2016/679, aka the GDPR) or any other privacy law; (ii) credit, debit or other payment card data subject to the *Payment Card Industry Data Security Standards* ("**PCI DSS**"); (iii) *Nonpublic Personal Information* (NPI) (as defined by the Gramm-Leach-Bliley Act and its implementing rules and regulations) or *Personal Health Information* (PHI) data (as defined by the Health Insurance Portability and Accountability Act and its implementing rules and regulations); or (iv) any data similar to the foregoing that is protected under foreign or domestic laws.

"**Site**" means the Company's website currently at <https://decart.ai>.

"**Support Services**" means any Service-related technical support and maintenance services specified in the Order.

"**Usage Statistics**" means any non-Customer-identifying information, data, reporting, suggestions, analyses, and/or intelligence relating to the operation, support, and/or Customer's use, of the Service and/or Service Content (such as metadata, aggregated data, analytics, etc.).

"**User**" means Customer's employees and contractors who are authorized by Customer to use the Service, and for whom Customer (or Company, at Customer's request) has supplied a user identification and password for the Service. Customer shall remain primarily responsible and liable for its Users' acts and omissions in connection with this Agreement as fully as if they were the acts and omission of Customer.

## **2. ACCOUNT**

In order to access the Service, Customer may be given the opportunity (or otherwise be required) to generate an account by submitting the information requested in the applicable online form or Service interface ("**Account**"). If Customer is an entity, it might be required to designate an administrator Account ("**Admin Account**") and a user Account for each User (each, a "**User Account**"). Customer shall ensure that all information submitted during the registration process is, and will thereafter remain, complete and accurate. As between Company and Customer, Customer shall be solely responsible and liable for maintaining the confidentiality and security of its Account credentials, as well as for all activities that occur under or in such Account. Customer shall immediately notify Company in writing of any unauthorized access to, or use of, an Account, or any other breach of security. Personal information received during the Account registration process will be processed by Company in accordance with Company's privacy policy on the Site.

## **3. PILOTS AND EVALUATION PRODUCTS**

**3.1. Pilots.** If agreed in the Order, Customer may be entitled to conduct an evaluation, 'proof-of-concept', or pilot of the Service (an "**Pilot**"). A Pilot is limited to whatever duration, features, and functionalities Company elects in its sole discretion (or that is otherwise specified in the Order), and, unless agreed otherwise in the Order, Company reserves the right to add and remove any features and functionalities, as well as terminate a Pilot, at any time, with or without notice.

**3.2. Evaluation Products.** From time to time, Company may permit Customer to try certain Service features or functionalities (whether new or existing) at no charge for a free trial or evaluation period (each, an "**Evaluation Product**"). Evaluation Products may be designated or identified as beta, pilot, evaluation, trial, or the like. Unless configured otherwise by Company, or agreed otherwise (for example, in the Order), the default evaluation period for an Evaluation Product (the "**Evaluation Period**") is **thirty (30) days**. However, Company reserves the right to terminate an Evaluation Period at any time, with or without notice.

- 3.3. General.** For the avoidance of doubt, the restrictions set forth in Section 4.1 (*Restrictions*) shall also apply to Evaluation Products and Pilots. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EVALUATION PRODUCTS AND PILOTS ARE PROVIDED FOR CUSTOMER'S INTERNAL EVALUATION ONLY (AND NOT FOR PRODUCTION USE), AND COMPANY SHALL HAVE NO OBLIGATION OR LIABILITY OF ANY KIND WHATSOEVER FOR EVALUATION PRODUCTS OR PILOTS. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE EXCLUSION OF COMPANY'S LIABILITY FOR AN EVALUATION PRODUCT OR PILOT, COMPANY'S AGGREGATE LIABILITY TO CUSTOMER IN RESPECT OF AN EVALUATION PRODUCT AND/OR PILOT SHALL NOT EXCEED **TEN US DOLLARS (USD\$10)**.

#### **4. SERVICE SUBSCRIPTION**

**General.** Subject to the terms and conditions of this Agreement (including without limitation Customer's payment of all applicable Fees), Company grants Customer a limited, non-exclusive, non-transferable, non-sublicensable right and license, during the Service Term (defined below), to access and use the Service for Customer's internal end use purposes in accordance with the Documentation (the "**License**").

For the avoidance of doubt: (i) the License is subject to the applicable Service Scope, and Customer shall not use any technical or other means within, or external to, the Service to exceed or circumvent the Service Scope, and (ii) the Service is only licensed (and is not sold) hereunder. Any rights not expressly granted herein are hereby reserved by Company and its licensors, and, except for the License, Customer is granted no other right or license in or to the Service, whether by implied license, estoppel, exhaustion, operation of law, or otherwise.

- 4.1. Restrictions.** As a condition to (and except as expressly permitted by) the License, Customer shall not do (or permit or encourage to be done) any of the following License restrictions (in whole or in part): (a) copy, create public Internet "links" to, "frame", or "mirror" the Service or Service Content; (b) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available the Service or Service Content to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (c) publicly perform, display or communicate the Service or Service Content; (d) modify, adapt, translate, or create a derivative work of the Service or Service Content; (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of, the Service or Service Content; (f) remove, alter, or conceal any copyright, trademark, or other proprietary rights notices displayed on or in the Service or Service Content; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Service or Service Content; (h) use the Service or Service Content to develop any service or product that is the same as (or substantially similar to), or otherwise competitive with, the Service; (i) store or transmit any robot, malware, Trojan horse, spyware, or similar malicious item intended (or that has the potential) to damage or disrupt the Service or Service Content, or use any robot, spider, scraper, or any other automated means to access the Service or Service Content; (j) employ any hardware, software, device, or technique to pool connections or reduce the number of Users or servers/machines that directly access or use the Service or Service Content (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling'); (k) forge or manipulate identifiers in order to disguise the origin of any Customer Content; (l) take any action that imposes or may impose (as determined in Company's reasonable discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support the Service, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure; (m) use the Service or Service Content in connection with any stress test, penetration test, competitive benchmarking or analysis, or vulnerability scanning, or otherwise publish or disclose (without Company's prior express written approval) any the results of such activities or other performance data of the Service; or (n) use the Service or Service Content to circumvent the security of another person's network/information, develop malware, unauthorized surreptitious surveillance, data modification, data exfiltration, data ransom or data destruction. In addition, Customer may not use the Services and/or or Output generated therefrom for the purpose of (i) engaging in illegal activities; (ii) generating defamatory, libelous, harassing, abusive, or hateful content; (iii) infringing on intellectual property; (iv) generating malware or spam; (v) impersonating others; (vi) promoting harmful activities; (vii) engaging in any activity that has a that has high risk of physical or economic harm; and/or (viii) providing any medical or financial advice.
- 4.2. Monitoring.** Company and its Affiliates may, from their own systems, monitor (and collect data and information regarding) Customer's use of the Service in order to ensure quality, improve Company's products and services, and ensure compliance with this Agreement. Customer shall not interfere with this monitoring, and Company may use any technical means to overcome such interference.
- 4.3. Delivery and Hosting.** The Service will be made available to Customer electronically (via the Site or via an API integration, as elected by Company or as specified in the Order). Any software and other components distributed to Customer shall be deemed accepted upon delivery. The hosting of the Service (and related processing) may be provided by a third party cloud hosting provider selected by Company ("**Hosting Provider**"), and accordingly the availability of the Service shall be in accordance with the Hosting Provider's then-current uptime commitments. In

the event Company decides to host the Service (or a part thereof) internally on Company's own servers under this Agreement, then Company shall notify Customer.

- 4.4. Usage Statistics.** For the avoidance of doubt, it is acknowledged and agreed that Company (alone and/or together with its Affiliates and service providers) may generate and commercially exploit Usage Statistics, as well as use Customer Content for the purpose of enhancing the Service, and nothing in this Agreement shall be deemed to prohibit or otherwise limit such activities.
- 4.5. Features and Functionalities.** Company may, from time to time, modify and replace the features and functionalities, as well as the user interface, of the Service. Some features and functionalities may in any event be restricted by geography or otherwise, in order for Company to comply with applicable Law or commitments to third parties. Customer agrees that its purchase hereunder is not contingent on the delivery of any future functionality or feature, or dependent on any oral or written statements made by or on behalf of Company regarding future functionalities or features.

## **5. SERVICES**

- 5.1.** Artificial intelligence and machine learning are rapidly evolving fields. Given the probabilistic nature of machine learning, use of our Service may in some situations result in incorrect output data and/or the output data may not be unique across users and the Service may generate the same or similar output data for different users. Customer should evaluate the output data as appropriate for your use case, including by using human review of the output data. Company recommends Customer to carefully test, review, and vet the output data before Customer uses and/or implements it. In addition, Customer shall not engage in any automatic decision making (including, without limitation, profiling), or relied upon in isolation to make a decision, relating to any person, which has a legal effect or a similarly significant effect on that person. Any use of the output data (during and after the Service Term) shall be your sole and exclusive responsibility and liability.

## **6. PAYMENT**

- 6.1. Fees.** The Customer agrees to pay the Company fees based on the usage of the service (the "**Fees**"). Fees are calculated based on the amount of data (measured in characters) that the Customer inputs and receives from the Service. The Customer shall deposit funds into their Account ("**Account Balance**"), which will be used to pay for the usage of the Service. The deposited funds can be used until exhausted. The Fee for each use of the Service will be calculated according to the number of characters (and the derived "tokens") in the submitted Input and the generated Output, in line with the Company's established rates. The Customer has the flexibility to deposit any amount into their Account Balance and is free to replenish the Account Balance at any time through our third party payment processor. The current rates and corresponding usage costs will be transparently displayed within the Service interface or provided in the Order. Deductions from the Account Balance will occur in real-time as the Service is used, ensuring that the Customer only pays for the amount consumed. The Company will provide the Customer with an itemized statement of usage for record-keeping and transparency.
- 6.2. Fee Increases.** The Company reserves the right to modify the rates charged to the Account Balance for the use of the Service. Such adjustments will be effective upon written notice to the Customer. The Company will provide reasonable notice of any rate changes, by email, through a notification in the Service interface, or by any other method deemed appropriate by the Company. The updated fees will apply to the Service usage after the effective date of the new rates as specified in the notice.
- 6.3. Payment Terms.** Unless expressly stated otherwise in the Order or this Agreement: (a) all Fees are stated, and are to be paid, in US Dollars; (b) all Fees for Token purchases are payable in advance; (c) Fees for any additional services or overages will be charged in arrears; (d) all Fees and other payments under this Agreement are non-refundable, and are without any right of set-off or cancellation; (e) any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of the rate of one and a half percent (1.5%) per month or the highest amount permitted by applicable Law; and (f) Company shall be entitled to issue invoices (and any associated reporting) and billing notices via email to the applicable Customer contact email address specified in the Order and/or via a functionality of the Service.
- 6.4. Payment Dispute.** If Customer believes that Customer has invoiced Customer incorrectly, Customer must contact Company no later than thirty (30) days after receiving the invoice in which the alleged error appeared; otherwise Customer shall be deemed to have waived all claims in connection with the applicable invoice and payment.

- 6.5. Taxes.** Amounts payable under this Agreement are exclusive of all applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges, except for taxes based upon Company's net income. Customer must provide a valid tax exemption certificate if claiming a tax exemption. In the event that Customer is required by any Law applicable to it to withhold or deduct taxes for any payment under this Agreement, then the amounts due to Company shall be increased by the amount necessary so that Company receives and retains, free from liability for any deduction or withholding, an amount equal to the amount it would have received had Customer not made any such withholding or deduction.
- 6.6. Payment Processing.** Customer represents and warrants that all payment and billing information provided is (and will remain) complete and accurate, and Customer has obtained all necessary consents to enable the necessary payment method. If applicable to the payment method, payment of Fees may be processed through a third-party payment processing service (which will receive and process Customer's billing information), and additional terms may apply to such payments. Customer authorizes Company (and/or its designee) to: (a) request and collect payment (and to otherwise take other billing actions, such as refunds) from Customer on a recurring basis; and (b) make any inquiries Company deems necessary, from time to time, to validate Customer's designated payment method or financial information, in order to ensure timely payment of Fees (including, but not limited to, for the purpose of receiving updated payment details from Customer's payment, credit card, or banking account provider – such as, updated expiry date or card number).
- 6.7. Reporting; Usage Audit.** Company may issue License- and Fee-related reporting and billing notices via email to the applicable Customer contact email address specified in the Order, as well as via a functionality of the Service. Company (or a third party it reasonably designates) shall, from time to time, be entitled to audit Customer's use of the Service (a "**Usage Audit**"), and Customer shall facilitate such Usage Audit by providing Company with all access (including without limitation VPN access) reasonably requested by Company (such as, for the purpose of calculating any Fees for overages).

## **7. OWNERSHIP**

- 7.1. Company Materials.** Company (and/or its licensors and suppliers, as applicable) is, and shall be, the sole and exclusive owner of all right, title and interest (including without limitation all Intellectual Property Rights) in and to: (a) the Service (and all underlying Intellectual Property); (b) Other Services; (c) the Service Content; (d) Company's Confidential Information; (e) any feedback, suggestions, or ideas for or about the Service or Service Content (collectively, "**Feedback**"); (f) Usage Statistics; and (g) any improvements, derivative works, enhancements, and/or modifications of/to any of the foregoing, as well as any other Intellectual Property conceived, authored, or otherwise developed pursuant to this Agreement, in each case regardless of inventorship or authorship. To the extent any of the foregoing Intellectual Property Rights do not automatically vest in Company, Customer hereby irrevocably assigns (and shall assign) same to Company (and its designees, successors, and assigns), and undertakes to do all things reasonably requested by Company (including without limitation executing, filing, and delivering instruments of assignment and recordation), at Company's expense, to perfect such ownership rights.
- 7.2. Customer Content.** As between the Parties, Customer is, and shall be, the sole and exclusive owner of all Customer Content, subject to any third party rights of any Content incorporated within the Output.
- (a) **License to Customer Content.** Customer hereby grants to Company and its Affiliates a worldwide, non-exclusive, royalty-free, paid-up, sublicensable (to Company's data subprocessors, Hosting Providers, as well as to third party service providers engaged by Company in the provision of the Service), irrevocable right and license to copy, process, create derivative works of, modify, adapt, and otherwise use your Customer Content (in any media, now known or hereafter developed): (A) during the Term of this Agreement, for the purpose of performing under this Agreement; and/or (B) on a perpetual basis, and provided the Customer Content is anonymized, for the purpose of generally enhancing the Service (such as developing new features and functionalities);
- (b) **No Sensitive Data or Confidential Information.** Unless the Service specifically requests otherwise, Customer shall ensure that no Input includes or links to Sensitive Data or Confidential Information (defined below). While Company makes an effort to store Customer Content securely, the Service is not designed to store, process, or manage such sensitive information, and Customer understand and agree that the provision of such information, whether inadvertently or purposefully, may lead to unauthorized access, loss, or disclosure. Customer is solely responsible for maintaining the confidentiality and security of any sensitive information that you upload to the Service. To the maximum extent permitted by law, Company disclaims any and all liability relating to or arising out of Customer sharing of Sensitive Data or Confidential Information through the Service.
- (c) **Location of Customer Content.** Customer Content may be hosted and processed by Company (and its Affiliates, Hosting Providers, and respective third party service providers) in Israel, the United States, the European Economic Area (EEA), the United Kingdom, and other locations around the world.

- (d) Responsibility for Customer Content. Customer is solely responsible for the legality, accuracy and quality of Customer Content, such as for ensuring that Customer's collection, processing, storage and transmission Customer Content is compliant with all applicable Laws, as well as any and all privacy policies, agreements or other obligations Customer may maintain or enter into with its customers. Customer represents and warrants that: (a) no processing of Customer Content under this Agreement (whether by Company, its Affiliates, or if applicable the Hosting Provider) will violate any Law, proprietary right, or privacy right; and (b) it has obtained and will maintain all required consents and licenses, and will maintain all ongoing legal bases under relevant privacy Laws (if applicable), necessary to provide, make available, and otherwise expose Customer Content to Company, its Affiliates, and the Hosting Provider (if applicable).
- (e) Data Storage. The Service is not intended to, and will not, operate as a data storage or archiving product or service, and Customer agrees not to rely on the Service for the storage of any Customer Content. Customer is solely responsible and liable for the maintenance and backup of all Customer Content.

## **8. CONFIDENTIALITY**

- 8.1. General.** Either Party may disclose or otherwise make available Confidential Information under this Agreement and shall, in doing so, be referred to as the "**Discloser**" hereunder. The other Party when receiving Confidential Information shall be referred to as the "**Recipient**". For the avoidance of doubt, disclosures by, to, or between the Parties' respective Affiliates shall also be deemed Confidential Information and be subject to this Agreement. "**Affiliate**" means, with respect to either Party, any person, organization or entity controlling, controlled by, or under common control with, such Party, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, organization or entity, whether through the ownership of voting securities or by contract or otherwise.
- 8.2. Exclusions.** Confidential Information shall not include any information that: (a) is lawfully known by the Recipient at the time of disclosure, on a non-confidential basis; (b) is or becomes, through no fault of the Recipient, available to the general public; (c) is independently developed by the Recipient without use or reference to Confidential Information; or (d) is rightfully disclosed to Recipient on a non-confidential basis by a third party.
- 8.3. Safeguarding.** The Recipient shall not use the Confidential Information for any purpose, except to perform its obligations under this Agreement. To maintain the confidentiality of the Discloser's Confidential Information, Recipient agrees to use the same degree of care it employs for the protection of its own Confidential Information (and in any event, a reasonable degree of care), and to procure that all such measures and safeguards are taken by its Representatives (defined below).
- 8.4. Non-Disclosure.** Recipient shall not disclose or make available any Confidential Information to any person other than to its Representatives (defined below) who have a strict need to know the Confidential Information for the purpose of Recipient performing its obligations under this Agreement, and who are bound to the Recipient by an agreement of confidentiality that contains substantially the same confidentiality obligations contained in this Agreement (or by comparable fiduciary or professional duties of confidentiality). Recipient shall remain primarily responsible and liable for its Representatives' acts and omissions in respect of the Confidential Information, as fully as if they were the acts and omissions of Recipient itself. "**Representatives**" means Recipient's and/or its Affiliates' directors, officers, employees, professional advisors (including, without limitation, attorneys, financiers, and accountants), contractors, and agents.
- 8.5. Compelled Disclosure.** Recipient may disclose Confidential Information to the minimum extent required by a Legal Requirement; *provided, however*, that before Recipient does so disclose it shall, to the extent legally permitted, use reasonable endeavours to give the Discloser as much notice of such disclosure as possible, and reasonably assist Discloser in seeking a protective order or other appropriate remedy. "**Legal Requirement**" means (a) an order of any court of competent jurisdiction, any regulatory, judicial, governmental or similar body, or any taxation authority of competent jurisdiction, (b) the rules of any listing authority or stock exchange on which its shares or those of any of its Affiliates are listed or traded, and/or (c) the laws or regulations of any country to which its affairs or those of any of its Affiliates are subject
- 8.6. Proprietary Notices.** Recipient shall not remove, alter, or conceal any copyright, trademark, patent, or other proprietary rights notices displayed on or in Confidential Information.
- 8.7. Return/Destruction of Confidential Information.** Promptly following written request by Discloser at any time (including within a reasonable time following termination of this Agreement), Recipient shall, as reasonably directed, return, destroy, and/or permanently delete all Confidential Information in its possession or control, and shall thereafter, upon written request, have one of its officers certify in a signed writing compliance with the foregoing. Notwithstanding the foregoing, the Recipient may retain an archival copy of Confidential Information solely to the extent that: (a) such archival copy is contained in electronic files as part of the Recipient's regular data

backup or archiving procedures, and/or (b) such retention is required by any Legal Requirement; and in each of the foregoing cases under paragraphs (a) and (b), provided further that the Recipient shall refrain from accessing or using such Confidential Information, and shall treat such Confidential Information at all times in accordance with the provisions of this Agreement and shall refrain from any use thereof.

**8.8. Definition of Confidential Information.** "**Confidential Information**" means all information disclosed by one Party to the other Party, regardless of form, which a reasonable person would understand to be confidential given the nature of the information and/or the circumstances of disclosure, and includes, but is not limited to: (a) any information related to Discloser's business, such as cost data, pricing methodologies, price lists, business plans and opportunities, marketing plans, financial and accounting information, forecasts and valuations, market share data, sales volumes, discounts, and budgets; (b) information relating to actual or potential customers, suppliers, products and services; and (c) technical data, computer programs and software code (including firmware and source code), ideas, inventions, algorithms, know-how, analyses, lab notebooks, specifications, processes, techniques, formulas, engineering designs and drawings, architectures, circuit schematics and circuit layouts, models, samples, hardware configuration information, and other technology and intellectual property.

## **9. DISCLAIMERS**

**9.1.** THE SERVICE, SERVICE CONTENT, OTHER SERVICES, EVALUATION PRODUCTS, ANY OUTPUT GENERATED BY THE SERVICE, AS WELL AS ANY OTHER GOODS AND SERVICES PROVIDED OR MADE AVAILABLE BY OR ON BEHALF OF THE COMPANY HEREUNDER (COLLECTIVELY, THE "**COMPANY MATERIALS**") ARE PROVIDED AND MADE AVAILABLE ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL DEFECTS, AND ALL EXPRESS, IMPLIED AND STATUTORY CONDITIONS AND WARRANTIES (INCLUDING WITHOUT LIMITATION ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET POSSESSION, NON-INFRINGEMENT, OR QUALITY OF SERVICE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR USAGE OF TRADE) ARE HEREBY DISCLAIMED BY COMPANY AND ITS LICENSORS.

**9.2.** COMPANY DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION: (A) REGARDING THE EFFECTIVENESS, ACCURACY, USEFULNESS, RELIABILITY, TIMELINESS, COMPLETENESS, OR QUALITY OF COMPANY MATERIALS; (B) THAT CUSTOMER'S USE OF COMPANY MATERIALS WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE; (C) REGARDING THE OPERATION OF ANY CELLULAR NETWORKS, THE PASSING OR TRANSMISSION OF DATA VIA ANY NETWORKS OR THE CLOUD, OR ANY OTHER CELLULAR OR DATA CONNECTIVITY PROBLEMS; OR (D) REGARDING THE SATISFACTION OF, OR COMPLIANCE WITH, ANY LAWS, REGULATIONS, OR OTHER GOVERNMENT OR INDUSTRY RULES OR STANDARDS. COMPANY WILL NOT BE LIABLE OR OBLIGATED IN RESPECT OF DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR FOR ISSUES RELATED TO HOSTING PROVIDERS OR PUBLIC NETWORKS.

**9.3.** THE PROVISIONS OF THIS SECTION (*DISCLAIMERS*) AND OF SECTION 10 (*LIMITATION OF LIABILITY*) BELOW ALLOCATE THE RISK UNDER THIS AGREEMENT BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THESE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT.

## **10. LIMITATION OF LIABILITY**

**10.1.** EXCEPT FOR BREACHES OF CONFIDENTIALITY UNDER SECTION 9 (*CONFIDENTIALITY*), CUSTOMER'S BREACH OF THE LICENSE (INCLUDING WITHOUT LIMITATION A BREACH UNDER SECTION 4.1 (RESTRICTIONS)), AND/OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES, OR LICENSORS BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, FOR:

- (a) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES;
- (b) ANY LOSS OF PROFITS, BUSINESS, OPPORTUNITY, REVENUE, CONTRACTS, ANTICIPATED SAVINGS, OR WASTED EXPENDITURE;
- (c) ANY LOSS OF, OR DAMAGE OR INTERRUPTION TO, DATA, NETWORKS, INFORMATION SYSTEMS, REPUTATION, OR GOODWILL; AND/OR
- (d) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.

**10.2.** THE COMBINED AGGREGATE LIABILITY OF COMPANY AND ALL COMPANY AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO COMPANY UNDER THIS AGREEMENT IN THE **SIX (6) MONTHS** IMMEDIATELY PRECEDING THE DATE GIVING RISE TO LIABILITY (OR, IF NO FEES APPLY, **ONE HUNDRED US DOLLARS (USD\$100)**).

**10.3.** THE FOREGOING EXCLUSIONS AND LIMITATION SHALL APPLY: (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; (B) EVEN IF A PARTY HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (C) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE;

AND (D) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY, AND WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), STRICT LIABILITY, MISREPRESENTATION, OR OTHERWISE.

## **11. INDEMNIFICATION**

**11.1. Indemnification by Company.** In the event that, during the term of this Agreement and the six (6) month period thereafter, a third party makes or institutes any claim, action, or proceeding against Customer alleging that Customer's authorized access and use of the Service in accordance with this Agreement infringes such third party's copyright or patent (an "**Infringement Claim**"), Company shall:

- (a) At its own expense, defend Customer against the Infringement Claim; and
- (b) Indemnify and hold harmless Customer for any amount finally awarded against or imposed upon Customer by the court (or otherwise agreed in settlement) under the Infringement Claim (*provided, however*, that any insurance recoveries and/or indemnity or contribution amounts received by the Customer prior to receipt of indemnification by Company, shall reduce the indemnifiable amount to be paid by Company by the amount of such recovery).

Company will have no obligation or liability under this Section (*Indemnification by Company*) to the extent that the Infringement Claim is based on or results from: (i) a modification to the Service not made by Company; (ii) the combination of the Service with any third party product or service; (iii) any Customer Content or any Customer instructions or specifications; (iv) any Customer breach under this Agreement; and/or (v) any failure by Customer to use the most current version of the Service made available by Company pursuant to this Agreement.

Should the Service (in whole or in part) become, or in Company's opinion be likely to become, the subject of an Infringement Claim or an injunction prohibiting Customer's use of the Service, then Customer permits Company, at Company's option and expense, to either: (x) obtain for Customer the right to continue using the Service (or part thereof, as applicable); or (y) replace or modify the Service (or part thereof, as applicable) so that its use hereunder becomes non-infringing; *provided, however*, that if (x) and (y) are not, in Company's opinion, commercially feasible, Company may terminate this Agreement upon written notice to Customer, and, following Customer's compliance with all post-termination obligations, Customer shall be entitled to receive a pro-rated refund of any prepaid License-related Fees hereunder based remaining period of the Service Term.

**11.2. Indemnification by Customer.** If Company or its Affiliates (or their respective directors, officers, or employees) (collectively, "**Company Indemnitees**") incur or suffer any loss or liability whatsoever (including but not limited to a fine, penalty, damages award, legal costs and expenses such as attorney's fees, *etc.*) under or in connection with any demand, claim, suit, or proceeding made or brought (whether by an individual, organization, or governmental agency) against a Company Indemnitee (each, a "**Misuse Claim**"), and such Misuse Claim arises directly or indirectly from any breach by Customer under this Agreement and/or from Customer's use of the Service, Customer agrees to:

- (a) At its own expense, defend Company Indemnitees against the Misuse Claim; and
- (b) Indemnify and hold harmless Company Indemnitees for such loss and liability, as well as for any amount finally awarded against or imposed upon Company Indemnitees by the court (or otherwise agreed in settlement) under the Misuse Claim.

**11.3. Indemnity Procedure.** As a condition to indemnification under this Section (*Indemnification*), the indemnified Party agrees: (A) to provide the indemnifying Party with prompt written notice of the Infringement Claim or Misuse Claim, as applicable (the "**Claim**"); (B) to cede to the indemnifying Party sole control of the defense and settlement of the Claim (except that any settlement shall require the indemnified Party's prior written consent, not to be unreasonably withheld, conditioned or delayed); (C) to provide the indemnifying Party with all information and assistance reasonably requested by it; and (D) not to admit any liability under (or otherwise compromise the defense of) the Claim. The indemnified Party may participate in the defense of the Claim at its own cost and expense.

## **12. TERM AND TERMINATION**

**12.1. Term of Agreement.** This Agreement commences on the Effective Date and, unless terminated in accordance herewith, shall remain in force until the completion of all Orders or their termination.

**12.2. Renewals.** Unless specified otherwise in the Order, upon expiration of the initial License term specified in the Order (the "**Initial Service Term**"), the Order and License shall automatically renew for successive renewal terms of twelve (12) months each (each a "**Renewal Service Term**", and together with the Initial Service Term, the "**Service Term**"), unless either Party notifies the other Party in writing that it chooses not to renew ("**Non-Renewal Notice**");



*provided, however*, that the Non-Renewal Notice is given at least sixty (60) days prior to the end of the then-current Service Term. At the commencement of each Renewal Service Term, Company shall be entitled to invoice Customer for the applicable Fees therefor.

**12.3. Termination.** This Agreement may be terminated as follows:

- (a) In accordance with any termination rights specified the Order;
- (b) Either Party may terminate this Agreement for cause upon written notice if the other Party commits a material breach under this Agreement, and fails to cure such breach within thirty (30) days after receiving written notice from the other Party alleging the breach. The foregoing 30-day cure period shall: (i) not be required if the breach is not curable; and (ii) be reduced to ten (10) days if the material breach in question is non-payment by Customer;
- (c) Either Party may terminate this Agreement upon written notice to the other Party upon the occurrence of any of the following events in respect of such other Party: (i) a receiver is appointed for the other Party or its property, which appointment is not dismissed within sixty (60) days; (ii) the other Party makes a general assignment for the benefit of its creditors; (iii) the other Party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief Law, which proceedings are not dismissed within sixty (60) days; or (iv) the other Party is liquidating, dissolving or ceasing normal business operations; and/or
- (d) Either party may terminate this Agreement convenience upon thirty (30) days' prior written notice to the other party. In case of such termination for convenience by Company, Customer shall be entitled to receive a pro-rated refund of any pre-paid and unutilized Fees under the Order based on the remaining period of the then-current Service Term.

**12.4. Suspension.** Company reserves the right to temporarily suspend provision of the Service: (a) if Customer is seven (7) days or more overdue on a payment; (b) if Company deems such suspension necessary as a result of Customer's breach of the License (such as a breach under Section 4.2 (*Restrictions*)); (c) if Company reasonably determines suspension is necessary to avoid material harm to Company, to its other customers, or to the Service, including if the Service's cloud infrastructure is experiencing denial of service attacks or other attacks or disruptions outside of Company's control, or (d) as required by Law or at the request of governmental entities.

**12.5. Effect of Termination; Survival.** Upon termination of this Agreement for any reason: (a) the License shall automatically terminate; (b) Customer shall cease all access and use of the Service; and (c) Customer shall pay any outstanding Fees and other charges that accrued as of termination, which shall become immediately due and payable, and, if necessary Company shall issue a final invoice therefor. Customer acknowledges that following termination it may have no further access to any Customer Content within the Service, and that Company shall be entitled to delete any Customer Content. Sections 8 (*Ownership*) through 13 (*Miscellaneous*) shall survive termination of this Agreement, as shall any right, obligation or provision that is expressly stated to so survive or that ought by its nature to survive. Termination shall not affect any rights and obligations accrued as of the effective date of termination.

### **13. MISCELLANEOUS**

**13.1. Entire Agreement.** This Agreement (and its annexes) represents the entire agreement of the Parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous oral or written understandings and statements by the Parties with respect to such subject matter. In entering into this Agreement, neither Party is relying on any representation or statement not expressly specified in these Terms. Without limiting the generality of the foregoing, any terms or conditions (whether printed, hyperlinked, or otherwise) in any purchase order or other standardized business forms, which purport to supersede, modify, or supplement this Agreement, shall be void and of no effect (even if signed by Company). Customer shall include the Order reference/number in any purchase order issued to Company. The section and subsection headings used in this Agreement are for convenience of reading only, and shall not be used or relief upon to interpret this Agreement. This Agreement may be executed in any number of counterparts (including digitally, electronically scanned and e-mailed PDF copies, and any similarly signed and electronically or digitally transmitted copies) each of which will be considered an original, but all of which together will constitute one and the same instrument.

**13.2. Modifications.** Occasionally Company may make changes to these Terms for valid reasons, such as adding new functions or features to the Service, technical adjustments, typos or error fixing, for legal or regulatory reasons or for any other reasons as Company may deem necessary, at Company's sole discretion. When Company makes material changes to these Terms, Company will provide Customer with notice as appropriate under the circumstances, e.g., by displaying a prominent notice within the Service or by sending Customer an email. Customer's continued use of the Service after the changes have been implemented will constitute Customer's acceptance of the changes.

- 13.3. Precedence.** To the extent of any conflict or inconsistency between a provision in these Terms on the one hand, and a provision in the Order on the other hand, the former shall prevail (except to the extent expressly stated otherwise in the Order, or to the extent related solely to the commercial or technical particulars of the Order, in which case the latter shall prevail).
- 13.4. Feature Specific Terms.** Features and functionalities may be accompanied by separate or additional terms and conditions (in each case, "**Feature Specific Terms**"). Except to the extent expressly stated otherwise within Feature Specific Terms, all Feature Specific Terms apply in addition to (and not instead of) this Agreement.
- 13.5. Third Party Content.** The Service may present, or otherwise allow Customer to view, access, link to, and/or interact with, Content from third parties and other sources that are not owned or controlled by Company (such Content, "**Third Party Content**"). The Service may also enable Customer to communicate with the related third parties. The display or communication to Customer of such Third Party Content does not (and shall not be construed to) in any way imply, suggest, or constitute any sponsorship, endorsement, or approval by Company of such Third Party Content or third party, nor any affiliation between Company and such third party. Company shall have no obligation or liability of any kind whatsoever for Third Party Content or for the third party's policies, practices, actions, or omissions. If Customer enables or uses Third Party Content with the Service, Company will allow the Third Party Content providers to access and use Customer Content as required for the interoperation of the Third Party Content and the Service. Any Third Party Content provider's use of Customer Content is subject to the applicable agreement between Customer and the Third Party Content provider.
- 13.6. Third Party Software.** The Service may include what is commonly referred to as 'open source' software. Under some of their respective license terms and conditions, Company may be required to provide Customer with notice of the license terms and attribution to the third party, in which case Company may provide Customer with such information (whether via the Service, via the Site, or otherwise). Notwithstanding anything to the contrary herein, use of the open source software will be subject to the license terms and conditions applicable to such open source software, to the extent required by the applicable licensor (which terms and conditions shall not restrict the license rights granted to Customer hereunder), and to the extent any such license terms and conditions grant Customer rights that are inconsistent with the limited rights granted to Customer in this Agreement, then such rights in the applicable open source license shall take precedence over the rights and restrictions granted in this Agreement, but solely with respect to such open source software. Company will comply with any valid written request submitted by Customer to Company for exercising any rights Customer may have under such license terms and conditions.
- 13.7. Assignment.** This Agreement may not be assigned by Customer, in whole or in part, without Company's prior express written consent. Company may assign this Agreement, in whole or in part, without restriction or obligation. Furthermore, any Company obligation hereunder may be performed (in whole or in part), and any Company right (including invoice and payment rights) or remedy may be exercised (in whole or in part), by an Affiliate of Company. Any prohibited assignment will be null and void. Subject to the provisions of this Section (*Assignment*), this Agreement will bind and inure to the benefit of each Party and its respective successors and assigns.
- 13.8. Governing Law; Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Israel without regard to any conflicts of laws rules or principles. The United Nations Convention on Contracts for the International Sale of Goods, as well as the Uniform Computer Information Transactions Act (UCITA) (regardless of where or when adopted), shall not apply to this Agreement and are hereby disclaimed. Any claim, dispute or controversy between the Parties will be subject to the exclusive jurisdiction and venue of the courts located in Tel Aviv, Israel and each Party hereby irrevocably submits to the personal jurisdiction of such courts and waives any jurisdictional, venue, or inconvenient forum objections to such courts. Notwithstanding the foregoing, each Party may seek equitable relief in any court of competent jurisdiction. EXCEPT TO SEEK EQUITABLE RELIEF, PAYMENT OF FEES, OR TO OTHERWISE PROTECT OR ENFORCE A PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIALITY OBLIGATIONS, NO ACTION, REGARDLESS OF FORM, UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER THE DATE ON WHICH THE CORRESPONDING LIABILITY AROSE. Any claims or damages that Customer may have against Company shall only be enforceable against Company, and not any other entity or Company's officers, directors, representatives, employees, or agents.
- 13.9. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) the Parties agree that the court making such determination shall have the power to limit the provision, to delete specific words or phrases, or to replace the provision with a provision that is legal, valid and enforceable and that most closely approximates the original legal intent and economic impact of such provision, and this Agreement shall be enforceable as so modified in respect of such jurisdiction. In the event such court does not exercise the power granted to it as aforesaid, then such provision will be ineffective solely as to such jurisdiction, and will be substituted

(in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.

- 13.10. Publicity.** Company may use Customer's name and logo on Company's website and in its promotional materials to state that Customer is a customer of the Service. Moreover: (a) within thirty (30) days of the Effective Date, Customer agrees to provide a quote from one of Customer's executives about the Service, for publication in Company's marketing materials, such as the Site; and (b) Customer agrees to reasonably cooperate with Company in the creation and promotion of a case-study to be published in Company's marketing materials, such as the Site. For the avoidance of doubt, use and publication of such quotes and case-study shall be at Company's sole discretion.
- 13.11. Waiver and Remedies.** No failure or delay on the part of either Party in exercising any right or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of any such right or remedy preclude any other or further exercise thereof, or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing, duly signed by the waiving Party, and will be valid only in the specific instance in which given. Except as may be expressly provided otherwise in this Agreement, no right or remedy conferred upon or reserved by either Party under this Agreement is intended to be, or will be deemed, exclusive of any other right or remedy under this Agreement, at law, or in equity, but will be cumulative of such other rights and remedies.
- 13.12. Data Processing Agreement (DPA).** To the extent that Customer needs to execute a DPA, Customer shall request the Company's DPA to [add email address].
- 13.13. No Third Party Beneficiaries.** Except as may be otherwise expressly provided in this Agreement (such as Company's Affiliates), there shall be no third-party beneficiaries of or under this Agreement.
- 13.14. Relationship.** The relationship of the Parties is solely that of independent contractors, neither Party nor its employees are the servants, agents, or employees of the other, and no exclusivities arise out of this Agreement. Nothing in this Agreement shall be construed to create a relationship of employer and employee, principal and agent, joint venture, franchise, fiduciary, partnership, association, or otherwise between the Parties. Except to the extent required by Company in connection with the provision of the Service and/or the performance of the Company's obligations hereunder, neither Party has any authority to enter into agreements of any kind on behalf of the other Party and neither Party will create or attempt to create any obligation, express or implied, on behalf of the other Party.
- 13.15. Force Majeure.** Neither Party shall have any liability for any performance (excluding payment obligations) under this Agreement that is prevented, hindered, or delayed by reason of an event of Force Majeure (defined below). The Party so affected shall be excused from such performance to the extent that, and for so long as, performance is prevented, interrupted, or delayed by the Force Majeure. If and when performance is resumed, all dates specified under this Agreement shall be automatically adjusted to reflect the period of such prevention, interruption, or delay by reason of such Force Majeure. For purposes of this Agreement, an event of "**Force Majeure**" shall be defined as: (a) fire, flood, earthquake, explosion, pandemic or epidemic (or similar regional health crisis), or act of God; (b) strikes, lockouts, picketing, concerted labor action, work stoppages, other labor or industrial disturbances, or shortages of materials or equipment, not the fault of either party; (c) invasion, war (declared or undeclared), terrorism, riot, or civil commotion; (d) an act of governmental or quasi-governmental authorities (including without limitation lockdowns); (e) failure of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, shortage of adequate power or transportation facilities; and/or (f) any matter beyond the reasonable control of the affected Party. Notwithstanding the foregoing, Customer shall not be entitled to use, or rely on, this Section (*Force Majeure*) in connection with any Customer breach of the License and/or of Company's Intellectual Property Rights. For the avoidance of doubt, any problems relating to hosting of the Service by a third party is beyond the reasonable control of Company.
- 13.16. Notices.** Except as may be specified otherwise in this Agreement, all notices, consents, or other communications provided for in connection with this Agreement shall be in writing, and shall be deemed given as follows: (a) when received, if personally delivered; (b) the second business day after mailing, when mailed via either U.S. mail or registered or certified mail with postage prepaid and return receipt requested; (c) upon delivery confirmation, when delivered by nationally recognized overnight delivery service ("**Courier**"); (d) the second business day after sending confirmed by facsimile; (e) the first business day after sending by email. Notwithstanding the foregoing, Customer agrees that Company may also give Customer notices via Customer's Account and/or via postings on or through the functionality of the Service (and such notices shall be deemed given immediately). Notices by Customer to Company must be given by Courier or registered mail to: 1007 North Orange Street, 10th Fl. Wilmington, Delaware, 19801.
- 13.17. Export Compliance.** Customer represents and warrants that: (a) it is not a resident of, and will not access or use the Service in, a country that the U.S. government has embargoed for use of the Service, and that Customer is not a person or entity named on the U.S. Treasury Department's list of Specially Designated Nationals or any other applicable trade sanctioning regulations of any jurisdiction; and (b) its country of residence and/or incorporation (as

applicable) is the same as the country specified in the contact and/or billing address provided to Company. Customer shall not transfer, export, re-export, import, re-import or divert the Service in violation of any Export Control Laws (defined below), and shall not transfer, export, re-export, import, re-import or divert the Service to Lebanon, Syria, Iran, Iraq, Sudan, Yemen, Cuba, or North Korea (or other countries specifically designated in writing by Company from time to time). In the event of a breach under this Section (*Export Compliance*), Customer agrees to indemnify and hold harmless Company and all Company Affiliates (and their respective directors, officers, and employees) for any fines and/or penalties imposed upon Company or a Company Affiliate (or such persons) as a result of such breach. "**Export Control Laws**" means all applicable export and re-export control Laws applicable to Customer and/or Company or its Affiliates, as well as the United States' Export Administration Regulations (EAR) maintained by the US Department of Commerce, trade and economic sanctions maintained by the US Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations (ITAR) maintained by the US Department of State.

- 13.18. Customer Resources.** Except for the Service, Customer shall be solely responsible: (a) for providing all hardware, software, systems, assets, facilities, and ancillary goods and services needed for Customer to access and use the Service; (b) for ensuring their compatibility with the Service; and (c) for obtaining (and maintaining) all consents and licenses necessary to exercise Customer's rights under the License. In the event Company is legally or contractually required to modify or replace features or functionalities of the Service in order to ensure the Service complies with the terms of service or privacy policies of various platforms, networks and/or websites, Customer shall be responsible for making all necessary changes to Customer's hardware, software, systems, assets, and facilities in order to continue using the Service.
- 13.19. Expense.** Except as may be expressly stated otherwise in this Agreement, each Party shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of this Agreement (and any documents referred to in it).
- 13.20. Government Users.** If Customer is a U.S. government entity, or this Agreement otherwise becomes subject to the Federal Acquisition Regulations (FAR), Customer acknowledges that the Service constitutes "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212, DFARS 252.227-7014 and DFARS 227.7202. In accordance with FAR 12.211-12.212 and DFARS 227.7102-4 and 227.7202-4, as applicable, the rights of the U.S. Government to use, modify, reproduce, release, perform, display, or disclose commercial computer software, commercial computer software documentation, and technical data furnished in connection with the Service shall be as provided in this Agreement. If a government agency needs additional rights, it must negotiate a mutually acceptable signed written addendum to this Agreement specifically granting those rights.
- 13.21. Subpoenas.** Nothing in this Agreement prevents Company from disclosing Customer Content to the extent required by Law, subpoenas, or court orders, but Company will use commercially reasonable efforts to notify Customer where permitted to do so.
- 13.22. High-Risk Activities.** Customer shall not use the Service with or for, and acknowledges that the Service is not intended for, High-Risk Activities. "**High-Risk Activities**" means activities where use or failure of the Service could lead to death, personal injury, damage to tangible property, or environmental damage, and includes without limitation life support systems, emergency services, nuclear facilities, autonomous vehicles, and traffic control.
- 13.23. Anti-Corruption.** Customer agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from any of Company's employees or agents, or otherwise from any Resellers, in connection with this Agreement. If Customer learns of any violation of the above restriction, Customer shall use reasonable efforts to promptly notify Company.