

GENERAL TERMS AND CONDITIONS

These GTCs form a part of the Contract between FLIP GmbH, Rotebühlstraße 50, 70178 Stuttgart, (hereinafter referred to as “**Provider**”) and the Customer set forth on one or more Orders that reference these GTCs and, together with all other applicable components of the Contract between Provider and Customer, sets forth the terms pursuant to which Customer may purchase access to certain of Provider’s products and services as specified in the applicable Orders, which may include, without limitation access to, and use of, Provider’s employee app “FLIP” (hereinafter referred to as the “**Software Service**”). Capitalized terms used but not defined in these GTCs have the definitions set forth in the Order or applicable Annex. Each of Customer and Provider shall be referred to herein as a “**Party**” and together as the “**Parties**.”

1. Definitions

1.1 “**Affiliates**” means, with respect to a Party, any person or entity that controls, is controlled by, or is under common control with such Party.

1.2 “**Customer Content**” means data, content, or other materials provided by Customer to Provider in connection with Customer’s use of the Services, including without limitation via submission to the Software Service.

1.3 “**Data**” includes but it is not limited to Customer Content, Documentation, Personal Data, Usage Data or any such information related to this agreement.

1.4 “**Data Protection Laws**” means the applicable Laws of any relevant jurisdiction governing privacy, data protection, security, or the Processing of Data.

1.5 “**Documentation**” the then-current version of Provider’s usage guidelines and standard technical documentation for the Services that Provider makes generally available to its customers that it provides the applicable Services to.

1.6 “**Laws**” means all applicable relevant local, state, federal and international laws, regulations and conventions.

1.7 “**Personal Data**” means any data or information of an end user of any products and services that constitutes “personal data,” “personal information,” “personally identifiable information,” “non-public personal information,” or an analogous term under applicable Laws, including but not limited to a person’s name, mailing address, email address, IDs, telephone number, access details, telecommunications data, usage and connection data

1.8 **“Process,” “Processing,” or “Processed”** means any operation or set of operations performed on Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation, alteration, retrieval, access, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.9 **“Professional Services”** means professional services to be provided by Provider to Customer as identified in the relevant Order and/or SOW (defined below), which may include, by way of example only, implementation and training services.

1.10 **“Services”** means the services that are identified in the relevant Order, which may include, if set forth in the Order, a subscription to access the then-current version of the Software Service and/or Support or Professional Services. The Services shall be delivered in accordance with the agreed Service Level Agreement (SLA).

1.11 **“Usage Data”** means information generated from the use of the Services, including without limitation the Software Service, which Data does not identify Authorized Users, any other natural human persons, or Customer, such as technical logs, Data, and learnings about Customer’s use of the Services, but excluding any identifiable Customer Content.

2. Subject of the Contract

2.1 Software. Subject to the terms and conditions of the Contract, Provider shall provide Customer and its Authorized Users with access to the Software Service, as further described in the applicable Order, on a software as a service (SaaS) basis.

2.2 Support. To the extent provided for in the Order and subject to the terms and conditions of the Contract, Provider shall provide Customer with support Services (**“Support”**) as set forth in the Order, which may be via remote diagnosis.

2.3 Consulting and maintenance services: Consulting and maintenance services are provided as described in the offer.

2.4 Professional Services. Subject to Customer’s timely payment of all applicable fees, Provider will use commercially reasonable efforts to provide to Customer the Professional Services, if any, set forth in each Order, in accordance with the applicable statements of work agreed to by the Parties (each, an **“SOW”**) with respect to such Professional Services. Provider will own and retain all right, title and interest, including all intellectual property and proprietary rights, in and to any work product or deliverables created in connection with the Professional Services. Nothing in this Agreement or any Order or attachment to this Agreement may be understood to prevent Provider from developing similar work product or deliverables for other customers.

2.5 Exclusions. Unless expressly set forth in an applicable Order, the Services shall not include individual extensions and adaptations of the functionality of the Software Service or the fulfilment of any legal and

regulatory requirements. In no event shall the Services include user administration and the manual resetting of passwords.

2.6 Modifications. From time to time, Provider may make improvements, modifications, or changes to the Software Service ("**Modifications**"). In the event Provider makes Modifications to the Software Service, as provided to Customer hereunder, Provider shall ensure that such Modifications do not materially and adversely affect or diminish the quality of the core functionalities of such Software Service, as set forth in the applicable Documentation. Notwithstanding the foregoing, nothing in the Contract obligates Provider to make Modifications available to Customer as part of the Services or otherwise unless specifically included in an Order.

2.7 Artificial Intelligence. Provider's Software Services may include features powered by artificial intelligence ("AI"), including automated content generation, predictive analytics, and natural language processing. These features are intended to enhance user experience and operational efficiency. While Provider takes reasonable steps to ensure the accuracy and reliability of AI-generated outputs, such outputs are provided "as is" and without warranties of any kind, express or implied. Users are solely responsible for verifying the accuracy, legality, and appropriateness of any decisions or actions taken based on AI-generated content. Flip disclaims all liability for any loss or damage resulting from reliance on AI features, except where such liability cannot be excluded under applicable law.

3. User Accounts / Usage of the Services

3.1 Authorized Users. Customer may appoint a certain number of natural persons, up to the number of licenses specified in the applicable Order, who are employees or contractors of Customer or its Affiliates to be authorized users for the Software Service on behalf of Customer (each, an "**Authorized User**") and who shall receive a user account for use of the Software Service (each, a "**User Account**"); provided that Customer shall not appoint as Authorized Users any competitors of Provider (or any employees, contractors, or other personnel providing services to any competitors of Provider). Only Authorized Users with valid User Accounts in good standing may use the Software Service. The use of a User Account by more than one person is not permitted. Customer (a) is responsible for its Authorized Users' compliance with the Contract and all actions taken through their User Accounts (excluding misuse of the User Accounts caused by Provider's breach of this Contract); (b) shall require Authorized Users to use the Software Service in accordance with the Contract; and (c) will promptly notify Provider if it becomes aware of any unauthorized use or disclosure of, access to, or other compromise of any User Accounts or access information or credentials therefor. Customer can control the allocation, redistribution, and withdrawal of User Accounts (e.g. in the event of an individual leaving the company) using admin-level User Accounts. Each Authorized User must keep their User Account information confidential.



Flip GmbH

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3.2 User Account Data. Provider may collect, access, use, disclose, transfer, transmit, store, host, or otherwise Process User Account information in connection with Provider's provision of the Services or for Provider's internal business purposes.

4. Use of Software Service.

4.1 License. During a Subscription Term, subject to Customer's compliance with the terms of the Contract, Customer may access and use the Software Service only for Customer's internal business purposes in accordance with the Documentation, this Contract, and any limitations set forth in an Order. Insofar as Provider undertakes new versions, upgrades, or updates of the Software Service during the term of the Contract or undertakes additional developments for Customer, the provisions and rights in the Contract for the Software Service shall also apply to such new versions, upgrades, updates, and developments.

4.2 Restrictions. Except as otherwise explicitly provided in the Contract, Customer will not, and will not permit or authorize third parties to (a) fully or sub- rent, fully or sub- lease, or otherwise permit third parties to use any Services, including without limitation the Software Service or Documentation; (b) copy, translate, modify, de-compile, reverse engineer, or otherwise attempt to derive the source code, algorithms, or architecture underlying the Software Service or any results provided in connection with any Professional Services (except to the extent the restriction set forth in this Section 4.2(b) expressly prohibited by applicable statutory law); (c) access or use the Services for the purpose of designing, modifying, or otherwise creating any environment, program, or infrastructure, or any portion thereof, which competes with the Software Service; (d) use the Service or any portion of the Service, including without limitation any results provided in connection with any Professional Services, to provide services to third parties (e.g., as a service bureau); (e) use the Service for any benchmarking activity or in connection with the development of any product competitive to the Software Service; (d) circumvent or disable any security or other technological features or measures of the Software Service, retrieve information or Data from the Services without Provider authorization, or take any other action or omission that is likely to interrupt, interfere with, or impair the smooth operation of the Software Service or any other programs or systems operated by or on behalf of Provider; (e) attempt to probe, scan or test the vulnerability of the Services; or (e) otherwise misuse the Service in any way or allow it to be used by unauthorized third parties.

4.3 App Store Requirements. If the applicable Order expressly includes the ability for Customer (or a third party authorized by Customer) to make a Customer-branded or other customized (e.g. “white labelled”) version of the Software Service available via an appstore (e.g. the Apple App Store or the Google Play app store), Customer, and not Provider, shall be responsible for compliance with all relevant app store conditions.

4.4 Suspension. Without limiting any of Provider’s rights or remedies hereunder, Provider may temporarily limit or suspend Customer’s access to the Software Service in order to avert damage if (a) Customer breaches any of the restrictions on use of the Software Service expressly set forth herein, including without limitation in Section 4.2; (b) Customer’s account is 30 days or more overdue; (c) changes to Laws or new Laws require that Provider suspend a Service; or (d) Customer’s actions risk harm to any of Provider’s other customers or the security, availability, or integrity of any of the Services. Where practicable, Provider will use reasonable efforts to provide Customer with prior notice of the suspension (email sufficing). If the issue that led to the suspension is resolved, Provider will restore Customer’s access to the Services in accordance with the Contract.

5. Other Obligations of Customer

5.1 Use of Services. Customer shall only use the Software Service in accordance with the Contract and shall be responsible for ensuring the Software Service is suitable for Data Processing by or on behalf of Customer in accordance with all Laws applicable to Customer and Customer’s business. Provider may audit the use of the Services to ensure compliance with the provisions and terms of the applicable order and this Contract.

5.2 Customer Cooperation. Customer acknowledges that the Services, including the onboarding and activation thereof, may require the reasonable cooperation of Customer personnel, as may be requested by Provider from time to time. Customer shall provide Provider with appropriate support in the provision of the Services to the extent required, including without limitation by giving appropriate instructions to the Authorized Users. Where agreement, approval, acceptance, consent, or similar action by Customer is required for onboarding, activation, or provision of the Services, such action shall not be unreasonably delayed or withheld, and Customer acknowledges that any delay or failure on the part of Customer to provide the same will relieve Provider of its obligations under any Order to the extent caused by such delay or failure. In particular, Customer shall (a) notify Provider without undue delay of any Services not provided by Provider in accordance with the Contract; (b) provide Provider in a timely manner with all Data, files, interfaces, and other information required for the proper provision of the Services; (c) provide an e-mail distribution list for the announcement of maintenance work and for exchanges in emergency situations, via which the specialist department or the IT contact can be reached; and (d) ensure compliance with the Contract by the Authorized Users and promptly take suitable measures (such as blocking the User Account) to prevent or stop unlawful or unauthorized use.

5.3 Customer Systems. Customer, and not Provider, is responsible for ensuring that Customer's and all Authorized Users' systems, equipment, devices, and other technical requirements are sufficient for the use of the Software Service. Without limiting the foregoing, Customer shall (a) ensure that the minimum requirements for the hardware and software used by Customer meet the minimum requirements provided by Provider; (b) follow instructions from Provider on error prevention; and (c) protect its local IT systems from infestation by viruses, Trojans or similar malware by using appropriate software in order to ensure a minimum level of Data security and Data protection.

6. **Sample Terms**. Upon request and for courtesy reasons only, Provider may provide Customer with suggestions in the form of sample texts for terms of use and a privacy policy, which Customer may use vis-à-vis Authorized Users (the "**Sample Terms**"). THE SAMPLE TERMS ARE PROVIDED AS EXAMPLES ONLY, and Customer acknowledges and agrees such text does not take into account any specific features, requirements, or expectations of Customer, and therefore may not be appropriate for any or all Customer use cases. PROVIDER MAKES NO REPRESENTATIONS OR GUARANTEES REGARDING THE LEGALITY, SUFFICIENCY, ACCURACY, OR APPROPRIATENESS OF THE SAMPLE TERMS. Customer, and not Provider, is responsible for reviewing the Sample Terms, and working with legal counsel as necessary, to ensure they work for Customer's intended uses. CUSTOMER ACKNOWLEDGES PROVIDER DOES NOT PROVIDE LEGAL ADVICE OR LEGAL SERVICES.

7. Fees

7.1 Fees. In consideration of the Services, Customer shall pay the fees specified in the Order (collectively, the "**Fees**"). The monthly service fee for subscriptions to the Software Service varies based on, among other things, the maximum number of available User Accounts and features agreed with Customer in the Order (hereinafter "**User Package**") and is invoiced in advance for the entire Service Period set forth in the applicable Order (the "**Service Period**"). One-time Fees or other Fees agreed in the Order (e.g. setup) shall be invoiced in advance upon execution of the applicable Order. If fees for Professional Services are not set forth on an Order, such fees will be paid for Professional Services to be rendered at Provider's then-current time and material rates.

7.2 Overages. The User Package is fixed for the selected Service Period set forth in the applicable Order. Customer's obligation to pay for the User Package exists irrespective of how many User Accounts Customer actually uses. In particular, if the number of users decreases, a refund or an early change to a lower tier of User Packages is generally excluded. If Customer's demand exceeds the maximum number of users of the selected User Package, Provider shall notify Customer e.g. by Email and charge exceeding demand of Users. The resulting additional remuneration, insofar as it is attributable to the period until the next annual invoice, shall be charged to Customer in the course of the activation of new User Packages.

7.3 Consulting and maintenance services are invoiced on a time and material basis as agreed in the offer. In addition to the daily rates offered for individual services, an annual maintenance fee is charged.

8. Customer Content.

8.1 License. Customer grants to Provider a non-exclusive, worldwide, royalty-free, fully paid up, right and license to store, edit, reproduce, display, perform, distribute, modify, make derivative works of, and other Processes and use Customer Content in connection with the provision of the Software Service to Customer.

8.2 Customer Responsibility. Customer is responsible for all of its Customer Content as provided to Provider and will comply with Laws when using the Services. Customer, and not Provider, assumes all responsibility for completeness, correctness, legality, up-to-dateness, quality, and suitability for a specific purpose of Customer Content. Customer represents and warrants that (a) it has made all disclosures, provided all notices, and has obtained all rights, consents, and permissions necessary for Provider to Process Customer Content as set forth in the Contract without violating or infringing Laws, third-party rights, or terms or policies that apply to Customer Content; and (b) Customer or the respective Authorised User is the owner of all rights in Customer Content or is otherwise authorized to grant the licenses set forth in the Contract, including without limitation to use and communicate the Customer Content within the scope of the Software Service.

9. **Infringement Claim**. If a third party claims an infringement of rights by Customer Content or if Provider otherwise becomes aware of a possible infringement of rights by Customer Content, Provider shall be entitled to block Customer Content or access thereto in whole or temporarily in order to avert damages. In the event that Provider informs Customer of any such claim, Customer shall promptly cease the allegedly infringing use within a reasonable period of time or prove the lawfulness of the contents. If Customer does not comply with this request, Provider is entitled, without prejudice to further rights and claims, to immediately terminate the Contract or applicable Order. Provider may charge Customer for expenses incurred by Provider as a result of the aforementioned measures.

10. **Proprietary Rights**. Neither party grants the other any rights or licenses not expressly set out in the Contract. Except as expressly provided in the Contract, as between the Parties, Customer retains all intellectual property rights and other rights in Customer Content provided to Provider. Except for Customer's use rights in the Contract, Provider and its licensors retain all intellectual property rights and other rights in the Services, Documentation, Usage Data, and Provider technology, templates, formats, and dashboards, including any modifications or improvements to these items made by Provider. If Customer provides Provider with feedback or suggestions regarding the Services or other Provider offerings, Provider may use the feedback or suggestions without restriction or obligation.

11. Confidentiality

11.1 Definition. "**Confidential Information**" means information disclosed to the receiving party ("**Recipient**") under the Contract that is designated by the disclosing party ("**Discloser**") as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Provider's Confidential Information includes the terms and conditions of

the Contract and any technical or performance information about the Services. Customer's Confidential Information includes Customer Data.

11.2 Obligations. As Recipient, each party will (a) hold Confidential Information in confidence and not disclose it to third parties except as permitted in the Contract; and (b) only use Confidential Information to fulfil its obligations and exercise its rights in the Contract. At Discloser's request, Recipient will delete all Confidential Information, except, in the case where Provider is the Recipient, Provider may retain Customer's Confidential Information to the extent required to continue to provide the Services. Recipient may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know (including, for Provider, the subcontractors referenced in Section 16.13), provided it remains responsible for their compliance with this Section 10 and they are bound to confidentiality obligations no less protective than this Section 10.

11.3 Exclusions. These confidentiality obligations do not apply to information that Recipient can document: (a) is or becomes public knowledge through no fault of the receiving party; (b) it rightfully knew or possessed prior to receipt under the Contract; (c) it rightfully received from a third party without breach of confidentiality obligations; or (d) it independently developed without using Confidential Information.

11.4 Remedies. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section 10.

11.5 Required Disclosures. Nothing in the Contract prohibits either party from making disclosures, including of Customer Data and other Confidential Information, if required by Law, subpoena, or court order, provided (if permitted by Law) it notifies the other party in advance and cooperates in any effort to obtain confidential treatment.

12. Privacy. Both Parties shall comply with all applicable Data Protection Laws. In particular, Customer shall fulfil its obligations to inform its Authorized Users under applicable Data Protection Law and shall solely Process Data with sufficient legal basis under applicable Data Protection Law. Insofar as Provider Processes Personal Data on behalf of Customer within the scope of the provision of the Service, the Processing shall be governed by the provisions of the Contract on the Processing of Personal Data on Behalf of Customer within the meaning set forth in Provider's Data Processing Agreement located at <https://getflip.com/legal> (the "DPA"). Both Parties warrant that they shall comply with the obligations under the DPA including but not limited to ensuring the preparation and maintenance of a privacy framework and policies compliant with applicable Data Protection Laws. Each Party represents and warrants that it will not (a) sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing, or by electronic or other means, any Data to any third party for monetary or other valuable consideration; (b) retain, use, or disclose any Data for any purpose other than for the specific purpose of performing the Services; and (b) retain, use, or disclose Data outside of the business relationship between the Parties. Each Party further represents and warrants that it will implement appropriate industry standard security measures to ensure the

confidentiality, integrity, and availability of Data and any systems used to Process Data. Such measures will include, but not be limited to, those listed in the DPA. Customer also represents and warrants that it will maintain a comprehensive written information security program that complies with Data Protection Laws and will ensure that its employees, personnel, agents, contractors, or subcontractors are subject to ongoing obligations of confidentiality applicable to Data no less protective of Data than those to which Customer itself is subject pursuant to this Agreement, including without limitation this Section 10.

13. Provider Limited Warranties

13.1 Limited Warranty. Provider warrants to Customer that the Software Service will perform materially as described in its Documentation and Provider will not materially decrease the overall functionality of the Software Service ("**Limited Warranty**") during a Service Period ("**Warranty Period**"). If Provider breaches the Limited Warranty during the Warranty Period and Customer makes a reasonably detailed warranty claim in the manner required by Provider (e.g. online form) within 14 days of discovering a breach of the Limited Warranty, then Provider will use reasonable efforts to correct the non-conformity. If Provider cannot do so within 30 days of receipt of Customer's warranty claim, either party may terminate the affected Order as it relates to the non-conforming Software Service. Provider will then refund to Customer any pre-paid, unused fees for the terminated portion of the applicable Subscription Term. This Section sets forth Customer's exclusive remedy and Provider's entire liability for breach of the Limited Warranty. These warranties do not apply to (a) issues caused by Customer's or Authorized Users' misuse of or unauthorized modifications to the Services; (b) issues in or caused by third-party platforms or other third-party systems; (c) use of the Services other than according to the Documentation; (d) Service components provided for test or non-production purposes; (e) use of the Services or other components of the Service for purposes for which they were not intended or in any environment that is not suitable for the system requirements of the Services.

13.2 Disclaimers. Except as expressly provided in Section 12.1 (Limited Warranty), the Software Service, Services, and all other Provider services are provided "AS IS". Provider, on its own behalf and on behalf of its suppliers and licensors, makes no other warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability, fitness for a particular purpose, title, or noninfringement. Provider does not warrant that Customer's use of the Services will be uninterrupted or error-free, nor that all defects can be corrected, that Provider will review Customer Content for accuracy, or that it will maintain Customer Content without loss. Provider is not liable for delays, failures, or problems inherent in use of the Internet and electronic communications or other systems outside Provider's control. Customer may have other statutory rights, but any statutorily required warranties will be limited to the shortest legally permitted period.

14. Intellectual Property Infringement

14.1 Defense of Infringement Claims. Subject to Section 13.3, Provider will, at its expense, either defend Customer from or settle any claim, proceeding, or suit ("**Claim**") brought by a third party against Customer alleging that Customer's use of the Software Service infringes or misappropriates any patent, copyright, trade secret, trademark, or other intellectual property right during the term of the Contract if:

(a) Customer gives Provider prompt written notice of the Claim; (b) Customer grants Provider full and complete control over the defense and settlement of the Claim; (c) Customer provides assistance in connection with the defense and settlement of the Claim as Provider may reasonably request; and (d) Customer complies with any settlement or court order made in connection with the Claim. Customer will not defend or settle any Claim without Provider's prior written consent

14.2 Indemnification of Infringement Claims. Provider will indemnify Customer from and pay (a) all damages, costs, and attorneys' fees finally awarded against Customer in any Claim under Section 13.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Customer in connection with the defense of a Claim under Section 13.1 (other than attorneys' fees and costs incurred without Provider's consent after Provider has accepted defense of the Claim); and (c) all amounts that Provider agrees to pay to any third party to settle any Claim under Section 13.1.

14.3 Exclusions from Obligations. Provider will have no obligation under this Section 13 for any infringement or misappropriation to the extent that it arises out of or is based upon (a) use of the Software Service in combination with other products or services; (b) the Software Service is provided to comply with designs, requirements, or specifications required by or provided by Customer; (c) use of the Software Service by Customer for purposes not intended or outside the scope of the license granted to Customer; (d) Customer's failure to use the Software Service in accordance with instructions provided by Provider; (e) any modification of the Software Service not made or authorized in writing by Provider or (f) Service components provided for test or non-production purposes;

14.4 Limited Remedy. This Section 13 states Provider's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party intellectual property right by the Software Service.

15. **Customer Indemnification**

15.1 Defense. Customer will defend Provider from any actual or threatened third party Claim arising out of or based upon Customer's use of the Software Service or Customer's breach of any of the provisions of the Contract if: (a) Provider gives Customer prompt written notice of the Claim; (b) Provider grants Customer full and complete control over the defense and settlement of the Claim; (c) Provider provides assistance in connection with the defense and settlement of the Claim as Customer may reasonably request; and (d) Provider complies with any settlement or court order made in connection with the Claim. Provider will not defend or settle any Claim without Customer's prior written consent. Provider will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Customer will have sole control over the defense and settlement of the Claim.

15.2 Indemnification. Customer will indemnify Provider from and pay (a) all damages, costs, and attorneys' fees finally awarded against Provider in any Claim under Section 14.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Provider in connection with the defense of a Claim under Section 14.1 (other than attorneys' fees and costs incurred without Customer's consent after Customer has accepted defense of the Claim); and, (c) all amounts that Customer agrees to pay to any third party to settle any Claim under Section 14.1.

16. LIMITATION OF LIABILITY

16.1 Disclaimer of Indirect Damages. EXCLUDING AMOUNTS ARISING FROM EITHER PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN, NEITHER PARTY WILL, UNDER ANY CIRCUMSTANCES, BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE CONTRACT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF SUCH PARTY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

16.2 Cap on Liability. EXCEPT FOR AMOUNTS ARISING FROM EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THE CONTRACT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID OR PAYABLE BY CUSTOMER TO PROVIDER DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).

16.3 Independent Allocations of Risk. EACH PROVISION OF THE CONTRACT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THE CONTRACT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING ORDERED BY PROVIDER TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THE CONTRACT. THE LIMITATIONS IN THIS SECTION 15 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THE CONTRACT.

17. Contract term and ordinary termination

17.1 Term. The term of the Contract (the “**Term**”) starts on the Effective Date and continues until expiration or termination of all Orders issued hereunder.

17.2 Termination. Either party may terminate the Contract (including any or all Orders) if the other party (a) fails to cure a material breach of the Contract (including a failure to pay fees) within 30 days after notice; (b) ceases operation without a successor; or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days.

17.3 Effect of Termination. Upon expiration or termination of an Order, Customer's access to and Provider's obligations to provide the Services described in the Order will cease. Customer Content and other Confidential Information may be retained in Recipient's standard backups notwithstanding any obligation to delete the applicable Confidential Information but will remain subject to the Contract's confidentiality restrictions.

17.4 Survival. These Sections survive expiration or termination of the Contract: 1, 4.2, 8, 9, 10 and 13 through 16.

17.5 Assignment. Neither party may assign the Contract without the prior consent of the other party, except that either party may without the other party's consent assign the Contract in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all its assets or voting securities to the other party involved in such transaction. Any non-permitted assignment is void. The Contract will bind and inure to the benefit of each party's permitted successors and assigns.

17.6 Governing Law and Jurisdiction. The Contract is governed by the laws of England and Wales. To the extent permitted by law, the English courts will have exclusive jurisdiction over any disputes arising out of or in connection with the Contract and all transactions governed by it.

17.7 Attorneys' Fees and Costs. The prevailing party in any action to enforce the Contract will be entitled to recover its attorneys' fees and costs in connection with such action.

17.8 Notices. Except as set out in the Contract, any notice or consent under the Contract must be in writing to the addresses on the first page and will be deemed given (a) upon receipt if by personal delivery; (b) upon receipt if by certified or registered mail (return receipt requested); or (c) one day after dispatch if by a commercial overnight delivery service. Notice that is delivered via facsimile or electronic mail is sufficient to meet the notice requirement, provided it is: (i) confirmed as received by the other Party, or (ii) an original copy follows it by mail, as set forth above, in a timely manner. Either party may update its address with notice to the other party. Provider may also send operational notices to Customer by email or through the Services.

17.9 Entire Agreement. The Contract (which includes all Orders and Annexes) is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In the event of a conflict between provisions made in the Order or other Annexes and this Contract, the provisions of the Order or the respective Annex shall prevail. In the Contract, headings are for convenience only and "including" and similar terms are to be construed without limitation. The Contract may be executed in counterparts (including electronic copies and PDFs or by the use of a mutually agreeable electronic signature authentication program), each of which is deemed an original and which together form one and the same agreement.

17.10 Amendments. Any amendments, modifications, or supplements to the Contract must be in writing and signed by each party's authorized representatives or, as appropriate, agreed through electronic means provided by Provider. The terms in any Customer purchase order or business form will not amend or modify the Contract and are expressly rejected by Provider; any of these Customer documents are for administrative purposes only and have no legal effect. Any terms and conditions of Customer that conflict with, deviate from or supplement the Contract shall not become part of the Contract unless Provider has expressly consented to their validity in writing. Consent is not already given by the fact that Provider accepts orders, provides services or refers directly or indirectly to documents or messages containing or referring to the general terms and conditions of Customer or third parties with knowledge of Customer's general terms and conditions.

17.11 Waivers and Severability. Waivers must be signed by the waiving party's authorized representative and cannot be implied from conduct. If any provision of the Contract is held invalid, illegal, or unenforceable, it will be limited to the minimum extent necessary so the rest of the Contract remains in effect.

17.12 Force Majeure. Neither party is liable for any delay or failure to perform any obligation under the Contract (except for a failure to pay fees) due to events beyond its reasonable control, such as a strike, blockade, war, pandemic, act of terrorism, riot, Internet or utility failures, refusal of government license, or natural disaster ("**Force Majeure Events**").

17.13 Subcontractors. Provider may use subcontractors and permit them to exercise Provider's rights, but Provider remains responsible for their compliance with the Contract and for its overall performance under the Contract. Documents, information and Data of Customer and its employees may be made accessible to these subcontractors to the extent necessary for the performance of the service by Provider.

17.14 Independent Contractors. The parties are independent contractors, not agents, partners, or joint venturers.

17.15 Export. Customer will comply with all relevant export and import Laws in using any Service. Customer (a) represents and warrants that it is not listed on any government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a government embargo or that has been designated by the government as a "terrorist supporting" country; (b) agrees not to access or use Services in violation of any export embargo, prohibition, or restriction.

17.16 Open Source. The Software may incorporate third-party open source software ("**OSS**"), as may be listed in the Documentation or otherwise disclosed by Provider in writing. To the extent required by the OSS license, that license will apply to the OSS on a stand-alone basis instead of the Contract.

17.17 No Third-Party Beneficiaries. Only Customer shall be entitled to demand performance under the Contract. Customer and Provider agree that by providing User Accounts no contract in favor of third parties and no protective effect in favor of third parties with regard to the Authorized Users or other third parties is intended.