



End User License Agreement

1. General. This End User License Agreement (the "Agreement") between the relevant Kenshoo company as described in Section 20 below d/b/a Skai ("Company" or "Skai") and the customer agreeing to these terms and conditions ("Customer") governs Customer's acquisition and use of the Services (as defined below). By signing this Agreement or by executing or agreeing to any order form ("Order Form") that references this Agreement, or by using the Services, Customer agrees to the terms of this Agreement and it becomes effective. Customer and Company will be referred to as a "Party" and collectively as the "Parties". All capitalized terms used in this Agreement will have the meaning as defined herein or within the Order Form.
2. The Services. Subject to the terms of this Agreement, Company will provide Customer, on a subscription basis, digital advertising, marketing intelligence, media planning, and marketing optimization technology as described in an Order Form, through Company's proprietary platform ("Platform"), enabling the use of each or the combination of Paid Search, Paid Social, Multi-Location Marketing, Retail Media, Professional Services, and other related services and any third party services and data sources that may vary from time to time, as more fully described in the applicable Order Form and this Agreement (the "Services"). To use the Services, Company will provide the necessary means of identification and authentication. From time to time, Company may establish and require additional or alternative identification and authentication means. Customer will be notified in advance of such change. It is Customer's responsibility to maintain the confidentiality of Customer's Users' credentials to access and use the Platform including implementation of its own password policy in accordance with industry best practices. During the Term of this Agreement, Company will provide Customer technical support for the Services in accordance with the applicable Product as set forth in Company's website (https://skai.io/wp-content/uploads/2024/09/Skai_PlatformPricingOverview_Sept2024_Full-Documents.pdf) and in accordance with the Company's Service Level Agreement, which is available at: <https://skai.io/wp-content/uploads/2025/03/Skai-SLA-2025.pdf>. Customer will enable Company to provide technical support to Customer's clients, where required. Customer will cooperate with Company and provide Company with all necessary information and assistance including but not limited to the integration of the Services into Customer's systems, including Customer's access information to each publisher account, or integration with Customer's third-party data providers. Customer hereby represents and warrants that it has the right, or will obtain the right, to allow Company to access such accounts for the purpose of the on-going operations of the Platform and Customer's account therein. Any additional Services or work which is not detailed in the Order Form (including but not limited to Add-Ons, additional training, custom integration/tracking, retrieval of data or analytics) will be itemized and billed separately according to the rates detailed in the applicable Order Form or amendment as agreed upon between the Parties.
3. Right to Use the Services. Except as expressly provided in this Agreement, Company grants to Customer, during the Service Term of this Agreement and in accordance with the terms of this Agreement, a limited, non-exclusive, non-transferable, revocable and non-sublicensable right to access and use the Platform and Services for the sole purpose of utilizing the Services for Customer's internal business use only. Customer may not, directly or indirectly or by itself or through any other person or entity: (i) use, rent, lease, sell, transfer (by sublicense, assignment or otherwise), time share, modify, reproduce, copy, make derivative works from, distribute, publish, use to provide service bureau services, or publicly display the Platform or Services and/or any part thereof, other than for the purpose of capabilities demonstration for its clients; (ii) misuse, reverse engineer, decompile, or otherwise attempt to discover the source code of the Platform; (iii) represent that it possesses any proprietary interest in the Platform and/or Services; and (iv) except as specifically permitted hereunder, use the name, trademarks, trade-names, and logos of Company. All rights not specifically granted hereunder are reserved to Company.
4. Prohibited Uses. Customer will not knowingly: (i) use the Services in any manner that is not explicitly permitted under the terms herein; (ii) use the Services to transmit any unsolicited commercial communications in violation of applicable laws; (iii) use the Services in a way or for any purpose that infringes or misappropriates any third party's intellectual property or personal rights, including without limitation, the right to privacy and the right of publicity; (iv) use the Services, including the upload of content to the Services, for any activity that will be deemed, or encourages activity that will be deemed as discriminating, threatening, harassing, anti-competitive, misleading, libelous, defamatory, obscene, pornographic, or profane; (v) use the Services to store or transmit any viruses, worms, time bombs, trojan horses and other harmful or malicious code, files, scripts, agents or programs, or otherwise engage in unfair or deceptive practices; (vi) interfere with or disrupt the integrity or performance of the Services; (vii) attempt to gain unauthorized access to the Services or their related systems or networks, or systematically access the Services using 'bots' or 'spiders'; (viii) use the Services to develop or offer similar services or have them used to engage in competition with Company or in any other way; and (ix) use the Services in any way that is not permitted under applicable publishers' terms and conditions agreed to and currently in effect as between Customer and applicable publishers.
5. Fees and Taxes. Customer will pay Company the applicable non-refundable fees described in the Order Form for the Services and any additional work in accordance with the terms therein (the "Fees"). Except as otherwise set forth in an Order Form, all Fees due hereunder will be due and payable within thirty (30) days from the date of invoice. Any Customer dispute over an invoice must be filed by the Customer no later than ninety (90) days from the date of which invoice was issued. Customer will provide Company with complete and accurate billing and contact information including a valid email address for receipt of invoices. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Unless otherwise stated, Company's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature ("Taxes"). If any such Taxes are required to be withheld, Customer will bear the amount withheld and pay an amount to Company such that the net amount payable to Company after withholding of taxes will equal the amount that would have been otherwise payable under this Agreement. If Company has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, the appropriate amount will be invoiced to and paid by Customer unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. As of the execution date of the applicable Order Form, Company does not charge Customer with third parties' API costs, associated with the usage of the Company Services. Company maintains the right to charge such costs from Customer in correlation with third party's API costs imposed on Company in relation to

the provision of the Services. If the API costs will exceed 5% of the average Fees prior to the application of the API costs, then Customer will be entitled to terminate the Agreement with a 30 days' written notice. Customer will have access to the Services available for the applicable Omnichannel Tier and Customer's Media Spend will be accumulative across all Products, limited to the Media Spend Tier for the Omnichannel Tier. If Customer exceeds its Media Spend Tier prior to the end of the then-current term, Customer agrees to the On Demand Media Fee terms in the Order Form.

6. Company's Intellectual Property. All rights, title and interest in and to the Services and Platform, including without limitation any Professional Services or Expert Managed Services provided, the underlying software, underlying data, platforms, algorithms, technology, design, any information, services, texts, files, sound, music, videos, various applications, organization, structure, "look and feel" and features and any modifications, enhancements and derivatives thereof and all intellectual property rights associated therewith, are and will remain at all times, owned by, or licensed to Company. This Agreement provides Customer a right to use the Platform and Services and does not provide Customer any ownership rights.
7. Customer Data. Any data received from Customer, including personal data, business data, or any other data, and all intellectual property rights associated therewith, including but not limited, to trademarks and copyrighted materials ("Customer's IP"), and collectively ("Customer Data"), remain and will be, as between Customer and Company, Customer's sole and exclusive property. Customer acknowledges that Company may use the Customer Data for the purpose of providing the Service and fulfilling the obligations under this Agreement ("Approved Use"). Company shall not disclose, transfer, or use Customer Data for any purposes other than the Approved Use without the Customer's prior written consent. With respect to Customer's IP, Customer hereby grants Company a non-exclusive, limited license to use Customer's IP for the Approved Use, and Customer represents and warrants that Customer has obtained all rights and permissions necessary for this purpose ("Customer's Authorized Use").
8. Service Data. Company captures, monitors and receives metrics and other data related to Customer and Customer's clients use of the Services, and draws insights and compile statistical and performance data from the Materials on an aggregate form, (collectively: "Service Data") for operational purposes and as part of the Services that Company provides, including but not limited to: (i) provision or making available of aggregate statistics about the Services in a manner that will not allow identification of Customer or Customer's end-users; (ii) perform its obligations under this Agreement and its enforcement; (iii) operate, manage, audit, maintain, enhance and support the Platform and Services; and (iv) protect the Platform and Services from threats; (v) if required by court order or law or requested by any governmental agency; and (vi) as otherwise expressly authorized by Customer.
9. Audience Data. If Customer uses Audience Data, Customer: (i) shall pay the applicable fees as detailed in the Order Form, per Customer's choice of Audience (Standard or Premium); (ii) shall comply with applicable specifications and requirements by the applicable Publishers and data marketing service providers (in this section 9: "Providers") concerning the use of Audience Data, and if applicable, the applicable Providers' advertising-related guidelines and requirements and to provide Company with all necessary and timely assistance, materials, documentation and other relevant support in relation to any inquiry or inspection conducted by a Provider concerning Company's or Customer's use of the Audience Data; for the purpose of this Agreement, (iii) acknowledges that Company and the Providers are not responsible for determining the best and proper use of the Audience Data; (iv) fully owns or has the authority to use or provide the data that Customer provides for the purpose of generating the Audience Data, that all such data relates to adult residents only, and that Customer will not take any action that would violate applicable local, state or federal law and any applicable regulations or applicable self-regulatory guidelines; (v) uses Audience Data only through the Platform and shall not use the Audience Data for any purpose other than as explicitly agreed herein; (vi) will not decompile, disassemble or create derivative works from the Audience Data and will not sublicense, resell, reuse, or otherwise grant any rights in the Audience Data to any third party, including any service bureau; (vii) will refrain from using Audience Data for any impermissible purpose or adverse action as defined by the Fair Credit Reporting Act, for renegotiating or restructuring of debt or for facilitating any advertising for adult entertainment (i.e., pornography), firearms, illegal gambling, or any other product or service that is illegal, including without limitation to discriminate on the basis of race, gender, religion, sexual orientation, or in any way that could be deemed unfair or deceptive under applicable law; (viii) will not use Audience Data for the purposes of employment, credit eligibility, health care or insurance eligibility underwriting and pricing.
10. Privacy and AI.
 1. Privacy. To the extent that data delivered by Customer to Company, or that Company processes on Customer's behalf, includes personal data about individuals, then Company's Data Processing Addendum, which is available at: <https://skai.io/data-processing-addendum/> is incorporated into this Agreement. Company does not knowingly collect and process financial, health related, genetic, or biometric personally identifiable information, or personally identifiable information revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, sexual orientation, sex life, criminal background, or audio, electronic, visual, thermal, olfactory, or similar information. Company warrants that it: (i) has implemented technical safeguards that prohibit reidentification of Customers' end-users to whom the information may pertain; (ii) has implemented business processes that specifically prohibit reidentification of the information; (iii) has implemented business processes to prevent inadvertent release of deidentified information; and (iv) does not know or makes attempt to know the identity of its Customers' end-users.
 2. Skai Cookie Requirements: To the extent the Customer implements the Skai cookie / tag (the "Skai Cookie") for measurement purposes on its properties, the Customer shall: (a) comply with all necessary transparency and consent requirements under Applicable Data Protection Law, which may include, as applicable, details of the Skai Cookie in externally facing cookie notice and a content management platform; (b) keep accurate and up-to-date records containing evidence of fulfilling transparency and/or consent requirements obtained under clause (a) (together, the "Consent Records") and ;(c) upon request provide Company with

a copy of all such Consent Records and additional information pertaining to its cookie-management preferences relating to the Skai Cookie.

3. Artificial Intelligence Tools (and for Intent Driven Messaging (as defined below) and Celeste AI (as defined below)). As part of the Services, Company may make available to Customer or incorporate into its services certain Artificial Intelligence features and functionalities ("AI Functionalities"), which may integrate third party AI models (such as Open AI). To the extent the Customer utilizes the AI Functionalities, subject to Customer's discretion, the Customer acknowledges that the AI Functionalities may allow the Customer to enter content, materials and other data ("Input") and receive content from the AI Functionalities ("Output") and agrees to the sharing of such Input with third parties' providers of AI models.

The AI Functionalities are provided to the Customer "AS IS". The Output may not be unique to each customer or accurate. The Company disclaims all liability for accuracy, completeness, relevancy, intellectual property compliance, legality, decency, quality or any other aspect of the Output. Additionally, the Company disclaims all liability for biases, errors, inconsistencies, or unintended consequences that may be present in the Output. The Company shall not be liable for any decisions, actions or consequences from Customer's use of the AI Functionalities or present in the Output. The Customer undertakes and agrees to (i) review and evaluate all Output before use and implementation to determine whether the Output serves its intended purpose; and (ii) not to use AI Functionalities in a way that can cause monetary, reputational or other damage to the Company, and in any other requirement by Company.

11. Services Suspension. Company may suspend, discontinue or disable the Services provided to Customer, or Customer's access to the Platform, or any portion of the Services provided to Customer, if: (a) one or more of Customer's undisputed payments are sixty (60) days or more overdue and Company has notified Customer of said payment default or (b) Customer materially breaches this Agreement.
12. Confidentiality. Any information provided hereunder by either Party whether furnished before or after the execution of the applicable Order Form, and regardless of the manner in which it is furnished, which is marked as "confidential" or should be reasonably understood by its nature or the circumstances of its disclosure to be confidential or proprietary to such Party ("Confidential Information") will not be used, disclosed or reproduced by the other Party without the express written consent of the Party providing such information, other than for the performance of such Party's obligations under this Agreement. Unless otherwise stated herein, the terms of this Agreement (but not its existence and the parties thereto) and specifically the rates set forth in the Order Form will be deemed Confidential Information. "Confidential Information" excludes information which (i) is or has become generally known or available through no act or failure to act by the receiving Party; (ii) is already known or available to receiving Party at the time of receipt as evidenced by then-existing written records; (iii) is hereafter furnished to the receiving Party by a third party, as a matter of right and without restriction on its disclosure; (iv) is disclosed by written permission of the Party for whom such information is confidential; or (v) is required to be disclosed by court order or law. If a Party receives a demand in a legal proceeding that would require the Confidential Information of the other Party to be disclosed, the receiving Party will notify the other Party of the demand and assist the other Party in obtaining a protective order or other relief. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, using at least the same degree of care it uses to protect its own confidential information; (ii) not to disclose the Confidential Information to any third party other than to its, directors, officers, employees, advisors or consultants (collectively, the "Representatives") on a "need to know" basis only and provided that such Representatives are bound by written agreement to comply with the confidentiality obligations as protective as those contained herein; (iii) not to use or reproduce any of the Confidential Information for any purposes except to carry out its rights and responsibilities under this Agreement. The Parties' obligations with respect to Confidential Information will survive the expiration or termination of this Agreement for any reason. For avoidance of doubt, the Company Platform and all designs, engineering details, and other technical, financial, marketing, commercial and other information pertaining to the Company Platform shall be considered Confidential Information of Company. In addition, the Company Platform may include integration with third party software which software shall be considered Confidential Information of its licensor, and any Customer data processed via such third party software shall be considered Confidential Information of Customer.
13. Customer's Warranties. Customer acknowledges that each Publisher, as applicable to the Services, maintains various terms and conditions, guidelines and policies agreed to by and between Customer and such Publisher ("Publisher Terms") for usage thereof, and Customer hereby represents and warrants that its usage of the Platform and any specifications, images, and content used therein, including when managed by Company on Customer's behalf and Customer Data (the "Materials") will at all times be in full compliance with Publisher Terms, as well as with any laws, international conventions, codes or regulations in any applicable jurisdiction. Customer further represents that it was never, directly or indirectly, in breach of any Publisher Terms or denied by any publisher from using its services, platform and advertising inventory due to a breach of Publisher Terms. Customer will notify Company without delay upon receipt of any such notice. It is hereby agreed that the breach of this Section 13 by Customer shall be considered a material breach of the Agreement and Company will have the right to immediately terminate the Agreement and any Order Form. Customer agrees that the Materials that are created or managed through the use of the Services, may be used as Customer's advertising content. Customer represents and warrants that: (i) it has any and all necessary rights and prerequisite permissions and consents to use the Materials, including without limitation, for advertising purposes and any data provided by it in furtherance of the scope of this Agreement shall be accurate, non-infringing and delivered with all necessary licenses for Company to complete its services for the benefit of the Customer; and (ii) the Materials are compliant with applicable law and/or regulations and do not infringe or misappropriate any third party's intellectual property or personal rights, including Materials provided or created as part of the Expert Managed Services. Company will use reasonable efforts to stay within the budgeted scope of Customer's Media Spend for Expert Managed Services. Notwithstanding the above, Customer acknowledges that Media Spend for certain channels is not always predictable and overspend may occur, which Customer agrees to pay. With regards to Skai DSP, Customer represents and warrants that Customer has approval from Amazon DSP to create a self-serve account and will have self-serve account prior to the Service Start Date. With regards to Planning and Measurement, Customer represents and warrants all of the following: (i) that the campaigns are created pursuant to the requirements and/or specifications provided by Customer; and (ii) that any Materials, specifications, or requirements therein were

provided by Customer and are within the guidelines required by the applicable Publisher. In the event Customer runs more than the allotted tests for Planning and Measurement incrementality testing, Company may pause the additional tests until the allotted tests have completed and Customer agrees to pay the fees associated with the additional test. If Customer begins a test within the Service Term but sets the test to end after the Service Term ends, Company may end the test at the end of the Service Term. Customer acknowledges that with respect to Skai AMC, Company can provide Skai AMC solely to Customer(s) who purchased Skai DSP, as Skai AMC is dependent on Skai DSP. Customer agrees to appoint at least one (1) authorized user, who will have the role of administrator on the Platform, permitted to make changes to the Order Form, purchase additional Services, including but not limited to Add-Ons, Expert Managed Services, Professional Services, and upgrading the Omnichannel Tier. The Authorized User shall agree to any new terms that will be effective upon executing or agreeing to any Order Form, or by using the Services. Customer acknowledges that the required information of Customer's users to access and use the Platform ("Customer Users") must be accurate and up to date at any time during the Service Term of this Agreement. Customer agrees to take full responsibility for any actions of the Customer Users on the Platform, and Company disclaims all liability and responsibility in relation thereto. Regarding any Customer Data provided to the Company, the Customer hereby undertakes and takes full responsibility to provide the Company only with Customer Data that the Customer is authorized and has the rights and permissions to provide and use, including under all applicable privacy laws, for the purpose of the Services under this Agreement.

14. **Company's Warranties.** Company represents and warrants that: (i) Company performs the Services, including Expert Managed Services and Professional Services if ordered by Customer, with care, skill, and diligence, in a professional and workmanlike manner and in accordance with applicable professional standards, and cause its employees, subcontractors, and agents to perform accordingly; (ii) Company follows Publishers' Terms, which are applicable to Company's performance of the Services; (iii) Company uses measures, procedures and commercially reasonable efforts to operate the Services efficiently and reasonably available; (iv) Company uses industry standard measures and controls, to protect the Platform from viruses, worms, time bombs, Trojan Horses and other harmful or malicious code, files, scripts, agents and programs; (v) Company does not knowingly utilize code, components and content which infringe third parties' intellectual property rights. If the Platform or Services are held to, or Company believes it is likely to be held to infringe a copyright, patent or trade secret, Company will in its sole discretion and expense either: (i) substitute or modify the Platform/Services or any part thereof so that it is non-infringing; or (ii) obtain a license to continue providing the Platform and or Services. Company reserves the right to amend the Services provided for each Omnichannel Tier from time to time. Company agrees to provide Customer with notice prior to any changes impacting Customer's Services and Company will not decrease Services provided during the then-current Service Term.
15. **Disclaimer of Warranties.** Company does not provide Customer a warranty, including on behalf of any Publisher, with respect to any Publisher services. Company does not edit or review the accuracy, lawfulness or appropriateness of the Customer Data, and does not provide Customer with any warranty in relation thereof. The Customer acknowledges that the content provided through the features included in Skai Decision Pro Add-On are based on the Customer Data (including historical Publisher data), and the accuracy and completeness thereof are not warranted and Company accepts no liability for any loss or damage suffered by using Skai Decision Pro Add-On. The Customer is urged to thoroughly review the information provided prior to taking any action. It may be advisable in certain cases to engage professional advice. Accordingly, Company does not provide Customer with any warranty for statements, Materials, or recommendations in relation to Planning and Measurement, Marketing Insights, Audits, Experiments, Search Term Analysis, Professional Services, Expert Managed Services, Managed Onboarding, Intent Driven Messaging, Executive HQ, Skai Decision Pro Add-On, Media Forecasting, or any other Services, Add-Ons or Platform dashboards. Company will not be responsible for any loss or corruption of Service Data, lost communications or any other loss or damage of any kind arising from any telecommunications and internet services. Company will not be held responsible for any acts or omissions of any Publisher or for elements beyond Company's reasonable control, including internet outages, cyber-attacks and force majeure events. EXCEPT FOR THE EXPLICIT WARRANTIES PROVIDED HEREIN, COMPANY PROVIDES THE SERVICES ON AN "AS IS" AND "AS-AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY, ACCURACY, COMPLETENESS, CORRECTNESS AND FITNESS FOR PARTICULAR PURPOSE. EXCEPT AS SET FORTH IN THE SLA PROVIDED IN SECTION 2, COMPANY DOES NOT WARRANT THAT THE PLATFORM OR ANY SERVICES RELATED THERETO WILL BE DELIVERED, PERFORMED OR OPERATE ERROR-FREE OR WITHOUT INTERRUPTION. No representation or other affirmation of fact, including, without limitation, statements regarding capacity or suitability for use or performance of Services, whether made by Company's employees or otherwise, which is not contained in this Agreement, shall be deemed to be a warranty by Company for any purpose, or give rise to any liability of Company whatsoever.
16. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA, CYBER ATTACKS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR ANY OTHER SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, WHETHER OR NOT THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, EXCEPT FOR GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BREACH OF CONFIDENTIALITY (SECTION 12), SECURITY (SECTION 10.1), PRIVACY (SECTION 10.1), OR INDEMNIFICATION OBLIGATIONS (SECTION 17) (THE "CARVEOUT CLAIMS"), IN NO EVENT SHALL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF SERVICE FEES PAID BY CUSTOMER TO COMPANY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE THE LIABILITY FIRST ARISES. WITH RESPECT TO THE CARVEOUT CLAIMS, IN NO EVENT SHALL EITHER PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THREE (3) TIMES THE TOTAL AMOUNT OF SERVICE FEES PAID BY CUSTOMER TO COMPANY DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE THE LIABILITY FIRST ARISES. The limitations of liability set forth in this section shall apply even if one or more remedies fails of its essential purpose or they conflict with one or more terms or conditions of this Agreement.
17. **Indemnification.** Each Party will indemnify, defend and hold the other Party harmless from and against third party claims or written demands ("Claim") directly resulting from the indemnifying Party's breach of any third party intellectual property rights (including if



such breach is related to or arising from Customer's IP or Customer's Authorized Use). Subject to the Limitation of Liability in Section 16, the indemnifying Party will cover direct damages, costs and expenses, including reasonable attorneys' fees incurred by the indemnified Party in responding to a Claim. The indemnity obligation under this Agreement is subject to the following conditions: (i) the indemnified Party notifies the indemnifying Party in writing about a Claim, promptly after becoming aware of the Claim, and gives the indemnifying Party the right to control and direct the investigation, preparation, defense, trial and settlement of the Claim; (ii) the indemnifying Party does not make any admission of liability, agreement or settlement in relation to the Claim without the prior written consent of the indemnified Party and the indemnity is made actionable upon a final decision of a competent court or a regulatory authority indicating the indemnifying Party's violations of the applicable law as the cause of the Claim, or subject to the explicit written agreement of the Parties; (iii) the indemnified Party will fully cooperate with the indemnifying Party in the defense and settlement of the Claim, including by providing access to the indemnifying Party and its professional advisors access to the indemnified Party's documents and records within the indemnified Party's power of control, for the purpose of assessing, defending and settling the Claim. A Party's indemnity obligation will not apply if the Claim was caused by: (i) acts or omissions of the other Party, or the other Party's employees, directors, affiliates, partners, agents, contractors, or other third parties acting jointly or on behalf of the other Party's ("Representatives"); (ii) instructions provided by the other Party's Representatives; or (iii) a willful, deliberate or malicious conduct by a third party not affiliated or controlled by either Party.

18. **Term and Termination.** The term of the Agreement will be as set forth and agreed by the Parties in the Order Form and renewed pursuant to the terms of the Order Form and the Agreement. In the event the Agreement or Order Form is terminated prior to the end of the Service Term, Customer shall pay all outstanding fees, including the Subscription Fee and any applicable Add-On Services for the Service Term. Either Party may terminate this Agreement immediately if: (i) the other Party is in material breach of any of the terms or conditions of this Agreement and fails to cure such breach within thirty (30) calendar days of receiving written notice of the material breach, or (ii) the other Party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other Party (and not dismissed within sixty (60) days). In the event the Agreement is terminated or expired, all Order Forms are simultaneously terminated. Upon expiration or termination, Customer will immediately cease use of the Platform, remove Skai Pixel as applicable, and is responsible to disconnect all Publisher accounts from the Platform to avoid incurring additional fees. Upon expiration or termination, Customer will immediately return all Confidential Information to Company. Sections 5 (in relation to outstanding payments), 6, 7, 8, 12- 20, 23 and 24 will survive the termination of the Agreement.

19. **Dispute Resolution.** Prior to initiating any legal action, the Parties will attempt to resolve in good faith any dispute related to this Agreement, first by direct communications between the persons responsible for administering this Agreement on behalf of each Party and next by negotiation between executives with authority to settle the dispute. Either Party may give the other Party a written notice of any dispute not resolved in the normal course of business. Within five (5) business days after delivery of the notice, the receiving Party will submit to the other Party a written response. The notice and the response will include a statement of each Party's position and a summary of arguments supporting that position and the name and title of the executive who will represent that Party. Within five (5) business days after delivery of the disputing Party's notice, the executives of both Parties will meet at a mutually acceptable time and place, including by phone or video conference, and thereafter as often as they reasonably deem necessary, to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

20. **Governing Law and Jurisdiction.** This Agreement, and any claim, cause of action or dispute arising out of or related thereto, will be governed solely by the laws of the jurisdiction, and will be brought exclusively in the courts, as provided under the following table:

Company	Customer's Domicile	Governing Law	Venue
Kenshoo Inc.	North America (Canada, USA), Colombia, Indonesia, Japan, Malaysia, Mexico, Taiwan, Vietnam, Philippines	New York	New York, NY, USA
Kenshoo (UK) Ltd.	Argentina, Austria, Belgium, Chile, Czech, Republic, Denmark, Finland, France, India, Italy, Netherlands, Poland, Russia, South Africa, Spain, Sweden, Turkey, Ukraine, UK, UAE, Germany, Ireland, Norway	England	London, England
Kenshoo Ltd.	Australia, China, Hong Kong, Israel, Korea, New Zealand, Singapore, Thailand	Israel	Tel Aviv, Israel
Kenshoo Brasil Plataforma de Marketing Ltda	Brazil	Brazil	Sao-Paulo, Brazil

Each Party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

21. **Marketing.** Company may disclose the fact that Customer is a customer of Company and may use Customer's and Customer's clients' logo and trademarks on Company's website and in its sales and marketing materials. In addition, subject to Customer's prior written approval, Company may issue a press release in regards to the Agreement and at Company's request, Customer will cooperate with Company in case studies, testimonials, media releases and white papers and will serve as a reference for Company. Customer may withdraw its consent granted herein to use its logo and trademark on Company's website in its sales and marketing materials and/or serve as a reference for Company within its sole discretion by providing written notice (email is sufficient) to Company.

22. Assignment of Rights. Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party. Notwithstanding the foregoing, either party can assign its rights and obligations under the Agreement without the other party's consent if such party undergoes a sale or transfer of substantially all of its assets through a merger, acquisition, or similar transaction. Any permitted assignee shall assume all obligations under this Agreement.

23. Force Majeure. Neither Party shall be held liable or responsible to the other Party or be deemed to have defaulted under or breached this Agreement for failure or delay in fulfilling or performing any term of this Agreement when such failure or delay is caused by or results from causes beyond the reasonable control of the non-performing Party, including fires, floods, earthquakes, embargoes, shortages, epidemics, quarantines, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotion, strikes, lockouts or other labor disturbances, acts of God or acts, omissions or delays in acting by any governmental authority. The non-performing Party shall notify the other Party of such force majeure within ten (10) days after such occurrence by giving written notice to the other Party stating the nature of the event, its anticipated duration, and any action being taken to avoid or minimize its effect. The suspension of performance shall be of no greater scope and no longer duration than is necessary and the non-performing Party shall use commercially reasonable efforts to remedy its inability to perform; provided, however, that in the event the suspension of performance continues for thirty (30) days after the date of the occurrence, and such failure to perform would constitute a material breach of this Agreement in the absence of such force majeure, the non-performing Party may terminate this Agreement pursuant by written notice to the other Party.

24. Miscellaneous. There are no third-party beneficiaries under this Agreement. This Agreement constitutes the entire and complete agreement between Customer and Company and supersedes any previous agreements or representations, either oral or written with respect to the subject matter of this Agreement. No terms issued by Customer or appearing on any other document provided by Customer, including without limitation any invoice, order, purchase order or acknowledgment form will have any force or effect or otherwise be binding on the Parties. If any provision of this Agreement is held invalid or unenforceable, that provision must be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the Parties and the remaining provisions will remain in full force and effect. This Agreement may be amended only by a written instrument executed by duly authorized representatives of the Parties. All notices under this Agreement will be in English and in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and exclusive of, any other remedies of a Party at law or in equity. This Agreement may be executed in any number of counterparts, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

25. Definitions. Whenever the following capitalized terms are used in this Agreement or in any addendum, supplement or applicable Order Form, they shall have the meaning specified here: <https://skai.io/omnichannel-definitions/>