



# Terms and Conditions

*Last Updated: December 23, 2024*

These Zesty Customer Terms and Conditions (the **"Agreement"**) constitutes a binding agreement between the **Zesty** entity executing the Order (**"Company"**) and the customer accepting this Agreement (**"Customer"**). This Agreement applies to and governs, inter alia, Customer's access to and use of the Platform (defined below). Company and Customer may be collectively referred to herein as the **"Parties"**, and each individually as a **"Party"**.

This Agreement commences and becomes effective (the **"Effective Date"**) as of the earliest of: (a) the date Customer first clicks "I Agree/I Accept/Sign Up" (or the similar button or checkbox); (b) the date Customer first accesses or uses the Platform, or sets up an Account (defined below); or (c) any effective or commencement date specified in Customer's initial Order (defined below). But for the avoidance of doubt, no Order is needed in order for this Agreement to take effect.

If you are accepting this Agreement on behalf of your employer or another entity (for example, if you are signing up using an email address from such employer or entity), you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to this Agreement; (ii) you have read and understand the terms and conditions of this Agreement; and (iii) you agree to this Agreement on behalf of your employer or such entity. IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU MUST NOT CLICK "I AGREE/I ACCEPT/SIGN UP" (OR THE SIMILAR BUTTON OR CHECKBOX), AND YOU ARE NOT AUTHORIZED TO ACCESS OR USE ANY PART OF THE PLATFORM.

**For the avoidance of doubt, this Agreement shall not apply to Customer if Customer purchased a Subscription to the Platform through a Company-authorized reseller, distributor, or similar channel partner of the Platform (a "Channel Partner"). In such cases, Customer is granted its subscription/license to the Platform by and through the Channel Partner, and not directly by Company (and accordingly, Customer agrees that it has no contract with Company).**

**If you are setting up a Free Customer Account, please see Section 3 (Free Customers and Evaluation Products) below.**

## 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.

**"Binary"** means any distributed component of the Platform (such as the Zesty Disk™ feature), for installation within the Customer Cloud. Unless the context requires otherwise, references in this Agreement to the "Platform" shall be deemed to include the "Binary" as well.

**"Commitment"** means any long term commitment plan offered by Customer Cloud Provider including but not limited to Convertible Reserved Instances, Standard Reserved Instances (**"Standard RI"**) or Savings Plans.

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

**"Customer Content"** means any Content (a) submitted or uploaded to, or transmitted through the Platform, or otherwise provided or made available to Company, by or on behalf of Customer, and/or (b) collected by the Platform from the Customer's systems, such as the Customer Cloud. Customer Content may include, where applicable, Personal Data (as defined under applicable data protection regulation and the [DPA](#)), but does not include the Usage Data.

**"Customer Cloud"** means the Customer's third party cloud account and environment for which the Platform is being purchased, as specified in the Order.

**"Customer Cloud Provider"** means the third party cloud service provider of the Customer Cloud.

**"Documentation"** means the Platform-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 "Platform" shall be deemed to include the "Documentation" as well.

**"DPA"** means the Data Processing Agreement as available at <https://zesty.co/data-processing-agreement/>.

**"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, technology, and other 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.

**"Kompass Agent"** means any distributed component of the Platform for installation within the Customer Cloud. Unless the context requires otherwise, references in this Agreement to the "Platform" shall be deemed to include the "Kompass Agent" as well.

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

**"Order"** means any order form or other ordering document (including without limitation any Internet-based or email-based ordering mechanism or registration process, such as, via Customer's Account or the Customer Cloud Provider's marketplace), submitted or entered into by Customer for the purchase of a Subscription. Each Order is hereby incorporated into this Agreement by reference. To the extent of any conflict or inconsistency between the terms and conditions of this Agreement and an Order, the former shall prevail (unless the Order specifically states otherwise).

**"Platform"** means Company's cloud management and optimization software-as-a-service platform, known as Zesty.

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

**"Professional Services"** means Platform-related installation, deployment, configuration, training, customization, integration, or other professional services.

**"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 successor 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.

**"Services"** means, as the case may be, Support Services, Professional Services, and/or any other services provided by or on behalf of Company pursuant to this Agreement (such as cost optimization actions).



“**Site**” means the Company’s website currently at <https://zesty.co/>.

“**Subscription Scope**” means any Platform usage or consumption limitations and parameters (for example, as to the volume of Users, volume of Binaries, available features and functionalities, etc.) specified in an Order.

“**Support Services**” means the standard Platform technical support and maintenance services that Company makes generally available to its customers (or, if applicable, any upgraded technical support and maintenance services purchased under an Order).

“**Usage Data**” means information about Customer or Users use of the Platform and Services, which includes, without limitations, access logs, clickstream, duration, errors and crashes, analyses, or intelligence relating to the operation or support of the Platform.

“**User**” means Customer’s employees who are authorized by Customer to use the Platform, and for whom Customer (or Company, at Customer’s request) has supplied a user identification and password for the Platform. Customer shall remain primarily responsible and liable for its Users’ compliance with the terms and conditions of this Agreement.

“**Zesty**” means either Zesty Tech Ltd. or Zesty Tech Inc. as defined in the Order.

## 2. ACCOUNT

- 2.1. In order to access the Platform, 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 Platform 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.
- 2.2. As an alternative to the above Account registration process, Customer may be able to generate an Account, or otherwise access the Platform, by integrating and logging in via a supported third party platform (a “**Third Party Application**”). As part of such integration, the Third Party Application may provide us with access to certain information that Customer and its Users have provided to such Third Party Application. The type of such information provided to Company, as well as the manner in which the Third Party Application uses,



stores, and discloses such information, is governed solely by the policies of the third party operating the Third Party Application, and Company shall have no liability or responsibility for the privacy practices or other actions of such third parties. Company enables such integration merely as a convenience, and the availability of such integration 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 Application or third party, nor any affiliation between Company and such third party. Company shall have no obligation or liability of any kind whatsoever for a Third Party Application or for the third party's policies, practices, actions, or omissions.

### 3. FREE CUSTOMERS AND EVALUATION PRODUCTS

- 3.1. **Free Customers.** The Platform may enable Customer to set up and configure a free-of-charge Account (a "**Free Customer Account**"). A Free Customer Account is limited to whatever duration, features, and functionalities Company elects in its sole discretion, and Company reserves the right to add and remove any features and functionalities, as well as terminate a Free Customer Account, at any time, with or without notice.
- 3.2. **Evaluation Products.** From time to time, Company may permit Customer to try certain Platform features or functionalities (whether new or existing) at no charge for a free trial or evaluation period (each, an "**Evaluation Product**"), subject to Company's sole discretion. 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 an 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, for convenience, with or without notice.
- 3.3. **General.** For the avoidance of doubt, the restrictions set forth in Section 4.2 (Restrictions) and Section 9 (Disclaimer) shall also apply to Evaluation Product and Free Customer Accounts. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, EVALUATION PRODUCTS AND FREE CUSTOMER ACCOUNTS 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 TOWARDS CUSTOMER FOR EVALUATION PRODUCTS OR FREE CUSTOMER ACCOUNTS. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE EXCLUSION OF COMPANY'S LIABILITY TO CUSTOMER FOR AN EVALUATION PRODUCT OR A FREE CUSTOMER ACCOUNT, COMPANY'S AGGREGATE LIABILITY TO CUSTOMER IN RESPECT OF AN EVALUATION PRODUCT AND/OR A FREE CUSTOMER ACCOUNT SHALL NOT EXCEED **TEN US DOLLARS (USD\$10)**.

### 4. SUBSCRIPTION



**4.1. General.** Subject to the terms and conditions of this Agreement (including without limitation Customer's payment of all applicable Fees), Company grants Customer, in connection with each Order, a limited, non-exclusive, non-transferable, non-sub licensable right and license, during the corresponding Subscription Term (defined below), to do the following (collectively, the "**Subscription**"):

(A) install the Binary or the Kompass Agent in such volume and manner as authorized by the Order and in accordance with the Documentation, as applicable; and (B) internally access and use the Platform and Platform Content, in accordance with the Documentation. For the avoidance of doubt: (i) the Subscription is subject to the applicable Subscription Scope, and Customer shall not use any technical or other means within, or external to, the Platform to exceed or circumvent the Subscription Scope, and (ii) the Binary and/or the Kompass Agent are only licensed (and not sold) hereunder. Any rights not expressly granted herein are hereby reserved by Company and its licensors, and, except for the Subscription, Customer is granted no other right or license in or to the Platform, whether by implied license, estoppel, exhaustion, operation of law, or otherwise.

Customer shall be solely responsible for providing all equipment, systems, assets, access (for ensuring the Platform has access to the Customer Cloud), and ancillary services needed to access and use the Platform, for ensuring their compatibility with the Platform, as well as for obtaining (and maintaining) all consents and licenses necessary to exercise Customer's rights under the Subscription. Company reserves the right, but not the obligation, to monitor Customer's use of the Platform. Customer acknowledges and confirms that the installation and operation of the Kompass Agent requires Customer Cloud resources whose costs shall be borne by the Customer.

**4.2. Restrictions.** As a condition to (and except as expressly permitted by) the Subscription, Customer shall not do (or permit or encourage to be done) any of the following Subscription restrictions (in whole or in part): (a) copy, create public Internet "links" to, "frame", or "mirror" the Platform or Platform Content; (b) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available the Platform or Platform 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 Platform or Platform Content; (d) modify, adapt, translate, or create a derivative work of the Platform or Platform 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 Platform or Platform Content; (f) remove, alter, or conceal any copyright, trademark, or other proprietary rights notices displayed on or in the Platform or Platform Content; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Platform or Platform Content; (h) use the Platform or Platform Content to develop any service or product that is the same as (or substantially similar to), or otherwise competitive with, either of them; (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 Platform or Platform



Content, or use any robot, spider, scraper, or any other automated means to access the Platform or Platform Content; (j) employ any hardware, software, device, or technique to pool connections or reduce the number of Binaries, servers/machines, Users, or endpoints that directly access or use the Platform or Platform Content (sometimes referred to as 'virtualization', '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 Platform or Platform Content, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure; (m) use the Platform or Platform Content in connection with any stress test, competitive benchmarking or analysis, or otherwise publish or disclose, without Company's prior express written approval, any the results of such activities or other performance data of the Platform; or (n) use the Platform or Platform 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.

**4.3. Customer Affiliates.** Subject to (and without expanding) the Subscription Scope, Customer may permit its Affiliates to exercise Customer's Subscription rights under an Order, provided that: (a) Customer initially discloses to the Company's the identity of such Affiliates and requires, in writing, the Company's authorization for the exercise (and Company may object to an Affiliate if Company deems such Affiliate is a competitor); and (b) such Affiliates, in writing, acknowledge the terms and conditions of this Agreement, agree to comply with the Subscription, and agree that Company shall have no obligation or liability of any kind whatsoever towards such Affiliates. Customer shall remain primarily responsible and liable for such Affiliates' compliance with the terms and conditions of this Agreement.

**4.4. Delivery and Hosting.** The Platform is made available to Customer via the Site. The hosting of the Platform (and related processing) will be provided by a third party cloud hosting provider selected by Company ("**Hosting Provider**"), and accordingly the availability of the Platform shall be in accordance with the Hosting Provider's then-current uptime commitments. In the event Company decides to host the Platform (or a part thereof) internally on Company's own servers under this Agreement, then Company shall notify Customer. Unless the Order specifies otherwise, delivery of the Binary and/or the Kompas Agent shall be by electronic download. The Binary and/or the Kompas Agent will be deemed accepted once made available for electronic download.

**4.5. Features and Functionalities.** Company may, from time to time, modify and replace the features and functionalities (but not material functionalities to which Customer is entitled under an Order, unless it improves the material functionality), as well as the user interface, of the Platform. 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.

- 4.6. Optimization Authorization.** Customer hereby authorizes Company and its Affiliates to analyze, predict and modify cloud resources, as well as perform additional optimization actions, on Customer's behalf (the "**Optimization Authorization**"). For the avoidance of doubt, any optimization actions are performed under Customer's name, and managed by Company. The Company shall not be liable for any damages and/or losses resulting from Customer revoking the permissions to perform Optimization Authorization or resulting from the Customer Cloud Provider's changes, alterations and revisions applied to the technical abilities, capabilities and/or terms of service of such Cloud Provider. Customer acknowledges and confirms that the Company will be purchasing Commitments on its behalf. Customer shall notify the Company in writing if it wishes the Company to refrain from purchasing Commitments on its behalf.
- 4.7. Discounted Program.** Customer is responsible to inform the Company whether it has a discount program (e.g. EDP, Private Pricing, etc.) ("**Discounted Program**") or if any change applies to Customer with respect to any Discounted Program, at least 30 days prior to such change. Customer acknowledges that Standard RIs purchased under a Discounted Program may not be sold on the Customer Cloud Provider's EC2 RI marketplace ("**RI Marketplace**").

## **5. SERVICES**

- 5.1. Support Services.** Subject to Customer's compliance with the payment obligations under this Agreement and the applicable Order, Customer will be entitled to receive the Support Services.
- 5.2. Professional Services.** Company is not obligated to provide any Professional Services. Any Professional Services mutually agreed to between the Parties shall be set out in sequential Professional Services Statements of Work to this Agreement (each, a "**Professional Services SOW**"). Professional Services shall be charged in accordance with such Professional Services SOW. Each Professional Services SOW shall be deemed incorporated into this Agreement by reference. To the extent of any conflict between the terms and conditions of this Agreement and a Professional Services SOW, the former shall prevail, unless and to the extent that the Professional Services SOW expressly states otherwise.
- 5.3. General.** Services will be performed by Company, its Affiliates, and/or Channel Partners (if applicable), and are provided for the benefit of Customer only. With Customer's prior written approval (not to be unreasonably withheld, conditioned, or delayed) Company may subcontract Services (in whole or in part) to a third party contractor, and Company shall remain primarily responsible for such contractor's performance of the Services. Unless





expressly agreed otherwise in writing, Services shall be carried out remotely, and any physical attendance at Customer's offices or other locations requested by Customer, if agreed to by Company, shall be charged at Company's then-current rates, and Company shall also be entitled to reimbursement for travel and lodging costs and expenses incurred.

## 6. PAYMENT

- 6.1. Customer agrees to pay Company the fees and other charges set forth in each Order (the "**Fees**"). Other than as specified under the Order, the Customer shall procure and pay all applicable licenses and subscriptions necessary for the performance of the Services by the Company, including payment to the Customer Cloud Provider such as AWS. Further, the Fees may be paid directly to Company or otherwise through AWS.
- 6.2. **Pricing.** The Fees will be priced in accordance with the then-current applicable Order.
- 6.3. **Payment Terms.** Unless expressly stated otherwise in an Order or this Agreement: (a) all Fees are stated, and are to be paid, in US Dollars; (b) all Fees shall be paid in advance at the commencement of each billing cycle (i.e., per month/year, as indicated under the Order) (except for Fees for overages, which are charged in arrears); (c) all payments and payment obligations under this Agreement are non-refundable, and are without any right of set-off or cancellation; (d) 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 and the highest amount permitted by applicable Law; and (e) 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, via Cloud Provider or a functionality of the Platform, and/or via a dedicated platform offered by the Hosting Provider.
- 6.4. **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.
- 6.5. **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, 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 prompt 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). Customer acknowledges and agrees that payment shall be deemed completed only upon the full and final receipt of the payable amount in the Company's designated bank account.

## 7. OWNERSHIP & PRIVACY AND DATA PROTECTION

**7.1. Company Materials.** Company (and/or its licensors, 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 Platform;
- (b) Platform Content;
- (c) Company's Confidential Information;
- (d) Any feedback, suggestions, or ideas for or about the Platform or Platform Content (collectively, "**Feedback**");
- (e) Usage Data; and
- (f) Any and all improvements, derivative works, and/or modifications of/to any of the foregoing, regardless of inventorship or authorship.

Customer shall make, and hereby irrevocably makes, all assignments and/or waivers necessary or reasonably requested by Company to ensure and/or provide Company (and/or its designee(s)) the ownership rights set forth in this paragraph.

### 7.2. Customer Content.

**7.2.1** As between the Parties, Customer is, and shall be, the sole and exclusive owner of all Customer Content

**7.2.2** Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Content, and hereby warrants that: (i) the Customer Content will not violate any applicable law and infringe any rights, including any privacy rights or proprietary rights, of any third parties; (ii) it has all required rights and authorizations to upload the Customer Content to the Platform; (iii) Customer undertakes to ensure the Customer Content will not include Sensitive Data and shall inform its personnel not to disclose Sensitive Data through its use of the Platform and Services, unless otherwise agreed in writing by the parties.

**7.2.3** Unless otherwise specifically agreed in writing, Customer Content may be hosted, accessed and processed by Company and its respective Hosting Provider



third-party service providers in Israel, EU and the United States, or other locations around the world.

**7.2.4** The Platform 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 Platform for the storage of any Customer Content whatsoever. Customer is solely responsible and liable for the maintenance and backup of all Customer Content. Upon termination of this Agreement, Company reserves the right to delete all Customer Content within 30 days following termination.

**7.2.5** The 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 Platform and/or the Services), irrevocable right and license to copy, process, create derivative works of, modify, adapt, and otherwise use Customer Content (in any media, now known or hereafter developed): (A) during the Term of this Agreement, for the purpose of providing the Platform and the Services, and otherwise 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 Platform (such as developing new features and functionalities).

### **7.3. Privacy and Data Protection**

**7.3.1.** In the event the Customer Content includes Personal Data or Personal Information (as defined under applicable data protection regulation), the parties undertake to comply with the terms of the [DPA](#).

**7.3.2.** Notwithstanding the above, the Company may, directly or indirectly, collect and use Usage Data for the purpose of enhancing, operating, and supporting the Services and the Platform. The Company may further process communications with Customer and its Users through the provisions of the Services, including customer support, customer success and other account management operations, including personal information received during the Account registration process in accordance with the Company's [privacy policy](#).

## **8. CONFIDENTIALITY**

Each Party will protect the other's Confidential Information (defined below) from unauthorized use, access or disclosure in the same manner as each Party protects its own Confidential Information, but with no less than reasonable care. Except as otherwise expressly permitted



pursuant to this Agreement, each Party may use the other Party's Confidential Information solely to exercise its respective rights and perform its respective obligations under this Agreement, and may disclose such Confidential Information:

- (a) solely to its employees and contractors who have a need to know such Confidential Information for the foregoing purposes, and who are bound by terms of confidentiality substantially similar to those set forth herein;
- (b) as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; and/or
- (c) as reasonably necessary to comply with any applicable Law.

Notwithstanding anything to the foregoing, Company shall be entitled to disclose Customer's Confidential Information to Company's Affiliates, as well as to the Hosting Provider and to Company's subcontractors under this Agreement.

**"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, technical data, computer programs and software code (including firmware and source code), ideas, inventions, algorithms, know-how, analyses, specifications, processes, techniques, formulas, designs and drawings, and other technology and intellectual property. Confidential Information shall not include information that: (a) was already known (without restriction) to the receiving Party at the time of disclosure by the disclosing Party; (b) was or is obtained by the receiving Party from a third party not known by the receiving Party to be under an obligation of confidentiality with respect to such information; (c) is or becomes generally available to the public other than by violation of this Agreement or another valid agreement between the Parties; or (d) was or is independently developed by the receiving Party without the use of the disclosing Party's Confidential Information. For the avoidance of doubt, and notwithstanding anything to the contrary, the Fees (including any pricing and payment terms) and other commercial terms of an Order shall be deemed Confidential Information of Company.

## 9. DISCLAIMER

THE PLATFORM, PLATFORM CONTENT, SERVICES, EVALUATION PRODUCTS, ANY REPORTS OR OUTPUT GENERATED BY THE PLATFORM, AS WELL AS ANY OTHER GOODS AND SERVICES PROVIDED OR MADE AVAILABLE BY OR ON BEHALF OF 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. COMPANY DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE OR CONDITION: (A) REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, TIMELINESS, COMPLETENESS, OR QUALITY OF COMPANY MATERIALS, INCLUDING ANY RECOMMENDATIONS, SUGGESTIONS OR ADVICE; (B) THAT CUSTOMER'S USE OF COMPANY MATERIALS WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE, INCLUDING ANY BUGS, SECURITY BREACHES, OR VIRUS ATTACKS; (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. CUSTOMER AGREES THAT COMPANY WILL NOT BE RESPONSIBLE OR LIABLE FOR OVER-PURCHASES OF COMMITMENTS DONE BY CUSTOMER, FOR ANY REASON. IF CUSTOMER ORDER INCLUDES A CREDITS SLA, CREDITS CONSTITUTE CUSTOMER'S SOLE REMEDY, AND COMPANY'S SOLE LIABILITY, FOR MEETING THE SLA.

Customer acknowledges that some Platform Content is collected and compiled automatically, and originates from third party suppliers (such as the Customer Cloud Providers) to which Customer gives Company or the Platform access.

THE PROVISIONS OF THIS SECTION (DISCLAIMER) 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 8 (CONFIDENTIALITY), CUSTOMER'S BREACH OF THE SUBSCRIPTION (INCLUDING WITHOUT LIMITATION A BREACH UNDER SECTION 4.2 (USAGE 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, RESTITUTION, OR OTHERWISE.

## **11. INDEMNIFICATION**

- 11.1. Indemnification by Company.** In the event that, during the term of this Agreement or 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 Platform 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 Platform not made by Company; (ii) the combination of the Platform with any third party product or service; and/or (iii) any Customer instructions or specifications. Should the Platform (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 Platform, then Customer permits Company, at Company's option and expense, to either: (x) obtain for Customer the right to continue using the Platform (or part thereof, as applicable); or (y) replace or modify the Platform (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, following which Customer shall be entitled to receive a pro-rated refund of any prepaid Subscription-related Fees hereunder based remaining period of the Subscription Term. Company's aggregate liability under this Section (Indemnification by Company) shall be



capped at the lower of: (a) ten (10) times the amounts actually paid by Customer to Company under this Agreement; and (b) Two Million US Dollars (US\$ 2,000,000). This Section (Indemnification by Company) represents the Company's sole obligation and liability, and the Customer's sole remedy, for any allegations or claims of infringement relating to the Platform.

**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 Platform, Customer agrees to: (a) Indemnify and hold harmless the Company Indemnitee(s) for such losses and liabilities; and (b) Defend the Company Indemnitee(s) against the Misuse Claim, at Customer's own cost and expense.

**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 continue in full force and effect until all Orders expire or are terminated (the "**Term**").

**12.2. Term of Orders and Auto-Renewals.** An Order commences on the effective date specified therein (or if no effective date is specified, then upon execution) and continues for the initial subscription term specified therein (the "**Initial Subscription Term**"). Unless specified otherwise in the applicable Order, or unless the Order is terminated in accordance with Section 12.3 (Termination of Orders), upon expiration of the Initial Subscription Term, the Order shall automatically renew for successive renewal terms of equal length (each a "**Renewal Subscription Term**", and together with the Initial





Subscription Term, the “**Subscription Term**”), unless either Party notifies the other Party in writing that it chooses not to renew (“**Non- Renewal Notice**”). For an annual Subscription plan, the Non-Renewal Notice must be given at least thirty (30) days prior to the end of the then-current Subscription Term. For a monthly Subscription plan, the Non-Renewal Notice must be given prior to the end of the then-current Subscription Term. At the commencement of each Renewal Subscription Term, Company shall be entitled to invoice Customer for the applicable Fees therefor. Customer acknowledges that, unless otherwise agreed by the Parties in writing and to the extent permissible by Customer Cloud Provider, (i) upon termination request Company will stop all cost optimization actions and Customer shall manage the existing Commitments; and (ii) Commitments are non-tradable and cannot be sold by Company on the RI Marketplace or any other applicable Customer Cloud Provider marketplace.

**12.3. Termination of Orders.** An Order may be terminated as follows: (a) In accordance with any termination rights specified therein; (b) Either Party may terminate an Order for cause upon written notice if the other Party commits a material breach under the Order and/or 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 an Order 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; (d) Company may terminate an Order for convenience upon thirty (30) days’ prior written notice to Customer. 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 such Order based on the remaining period of the then-current Subscription Term; and (e) Customer may, within the initial five (5) business days of an Order, terminate the Order for convenience upon written notice to Company. In case of such termination for convenience by Customer, Customer shall be entitled to receive a pro-rated refund of any pre-paid and unutilized Fees under such Order based on the remaining period of the Initial Subscription Term.

**12.4. Suspension.** Company reserves the right to temporarily suspend provision of the Platform: (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 Subscription (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 Platform, including if the Platform’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 Subscription shall automatically terminate; (b) Customer shall cease all access and use of the Platform, and shall uninstall and, if applicable, permanently delete all copies of the Binary and/or the Kompass Agent (and Company shall be entitled to verify same) and certify in a signed writing that it has done so (In the event of termination or expiration of the license, the Kompass Agent might operate until the Customer has completely uninstalled it); 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 and agrees that following termination: (A) the Platform may, depending on Platform configurations set by the Customer, continue to automatically collect certain Customer Content from Customer's systems, and that Customer must expressly notify Company in writing if Customer wishes such collection to cease; and (B) it will have no further access to any Customer Content within the Platform, and that Company may (but shall not be obligated to) delete any Customer Content as may have been stored by Company at any time. Sections 7 (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 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 this Agreement. Without limiting the generality of the foregoing, this Agreement supersedes 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, which shall be deemed rejected, void, and of no effect. The section and subsection headings used in this Agreement are for convenience of reading only, and shall not be used or relied 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 to Agreement.** Company may, from time to time, amend and modify this Agreement, with notice to Customer via email or via the Platform (an “**Agreement Modification**”). Except as otherwise indicated below, an Agreement Modification shall automatically take effect and apply to Customer as of the next Renewal Subscription Term (if any) or within 30 days, the earlier of the two. Notwithstanding the foregoing, in some cases Company may specify that an Agreement Modification will become effective immediately or at a specified date. If the effective date of an Agreement Modification is during Customer’s then-current Subscription Term, and the Agreement Modification is material and adverse (that is, it expands Customer’s obligations and liabilities in a material way), and Customer objects to the Agreement Modification, then, as Customer’s sole remedy, and Company’s sole obligation and liability, Customer may terminate the affected Order upon written notice to Company and receive a pro-rated refund of any pre-paid and unutilized Fees under such Order based on the remaining period of the then-current Subscription Term; provided, however, that in order to exercise this right, Customer must provide Company with written notice of its objection and termination (which notice must include an explicit reference to the Agreement Modification to which Customer objects) within thirty (30) days of Company’s notice of the Agreement Modification.
- 13.3. 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.
- 13.4. Third Party Content.** The Platform 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 Platform 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 Platform, 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 Platform. Any Third Party Content provider’s use of Customer Content is subject to the applicable agreement between Customer and the Third Party Content provider.
- 13.5. Third Party Software.** The Platform 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 Platform, 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.

**13.6. 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.

**13.7. Governing Law; Jurisdiction.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, USA 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 San Mateo County, California, USA 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. EACH PARTY IRREVOCABLY WAIVES ITS RIGHT TO TRIAL OF ANY ISSUE BY JURY. 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.

**13.8. 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.

- 13.9.       Publicity.** Company may use Customer's name and logo on Company's Site and in its promotional materials to state that Customer is a customer of the Platform.
- 13.10.      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.
- 13.11.      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.
- 13.12.      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 Platform 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.
- 13.13.      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 Subscription and/or of Company's Intellectual Property Rights. For the avoidance of doubt, any problems relating to hosting of the Platform by a third party is beyond the reasonable control of Company.

**13.14. 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 upon: (a) personal delivery; (b) the second business day after mailing via either U.S. mail or mailing via registered or certified mail with postage prepaid and return receipt requested; (c) upon delivery confirmation by nationally recognized overnight delivery service ("**Courier**"); (d) 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 Platform (and such notices shall be deemed given immediately). Notices by Customer to Company shall be given by Courier or U.S. mail to: **20 Lincoln St. Tel Aviv, 6713412, Israel, Attn: Legal Department with a copy to [legal@zesty.co](mailto:legal@zesty.co).**

**13.15. Export and Sanctions Compliance.** Customer shall be solely responsible for obtaining all required authorizations and licenses from applicable government authorities under Export Control Laws and Sanctions, as defined below, in connection with Customer's use of the Platform. Customer represents and warrants that: (a) it is not a resident of, and will not access or use the Platform in a Sanctioned Jurisdiction, as defined below, and that Customer is not a Sanctioned Person, as defined below; 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 Platform in violation of any Export Control Laws (defined below), and shall not transfer, export, re-export, import, re-import or divert the Platform to any Sanctioned Jurisdiction (or other countries specifically designated in writing by Company from time to time). In the event of a breach under this Section (Export and Sanctions 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.

"Sanctions" means all trade, economic or financial sanctions, embargoes, or restrictive measures administered, enacted or enforced by (i) the United States (including without limitation OFAC or the Department of State), (ii) the European Union or any European Union member state, (iii) the United Nations, (iv) the United Kingdom, (v) Israel, or (vi) any other Governmental Entity of a jurisdiction where the Company or its Affiliate conducts business.

"Sanctioned Jurisdiction" means a country or territory that is itself the subject or target of any Sanctions (at the time of Terms, Cuba, Iran, Lebanon, North Korea, Syria, Sudan, Russia, and the Ukrainian regions: Crimea Luhansk, Donetsk, Kherson and Zaporizhzhia).

"Sanctioned Person" means any Person subject to Sanctions, including (a) any Person appearing on any list of Persons subject to Sanctions maintained by the United States (including without limitation OFAC or the Department of State), (ii) the European Union or any European Union member state, (iii) the United Nations, (iv) the United Kingdom, (v) Israel, or (vi) any other Governmental Entity of a jurisdiction where the Company or its Subsidiary conducts business; (b) any Person located, organized, or resident in a Sanctioned Jurisdiction; or (c) any Person directly or indirectly owned fifty percent or more or controlled, individually or in the aggregate, by one or more Persons described in the foregoing clauses (a) and/or (b).

**13.16. 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, execution and performance of this Agreement (and any documents referred to in it).

**13.17. 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 Platform 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 Platform 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.

- 13.18. Customer Resources.** Except for the Platform, 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 Platform; (b) for ensuring their compatibility with the Platform; and (c) for obtaining (and maintaining) all consents and licenses necessary to exercise Customer's rights under the Subscription, as well as configuring all permissions (such as IAM permissions) to allow the Platform to operate. In the event Company is legally or contractually required to modify or replace features or functionalities of the Platform in order to ensure the Platform 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 Platform.
- 13.19. 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.
- 13.20. 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 Channel Partners, in connection with this Agreement. If Customer learns of any violation of the above restriction, Customer shall use reasonable efforts to promptly notify Company.

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