

## ZEBRUNNER CLOUD TERMS OF SERVICE

*Last updated: 8 November, 2023*

By submitting a registration form, creating an account, or using the Zebrunner Inc. services described herein, you agree to be bound by these Zebrunner Inc. Terms of Service ("Terms"). These Terms describe your rights and responsibilities as a customer of Zebrunner Inc. services. These Terms are between you and Zebrunner Inc. ("Zebrunner", "we" or "us") that provides the services described herein and in the applicable Documentation, as that terms is later defined herein ("Services") that you are using or accessing. "You" (or "Customer") means the entity you represent in accepting these Terms or, if that does not apply, you individually. By accepting on behalf of your employer or another authorized entity, you represent and warrant that: (i) you have full legal authority to bind your employer or such entity to these Terms; (ii) you have read and understand these Terms; and (iii) you agree to these Terms on behalf of the party that you represent. If you do not agree to be bound by these Terms, you may not access our Services.

### 1. SERVICES

**1.1 Provision of Services.** Zebrunner will provide you with the Services selected by you via the Zebrunner online purchase process. The Services are provided on a subscription basis for the term set forth in the Zebrunner online purchase process ("Subscription Term"). The Services are for your own internal business, commercial or organizational use in accordance with the conditions of these Terms, and the terms and conditions presented or referenced in the Zebrunner online purchase process (collectively, the "Permitted Use"). You shall make no use of the Services beyond the Permitted Use pursuant to these Terms of Service.

**1.2 Permitted Users.** You are responsible for determining those persons permitted to access and use the Services and accounts, which may include your employees, agents and consultants ("Permitted Users"). You may permit your Permitted Users to access and use the features and functions of the Services in accordance with these Terms. If applicable, the number of Permitted Users may be limited as specified during the online purchase process.

**1.3 No-Charge Products.** Zebrunner may offer certain Services to you at no charge, including free accounts and Free Trials (as defined below), trial use and Beta Versions ("No-Charge Products"). Notwithstanding anything to the contrary in these Terms, you acknowledge that: (a) use of any No-Charge Products shall be at your sole risk and discretion; (b) No-Charge Products may not be supported and may be changed at any

time, including in a manner that reduces functionality of the No-Charge Products; (c) No-Charge Products may not be available at all times and may be discontinued at any time and (d) Zebrunner may modify or terminate your right to use No-Charge Products at any time and for any reason in our sole discretion, with no liability of any kind.

**1.4 NO WARRANTY.** NO CHARGE PRODUCTS ARE PROVIDED “AS-IS” and “AT YOUR OWN RISK,” WITH NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, NO WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT.

**1.5 DISCLAIMER OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ZEBRUNNER OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) HOWEVER CAUSED AND ON ANY LEGAL OR EQUITABLE THEORY OF LIABILITY, AND WHETHER OR NOT FOR BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE ARISING OUT OF NO CHARGE PRODUCTS, EVEN IF ZEBRUNNER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**1.6 Account Information.** When creating an account through the Services, you shall ensure that the information provided is accurate, complete, and current at all times. Zebrunner shall use and store all information provided to Zebrunner in connection with the creation and use of your accounts in the Services including, without limitation, usernames, email addresses, and other contact information (“Account Information”) in accordance with Zebrunner privacy policy as amended from time to time (“Privacy Policy”). Zebrunner is entitled to modify or terminate your account if you have provided inaccurate or incomplete Account Information.

**1.7 Data Security.** During the Subscription Term, Zebrunner shall implement and maintain an industry standard information security program that incorporates administrative, technical and physical safeguards designed to: (a) ensure the security and integrity of your Data and Account Information; (b) prevent unauthorized access to, or disclosure of, the your Data and Account Information; and (c) protect against threats, hazards and security incidents with respect to your Data and Account Information, in each case, solely to the extent that Zebrunner hosts such Data or Account Information.

## 2. SaaS SERVICES

**2.1 Access to SaaS Services.** Zebrunner grants to you a limited, non-exclusive, non-sublicensable, non-transferable, revocable right and license during the Subscription

Term: (a) to access and use the SaaS Services for the Permitted Use; and (b) to use and reproduce a reasonable number of copies of the Documentation solely as necessary to support the Permitted Use.

**2.2 Permitted User Access.** If you are given passwords, or the ability to create passwords, to access SaaS Services on Zebrunner's platform, you shall ensure that all Permitted Users keep their user ID and password information strictly confidential and not share such information with any unauthorized person or third party. User ID and password should only be used by one person and can not be shared. You shall use your best efforts to ensure your Permitted Users comply with these Terms and shall be responsible for any and all actions taken using your accounts and passwords or through your devices. You shall notify Zebrunner as soon as reasonably practicable of any unauthorized use of any User ID, password or account or any other known or suspected breach of security.

**2.3 General Restrictions.** You shall not, and shall not allow any Permitted User or third party to: (a) modify, adapt, alter, translate or create derivative works of the SaaS Services; (b) rent, lease, loan, copy, provide access to or sublicense any SaaS Services to a third party; (c) use any SaaS Services to provide, or incorporate any SaaS Services into, any product or service provided to a third party, such as in a service bureau or time-sharing arrangement; (d) upload any data to the SaaS Services in breach of Section 2.4; (e) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code or non-public APIs to the SaaS Services; (f) remove or obscure any proprietary or other notices contained in any SaaS Services (including in any reports or data printed from the SaaS Services); (g) send or store in or via the SaaS Services any infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (h) send or store in or via the SaaS Services or include within Client Information (as defined in Section 2.4) any viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs; (i) interfere with or disrupt the SaaS Services or the hardware or network used to operate the SaaS Services or access the SaaS Services through an unapproved interface; or (j) otherwise use the SaaS Services in any manner that exceeds the limited license under Section 2.1 or in a manner inconsistent with applicable law and/or these Terms.

**2.4 Customer Data Obligations.** "Customer Data" means, all information, data, and other content, other than Account Information and Usage Data (as defined in these Terms), in any form or media, that is submitted or otherwise transmitted by you via the Services. Customer Data does not include "Account Information" (as defined in Section 1.7) or Usage Data (as defined in Section 4.3) and should not include any personally identifiable information, production, or other sensitive data. You may only upload

non-sensitive, non-production data (for example, synthetic or “dummy” test data) in connection with your use of the Zebrunner Services without the inclusion of any proprietary source code or personally identifiable information. ZEBRUNNER SHALL HAVE NO RESPONSIBILITY OR LIABILITY RELATED TO OR RESULTING FROM YOUR FAILURE TO COMPLY WITH THE FOREGOING. You will ensure that your use of the SaaS Services and all Customer Data is at all times compliant with your security and privacy policies and all applicable local, state, federal and international law, regulations and conventions, including, without limitation, those related to data privacy, international communications, and the exportation of technical data. You are solely responsible for the accuracy and content of all Customer Data you provide. You represent and warrant to Zebrunner that you have sufficient rights in the Customer Data to grant the rights provided in Section 4.3 and that Customer Data does not infringe, misappropriate or otherwise violate the rights of any third party. If you export information from a jurisdiction outside the United States, you will ensure that you have all legal rights to do so (including, without limitation, in compliance with applicable privacy laws and regulations). If Zebrunner discovers your breach of this section 2.4, Zebrunner may (1) remove your Customer Data from the Zebrunner platform or (2) suspend your access to the Zebrunner Services. Zebrunner will use reasonable efforts to provide you with advance notice of removals and suspensions when practicable, but if Zebrunner determines that your actions endanger the operation of the Zebrunner Services or other users, Zebrunner may suspend your access or remove your Customer Data immediately without notice. Zebrunner has no liability to you for removing or deleting your Customer Data from or suspending your access to any Zebrunner Services under this Section 2.4.

**2.5 Backups.** Customer shall be solely responsible for creating a backup of any and all Customer Data uploaded to the Service. In the event of any data loss of Customer Data hereunder, Zebrunner shall only be liable in the amount necessary to retrieve the backup.

### 3. BETA FEATURES.

**3.1 Beta Features.** Zebrunner may provide certain beta features within the Services, whether free of charge or for a fee (“Beta Features”).

**3.2 NO WARRANTY.** BETA FEATURES ARE PROVIDED “AS IS” and “AT YOUR OWN RISK.” NEITHER ZEBRUNNER NOR ITS LICENSORS OR SUPPLIERS MAKE ANY WARRANTIES REGARDING THE BETA FEATURES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

**3.3 LIMITATION OF LIABILITY.** IN NO EVENT SHALL ZEBRUNNER BE LIABLE TO YOU OR ANY OTHER PARTY, UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY DAMAGES ARISING FROM BETA FEATURES.

**3.4 No Right to Access.** Nothing in these Terms shall be interpreted as requiring Zebrunner to develop or provide access to any Beta Features. Zebrunner reserves the right to terminate access to any Beta Features at any time and for any reason. In no event shall Zebrunner be held liable for such termination.

#### 4. PROPRIETARY RIGHTS.

**4.1 Zebrunner Intellectual Property Rights.** No Intellectual Property Rights are assigned or transferred to you hereunder. You are obtaining only a limited right to the Services, irrespective of any use of the words “purchase”, “sale” or like terms hereunder. You agree that Zebrunner, its licensors, and its suppliers retain all right, title, and interest (including all Intellectual Property Rights) in and any work product produced by Zebrunner or its suppliers hereunder. For the purposes of these Terms: (a) “Intellectual Property Rights” means all of the following in any jurisdiction throughout the world and all rights therein: (i) patents and applications therefor and all other rights corresponding thereto; (ii) trade-secret rights and all other rights in confidential business or technical information; (iii) copyrights, copyrights registrations and applications therefor, moral rights, and all other rights corresponding thereto; (iv) domain names, uniform resource locators, other names and locators associated with the Internet, and applications or registrations therefor; (v) trade names, logos, common law trademarks and service marks and trademark and service mark registrations, all related goodwill related thereto, and applications therefor; (vi) all rights in databases and data collections; and (vii) any similar or equivalent rights recognized in any jurisdiction in the world to any of the foregoing; and (b) “Zebrunner Services” means the Services (including the Software), Documentation, and any and all related and underlying technology and work product developed by, or on behalf of, Zebrunner and its licensors and suppliers.

**4.2 Feedback.** In the event you provide Zebrunner with any suggestions, ideas, improvements or other feedback with respect to any aspect of any of the foregoing (“Feedback”), you shall and hereby do grant Zebrunner (and its successors and assigns) a non-exclusive, perpetual, irrevocable, sublicensable (through multiple tiers), transferable, royalty-free, fully paid-up, worldwide right and license to copy, reproduce, modify, create derivatives of, display, perform, sell, offer for sale, distribute and otherwise exploit such Feedback for any purpose.

**4.3 Data Rights.** You will retain all right, title and interest (including any and all Intellectual Property Rights) in and to the Customer Data. In connection with providing the Services, you acknowledge that Zebrunner may (to the extent permitted by applicable law) create or collect certain aggregated and anonymized technical and analytical information pertaining to your use of the Services or information pertaining to the performance of the Services in your environment (“Usage Data”) and may use such Usage Data for the purposes listed in (i) – (iii) below. You grant Zebrunner a limited, non-exclusive, worldwide, royalty-free license: (a) during the Subscription Term, to download, store, process and use the Customer Data as necessary for purposes of providing and improving the SaaS Services; and (b) on a perpetual and irrevocable basis, to use the Customer Data in an aggregated and anonymized form only, together with the Usage Data, to: (i) improve the Services (including through various machine learning exercises); (ii) provide analytics and benchmarking services; and (iii) generate and disclose statistics regarding use of the Services.

## **5. SUBSCRIPTION TERM, FEES & PAYMENT**

**5.1 Subscription Term and Automatic Renewal.** Unless otherwise terminated as set forth below, these Terms will remain in force for the term indicated in the Zebrunner online purchase process. After the conclusion of the initial Subscription Term, unless specified otherwise by Zebrunner in writing, these Terms will automatically renew for successive renewal terms of equal length to the initial Subscription Term, at Zebrunner’s then-current fees for such Services, unless you provide Zebrunner with at least twenty-one (21) days’ notice of non-renewal. By subscribing to the Services, you authorize Zebrunner to charge the fees for the initial Subscription Term, and again at the beginning of any subsequent Subscription Term. You may cancel either via email notification or via the account administration tools provided within the Services if applicable. If you cancel your subscription, you may continue to use the Services until the end of your then-current Subscription Term and your subscription will not be renewed after your then-current Subscription Term expires. However, you will not be eligible for a prorated refund of any portion of the fees paid for the then-current Subscription Term.

**5.2 Fees and Payment.** All fees are payable at the time of purchase (or on the date of renewal of the Subscription Term, as applicable). All fees are non-refundable. Unless otherwise agreed by Zebrunner in writing, all fees must be paid in US dollars.

**5.3 Third Party Payment Processors.** Zebrunner may employ the use of third-party service providers for the purpose of facilitating payments and the completion of purchases. By submitting your payment information to Zebrunner, you understand that

Zebrunner may share that information with such third parties subject to the Zebrunner Privacy Policy.

**5.4 Adjustment of Fees.** Zebrunner may adjust the fees charged to you hereunder on notice (electronic notice is sufficient) delivered to you at least thirty (30) days prior to the end of the then-current Subscription Term (and such fees will take effect beginning on the next Subscription Term).

**5.5 Taxes.** Your fees under these Terms exclude any taxes or duties payable in respect of the Services provided by Zebrunner in the jurisdiction where the payment is either made or received. To the extent that any such taxes or duties are payable by Zebrunner, you must pay to us the amount of such taxes or duties in addition to any fees owed under these Terms.

**5.6 Suspension of Service.** If your account is ten (10) days or more overdue, in addition to any of its other rights or remedies, Zebrunner reserves the right to, with or without notice, suspend your access to the applicable Services without liability until such amounts are paid in full.

**5.7 Free Trials.** Any No-Charge Products that provide access to the Services must be used within the specified time of the No-Charge Products. At the end of the No-Charge Products license period, your use of that Service will expire, and any further use of the applicable Service is prohibited unless you pay the then-applicable subscription fee.

## 6. TERMINATION

**6.1 Termination for Cause.** Either party may terminate these Terms if the other party (a) fails to cure any curable material breach of these Terms within thirty (30) days after written notice (ten (10) days in the case of non-payment or in the event Customer breaches any license or use restrictions), *provided that* if (a) a Party commits a material breaches that cannot be cured; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter), the non-reaching Party may terminate upon notice. Zebrunner has the right to terminate these Terms immediately upon written notice in case you breach obligations set forth in the Section 2, 4.1, and/or 11.

**6.2. Termination for Convenience.** You may choose to stop using the Services and terminate these Terms at any time for any reason upon written notice to Zebrunner, however, upon any such termination (i) you will not be entitled to a refund of any pre-paid fees and (ii) if you have not already paid all applicable fees for the then-current

Subscription Term or related services period (as applicable), any such fees that are outstanding will become immediately due and payable.

**6.3 Effect of Termination.** Upon any expiration or termination of these Terms: (a) all licenses will immediately terminate and you shall immediately cease any and all use of and access to the Services; (b) any unpaid amounts owed to Zebrunner will become immediately due and payable; and (c) each party will return to the other party or, at the disclosing party's election, destroy such other party's Confidential Information (subject to Section 6.4).

**6.4 Data Storage and Wind Down.** Zebrunner does not provide a data/content archiving service. Except in the event of termination for your breach, Zebrunner agrees only that it shall not intentionally delete any Customer Data which is less than thirty (30) days old. During the thirty (30) days period immediately following termination of these Terms, Zebrunner will provide you with access to the Customer Data for download (and reasonable assistance in effectuating such download). Customer Data not retrieved within thirty (30) days may be deleted by Zebrunner at its discretion. For the avoidance of doubt, in the event of termination under Section 6.1 above, Zebrunner shall have no obligation to store any Customer Data and shall have no obligation to allow you access to such Customer Data.

**6.5 Survival.** Sections 1.4, 1.5, 1.6, 2.3, 2.4, 3, 4, 6.3, 6.4, 6.5, 7.2, 8, 9, 10, 12 shall survive any expiration or termination of these Terms.

## 7. LIMITED WARRANTY

**7.1 Limited Warranty.** Zebrunner warrants, for your benefit only, that the Services shall operate substantially in conformity with the material provisions of the applicable Documentation. The limited warranty set forth in this Section 7.1 shall not apply: (a) unless you make a claim within thirty (30) days of the date on which the condition giving rise to the claim first occurred; or (b) if the error was caused by your misuse or unauthorized modifications (or any third acting on its behalf), or third-party hardware, software or services not provided by Zebrunner; or (c) Services provided on a no-charge or evaluation basis, including the Beta Services.

**7.2 DISCLAIMER OF WARRANTIES.** EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS (INCLUDING PURSUANT TO THE LIMITED WARRANTY IN SECTION 7.1), AND TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS". NEITHER ZEBRUNNER NOR ITS LICENSORS OR SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR



PURPOSE OR NONINFRINGEMENT. ZEBRUNNER DOES NOT WARRANT THAT THE USE OF ZEBRUNNER SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES ZEBRUNNER WARRANT THAT IT WILL REVIEW THE CUSTOMER DATA FOR ACCURACY OR THAT IT WILL PRESERVE OR MAINTAIN THE CUSTOMER DATA OR END USER DATA WITHOUT LOSS. ZEBRUNNER WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE THE REASONABLE CONTROL OF ZEBRUNNER. YOU MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, WILL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW. TO THE EXTENT PERMITTED BY LAW, ZEBRUNNER IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR ANY OTHER LOSS OR DAMAGE RESULTING FROM (I) THE TRANSFER OF DATA OVER PUBLIC COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET; (II) PERSONAL INJURY OR PROPERTY DAMAGE OF ANY NATURE WHATSOEVER RESULTING FROM YOUR ACCESS TO AND USE OF ZEBRUNNER SERVICES AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN; (III) ANY LOSS OF YOUR DATA OR CONTENT FROM THE ZEBRUNNER SERVICES; OR (II) ANY DELAY OR DELIVERY FAILURE ON THE PART OF ANY OTHER SERVICE PROVIDER NOT CONTRACTED BY ZEBRUNNER, AND YOU ACKNOWLEDGE THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. YOU ACKNOWLEDGE THAT ZEBRUNNER CANNOT GUARANTEE THE ABSOLUTE PREVENTION OF CYBER-ATTACKS SUCH AS HACKING, SPYWARE, AND VIRUSES. ACCORDINGLY, ZEBRUNNER SHALL NOT BE LIABLE FOR ANY UNAUTHORIZED DISCLOSURE, LOSS OR DESTRUCTION OF THE CUSTOMER DATA ARISING FROM SUCH RISKS. YOU WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF ZEBRUNNER TO ANY THIRD PARTY. ZEBRUNNER DOES NOT WARRANT, ENDORSE, GUARANTEE OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE OFFERED BY A THIRD PARTY THROUGH WEBSITE OR ZEBRUNNER SERVICES, AND ZEBRUNNER SHALL NOT BE A PARTY TO OR IN ANY WAY RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD PARTY PROVIDERS OF PRODUCT OR SERVICES. SPECIFICALLY, BUT WITHOUT LIMITATION, Zebrunner does not warrant that the use of the Services will be uninterrupted or error-free, nor does Zebrunner warrant that it will review the Customer Data for accuracy or that it will preserve or maintain the Customer Data without loss.

**7.3 Election of Remedies.** In the event of a material non-conformity of the Services Customer's sole remedy shall be Service credits equal to the duration of the

non-conformity or a prorated refund commensurate to the duration of the non-conformity, in Zebrunner's sole discretion.

## 8. LIMITATION ON LIABILITY.

**8.1 Liability cap.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS OTHERWISE SET FORTH HEREIN: (A) NEITHER PARTY SHALL BE LIABLE, UNDER ANY LEGAL OR EQUITABLE THEORY OF LAW, WITH RESPECT TO ANY SUBJECT MATTER OF THESE TERMS FOR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), EVEN IF SUCH PARTY IS INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE; (B) THE AGGREGATE LIABILITY OF ZEBRUNNER UNDER THESE TERMS SHALL NOT EXCEED THE GREATER OF: (I) THE FEES PAID BY YOU TO ZEBRUNNER DURING THE IMMEDIATELY PRECEDING TWELVE (12) MONTH PERIOD (OR, IF NO AMOUNTS HAVE BEEN PAID, OR YOU HAVE ACQUIRED BETA SERVICES OR SERVICES ON A FREE TRIAL, SUCH AMOUNT SHALL BE US\$100.00).

**8.2 NO LIABILITY FOR CUSTOMER DATA.** ZEBRUNNER SHALL NOT IN ANY CIRCUMSTANCES BE LIABLE FOR THE COST OR PROCUREMENT OF SUBSTITUTE TECHNOLOGY OR SERVICES, OR ANY LOSS OF CUSTOMER DATA. IN ADDITION, ZEBRUNNER SHALL HAVE NO LIABILITY FOR MATTERS OUTSIDE OF ITS REASONABLE CONTROL.

**8.3 Nature of Claims and Failure of Essential Purpose.** The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in these Terms is found to have failed of its essential purpose.

## 9. INDEMNIFICATION

**9.1 By Customer.** Except as otherwise provided herein, Customer shall indemnify, defend and hold harmless Zebrunner from and against all third party and governmental actions, claims and all resulting, to the extent payable out-of-pocket to unaffiliated third parties: damages, liabilities, fines, penalties, costs and expenses, including all reasonable attorneys' fees ("Losses") arising out of or relating to: (a) any Customer Data (including, without limitation, the violation of any laws, regulations or privacy rights); (b) any action taken (or not taken) by Customer based upon use of any of the Services or results thereof; (c) any service or product offered by Customer in connection with, or related to, any of the Services; and/or (d) any use of the Services hereunder.

## 10. CONFIDENTIAL INFORMATION

Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitutes the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any communications with Zebrunner, including support services communications, shall be deemed Confidential Information hereunder. Except as expressly authorized herein, the Receiving Party will hold in confidence (using reasonable methods or protection) and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can reasonably evidence: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become generally available to the public through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy. Therefore, upon any such disclosure, the Disclosing Party shall be entitled to appropriate equitable relief (without the posting of a bond or similar instrument) in addition to whatever other remedies it might have at law.

## 11. CUSTOMER WARRANTIES

Customer Warranties. Customer represents, warrants, and covenants that:

- (a) in performing these Terms, Customer's actions shall not contravene any applicable laws, rules, or regulations, including those of (1) the country, state, or locality where Customer resides, and (2) the country, state, or locality where Zebrunner is located or operates;
- (b) the execution, delivery and performance by Customer of these Terms do not and shall not violate any law (including, without limitation, privacy, export control, obscenity and anti-spam laws), violate any charter document of Customer, violate any agreement or order to which Customer is a party or by which Customer or its assets are bound, or require any consent from any Person; and
- (c) Customer and/or his, her, or its representatives, if any, are not and will not be at any time during the Term be: (i) located in a country embargoed by the United States; (ii) the target of any sanctions program that is established by Executive Order of the

President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (iii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. App. § 5, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56 or any Executive Order of the President issued pursuant to such statutes; (iv) named on the following list that is published by OFAC: "List of Specially Designated Nationals and Blocked Persons"; (v) named on the U.S. Treasury Department's list of Specially Designated Nationals (SDN); or (vi) named on the United States Commerce Department's Table of Deny Orders.

## 12. GENERAL TERMS

**12.1 Electronic Communications.** The communications between Zebrunner and you may take place via electronic means, whether you notify Zebrunner via email or via the account administration tools provided within the Services if applicable, or whether Zebrunner posts notices within the Services or communicates with you via email. For contractual purposes, you: (a) consent to receive communications from Zebrunner in an electronic form; and (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that Zebrunner provides to you electronically satisfy any legal requirement that such communications would satisfy if it were to be in writing.

**12.2 Assignment.** These Terms will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign these Terms except upon the advance written consent of the other party, except that either party may assign these Terms in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such party's assets or voting securities. Any attempt to transfer or assign these Terms except as expressly authorized under this Section will be null and void.

**12.3 Severability.** If any provision of these Terms shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that these Terms shall otherwise remain in effect.

**12.4 Publicity.** You agree that Zebrunner may use your name and logo on Zebrunner website and in Zebrunner promotional materials (e.g., presentations, ads, data sheets, and press releases) or as part of a general list of customers. Zebrunner will promptly cease use of your name and logo upon your written request.

**12.5 Export Laws.** You acknowledge that the laws and regulations of the United States restrict the export and re-export of commodities and technical data of United States origin, including the Services. You agree that you will not export or re-export the

Services in any form in violation of the export or import laws of the United States or any foreign jurisdiction.

**12.6 Updates to these Terms; Waivers.** Zebrunner may supplement, amend, or otherwise modify these Terms at any time, by providing you with at least thirty (30) days' notice thereof (electronic notice is sufficient) and such changes will go into effect at the beginning of the next Subscription Term. Except as set forth in the preceding line, no supplement, amendment, or modification of these Terms shall be binding, unless executed in writing by a duly authorized representative of each party to these Terms. No waiver will be implied from conduct or failure to enforce or exercise rights under these Terms, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party that would benefit from the enforcement of the waiver.

**12.7 Entire Agreement.** These Terms are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of these Terms. No terms, provisions or conditions of any purchase order or other business form employed by Customer will supersede the terms and conditions of these Terms, nor have any effect on the rights, duties or obligations other parties hereunder or otherwise modify these Terms and any such document relating to these Terms will be for administrative purposes only and will and will have no legal effect, regardless of whether either party executes such document or fails to object to such terms, provisions or conditions.

**12.8 Subcontractors.** Zebrunner may use the services of subcontractors for performance of services under these Terms, provided that Zebrunner remains responsible for: (a) compliance of any such subcontractor with the provisions of these Terms; and (b) for the overall performance of the Services as required under these Terms.

**12.9 Relationship of Parties.** The parties to these Terms are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

**12.10 Rights of Third Parties.** These Terms are between Zebrunner and Customer. No other person shall have any rights or obligations pursuant to these Terms, including the right to enforce any of its provisions.

**12.11 Governing Law; Jurisdiction and Venue.** These Terms shall be governed by and construed and enforced in accordance with the laws of the State of Nevada without reference to conflicts of law rules and principles. To the extent permitted by law, the provisions of these Terms shall supersede any provisions of the Uniform Commercial Code as adopted or made applicable to the Support Services and Services in any competent jurisdiction. These Terms shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed and excluded. The federal and state courts located in Las Vegas, NV shall have exclusive jurisdiction to adjudicate any dispute arising out of these Terms.

**12.12 Injunctive Relief.** If Customer breaches, or threatens to commit a breach of any of the covenants set forth herein, Zebrunner shall be entitled, in addition to any other rights Zebrunner may enjoy, to obtain injunctive or other equitable relief by any court of competent jurisdiction to restrain any actual or threatened breach or otherwise to specifically enforce the provisions of these Terms, it being agreed that such breach or imminent breach will cause irreparable injury to Zebrunner and money damages alone would be an inadequate remedy and would fail to fully compensate Zebrunner for Customer's breach. The rights and remedies of the Parties to these Terms are cumulative and not alternative. Customer further agrees to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such equitable relief and that this provision is without prejudice to any other rights that the Parties hereto may have for any failure to perform these Terms.

**12.13 Legal Costs of Prevailing Party.** The substantially prevailing Party in any legal action, including arbitration, brought by one Party against the other and arising out of these Terms shall be entitled, along with any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorney's fees. Such fees may be set by the court in the trial of such action or may be enforced in a separate action brought for that purpose. Such fees shall be in addition to any other relief that may be awarded.

**12.14 Force Majeure.** Except for the obligation to make payments, in no event shall either Party be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer systems (software and hardware).

**12.15 Headings.** The section headings contained in these Terms are for reference purposes only and shall not affect the meaning or interpretation of these Terms.