Terms and Conditions

These Terms and Conditions ("**Terms and Conditions**") are a legally binding agreement between ActiveFence Ltd. or any of its affiliates (the "**Company**") and you, the person or entity that will be accessing or using Company's online platforms and solutions (referenced below as "**Customer**") as this term is defined in the applicable order form, with respect to the use of the Company's online platform available to Customer by Company (the "**Solution**"). Company and Customer may also be referred to individually as a "**Party**" and collectively as the "**Parties**".

By using the Company's Solution, Customer accepts these Terms and Conditions. The Company reserves the right, in its sole discretion, to modify these Terms and Conditions at any time by posting the modified provisions on the Solution, and Customer shall be responsible for reviewing and becoming familiar with any such modifications. Please note that any such modifications shall become effective immediately upon posting. IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, YOU SHOULD NOT USE THE SOLUTION.

1. **Subscription to the Solution**. Subject to the terms and conditions of any order form and/or subscription agreement entered between Customer and Company or Company's authorized resellers Company grants Customer, during the Term (as defined in the applicable order form), a limited, non-exclusive, non-sublicensable, non-transferable right to use the Solution solely for Customer's internal business purposes ("**Subscription**").The foregoing right to use is subject to, and in consideration of, the full payment of the subscription fee for the Solution as set forth in the Subscription.

2. **Customer Data and Responsibilities.**

    2.1. **Data Insights.** While using the Solution, Customer may provide, upload, transmit, or make accessible to Company certain data ("**Customer Data**"), in addition to data collected and integrated into the Solution by Company ("**Company Data**", and collectively, the "**Data**"). Based on such Data, certain insights and inferences may be generated, based on the parameters and specifications Customer provided Company as part of the initial ramp-up period ("**Data Insights**"). Subject to the terms and conditions of these Terms and Conditions, Company hereby grants Customer a non-exclusive, perpetual, non-sublicensable, non-transferable royalty free right to use the Data Insights solely for Customer's internal business purposes. Notwithstanding anything to the contrary, Customer acknowledges that Company may, at its sole discretion, repurpose the Data Insights for its own business purposes (including but not limited to re-tagging the Data), provided that in no event shall Customer's identity be disclosed as result of such repurposing.

    2.2. **Customer Data; Compliance with Applicable Laws**.

    2.2.1. As between Company and Customer: (i) the Customer Data, and all worldwide Intellectual Property Rights therein, is the exclusive property of Customer, and (ii) the Company Data, and all worldwide Intellectual Property Rights therein is the exclusive property of Company.

    2.2.2. Customer grants Company a non-exclusive, sublicensable, transferable, worldwide, royalty-free and fully paid license to process and use the Customer Data as necessary for purposes of providing the Solution and as otherwise permitted in these Terms and Conditions. Customer warrants that Customer is the owner or legal custodian of, or otherwise has the right and has or will obtain the necessary permissions, valid consents and releases to lawfully transmit, store and use all Customer Data in connection with the Solution and to grant the rights granted to Company under these Terms and Conditions.

    2.2.3. Customer warrants that it has complied, and will continue to comply, with all applicable laws and regulations applicable to Customer's use of the Solution including any applicable laws that govern data privacy and that Customer has provided all notices and obtained all legal bases for processing sufficient to allow Company to use any personal data provided by Customer or processed by Company for the purpose of providing the Solution, including the processing of such personal data in any jurisdiction in which Company and any of its subcontractors operate. If required under applicable law, Customer shall comply with the terms of the data processing agreement, which shall be made available to Customer upon request.

2.3. **Customer Responsibilities for Data and Security**. Customer and its users shall have access to the Data and shall be responsible for all changes to and/or deletions of Data and the security of all passwords and other account information required in order to access and use the Solution. Customer shall have the ability to retrieve or export Data out of the Solution using the self-service tools Company makes available to the Customer. Customer is encouraged to make its own back-ups of the Data and is responsible for backing up such data. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data and the means by which Customer acquired Customer Data, and for the adequate security, protection and backup of Customer's Data. Customer understands that the Solution may store and backup files that are no longer usable due to corruption from viruses, software malfunctions and other causes, which might result in Customer restoring files that are no longer usable.

2.4. **API Integration**. Should Customer choose to integrate data received from third party suppliers or service providers of Customer via API integrations offered by Company ("**API Integrations**"), Customer hereby warrants and represents that it has all rights, approvals and authorizations to allow such API Integrations, that the API Integrations do not violate the rights of any third party, and undertakes to indemnify Company with respect to any claim in connection with the foregoing. The use of the API Integrations is at Customer's own risk and Company will not be liable for any content or data transferred via the API Integrations.

3. **Restrictions**. Customer must not, and shall not allow any third party to: (i) circumvent, disable or otherwise interfere with features that enforce limitations on use of the Solution; (ii) allow any unauthorized third party to access or use the Solution and/or the Data Insights; (iii) sell, rent, lease, license or timeshare the Solution and/or the Data Insights; (iv) copy, modify, reverse engineer, decompile, disassemble or derive, or attempt to derive, the source code of, the Solution; (v) use the Solution to develop a competing service or product; (vi) interfere or attempt to interfere with the integrity or proper working of the Solution; (vii) access or search the Solution (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or features provided by Company for use expressly for such purposes and/or (viii) use the Solution in any unlawful manner or in breach of these Terms and Conditions.

4. **Title.** The intellectual property rights and all other rights, title and interest of any nature in and to the Solution and the Data Insights, and any related content, documentation and services provided or made available by Company hereunder, including all modifications, upgrades, customizations and derivative works (whether or not permitted under these Terms and Conditions) of the Solution, are and shall remain the exclusive property of Company and its licensors. Except as expressly set forth herein, nothing in these Terms and Conditions shall be construed as transferring any rights, title or interests to Customer or any third party. Company and its licensors reserve any and all rights not expressly granted in these Terms and Conditions. In the event that Customer or users on its behalf provide any comments or suggestions in connection with the Solution, whether written or oral ("**Feedback**"), then Company, in its sole discretion, shall be entitled to use the Feedback without restriction, and such Feedback will not be treated as confidential to Customer. Customer hereby grants Company, on behalf of itself and its users, a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into Company's products and services.

5. **Suspension; Termination.** If Company believes that Customer is using the Solution in a manner that may cause harm to Company or any third party then Company may, without derogating from Company's right to terminate these Terms and Conditions for any breach hereof, suspend Customer's access to and use of the Solution until such time as Company believes the threat of harm, or actual harm, has passed. In addition, in any event that the Subscription is terminated or terminable by Company or any of its authorized resellers, Company may immediately terminate Customer's access to the Solution without any liability to Company.

6. **Warranty Disclaimer.** THE SOLUTION AND THE DATA INSIGHTS ARE PROVIDED ON AN "AS IS" BASIS, AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT

PERMITTED BY APPLICABLE LAW. COMPANY DOES NOT GUARANTEE THAT USE OF THE SOLUTION BY CUSTOMER OR ANY ADVICE, CONSULTING OR OTHER SERVICE PROVIDED TO CUSTOMER WILL ENSURE CUSTOMER'S LEGAL COMPLIANCE WITH ANY LAW, RULE, REGULATION, OR DIRECTIVE. COMPANY WILL NOT BE LIABLE OR RESPONSIBLE FOR: (A) ANY TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); AND/OR (B) ANY ISSUE THAT IS ATTRIBUTABLE TO CUSTOMER'S SOFTWARE OR CUSTOMER'S INTERNET OR DATA SERVICE PROVIDER.

7. Limitation of Liability.

7.1. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY LOSS OF INCOME, PROFITS, GOODWILL, REPUTATION, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE UNDER THESE TERMS AND CONDITIONS OR THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE SOLUTION AND/OR THE DATA INSIGHTS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.2. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, COMPANY'S TOTAL AGGREGATE LIABILITY FOR ALL DAMAGES AND LOSSES UNDER THESE TERMS AND CONDITIONS, OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE SOLUTION AND/OR THE DATA INSIGHTS, SHALL NOT, UNDER ANY CIRCUMSTANCE, EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER TO COMPANY UNDER THE SUBSCRIPTION WITHIN THE TWELVE (12) MONTHS PRECEDING THE DATE OF BRINGING A CLAIM.

8. Confidential Information. Each Party may have access to certain non-public and/or proprietary information of the other Party, in any form or media, including (without limitation) confidential trade secrets and other information related to the products, software, technology, data, know-how, or business of the other Party, whether written or oral, and any such other information that, regardless of the manner in which it is furnished and given the totality of the circumstances, a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive ("**Confidential Information**"). Each Party shall take reasonable measures, at least as protective as those taken to protect its own confidential information, but in no event less than reasonable care, to protect the other Party's Confidential Information from disclosure to a third party. Neither Party shall use or disclose the Confidential Information of the other Party except as expressly permitted under these Terms and Conditions or by applicable law. All right, title and interest in and to Confidential Information are and shall remain the sole and exclusive property of the disclosing Party.

9. Indemnification. Customer hereby agrees to defend, indemnify and hold Company harmless against any damages awarded against Company by a court of competent jurisdiction, or paid in settlement, in connection with a third party claim, suit or proceeding arising from or related to : (i) breach of any of Customer's obligations, or warranties hereunder or under the Subscription; or (ii) Customer's gross negligence or willful misconduct.

10. Independent Contractors. The Parties are independent contractors. Nothing in these Terms and Conditions shall create a partnership, joint venture, agency, or employment relationship between the Parties. Neither Party may make, or undertake, any commitments or obligations on behalf of the other.

11. Assignment. These Terms and Conditions and any rights or obligations hereunder: (i) may not be transferred or assigned by Customer without the prior written consent of Company which may not be unreasonably withhold; but (ii) may be transferred or assigned by Company. Subject to the foregoing conditions, these Terms and Conditions shall be binding upon and inure to the benefit of each Party and its respective assigns. Any prohibited assignment shall be null and void.

12. Fee Increase. Company may increase its fees following the expiration of the initial Term or any renewal Term.

13. 18 U.S.C. §2258B(a). To the extent that the services to be performed by Company include those undertaken pursuant to 18 U.S.C. §§ 2258A and 2258B, the parties acknowledge and agree that Company shall be deemed an agent of Customer in performing such services and shall be entitled to the immunity protections set forth in 18 U.S.C. §2258B(a).

14. **Force Majeure.** Any delay in the performance of any duties or obligations of either Party (except the payment of money owed) will not be considered a breach of these Terms and Conditions if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, endemic, pandemic (including but not limited to SARS-CoV-2 (COVID-19) or any mutation thereof), or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

15. **Governing Law and Jurisdiction.** These Terms and Conditions shall be governed by the laws of the State of New York, without regard to its conflict of laws' provisions. The federal and state courts located in City, County and State of New York, shall have the sole and exclusive jurisdiction over any disputes arising under the terms of these Terms and Conditions. The Parties hereby expressly consent to such exclusive jurisdiction and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Each party waives the right to trial by jury in any action arising out of or relating to these Terms and Conditions. Notwithstanding the foregoing, Company may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.

16. **General.** The headings used in these Terms and Conditions are for convenience only and shall in no case be considered in construing these Terms and Conditions. In the case of an inconsistency or contradiction between these Terms and Conditions and any Subscription, these Terms and Conditions shall prevail. If any part of these Terms and Conditions is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of these Terms and Conditions shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced. No failure or delay in exercising any right hereunder by either Party shall operate as a waiver thereof, nor will any partial exercise of any right hereunder preclude further exercise. Each notice and/or demand given by Company to Customer using the Solution shall be deemed given immediately.

Last Updated – December 2023