

## **HACKEREARTH TERMS AND CONDITIONS**

BY ACCESSING THE SOFTWARE (DEFINED BELOW) AND AVAILING THE SUBSCRIPTION (DEFINED BELOW) OR BY WAY OF AVAILING THE SERVICES, THE CUSTOMER INDICATES ITS UNDERSTANDING, ACCEPTANCE AND CONSENT TO THE FOLLOWING HACKEREARTH TERMS AND CONDITIONS (THESE "HACKEREARTH TERMS"). THESE HACKEREARTH TERMS CONSTITUTE THE LEGAL TERMS AND FORM A CONTRACTUAL ENGAGEMENT BETWEEN HACKEREARTH INC., A DELAWARE CORPORATION WITH ITS OFFICE AT 1111 W EL CAMINO REAL STE 133 #398 SUNNYVALE CA 94087 (THE "COMPANY") WHICH EXPRESSION SHALL, UNLESS REPUGNANT TO THE CONTEXT OR MEANING THEREOF, BE DEEMED TO MEAN AND INCLUDE ITS SUBSIDIARIES, AFFILIATES, SUCCESSORS AND PERMITTED ASSIGNS AND THE ENTITY USING, OR AVAILING THE SUBSCRIPTION OR SERVICES (THE "CUSTOMER").

THE COMPANY AND THE CUSTOMER ARE HEREINAFTER COLLECTIVELY REFERRED TO AS THE "PARTIES" AND INDIVIDUALLY AS A "PARTY".

### **1. DEFINITIONS**

- 1.1 "Affiliate (s)" shall mean, with respect to the Company, any entity that owns or controls, is owned or controlled by, or is under common ownership or control with the Company.
- 1.2 "Confidential Information and Proprietary Information" means all information, in any medium or format (including written, oral, visual or electronic, together with all copies, which is directly or indirectly related to the subject matter of these HackerEarth Terms and/or SOW and any Order Form, and the business of the Disclosing Party, which includes but is not limited to (a) Intellectual Property information; (b) technical or business information or material not covered in (a); (c) proprietary or internal information related to the products or services of the Parties including samples, apparatuses, equipment, financial information including Fees related information, process/flow charts, business models, information related to procurement requirements, purchasing, manufacturing, customers, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans, information the Parties provide regarding third parties; and (d) is identified by either Party as "Confidential" and/or "Proprietary", or which, under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary, including these HackerEarth Terms.
- 1.3 "Cure Period" shall mean and include thirty (30) days after receipt of written notice of default from the non-defaulting Party or within such additional cure period as the non-defaulting Party may authorize in writing.
- 1.4 "Customer Content", in the context of:
  - a) HackerEarth Sprint, shall mean and include the problem statement proposed by the Customer and the content shared by the Customer to be hosted on the microsite;
  - b) HackerEarth Assessment, shall mean the custom questions, prepared by the Customer, using the Subscription;
  - c) and generally, in relation to the Subscription or Services, Pre-Existing Materials of the Customer, if any, shared in relation with the Services or Subscription, as more particularly set out under the SOW.
- 1.5 "Documentation" shall mean the knowledgebase and documents as to and connected with the functionality of the Software, provided by the Company to the Customer, along with the Subscription.
- 1.6 "Enhancement(s)" shall mean any modification, update, upgrade or addition to the Software that, when made or added to the Software, and its modules currently being used by the Customer, provide minor functionality change or improvements to the Software but do not change overall utility, functional capability, or application, where such modifications or additions are generally made available by the Company to all its customers as a part of their Subscription to the Software.

- 1.7 **“Error(s)”** shall mean any verifiable and reproducible failure or inability of the Software to perform any material functions set forth in the Documentation due to any programming defect in the Software, when used by the Customer as specified under these HackerEarth Terms or the Documentation by the Company. The term “Error”, shall however, not include any failure or inability of the Software that (i) results from the misuse or improper use of the Software, (ii) does not materially affect the operation and use of the Software, (iii) results from any modification to the Software that is not a Company authorized change, (iv) results from any cause beyond reasonable control of the Company, including third party cloud environment, hardware, software, firmware, malicious code like virus, trojan or malware.
- 1.8 **“Fix(es)”** shall mean any modification or addition to the Software that, when made or added to the solution or modules currently being used by the Customer, corrects Errors but does not change overall utility, functional capability, or application, where such modifications or additions are generally made available by the Company to all its customers.
- 1.9 **“Participant Data”** shall mean the data, including the data in the code developed by an individual participating in the Services.
- 1.10 **“Pre-Existing Materials”** shall mean and include but not be limited to all Intellectual Property Rights, information, knowledge, experience and know-how (including processes, ideas, concepts, methodologies, tools and techniques), reports, object or source code, writings, flow charts, templates, outlines, exhibits, diagrams, sketches, inventions, discoveries, designs, methods, device, illustrations, drawings, models, reports, methods, material, procedures or protocols developed independent of and/or prior to the rendition of Services. In addition to the foregoing, insofar as it relates to the Company, the microsite created by the Company shall be the Company’s Pre-Existing Material.
- 1.11 **“Order Form”** shall mean and include the form for placing an order for the Subscription, attached as an Exhibit.
- 1.12 **“Service(s)”**, as more particularly described under the SOW, shall, in the context of:
- HackerEarth Sprint, means the end-to-end managed services performed by the Company or its Affiliates/s for the Customer, along with the limited Subscription to the Software; and
- HackerEarth Assessment, means the professional services performed in relation to the Subscription, in addition to the Subscription offered by the Company or its Affiliate/s.
- 1.13 **“Software”** shall mean the proprietary software of the Company, namely ‘HackerEarth Sprint’ or ‘HackerEarth Assessment’, including all Fixes and Enhancements therein as more particularly described under an Order Form, offered as an internet accessible service on cloud.
- 1.14 **“Statement of Work” or “SOW”** shall mean and include the document appended as Exhibit B of this Agreement, containing the scope of Services attached as an Exhibit.
- 1.15 **“Subscription”** shall mean the non-exclusive, non-transferable, non-sublicensable, revocable (in accordance with these Terms) and limited subscription to the Software, for the Customer’s internal business use, as more particularly described under the Order Form.
- 1.16 **“Term”** shall mean the duration set out under the SOW or the Order Form (including current and subsequent SOW or Order Form), as applicable, and shall be such duration, for which, the Services shall be performed or such duration during which, the Subscription shall remain in effect respectively.

## **2. SUBSCRIPTION AND SUPPORT**

- 2.1 Subject to the fulfillment of the terms and conditions of this HackerEarth Terms, the Company will provide Customer with the Subscription as set out under the Order Form.
- 2.2 Company will undertake commercially reasonable efforts to make the Subscription available in accordance with the SLA hosted at [https://drive.google.com/file/d/1YUe0O9P5Ydg2t\\_xVGiClPdb7SonLFE60/view?usp=sharing](https://drive.google.com/file/d/1YUe0O9P5Ydg2t_xVGiClPdb7SonLFE60/view?usp=sharing)

### 3. RESTRICTIONS AND RESPONSIBILITIES OF THE CUSTOMER AS TO SUBSCRIPTION

- 3.1 Insofar as it relates to the Subscription, Customer including the Users will not: (i) copy, adapt, reverse engineer, decompile, disassemble or otherwise attempt to discover or reproduce the source code, object code or underlying structure, ideas or algorithms of the Software (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); (ii) modify, translate, or create derivative works based on the Software; (iii) use the Software for timesharing or benchmarking or for any purpose other than the purpose set out herein; (iv) use the Software in any infringing, defamatory, harmful, fraudulent or for illegal purposes; or (v) use the Software other than in accordance with this HackerEarth Terms and in compliance with all applicable laws, regulations and rights (including but not limited to those related to data protection and privacy; or (vi) use the Software to allow the transfer, transmission, export, or re-export the Software or Documentation or portion thereof;; or (vii) allow the Software to be used for applications/instances, in excess of the Subscription; or (viii) use the Software to develop any competing or similar product; or (x) use the Software with any unsupported software or hardware in any manner not recommended by the Company.
- 3.2 **Account Management:** The duly authorized persons of the Customer availing the access to the Software, through the Customer's Subscription ("**User(s)**") may be required to register with the Customer by creating an account by providing his/her email address on the Software. This account management will be facilitated through an administrator appointed by the Customer. Customer shall ensure that the Users provide accurate, complete, and updated registration information. The Customer will cooperate with the Company in connection with the performance of this HackerEarth Terms by making available such personnel and information as may be reasonably required and taking such other actions as Company may reasonably request. Customer will also cooperate with Company in establishing a password or other procedures for verifying that only designated employees of Customer have access to any administrative functions of the Services. Customer will be responsible for maintaining the security of Customer account, passwords (including but not limited to administrative and User passwords) and files, and for all uses of Customer account with or without Customer's knowledge or consent.

### 4. GOVERNANCE AS TO THE SERVICES

For each engagement, each Party shall designate a project manager (the "**Project Manager**"). The Project Managers shall co-ordinate the Services and be the primary point of contact for the other Party. The Project Manager shall have such information and authority so as to provide guidance and decisions on a time-to-time basis and as required by the other Project Manager from time to time.

### 5. CHANGE IN SERVICES

- 5.1 The Parties reserve the right to introduce changes in the scope of Services, Deliverables (defined below), and time schedule at any time during the Term.
- 5.2 Either Party may propose a change to any aspect of a SOW by issuing a written request to the other Party describing the proposed change in enough detail to enable initial consideration of the proposed change (the "**Change Request**"). Upon the Change Request being issued, the Company will prepare and submit to the Customer, a proposal (the "**Change Request Proposal**"), setting out full details of the change, including any changes to the Services, Deliverables, Fees, specifications, milestones, project plan, due dates and any other areas as deemed fit by the Service Provider and arising as a result of the change.
- 5.3 The Customer will consider the Change Request Proposal within a period of seven (7) working days, and will notify the Company as to its acceptance or rejection of the Change Request Proposal. In the event the Customer rejects the Change Request Proposal, the Parties will have no further obligations in relation to that change and the Parties' obligations under this HackerEarth Terms and the relevant SOW will continue in force unchanged. In the event the

Customer accepts the Change Request Proposal, the Parties will execute a change order (the “**Change Order**”) and perform the Services in accordance with the Change Order.

- 5.4 No changes or additions to the Services may be implemented or acted upon by the Service Provider unless the Change Order is signed, as provided hereinbefore.

## **6. CONFIDENTIALITY**

- 6.1 Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose Confidential Information and Proprietary Information.
- 6.2 The Receiving Party agrees: (a) not to divulge to any third person any such Confidential Information and Proprietary Information, (b) to give access to such Confidential and Proprietary Information solely to those employees with a need to have access thereto for purposes of the HackerEarth Terms, and (c) to take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information and Proprietary Information that the Receiving Party takes with its own Confidential Information, but in no event will a Party apply less than reasonable precautions to protect such Confidential Information and Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (i) is or becomes generally available to the public without any action by, or involvement of, the Receiving Party, or (ii) was in its possession or known by it prior to receipt from the Disclosing Party, or (iii) was rightfully disclosed to it by a third party without imposing any obligation of confidentiality, or (iv) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in the HackerEarth Terms will prevent the Receiving Party from disclosing the Confidential Information pursuant to any judicial or governmental order provided that the Receiving Party provides the Disclosing Party with a copy of such order and allows the Disclosing Party for a reasonable amount of time to mitigate the disclosure in the best way possible.
- 6.3 Both Parties will have the right to disclose the existence but not the terms and conditions of the HackerEarth Terms, unless such disclosure of the HackerEarth Terms is approved in writing by both Parties prior to such disclosure, or is included in a filing required to be made by a Party with a governmental authority (provided such party will use reasonable efforts to obtain confidential treatment or a protective order) or is made on a confidential basis as reasonably necessary to potential investors or acquirers.
- 6.4 The confidentiality obligations of the Parties under this section shall survive for a period of two (2) years post termination or expiration of the HackerEarth Terms.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1 Each Party shall have all ownership rights, including all intellectual property rights such as copyrights, trademarks, service marks and patents therein (the “**Intellectual Property Rights**” or “**IPR**”) in and to their Pre-Existing Materials.
- 7.2 Any and all Intellectual Property Rights in and to the Subscription, Software, Documentation and branding thereof, are the sole and exclusive property of the Company. The HackerEarth Terms do not grant the Customer or any Users, any rights, title and interest in and to Software, the Subscription, the Documentation, its contents, and branding thereof, including the Company’s Intellectual Property Rights, except where expressly and unequivocally granted herein. Any rights not expressly and unequivocally granted to the Customer, or any Users are reserved by the Company.
- 7.3 From time to time, the Customer or Users may provide feedback, suggestions, requirements or recommendations (“**Feedback**”) regarding the Subscription or the Services. The Customer hereby assigns to the Company all right, title and interest to such Feedback and an exclusive right to create any developments based on such Feedback.
- 7.4 Any and all ownership rights in and to the Customer Content, including the Intellectual Property Rights therein, are the sole and exclusive property of the Customer.

- 7.5 The Services may result in the generation of certain deliverables, created solely in connection with the Services, and specifically for the Customer, including the themes proposed by the Customer, the creatives on the microsite and questionnaire developed by the Company, specifically for the Customer (the “**Deliverables**”). All Intellectual Property Rights in the Deliverables (excluding Company Pre-Existing Materials) shall be owned by the Customer.
- 7.6 The Services performed in relation to the HackerEarth Assessment would result in the generation of an assessment report (the “**Resulting Data**”). The Customer is hereby granted an exclusive, nontransferable, revocable right to use the Resulting Data for its internal analysis purposes only. HackerEarth Terms are not a sale and do not convey to Customer any rights of ownership in or related to the Service or Software, or any intellectual property rights. Notwithstanding the foregoing, the Company shall have the right to use the Resulting Data anonymously, to improve upon the Services.
- 7.7 Insofar as it relates only to HackerEarth Sprint, the ownership rights and Intellectual Property Rights in the Participant Data, the participant and the Customer shall mutually agree on the ownership of the Participant Data, including the IPR therein by way of a separate agreement to be executed between the Customer and the participant or by the virtue of being listed on the microsite (the “**Participant Agreement**”) as per applicable SOW.

## **8. PAYMENT OF FEES**

- 8.1 Customer will pay Company the applicable fees for Subscription or Services, as the case may be, in the manner set forth in the Order Form or the SOW (the “**Fees**”). All Fees payable by the Customer are non-refundable and non-cancellable.
- 8.2 Upon renewal of the Subscription, the Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees in its sole discretion, upon thirty (30) days prior notice to Customer (which may be sent by email).
- 8.3 If Customer believes that the Company has billed Customer incorrectly, Customer must contact Company no later than seven (7) working days after receiving the bill in which the Error or problem appeared, in order to receive an adjustment or credit. In the event that the Customer does not contact the Company with an Error or problem with respect to the bill within seven (7) working days of receiving the bill, then the Company shall reasonably deem the Customer’s acceptance to the same. Inquiries should be directed to the Company’s customer support department. To the extent applicable and as more particularly set out under the applicable Order Form or the SOW, the Customer will pay the Company for additional services, such as integration fees or other consulting fees, if any. All payments will be made in accordance with the payment schedule and the method of payment set out under the Order Form or the SOW, as applicable. If not otherwise specified, payments for such Subscription or Services will be due within thirty (30) days of invoice and are nonrefundable.
- 8.4 Fees under the HackerEarth Terms are exclusive of all taxes, including national, state or provincial and local use, sales, value-added, property, and similar taxes, if any and shall be payable, as applicable.

## **9. TERMINATION**

- 9.1 Subject to earlier termination as provided below, the HackerEarth Terms is for the Term.
- 1.17 The Customer may terminate the applicable Order Form or SOW for convenience, by providing thirty (30) days’ notice in writing to the Company. In case of termination for convenience by the Customer, the Customer shall not be entitled to any refund of Fees.
- 9.2 In the event of termination of the HackerEarth Terms for any material breach (including any failure to pay), the non-breaching Party may terminate the applicable SOW or Order Form prior to the end of the Service Term by giving: (a) thirty (30) days prior written notice to the breaching Party, or (b) 10 (ten) days in the case of nonpayment by Customer or Customer’s or User’s breach of Section 3 of the HackerEarth Terms; provided, however, that the applicable SOW or Order Form will not terminate if the breaching Party has cured the breach within the Cure Period

prior to the expiration of such thirty (30)-day period. Either Party may terminate the applicable SOW or Order Form, without notice, (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business.

9.3 All sections of the HackerEarth Terms which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability.

9.4 In case of termination for a breach of the HackerEarth Terms solely attributable to the Company, the Customer will be entitled to a pro-rata refund.

## **10. REPRESENTATIONS AND WARRANTIES OF PARTIES**

10.1 Each Party represents and warrants to the other Party that:

- a) It has the legal right and authority to enter into and perform its obligations under these Terms; and
- b) It is not prevented from entering into these Terms under any law for the time being in force; and
- c) There is no order, decree or judgment passed against it that is likely to affect respective financial obligations under these Terms or a suit or legal proceeding pending or threatened against it so as to prejudicially impair its financial soundness.

10.2 The Company further represents that:

- a) It has all rights, title and interest in the Software, for which, Subscription is granted to the Customer; and
- b) The customer's authorized use of the Software and Subscription, in accordance with these Terms, shall not infringe the intellectual property rights of any third party.

10.3 The Customer hereby further acknowledges and agrees that by accepting the HackerEarth, the Customer has had recourse to its own skill and judgment to check the applicability of the Subscription and Services and to validate if the Subscription and Services are suitable for the task for which the Customer intends them to be used and has not solely relied on any representations made by the Company or any of its employees or agents.

## **11. WARRANTY DISCLAIMER**

EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED HEREINABOVE, THE SERVICES, THE SOFTWARE, THE SUBSCRIPTION, THE DOCUMENTATION AND COMPANY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THE HACKEREARTH TERMS ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED OR STATUTORY. COMPANY (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES NOT EXPRESSLY PROVIDED HEREINABOVE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## **12. INDEMNITY**

12.1 Each Party shall defend and settle any third-party claim relating to (i) any breach by the Party of its confidentiality obligations; or (ii) gross negligence and willful misconduct by either Party.

12.2 Insofar as it relates to the Subscription and to the extent solely and directly attributable to the Company, the Company agrees to defend and settle claims arising out of or in connection with any third-party claim made against

the Customer for infringement or misappropriation based upon Customer's or User's authorized use of the Subscription. The Company shall not be liable to indemnify the Customer for any instances, whereby the claim arises out of or relates to or is connected with (i) Customer's or User's use of the Software or Subscription other than as permitted under the HackerEarth Terms, or (ii) any claim or action that arises from Customer's breach of Section 3 of the HackerEarth Terms.

- 12.3 Insofar as it relates to the Services and to the extent solely and directly attributable to the Company, the Company agrees to defend and settle third party claim made against the Customer for infringement or misappropriation based upon Customer's or User's authorized use of the Deliverables. The Company shall not be liable to indemnify the Customer for any instances, whereby the claim arises out of or relates to or is connected with (i) Customer's or User's use of the Deliverables other than as permitted under the HackerEarth Terms, or (ii) Customer's or User's use of the Deliverables with any Customer or third-party materials, or (iii) any modifications to the Deliverables made by the Customer or User.
- 12.4 Insofar as it relates to the Subscription and to the extent solely and directly attributable to the Customer, the Customer agrees to defend any third-party claim relating to Customer's or User's use of the Software or Subscription other than as permitted under the HackerEarth Terms.
- 12.5 Insofar as it relates to the Services and to the extent solely and directly attributable to the Customer, the Customer agrees to defend any third party claims directly relating to (i) any claims by a Participant against the Company, arising out of Customer's act or omission, including Customer's failure to execute the Participant Agreement or adhere to any terms of the Participant Agreement (ii) a third party claim made against the Company for infringement or misappropriation based upon or arising out of: (a) the Customer's combination or use of the Services or Deliverables with software, services, or products developed by the Customer or third parties; (b) modification of the Deliverables by the Customer; or (c) Customer Content.

### **13. LIMITATION OF LIABILITY**

IN NO EVENT WILL THE PARTIES ) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUBSCRIPTION THE USE OF THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THE HACKEREARTH TERMS, THE DELAY OR INABILITY TO USE THE SERVICES OR ANYTHING PROVIDED IN CONNECTION WITH THE HACKEREARTH TERMS OR OTHERWISE ARISING FROM THE HACKEREARTH TERMS, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, EVEN IF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE MAXIMUM AGGREGATE LIABILITY OF THE PARTIES, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, WILL NOT EXCEED, THE FEES PAID TO COMPANY UNDER THE SOW OR THE APPLICABLE ORDER FORM, NOT EXCEEDING THE THREE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS ASSERTED. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY

### **14. ARBITRATION**

To ensure the timely and economical resolution of disputes that may arise between the Customer and the Company, both the Customer and Company mutually agree that pursuant to the Federal Arbitration Act, 9 U.S.C. §1-16, and to the fullest extent permitted by applicable law, they will submit solely to final, binding and confidential arbitration any and all disputes, claims, or causes of action arising from or relating to: (i) the negotiation, execution, interpretation, performance, breach or enforcement of this Agreement; or (ii) the relationship between the Customer and the Company; or (iii) the termination of that relationship; provided, however, that this Section shall not apply to any claim or cause of action that cannot be subject to arbitration as a matter of law. By agreeing to this arbitration procedure, both the Customer and the Company waive the right to resolve any such disputes

through a trial by jury or judge or through an administrative proceeding. The Arbitrator shall have the sole and exclusive authority to determine whether a dispute, claim or cause of action is subject to arbitration under this Section and to determine any procedural questions which grow out of such disputes, claims or causes of action and bear on their final disposition. All claims, disputes, or causes of action under this Section, whether by the Customer or the Company, must be brought solely in an individual capacity, and shall not be brought as a plaintiff (or claimant) or class member in any purported class or representative proceeding, nor joined or consolidated with the claims of any other person or entity. The Arbitrator may not consolidate the claims of more than one person or entity, and may not preside over any form of representative or class proceeding. To the extent that the preceding sentences in this Section are found to violate applicable law or are otherwise found unenforceable, any claim(s) alleged or brought on behalf of a class shall proceed in a court of law rather than by arbitration. The arbitration will be administered by the American Arbitration Association (“AAA”), in accordance with the Consumer Arbitration Rules (the “AAA Rules”) then in effect. The AAA Rules are currently available at <https://www.adr.org/sites/default/files/Consumer%20Rules.pdf>. The Customer and the Company both have the right to be represented by legal counsel at any arbitration proceeding, at each party’s own expense. The Arbitrator shall: (i) have the authority to compel adequate discovery for the resolution of the dispute; (ii) issue a written arbitration decision, to include the arbitrator’s essential findings and conclusions and a statement of the award; and (iii) be authorized to award any or all remedies that the Customer or the Company would be entitled to seek in a court of law. The Customer and the Company shall equally share all AAA’s arbitration fees. To the extent AAA does not collect or the Customer otherwise does not pay to AAA an equal share of all AAA’s arbitration fees for any reason, and the Company pays AAA the Customer’s share, the Customer acknowledges and agrees that the Company shall be entitled to recover from the Customer the Customer’s respective half of the AAA arbitration fees invoiced to the Parties (less any amounts the Customer has paid to AAA) in a federal or state court of competent jurisdiction. Nothing in this Section is intended to prevent either the Customer or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any final award in any arbitration proceeding hereunder may be entered as a judgment in the federal and state courts of any competent jurisdiction and enforced accordingly.

## 15. MISCELLANEOUS

- 15.1 **Severability.** If any provision of the HackerEarth Terms is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the HackerEarth Terms will otherwise remain in full force and effect and enforceable.
- 15.2 **Assignment.** The HackerEarth Terms are not assignable, transferable or sublicensable by either Party without the other Party’s prior written consent, except that either Party may assign, transfer or sublicense the HackerEarth Terms or any rights and obligations hereunder to its subsidiaries or any third-party in accordance with a merger or acquisition or a substantial sale of its assets.
- 15.3 **Entire Agreement.** Both Parties agree that the HackerEarth Terms are the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of HackerEarth Terms, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein.
- 15.4 **Export Control and US Government Matters.** Notwithstanding anything else, Customer shall not allow the export or re-export of the Software, Services or Deliverables or anything related thereto or any direct product thereof (collectively “**Controlled Subject Matter**”), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “**Embargoed Countries**”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “**Designated Nationals**”). Use



of the Controlled Subject Matter is representation and warranty that the Customer or User is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. Consistent with Defense Federal Acquisitions Regulation section 227.7202 and Federal Acquisitions Regulation section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by these Terms and will be prohibited, except to the extent expressly permitted by these Terms.

- 15.5 **No Partnership.** No agency, partnership, joint venture, or employment is created as a result of HackerEarth Terms and Customer does not have any authority of any kind to bind Company in any respect whatsoever.
- 15.6 **Notices.** All notices under HackerEarth Terms will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid.
- 15.7 **Governing Laws.** The HackerEarth Terms and all rights and obligations under the HackerEarth Terms shall, in all respects, be governed by and construed and enforced in accordance with the laws of the State of California, USA and the courts of San Francisco, California, USA, shall have the exclusive jurisdiction to adjudicate any subject matter under the HackerEarth Terms.
- 15.8 **Order of Precedence.** If there is any conflict between the terms of the Order Form or the SOW, as the case may be and, these HackerEarth Terms, then, the terms of the Order Form or the SoW, respectively, will govern for all purposes and shall prevail over any conflicting terms under HackerEarth Terms.

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