TERMS OF SERVICE

PLEASE READ THESE TERMS OF SERVICE CAREFULLY.

These Terms of Service are effective as of the date Customer clicks "Accepted and Agreed To" or as of the date Customer signs The Software as a Service Agreement (the "**Effective Date**"). Customer's use of and Provider's provision of Provider's Services (as defined below in Section **Error! Reference source not found.**) are governed by these Terms of Service and other documents that form **the Agreement as defined in Section 1 (C) of the Software as a Service Agreement** (the "**SaaS Agreement**").

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THESE TERMS OF SERVICES, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON SIGNING ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. CUSTOMER ACKNOWLEDGES IT HAS HAD THE OPPORTUNITY BOTH TO REVIEW THESE TERMS OF SERVICES AND THE AGREEMENT AND TO CONSULT WITH LEGAL COUNSEL PRIOR TO ACCEPTANCE OF THE AGREEMENT.

1. DEFINITIONS. For purposes of these Terms of Service, capitalized terms shall have the meanings set forth below. Capitalized terms utilized in these Terms of Service and not defined have the meaning set forth in the Service as a Software Agreement, the Agreement or such other applicable document between Customer and Provider relating to its access to and use of the Services.

1.1. **"Account"** means any accounts or instances created by or on behalf of Customer for access to and use of any of the Services.

1.2. "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the Provider or the Customer.

1.3. **"API"** means the application programming interfaces developed, made available and enabled by Provider that permit Customer to access certain functionality provided by the Services, including, without limitation, the REST API that enables the interaction with the Services automatically through HTTP requests and the application development API that enables the integration of the Services with other web applications.

1.4. "**AUP**" means Provider's acceptable use policy currently posted at either at https://wwm.technology or at http://arms.ae

1.5. "**Control**" (including, with correlative meaning, the terms "controlled by" and "under common 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.

1.6. "**Customer Data**" means all information processed or stored through the SaaS by Customer or on Customer's behalf. Customer data does not include payment records, credit cards or other information Customer uses to pay Provider, or other information and records related to Customer's account, including without limitation identifying information related to Customer staff involved in payment or other management of such account.

1.7. "**GDPR**" means Regulation (EU) 2016/679 of the European Parliament and of the of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data

and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

1.8. "**ARMS" or "Advanced Retention Management System"** means Provider's proprietary set of instructions developed, operated, and maintained by Provider (and its third party service providers) that are executed by a machine, including (without limitation), subsequent updates, enhancements, modifications and releases of the same, as well as third party software added to or used in connection with the foregoing, and, all related components, templates, features, enhancements, modifications, data and related files that is used by the Provider to perform the Services are subscribed to through a Provider´s branded or controlled website (or that Provider otherwise makes available to Customer) or by written instructions to the company.

1.9. "**Data Incident**" has the meaning given to it in Section 10.1.

1.10. "**Documentation**" means Provider's standard manual related to use of the SaaS, as well as ex.set up guides, documents specifying the functionalities or limitations of the SaaS and/or Services or describing the SaaS and/or Services, as applicable or any other software or services support documentation or any other written or electronic instruction supplied by the Provider.

1.11. "**Legal Notice**" means any notice provided by one party to the other under Section 14.2. of these Terms of Service.

1.12. "**Order**" means an order for access to the SaaS- : means Provider´s generated service order form(s) executed or approved by the Customer managing Customer´s subscription to the SaaS and/or Service with respect to Customer´s subscription to a Service, which may detail, among other things, the number of Users authorized to use a Service under Customer´s subscription. ordering document or online order specifying the Services to be provided hereunder that is entered into between Customer and Provider, including any addenda and supplements thereto.

1.13. "**Privacy/Security Law**" means privacy and security laws governing Provider's handling of Customer Data (if any).

1.14. **"Provider´s Technology"** means, (i) the Services, SaaS, Mobile Apps, Documentation, Provider´s APIs, Provider´s website(s) and any content published on the Provider´s websites, (ii) any training materials, support materials, templates, tools, methodologies or know-how, (iii) Provider´s Confidential Information and (iv) any modifications or derivative works of the foregoing.

1.15. *"Service"* means any of the Provider´s set of SaaS solutions that are developed, operated, and maintained by Provider (and its third party service providers) and that are subscribed to through a Provider´s branded or controlled website (or that Provider otherwise makes available to Customer).

1.16. *"Subscription"* means Customer´s right to use the SaaS and Services that Customer has subscribed to or that Provider otherwise makes available to Customer.

1.17. "**SLA**" means Provider's standard service level agreement, currently posted at either at https://wwm.technology or at http://arms.ae.

1.18. "**Term**" is defined in Section 13.1.below.

1.19. **"Update"** means, the generally available updates, variations, modifications, alterations, additions, enhancement, functional changes, upgrades, hot fixes, patches, workarounds to the SaaS or Service or Documentation provided by Provider, but excludes separately priced new products or modules. Upon delivery to Customer, each Update will constitute an element of the SaaS and will thereafter be subject to the Agreement, including without limitation license, warranty, and indemnity terms.

1.20. "**User**" means any company or individual who uses the SaaS and/or Services on Customer's behalf or through Customer's Account or passwords, whether authorized or not.

1.21. The headings of the Sections are only used for facilitating the reference and they do not affect their interpretation.

1.22. All the words that denote only the singular number will also comprise the plural, and vice versa, and the words that denote natural persons will comprise legal persons and vice versa.

1.23. The neutral gender, it, comprises the masculine and feminine gender and vice versa, unless the text determines differently.

1.24. References to any law or regulation will be considered to comprise references to this law or regulation as this can be altered or replaced from time to time or, similarly, to be extended, re-enacted or amended.

1.25. References to any agreement (including, without prejudice of generality of the aforementioned, the Agreement) or other document will be considered to include references to it, as this can be altered, amended, renewed or replaced from time to time (as permitted by the Agreement) and to all the agreements and documents that are denoted as complementary to it.

2. THE SAAS.

2.1. Use of the SaaS. Customer has limited, non-exclusive right to access and use the Services and the SaaS only for its internal business purposes. Provider reserves the right to monitor and periodically audit Customer´s use of the SaaS and Services to ensure that Customer´s use complies with the Agreement. Should Provider discover that Customer´s use of a SaaS and Services violates the Agreement or the Order features and limitations or Documentation, Provider reserves the right to charge Customer, and Customer hereby agrees to pay, for said overuse, in addition to other remedies available to Provider.

2.2. Service Levels. Provider shall provide the remedies listed in the SLA for any failure of the SaaS listed in the SLA. Such remedies are Customer's sole remedy for any failure of the SaaS, and Customer recognizes and agrees that if the SLA does not list a remedy for a given failure, it has no remedy. Credits issued pursuant to the SLA apply to outstanding or future invoices only and are forfeit upon termination of the SaaS Agreement. Provider is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation after termination of the Agreement. Nevertheless, Provider can set off any obligation Customer owes the Provider, to the extent permitted by law, against any credit in any Account Customer has with the Provider.

2.3. Documentation: Customer may reproduce and use the Documentation solely as necessary to support Users' use of the SaaS.

2.4. <u>SaaS Revisions</u>. Provider may revise, modify, add to, discontinue (temporarily or permanently) or update the SLA or the content, features and functions and the user interface of the SaaS or any part or element thereof at any time without prior notice, in its sole discretion, including without limitation by removing such features and functions or reducing service levels or taking such action as is necessary to preserve Provider's rights upon any use of the SaaS and/or Services that may be reasonably interpreted as violation of Provider's intellectual property rights, distribution of Internet viruses, worms, Trojan horses, malware, and other destructive activities or illegal activity, provided no such revision materially reduces features or functionality provided pursuant to an outstanding Order. If any such revision to the SaaS materially reduces features or functionality provided pursuant to an outstanding Order, Customer may within 30 days of notice of the revision terminate such Order, without cause, or terminate the Agreement without cause if such Order is the only one outstanding. Customer agrees that its purchase of the Services and SaaS is neither contingent upon the delivery of any future functionality or features, nor dependent upon any oral or written public comments made by Provider with respect to future functionality or features. Customer´s sole remedy shall be to terminate the SaaS pursuant to Section 13. below.

2.5. <u>Support Services</u> Provider will (a) make the SaaS and Services available to a Customer pursuant to these Terms of Service and the Agreement, (b) provide reasonable technical support for the SaaS and/or the Services to Customer and Users at the reasonable request of the Customer at no additional charge, and/or upgraded support (for an additional charge, if applicable), (c) use commercially reasonable efforts to make the SaaS available 24 hours a day, 7 days a week, except for: (i) Scheduled Maintenance as defined in Section B.3 of the SLA), and (ii) failures due to Force Majeure or any unavailability caused by circumstances beyond Provider's reasonable control. Nothing in the Agreement requires the Provider to provide Support Services where the support is required as a result of a circumstances on Customer´s side described in Section 10.1..

2.6. <u>API Use.</u> Provider may offer an application programming interface that provides additional ways to access and use the SaaS and/or the Service ("**API**"). Such API is considered a part of the SaaS and/or the Service, and its use is subject to all these Terms of Service and the Agreement. Customer may only access and use Provider´s API for Customer's internal business purposes, in order to create interoperability and integration between the SaaS and/or the Service and other products, services or systems Customer uses internally.

2.7. <u>Logging Into an Account.</u> Provider shall provide Customer with a username and password ("**Login Credentials**") to be used to log in to its Account unless the Customer uses the single sign-on Feature or another service to log in. These Login Credentials must not be used by multiple persons. Customer must promptly notify Provider:

a) of a User's departure from the Customer's organization;

b) of a change in a User's role in the Customer's organization;

c) of any termination of a User's right for any reason.

2.8. <u>Customer's Clients.</u> Customer shall make no representations or warranties regarding the SaaS and/or the Services or any other matter, to Customer's Clients or Users or any other third party, from or on behalf of Provider, and Customer shall not create or purport to create any obligations or liabilities for Provider. Provider shall have no obligation to provide support or other services, SLA

remedies, or other remedies to Customer's Clients.

3. SAAS FEES.

3.1. Fees. Customer shall pay Provider the fee set forth in each Order (the "**Subscription Fee**") for each Term, which will depend on the number of users, and any additional services. Provider will not be required to refund fees under any circumstances. Provider's invoices are due within 30 days of issuance. For late payment, Customer shall pay interest charges from the time the payment was due at the rate that is the lower of 1,5% per month or the highest rate permissible under applicable law, plus Customer will be liable for all the costs the Provider incurs to pursue collections against Customer in order to collect any outstanding fees, including without limitation attorneys' and collection agency fees and expenses.

3.2. Change of Fees. Provider reserves the right to change Fees or applicable charges and to institute new charges and Fees, upon thirty (30) days prior notice to Customer, and Customer's continued use of the SaaS and/or Services shall be deemed acceptance of such changes to the charged Fees or applicable charges.

3.3. Taxes. Amounts due under the Agreement are payable to Provider without deduction for any tax, tariff, duty, or assessment imposed by any government authority (national, state, provincial, or local), including without limitation any sales, use, excise, ad valorem, property, withholding, or value-added tax, whether or not withheld at the source (collectively, "**Sales Tax**"). Except as forbidden by applicable law, Provider may require that Customer submit applicable Sales Taxes to Provider. However, the preceding sentence does not apply to the extent that Customer is tax exempt, provided it gives Provider a valid tax exemption certificate within 30 days of the Effective Date. If Provider has the legal obligation to pay or collect Sales Taxes for which Customer is responsible under this Section, the appropriate amount will be invoiced and paid by the Customer, unless, prior to the invoice date, the Customer provides Provider with a valid tax exemption certificate authorized by the appropriate taxing authority. Provider's failure to include any applicable tax in an invoice will not waive or dismiss its rights or obligations pursuant to this Section. If applicable law requires withholding or deduction of Sales Taxes or any other tax or duty, Customer shall separately pay Provider the withheld or deducted amount, over and above fees due. For the avoidance of doubt, this Section does not govern taxes based on Provider's net income.

4. CUSTOMER DATA & PRIVACY.

4.1. Use of Customer Data. Provider shall not: (a) access, process, or otherwise use Customer Data other than as necessary to facilitate the SaaS; or (b) give Customer Data access to any third party, except Provider's employees that have a need for such access to facilitate the SaaS and the provision of services to Customer pursuant to the Agreement and are subject to a reasonable written agreement governing the use and security of Customer Data. Further, Provider: (c) shall exercise reasonable efforts to prevent unauthorized disclosure or exposure of Customer Data; and (d) shall comply with all Privacy/Security Laws that are applicable both specifically to Provider and generally to data processors in the jurisdictions in which Provider does business and operates physical facilities.

4.2. Statutory Special Terms. The parties recognize and agree that Addendum No.1 (Data Processing Addendum): (a) governs the following Customer Data: personally identifiable information of Customer, Users, Contact Details, or third parties, including from Customer´s employees, partners and Clients and (b) applies only to such Customer Data (listed under the letter a) above) and not to

any of the Customer's other rights or duties pursuant to the Agreement. If Provider receives a "right to know," deletion, "right to be forgotten," or similar request related to Customer Data, Provider may respond in accordance with applicable law. Nothing in the Agreement precludes Provider from asserting rights or defenses it may have under applicable law related to such requests. To the extent Customer Data constitutes Personal Data, the Parties agree that Customer shall be deemed to be the Data Controller, and Provider shall be deemed to be the Data Processor, as those terms (Personal Data, Data Controller and Data Processor) are understood under the GDPR. The terms of the data processing addendum are hereby incorporated by reference. Customer´s acceptance of these Terms of Service shall be treated as its execution of the Data Processing Addendum and its Appendices. For the purposes of Article 28 of GDPR, these Terms of Service constitute the data processing contract between the Customer as the data controller and the Provider as the data processor. The Customer hereby instructs the Provider to process the Customer data as described in these Terms of Service.

4.3. <u>Additional Fees.</u> Customer recognizes and agrees that Provider may charge additional fees (without limitation) (a) for activities (if any) required by Privacy/Security Laws or GDPR and (b) for activities Customer requests to help it comply with Privacy/Security Laws or GDPR.

4.4. <u>Privacy Policy.</u> Customer is on notice of Provider´s Privacy Policy and Security Strategy, and Customer recognizes and agrees that such policies are not part of the Agreement and nothing in the Agreement restricts Provider's right to alter such policies. Provider will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or its Users).

4.5. <u>De-Identified Data.</u> Notwithstanding the provisions above of this Section 4., Provider may use, reproduce, sell, publicize, or otherwise exploit De-Identified Data (as defined below) in any way, in its sole discretion, including without limitation aggregated with data from other customers. ("De-Identified Data" refers to Customer Data with the following removed: information that identifies or could reasonably be used to identify an individual person, a household, a Customer's Client, or Customer.)

4.6. <u>Data Analysis.</u> Notwithstanding anything to the contrary, Provider shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the SaaS and/or Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Provider will be free (during and after the term hereof) to use such information and data to improve and enhance the SaaS and/or Services and operate its products and services and for other development, diagnostic and corrective purposes in connection with the SaaS and/or Services and other Provider offerings.

4.7. <u>Data Incidents.</u> In the event of a Data Incident, or in the event that Provider suspects a Data Incident, Provider shall (i) promptly notify Customer by telephone or in person and (ii) cooperate with Customer and law enforcement agencies, where applicable, to investigate and resolve the Data Incident, including without limitation by providing reasonable assistance to Customer in notifying injured third parties. Provider shall give Customer prompt access to such records related to a Data Incident as Customer may reasonably request; provided such records will be Provider's Confidential Information, and Provider will not be required to provide Customer with records belonging to, or compromising the security of, its other customers.

4.8. <u>Right to Audit.</u> Customer may: (A) audit during normal business hours Provider's records pertaining to the performance of the Agreement, regardless of the manner or form in which Provider maintains such records, provided such audit will not unduly interfere with Provider's business operations; (B) employ a third-party consultant or auditor to assist in such audit. Provider may designate any records referenced in the preceding sentence as its Confidential Information and may require that the third party auditor or consultant described in the preceding sentence execute a nondisclosure agreement with terms consistent with those of Section 8. bellow (Confidential Information).

4.9. <u>Subcontractors.</u> Provider shall not permit any subcontractor to access Customer Data except to the extent that such subcontractor needs access to facilitate the provision of services to Customer pursuant to the Agreement and is subject to a written contract with Provider protecting the data, with terms reasonably consistent with those of this Section 4.. Provider shall exercise reasonable efforts to ensure that each subcontractor complies with all of the terms of these Terms of Service related to Customer Data. As between Provider and Customer, Provider shall pay any fees or costs related to each subcontractor's compliance with such terms. By agreeing to these Terms of Services, the Customer authorizes the Provider (a general written authorization in the meaning of Article 28 (2) of GDPR to engage the third party service providers for the purposes of performing the Services.

4.10. <u>Required Disclosure.</u> Notwithstanding the provisions above of this Article 4., Provider may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Provider shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

4.11. <u>Risk of Exposure.</u> Notwithstanding the foregoing , Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the SaaS, Customer assumes such risks. Provider offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.

4.12. <u>Customer's Rights and Obligations.</u> Customer possesses and retains all right, title, and interest in and to Customer Data, and Provider's use and possession thereof is solely on Customer's behalf. Customer may access and copy any Customer Data in Provider's possession at any time, and Provider shall reasonably facilitate such access and copying promptly after Customer's request. Subject to the terms of this Agreement, Customer hereby grants to Provider and its Affiliates a non-exclusive, worldwide, royalty-free right to copy, store, record, transmit, maintain, display, view, print, or otherwise use or process the Customer Data solely to the extent necessary to provide the SaaS and/or Services, and perform all related obligations owed to Customer under the Agreement, and to investigate when Provider has a good faith belief, or has received a complaint alleging, that such Customer Data is in violation of the Agreement, or to comply with a valid legal subpoena, request, or other lawful process, or as expressly permitted in writing by Customer or as may be required by law.

4.13. <u>Data Accuracy.</u> Provider shall have no responsibility or liability for the accuracy, quality, security, integrity, legality, appropriateness, intellectual property rights in and reliability of data uploaded to the SaaS by Customer, including without limitation Customer Data and any other data uploaded by Users. Customer is solely responsible for the accuracy, quality, security, integrity, reliability, appropriateness, content, intellectual property rights in and legality of all Customer Data. Customer warrants that Customer (i) has and will have sufficient rights, licenses, consents, permissions, power and/or authority in the Customer Data to grant the rights to Provider under the Agreement, iii)

the Customer Data Customer submits, Customer´s use of such Customer Data, and Provider´s use of such Customer Data, as set forth in these Terms, do not and shall not (a) infringe or violate any patents, copyrights, trademarks or other intellectual property, proprietary or privacy, data protection or publicity rights of any third party; (b) violate any applicable local, state, federal and international laws, regulations and conventions, including those related to data privacy and data transfer and exportation; (c) violate any of Customer´s or third party's policies and terms governing the Customer Data.

4.14. <u>Compliance with Laws.</u> Customer warrants, represents and undertakes that it will be in compliance with all applicable privacy laws, regulations and statutes with regard to Customer data collected and provided to Provider in the provision of services under the Agreement. Such compliance shall include but not be limited to: (a) obtaining the freely given, specific, informed and unambiguous consent of each individual whose personal data Customer provides to Provider under the Agreement so that Provider may lawfully send direct marketing (including by e-mail) to that individual, and (b) not providing to Provider personal data relating to any individual who has opted-out of personal data processing, including contact for marketing purposes. Customer shall indemnify and hold Provider harmless against claims made by any third party against Provider resulting from Customer's breach of this warranty.

4.15. <u>Excluded Data.</u> Customer warrants that (a) it has not and will not transmit Excluded Data (as defined below), or permit transmission of Excluded Data, to Provider or its computers or other media and, (b) to the best of its knowledge, Customer Data does not and will not include Excluded Data. Customer shall inform Provider of any Excluded Data within Customer Data promptly after discovery (without limiting Provider's rights or remedies). Customer recognizes and agrees that: (i) the provisions of this Agreement related to Customer Data do not apply to Excluded Data; (ii) Provider has no liability for any failure to provide protections in the Excluded Data Laws (as defined below) or otherwise to protect Excluded Data; and (iii) Provider's systems are not intended for management or protection of Excluded Data and may not provide adequate or legally required security for Excluded Data. Provider is not responsible or liable for any data exposure or disclosure or related loss to the extent that it involves Excluded Data. ("Excluded Data" means data that is protected under a special legislation and requires a unique treatment such as health information or sensitive personal data as defined under the EU directive 95/45/EC as enacted in the member states of the European Union or any similar applicable law relating to privacy and data protection. "Excluded Data Laws" means any law or regulation governing Excluded Data, including without limitation any law or regulation protecting privacy or security rights of Excluded Data subjects, as well as the following statutes and regulations: GDPR.)

5.CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS.

5.1. <u>Acceptable Use.</u> Customer shall comply with the AUP. Customer shall not: (a) use the SaaS and/or the Services for service bureau or time-sharing purposes or in any other way allow third parties to exploit the SaaS and/or the Services; (b) provide SaaS passwords or Login Credentials to any third party; (c) share non-public SaaS features or content with any third party; (d) access the SaaS in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics, or to copy any ideas, features, functions or graphics of the SaaS and/or the Services; or (e) engage in web scraping or data scraping on or related to the SaaS and/or the Services, including without limitation collection of information through any software that simulates human activity or any bot or web crawler; (f) license, sell, rent, lease, transfer, assign, distribute, display, host,

outsource or otherwise commercially exploit the SaaS and/or the Services, (g) manipulate data in an attempt to circumvent limits for the level of Subscription purchased by Customer (if applicable) set for the use of the SaaS and/or Service (in terms of number of Users, maximum list sizes, monthly email limitations, etc.); or (h) interfere with or disrupt the integrity or performance of the SaaS and/or any Service or third-party data contained therein. In the event that it suspects any breach of the requirements of this Section **Error! Reference source not found.**, including without limitation by Users, Provider may suspend Customer's access to the SaaS and/or the Services without advanced notice, in addition to such other remedies as Provider may have. Neither this Agreement nor the AUP requires that Provider take any action against Customer or any User or other third party for violating the AUP, this Section **Error! Reference source not found.**, or the Agreement, but Provider is free to take any such action it sees fit.

5.2. <u>Unauthorized Access</u>. Customer shall take reasonable steps to prevent unauthorized access to the SaaS and/or the Services, including without limitation by protecting its Login Credentials. Customer shall notify Provider immediately of any known or suspected unauthorized use of the SaaS and/or the Services or breach of its security and shall use best efforts to stop said breach.

5.3. <u>Compliance with Laws.</u> In its use of the SaaS and/or the Services, Customer shall comply with all applicable laws, including without limitation Privacy/Security Laws and laws related to electronic communications.

5.4. <u>Customer's Clients & Other Users; SaaS Access.</u> Customer is responsible and liable for: (a) Users' use of the SaaS and/or the Services, including without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of the Agreement applicable to Customer; and (b) any use of the SaaS and/or the Services through Customer's account, whether authorized or unauthorized.

5.5. <u>Back Up.</u> Customer agrees to separately back up all Customer Data. Customer at all times retains ownership of all Customer Data. Customer is solely responsible for ensuring that any processing of Customer Data by Provider and Customer via the SaaS and/or the Service is in compliance with all applicable laws.

5.6. <u>System Requirements.</u> Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the SaaS and/or Services, including without limitation, hardware, software, networking and the like. A high-speed Internet connection is required for proper transmission of the Services. Customer is responsible for procuring and maintaining the network connections that connect Customer´s network to the SaaS and/or Services including, but not limited to, browser software that supports protocols used by Provider, including the Transport Layer Security (TLS) protocol or other protocols accepted by Provider, and to follow procedures for accessing services that support such protocols. Provider is not responsible for notifying Customer or Users of any upgrades, fixes or enhancements to any such software or for any compromise of data, including Customer Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by Provider. Provider assumes no responsibility for the reliability or performance of any connections as described in this Section. The SaaS and/or Services are available only for supported devices and is not available for all devices.

6. SUBCONTRACTING

6.1. Subject to any express restrictions elsewhere in the Agreement, the Provider may subcontract any of its obligations under the Agreement, providing that the Provider must give to the Customer, promptly following the appointment of a subcontractor, a written notice specifying the subcontracted obligations and identifying the subcontractor in question. The Provider shall remain responsible to the Customer for the performance of any subcontracted obligations.

7.INTELLECTUAL RIGHTS & FEEDBACK.

7.1. IP Rights to the SaaS. Customer´s subscription is a right of access to and use of the SaaS and/or Services. Customer agrees that Customer receives only a limited right to use the SaaS and the Services. Customer acknowledges and agrees that Provider retains all right, title, and interest in and to the SaaS and*or Services, including without limitation all software used to provide the SaaS and all graphics, user interfaces, logos, and trademarks reproduced through the SaaS, patents, inventions, source code, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights and any other Provider´s Technology. The Agreement does not grant Customer any intellectual property license or rights in or to the SaaS or any of its components and/or Services, except to the limited extent that such rights are necessary for Customer's use of the SaaS as specifically authorized by the Agreement. Customer recognizes that the SaaS and/or Services and its components are protected by copyright and other laws. Customer acknowledges that the SaaS and Services are offered as online, hosted solutions, and that Customer has no right to obtain a copy of the underlying computer code for any SaaS and/or Services, except (if applicable) for any downloadable software, in object code format.

7.2. Feedback. Provider has not agreed and does not agree to treat as confidential any suggestion or idea provided by Customer (any "Feedback"), and nothing in the Agreement or in the parties' dealings arising out of or related to the Agreement will restrict Company's right to use, profit from, disclose, publish, or otherwise exploit any Feedback, without compensating or crediting Customer, or the individual providing such Feedback. Feedback will not be considered Customer's trade secret and will not constitute Confidential Information unless Provider so agrees in writing. **C**ompany shall have no obligation to incorporate Feedback into any product or service.

8.CONFIDENTIAL INFORMATION.

8.1. "Confidential Information" refers to the following items Provider discloses to Customer: (a) any document Provider marks "Confidential"; (b) any information Provider orally designates as "Confidential" at the time of disclosure, provided Provider confirms such designation in writing within __ business days; (c) the Documentation and non-public information regarding features, functionality and performance of the SaaS and/or Services, whether or not marked or designated confidential; (d) the Agreement and any and all information concerning the business and affairs of Provider, (e) Provider's or its affiliates business, financial situation or technology, all scientific, technical, financial, business and other information, all manufacturing, marketing, sales and distribution data, all scientific and test data, documents, methods, techniques, formulations, operations, know-how, experience, skills, trade secrets, computer programs and systems, processes, practices, ideas, inventions, designs, samples, plans and drawings, Software source codes and (d) any other nonpublic, sensitive information Customer should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include

information that: (i) is known to the Customer at the time of the disclosure, provided there is adequate written documentation to confirm such prior knowledge and that it was not directly or indirectly acquired from the Provider; or (ii) is independently developed by Customer without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Customer's improper action or inaction; or (iv) is approved for release in writing by Provider. Customer is on notice that the Confidential Information may include Provider's valuable trade secrets.

8.2. <u>Nondisclosure.</u> Customer shall not use Confidential Information for any purpose other than as necessary to access the SaaS in accordance with the Agreement (the "Purpose"). Customer: (a) shall not disclose Confidential Information to any employee or contractor of Customer unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Customer with terms no less restrictive than those of this Section 8; and (b) shall not disclose Confidential Information to any other third party without Provider's prior written consent. Without limiting the generality of the foregoing, Customer shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Customer shall promptly notify Provider of any misuse or misappropriation of Confidential Information that comes to Customer's attention. Notwithstanding the foregoing, Customer may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Customer shall give Provider prompt notice of any such legal or governmental demand and reasonably cooperate with Provider in any effort to seek a protective order or otherwise to contest such required disclosure, at Provider's expense.

8.3. <u>Termination & Return.</u> With respect to each item of Confidential Information, the obligations of Section **Error! Reference source not found.** above (Nondisclosure) will terminate _____ after the date of disclosure; provided that such obligations related to Confidential Information constituting Provider's trade secrets shall continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of the Agreement, Customer shall return all copies of Confidential Information to Provider or certify, in writing, the destruction thereof.

8.4. <u>Injunction.</u> Customer agrees that: (a) no adequate remedy exists at law if it breaches any of its obligations in this Section 8; (b) it would be difficult to determine the damages resulting from its breach of this Section 8, and such breach would cause irreparable harm to Provider; and (iii) a grant of injunctive relief provides the best remedy for any such breach, without any requirement that Provider prove actual damage or post a bond or other security. Customer waives any opposition to such injunctive relief or any right to such proof, bond, or other security. (This Section **Error! Reference source not found.** does not limit either party's right to injunctive relief for breaches not listed.)

8.5. <u>Retention of Rights.</u> This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Provider will retain all right, title, and interest in and to all Confidential Information.

9.REPRESENTATIONS & WARRANTIES.

9.1. <u>From Provider.</u> Provider represents and warrants that it is the owner of the SaaS and of each and

every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights to use the SaaS set forth in this Agreement without the further consent of any third party. Provider's representations and warranties in the preceding sentence do not apply to use of the SaaS in combination with hardware or software not provided by Provider. In case of breach of the warranty above in this Section **Error! Reference source not found.**, Provider, at its own expense, shall promptly: (a) secure for Customer the right to continue using the SaaS; (b) replace or modify the SaaS to make it noninfringing; or if such remedies are not commercially practical in Provider's reasonable opinion, (c) if options (a) or (b) are not commercially reasonably as determined by Provider, then either Customer or Provider may terminate the Agreement. If Provider exercises its rights pursuant to Subsection **Error! Reference source not found.**(c) above, Customer shall promptly cease all use of the SaaS and all reproduction and use of the Documentation and erase all copies in its possession or control. This Section **Error! Reference source not found.**, in conjunction with Customer's right to terminate the Agreement where applicable, states Customer's sole remedy and Provider's entire liability for breach of the warranty above in this Section **Error! Reference source not found.**.

9.2. <u>From Customer.</u> Customer represents and warrants that: (i) it has the full right and authority to enter into, execute, and perform its obligations under the Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by the Agreement; (ii) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the SaaS; and (iii) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law; and (iv) holds all necessary governmental and third party licenses, approvals, authorizations and registrations necessary to offer its products and services, promotions, and campaigns.

9.3. <u>Warranty Disclaimers</u>. Except to the extent set forth in the SLA, CUSTOMER ACCEPTS THE SAAS AND API"AS IS," WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SAAS WILL PERFORM WITHOUT INTERRUPTION OR ERROR THAT THE SAAS AND SERVICE WILL MEET CUSTOMER'S REQUIREMENTS; AND (b) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SAAS IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION, THAT IT WILL BE FREE FROM VIRUSES OR OTHER MALICIOUS SOFTWARE OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE AND (c) PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE SAAS AND SERVICE (OR ANY PORTION THEREOF) IS COMPLETE, ACCURATE, OF ANY CERTAIN QUALITY, RELIABLE, SUITABLE FOR, OR COMPATIBLE WITH, ANY OF CUSTOMER´S CONTEMPLATED ACTIVITIES, DEVICES, OPERATING SYSTEMS, BROWSERS, SOFTWARE OR TOOLS (OR THAT IT WILL REMAIN AS SUCH AT ANY TIME) OR COMPLY WITH ANY LAWS APPLICABLE TO CUSTOMER. Provider provides no warranty regarding, and will have no responsibility for, any claim arising out of: (a) a modification of the SaaS made by anyone other than Provider, unless Provider approves such modification in writing; or (b) use of the SaaS in combination with any operating system not authorized in the Documentation or with hardware or software specifically forbidden by the Documentation. NO INFORMATION OR ADVICE OBTAINED BY CUSTOMER FROM PROVIDER OR THROUGH SAAS SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.

10.INDEMNIFICATION.

10.1. <u>From Customer</u> Customer shall defend, indemnify, and hold harmless Provider and the Provider Associates (as defined below) against any and all "Indemnified Claim," meaning any third party claim, suit, action, proceeding or liabilities arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the SaaS and/or Services, including without limitation: (a) claims by Customer's Clients or other Users or by Customer's or Customer's Clients' employees; (b) claims related to Data Incidents (as defined below); (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the SaaS through Customer's account, including without limitation by Customer Data; and (d) claims that use of the SaaS through Customer's account, including by Customer's Clients or other Users, harasses, defames, or defrauds a third party or violates any law or restriction on electronic advertising; (d) claims related to any breach or default by the Customer of any of the obligations of the Customer under the Agreement and/or any breach of the foregoing representations, warranties, and covenants or any applicable law, (e) Customer´s acts or omissions in connection with the provision of its products or services; (f) Customer's or Customer´s Personnel's negligence or intentional misconduct; (g) Customer's failure to compensate, pay applicable taxes or contributions, or otherwise perform any obligation imposed on Customer by law or contract. INDEMNIFIED CLAIMS INCLUDE, WITHOUT LIMITATION, CLAIMS ARISING OUT OF OR RELATED TO PROVIDER'S NEGLIGENCE. Customer's obligations set forth in this Section 10.1. include, without limitation: (i) settlement at Customer's expense and payment of judgments finally awarded by a court of competent jurisdiction, as well as payment of court costs and other reasonable expenses; (ii) reimbursement of reasonable attorneys' fees incurred before Customers' assumption of the defense; and (iii) reimbursement of any and all costs, damages and expenses (and, without limiting the generality of the foregoing, any direct losses, costs, damages and expenses of CUSTOMER or such other persons including costs as between a solicitor and his own client) and including specifically, without limiting the generality of the foregoing, any direct, indirect and consequential damages suffered by PROVIDER in this regard. If Customer fails to assume the defense on time to avoid prejudicing the defense, Provider may defend the Indemnified Claim, without loss of rights pursuant to this Section 10.1. Provider will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it or a Provider Associate admit wrongdoing or liability or subjects either of them to any ongoing affirmative obligation. ("Provider Associates" are Provider's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns. A "Data Incident" is any (1) unauthorized disclosure of, access to, or use of Customer Data, including without limitation Excluded Data, or (2) violation of Privacy/Security Law through Customer's account, including, but not limited to, failure to obtain consent from data subject according to GDPR. Data Incidents include, without limitation, such events caused by Customer, by Provider, by Customer's cliets or other users, by hackers, and by any other third party. The Customer shall not agree to any settlement which may result in Provider incurring any financial or other liability without the prior written consent of Provider. Provider shall provide, at the Customer's cost, such assistance and cooperation as the Customer may reasonably request from time to time in connection with the defence of any such suit or proceeding or threatened suit or proceeding.

10.2. <u>From Provider.</u> Provider shall defend and indemnify Customer and Customer's Associates (as defined below in Section **Error! Reference source not found.**) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging direct

infringement of any patent, copyright, trade secret, or other intellectual property right by the SaaS, provided that Customer (a) promptly gives Provider notice of the claim, suit, action, or proceeding; (b) gives Provider sole control of the defense and related settlement negotiations; and (c) provides Provider with all reasonably available information and assistance necessary to perform Provider's obligations under this Section 10.2.. Provider's obligations set forth in this Section **Error! Reference source not found.** do not apply to the extent that an Indemnified Claim arises in whole or in part out of: (a) Customer's breach of the Agreement; (b) revisions or modifications to the SaaS made without Provider's written consent; (c) Provider's modification of SaaS in compliance with specifications provided by Customer; (d) unauthorized use of the SaaS and/or Service by Customer, its Affiliates or Users; (e) the allegation does not state with specificity that the SaaS and/or Services are the basis of the Claim Against Customer; (f) the use of the SaaS in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by the Provider; (g) use of the SaaS and/or Services in combination with hardware, software, data, or processes not provided by Provider or not authorized in the Documentation or with hardware or software specifically forbidden by the Documentation; or (h) Services for which there is no charge. In the event of an Indemnified Claim, Provider may exercise any of the remedies set forth in Subsections 9.1.(a) through **Error! Reference source not found.**(c) above, including without limitation its right therein to terminate the Agreement. **Indemnified Claims do not include claims, suits, or proceedings alleging infringement of intellectual property rights that were not registered and granted before the Effective Date.** Provider is not required to spend more than $..... pursuant to Section 10.2., including without limitation on attorneys' fees, court costs, settlements, judgements, and reimbursement of costs.

11.LIMITATION OF LIABILITY.

11.1. <u>Excluded Damages.</u> IN NO EVENT WILL PROVIDER BE LIABLE TO THE CUSTOMER FOR ANY OF THE FOLLOWING, ARISING OUT OF OR RELATED TO THE AGREEMENT: (A) LOST PROFITS OR LOSS OF BUSINESS OR LOSS OF ANTICIPATED SAVINGS, LOSS OF REVENUE OR INCOME OR LOSS OF BUSINESS or LOSS OF ANY ECONOMIC ADVANTAGE, CONTRACTS AND OPPORTUNITIES, LOSS OF GOODWILL, LOSS OF USE OR PRODUCTION OR ANY BUSINESS INTERRUPTION OR DISRUPTION OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE DAMAGES OR INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF CUSTOMER DATA), whether incurred by either Customer or any third party. LIABILITIES LIMITED BY THIS Section 11. INCLUDE, WITHOUT LIMITATION, LIABILITY FOR NEGLIGENCE. FURTHER NEITHER PROVIDER OR ITS AFFILIATES WILL BE RESPONSIBLE FOR COMPENSATION, REIMBURSEMENT, LOSSES, COSTS OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE SAAS, SERVICES, INCLUDING AS A RESULT OF ANY (I) TERMINATION OR SUSPENSION OF THE AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SAAS AND /OR SERVICES, (II) PROVIDER´S DISCONTINUATION OF ANY OR ALL ACCESS TO THE SAAS AND/OR SERVICES, OR (III) ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE ACCESS TO THE SAAS AND/OR SERVICES FOR ANY REASON WHATSOEVER, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (B) THE COST OF COVER OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY CUSTOMER TO ANY THIRD PARTIES IN CONNECTION WITH THE AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SAAS AND/OR SERVICES; OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS, DENIAL OF ACCESS, OR FAILURE TO MAINTAIN OR STORE ANY OF CUSTOMER'S CONTENT, CUSTOMER DATA OR OTHER DATA.

11.2. <u>The Aggregate Liability.</u> THE AGGREGATE AND CUMULATIVE TOTAL LIABILITY OF PROVIDER FOR DAMAGES, INCLUDING FOR DIRECT DAMAGES, UNDER THE AGREEMENT SHALL IN NO EVENT EXCEED 50% of THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER UNDER THE AGREEMENT THAT GAVE RISE TO THE CLAIM DURING THE 12 MONTHS PRECEDING THE CLAIM, AND IF SUCH DAMAGES RELATE TO PARTICULAR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO FEES PAID FOR THE SERVICES GIVING RISE OR RELATED TO THE ALLEGED LIABILITY AND DAMAGES UNDER THE AGREEMENT DURING THE 12 MONTHS PRECEDING THE CLAIM. Multiple claims shall not enlarge this limitation. This limit applies to an indemnity according Section 10.2. as well.

11.3. <u>Clarifications & Disclaimers.</u> THE LIABILITIES LIMITED BY THIS Section 11. APPLY TO THE BENEFIT OF PROVIDER'S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THIRD PARTY CONTRACTORS, licensors, advertisers, consultants, and other representatives AS WELL AS: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, FIDUCIARY DUTY, WARRANTY, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF PROVIDER IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. Customer acknowledges and agrees that Provider has based its pricing on and entered into this Agreement in reliance upon the limitations of liability and disclaimers of warranties and damages in this Section 9.3. and Section 11. and that such terms form an essential basis of the bargain between the parties. If applicable law limits the application of the provisions of this Section 11. Or Section 9.3., Provider's liability will be limited to the maximum extent permissible. ANY CLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT MUST BE BROUGHT WITHIN ONE (1) YEAR OF THE FIRST EVENT OR OCCURRENCE GIVING RISE TO THE CLAIM.

12. THIRD PARTY SERVICES.

12.1. <u>Third Party Services.</u> Through the Saas or Service Customer may enable an integration of his Account, within his Account (or a portion thereof), with Third Party Services, which will allow an exchange, transmission, modification or removal of data between Provider and the Third Party Services, including without limitation, the Customer Data, the scope of which is determined by the applicable actions set by such integration. Customer hereby acknowledge that any access, collection, transmission, processing, storage or any other use of data, including the Customer Data, by a Third Party Service, is governed by the Third Party Agreement, including any applicable privacy policy, and Provider is not responsible for any access, collection, transmission, processing, storage or any other use of data, including the Customer Data, by the Third Party Service or for such Third Party Service privacy and security actions, inactions or general practices.

12.2. <u>Exclusion of Liability.</u> By enabling, integrating and/or using Third Party Services, Customer understands and agrees that: a)Provider is neither responsible for Customer's use of these Third Party Services, nor does it provide any warranties whatsoever for these Third Party Services; b) Customer is solely responsible for compliance with applicable privacy restrictions, laws and regulations, including its use of the Third Party Service and other data activities Customer may conduct or may permit third parties, including the Third Party Service, to conduct. Provider shall have no obligation of any kind, for any such modification and/or removal of data, either in the Account with Provider and/or the integrated Third Party Service. Provider is not liable for any damage or loss caused or alleged to be caused by or in connection with Customer's enablement, access or use of any such Third Party Services, or Customer's reliance on the privacy practices, data security processes or other policies of such Third Party Services. Customer understands that Provider

is not responsible for providing technical support for the Third Party Services and that Provider is not responsible for the data hosting and data transfer practices followed by the providers of such Third-Party Services, even if the activities and use of the data by Customer and any other Users within the Account, may result in a modification and/or removal of data, either in the Account (i.e. Customer Data) and in the integrated Third Party Service. Provider is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Third Party Services or Application or its provider. PROVIDER BEARS NO RESPONSIBILITY AND/OR LIABILITY FOR ANY LINKS OR THIRD PARTY SERVICES, INCLUDING WITHOUT LIMITATION, SUCH THIRD PARTY SERVICE'S OPERABILITY OR INTEROPERABILITY WITH PROVIDER´S SERVICE, SECURITY, ACCURACY, RELIABILITY, DATA PROTECTION AND PROCESSING PRACTICES AND THE QUALITY OF ITS OFFERINGS, AS WELL AS ANY ACTS OR OMMISSIONS BY THIRD PARTIES.

12.3. Integration with Provider´s Applications. Provider cannot guarantee the continued availability of such SaaS and/or Service features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Third Party Services or Application ceases to make the Third Party Services or Application available for interoperation with the corresponding SaaS and/or Service features in a manner acceptable to Provider.

13. TERM & TERMINATION.

13.1. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and continue in force indefinitely.

13.2. Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.

13.3. Insolvency. Either party may terminate the Agreement for cause by written notice, without opportunity to cure, in the event that: (a) the other party fails to function as a going concern; (b) a receiver, trustee, or other custodian for the other party or its assets is appointed, applied for, or consented to; (c) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course; (d) the other party makes an assignment for the benefit of creditors; (e) the other party is liquidated or dissolved; or (f) any proceedings are commenced by or against the other party under any bankruptcy, insolvency, or debtor's relief law and not dismissed within 60 days.

13.4. Convenience. Except to the extent that an Addendum provides to the contrary, Customer may terminate an Addendum or the Agreement for any reason or no reason on 90 days' written notice.

13.5. Effects of Termination. Upon termination of the Agreement, Customer shall cease all use of the SaaS and/or Services and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of the Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Sections **Error! Reference source not found.** (IP & Feedback), **Error! Reference source not found.** (Confidential Information), **Error! Reference source not found.** (Warranty Disclaimers), **Error! Reference source not found.** (Indemnification), and **Error! Reference source not found.** (Limitation of Liability), Subsection 12.2 (Exclusion of Liability); and (c) any other provision of the Agreement that must survive to fulfill its essential purpose. In no event will termination or expiration of the Agreement relieve Customer of its obligation to pay any fees payable to Provider for the period prior to the effective date of

termination or expiration.

13.6. <u>Handling Of Customer Data In The Event Of Termination.</u> Customer acknowledges and agrees that following termination of the SaaS and/or use of the Service, Provider may immediately deactivate Customer's Accounts and that following a reasonable period of not less than 90 days shall be able to delete Customer's Account and related Customer Data, unless there is a legal obligation imposed on Provider preventing it from deleting all or part of the data. However, Provider will grant Customer temporary, limited access to the SaaS for the sole purpose of permitting Customer to retrieve lawful Customer Data, provided that Customer has paid in full all good faith all amounts owed to Provider. Customer further agrees that Provider shall not be liable to Customer or to any third party for any termination of Customer access to the SaaS and/or Services or deletion of Customer Data, provided that Provider is in compliance with the terms of this Section 13.6.

13.7. <u>Suspension.</u> Without limiting Provider's other rights and remedies, Provider may suspend or terminate Customer's access to the SaaS and/or the Services and/or Customer's Account (or any part thereof), or restrict functionalities, at any time, without advanced notice, on the following grounds: (i) Customer's or its Users' breach of requirements of AUP or these Terms of Service; or (ii) in the event suspension is deemed necessary by Provider to prevent or address the introduction of malicious software, a security incident, or other harm to Customer, Provider, or Providers' other customers; or (iii) there is reason to believe the traffic created from Customer´s use of the SaaS and/or the Services or Customer´s use of the SaaS and/or the Services is fraudulent or negatively impacting the operating capability of the SaaS and/or the Services; or (iv) Provider determines, in its sole discretion, that providing the SaaS and/or the Services is prohibited by applicable Law, or it has become impractical or unfeasible for any legal or regulatory reason to provide the SaaS and/or the Services; or (vi) subject to applicable law, upon Customer´s liquidation, commencement of dissolution proceedings, disposal of Customer´s assets or change of control, a failure to continue business, assignment for the benefit of creditors, or if Customer becomes the subject of bankruptcy or similar proceeding and non payment of fees If any amount owing by Customer under the Agreement or any other agreement for the SaaS and/or the Services is 30 or more days overdue. Provider will notify Customer of any such suspension. Provider will use diligent efforts to attempt to limit, where commercially feasible, the suspension to affected Users or Provider´s Technology, and will immediately restore the availability of the same as soon as the issues leading to the suspension are resolved. Such suspension will in no way affect Customer's other obligations under the Agreement.

14. NOTICES

14.1. <u>Notices.</u> Customer agrees to provide Provider with Customer's e-mail address, to promptly provide Provider with any changes to Customer's e-mail address, and to accept emails (or other electronic communications) from Provider at the e-mail address Customer specifies. Customer further agrees that Provider may provide any and all notices, statements, and other communications except for Legal notices, which shall clearly be identifiable as Legal Notices, to Customer through either e-mail or other electronic transmission (such notices will be deemed received 12 hours after they are sent), or by mail or express delivery service (such notices will be deemed received the second business day after they are sent). Customer agrees that any notices, agreements, disclosures or other communications that the Provider sends to the Customer electronically will satisfy any legal communication requirements, including, but not limited to, that such communications be in writing. It is Customer´s responsibility to keep all its contact information current and Customer waives its

right to receive such notices if it does not provide current contact information.

14.2. <u>Legal Notices.</u> All legal notices provided by either party to the other under the Agreement shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.

15. MISCELLANEOUS.

15.1. <u>Independent Contractors.</u> The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent, employee, partner, associate or joint venturer of the other within the application of any federal, state, city or local laws or regulations, and neither may make commitments on the other's behalf. The parties agree that no Provider employee or contractor will be an employee of Customer.

15.2. <u>Force Majeure.</u> No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of the Agreement to the extent caused, directly or indirectly, by epidemics, acts of war, terrorism, hurricanes, earthquakes, weather of exceptional severity, other acts of God or of nature, criminal acts of third parties or any other acts undertaken by third parties not under the performing party´s reasonable control including, without limitation, denial of service attack, fire, explosion, strikes or other labor or industrial disputes, riots or other acts of civil disorder, embargoes, government orders responding to any of the foregoing, acts of governments such as expropriation, condemnation, embargo, changes in laws, and shelter-in-place or similar orders, failures or interruptions of electricity supplies or internet connection, failure in third-party hosting services, or other causes beyond the performing party's reasonable control ("Force Majeure Event"). If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under the Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event. In the event that a Force Majeure Event continues for a period of thirty (30) consecutive days, the other party may terminate the Agreement on written notice to the non-performing party. If Provider is the party experiencing the Force Majeure Event and as a result thereof is unable to provide the SaaS and/or the Services, for the period noted herein, and Customer terminates the Agreement, then Provider will provide Customer a refund of fees paid by Customer pro-rated as of the date the Force Majeure Event commenced. The Provider shall not be liable to the Customer in respect of any losses arising out of a Force Majeure Event. A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under the Agreement, must: (a)promptly notify the other; and (b)inform the other of the period for which it is estimated that such failure or delay will continue. A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

15.3. <u>Assignment & Successors.</u> Customer may not assign, transfer or convey to any other person, firm, corporation or entity whatsoever the Agreement or any of its rights, title, interest or obligations arising pursuant to the Agreement, whether by operation of law or otherwise, without Provider's prior express written consent, acting in its discretion, provided that a) no such consent shall release or relieve the Customer from any obligations or liabilities under the Agreement and b) no such consent will be unreasonable withheld. Notwithstanding the foregoing, Customer may assign the Agreement in its entirety, without consent of the Provider, to its Affiliate or in connection with a

merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the Provider. Provider can assign the Agreement without Customer´s consent. Subject to the foregoing restrictions, the Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns. Any attempted assignment in violation of this section will be null and void.

15.4. <u>No Third-Party Beneficiaries.</u> There are no third-party beneficiaries to the Agreement.

15.5. <u>Severability.</u> To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of the Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of the Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of the Agreement will continue in full force and effect.

15.6. <u>No Waiver.</u> Neither party will be deemed to have waived any of its rights under the Agreement by lapse of time, failure or delay to exercise or enforce any right under the Agreement or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of the Agreement will constitute a waiver of any other breach of the Agreement. Neither a delay or a default by the Provider during the execution or exercise of any right, authority or privilege under the Agreement or to which it is entitled by the law, will destroy or impair any such right, authority or privilege or will be considered as a waiver of such right, authority or privilege, nor any or partial execution or exercise of any right, authority or privilege will prevent or exclude any other or further execution or exercise or the execution or exercise of any other right, authority or privilege.

15.7. <u>Choice of Law & Jurisdiction</u>. The Agreement will be governed solely by the laws of _____, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the courts of _____ [city or county], _____ [state]. This Section 7 governs all claims arising out of or related to the Agreement, including without limitation tort claims.

15.8. <u>Specific Laws</u> Except as expressly stated in these Terms of Service, Provider makes no representations or warranties that Customer´s use of the SaaS and/or Service is appropriate in Customer´s jurisdiction. Other than as indicated herein, Customer is responsible for compliance with any local and/or specific applicable laws, as applicable to Customer´s use of the SaaS and/or the Services. Customer acknowledges that use of the SaaS and/or the Services in other countries than ….. is likely to be subject to the requirements of local law.

15.9. <u>Waiver of Jury Trial, Class Action Waiver.</u> Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement. Where permitted under applicable law, both parties agree that each party may bring claims against the other party only in its individual capacity and not as a plaintiff or class member in any purported class or representative action. Unless both parties mutually agree, no arbitrator or judge may consolidate more than one person's claims or otherwise preside over any form of a representative or class proceeding.

15.10. <u>Conflicts.</u> In the event of any conflict between these Terms of Service and any Provider´s policy and/or SLA, AUP, DPA, the terms of these Terms of Service will govern.

15.11. <u>Provider´s Trade Marks.</u> Provider´s name, logo, trade names and trademarks or other identification (or any abbreviation, contraction or simulation thereof) are owned by Provider, and no right is granted to Customer to use any of the foregoing except as expressly permitted by prior written consent of Provider.

15.12. <u>Publicity Rights.</u> Provider may use Customer´s business name in an appropriate and acceptable manner for standard marketing promotions, provided that the Provider agrees to cease or alter such use at Customer´s written request where such use is contrary to Customer´s branding policies, could cause any brand confusion in the market or is otherwise objectionable to Customer. Acceptable and standard marketing promotions include, but are not limited to: client listings, press releases, surveys, interviews, reputable business publications, television, and website presentation and promotion, etc.

15.13. <u>Export Compliance and Use Restriction.</u> The SaaS and the Services a which Provider may provide or make available to Customer or Users may be subject to …… (or other territories) export control and economic sanctions laws, rules and regulations and other applicable export and import laws (collectively, "**Export Control Laws**"). Customer agrees to comply with all the Export Control Laws as they relate to access to and use of the SaaS and the Services by Customer and Users. Customer shall not access or use the SaaS and the Services if Customer is located in any jurisdiction in which the provision of the SaaS and/or the Services is prohibited under …… or other applicable laws or regulations (a "**Prohibited Jurisdiction**") and Customer shall not provide access to the SaaS and/or the Services to any government, entity or individual located in any Prohibited Jurisdiction. Customer represents, warrants and covenants that (i) Customer is not named on, or owned or controlled by any party named on any …... government (or other government) list of persons or entities prohibited from receiving exports, or transacting with any …... person, (ii) Customer is not a national of, located in, or a company registered in, any Prohibited Jurisdiction, (iii) Customer shall not permit Users to access or use the SaaS and/or the Service in violation of any Export Control Laws, (iv) no Customer Data created or submitted by Customer is subject to any restriction on disclosure, transfer, download, export or re-export under the Export Control Laws, and (v) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the ……. and the country in which Customer and Customer's Users are located. Customer further agrees that Customer will not use the SaaS and/or the Services to disclose, transfer, download, export or re-export, directly or indirectly, any Customer Data to any country, entity or other party which is ineligible to receive such items under the Export Control Laws or under other laws or regulations to which Customer may be subject. Customer acknowledges that the SaaS and/or the Services may not be available in all jurisdictions and that Customer is solely responsible for complying with the Export Control Laws.

15.14. <u>Entire Agreement.</u> The Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.

15.15. <u>Amendment.</u> Provider may, at its sole discretion, amend, change or modify these Terms of Services or any portions of the Terms of Service or the Agreement from time to time by sending Customer written notice thereof. Provider will use reasonable efforts to notify Customer of the

changes through communications via Customer´s email or other means. Such amendment will be deemed accepted and become effective 30 days after such notice (the "Proposed Amendment Date") unless Customer first gives Provider written notice of rejection of the amendment and terminates the Agreement pursuant to Section 13.2 (Term & Termination). Customer's continued use of the SaaS and/or the Services following the effective date of the Proposed Amendment will confirm Customer's consent thereto.

15.16. <u>Translated Versions.</u> The original language of these Terms of Service is English. Provider may make available translations for convenience. In case of conflicts between the original English version and any translation, the English version shall prevail.