



# General Terms and Conditions Zivver Corporation

## 1. DEFINITIONS AND INTERPRETATION

The capitalized terms in these General Terms and Conditions have the meaning ascribed to them in this Section.

**Agreement** the (digitally) signed and/or accepted Offer, including any attached schedules and, attached thereto, which includes and incorporates by reference these General Terms and Conditions.

**Business Days** Monday through Friday from 8:30 AM up to 5:30 PM in the time zone of Zivver's headquarters and excluding local national holidays.

**Confidential Information** any trade secrets or other information of a party, whether of a technical, business, or other nature (including, without limitation, information relating to a party's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, customers, prospects, or other affairs), that is disclosed to a party during the term of this Agreement and that such party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing party. Confidential Information does not include any information that: (a) was known to the receiving party prior to receiving the same from the disclosing party in connection with this Agreement; (b) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party; (c) is acquired by the receiving party from another source without restriction as to use or disclosure; or (d) is or becomes part of the public domain through no fault or action of the receiving party.

**Customer** the legal entity or natural person exercising its, his or her profession and with whom Zivver enters into the Agreement.

**End User(s)** the natural person or persons that are employees or independent contractors of the Customer or act on behalf of the Customer and make use of the Services.

**Intellectual Property Rights** any and all intellectual property rights, including without limitation, patents, design rights, copyrights, neighbouring



rights, database rights, trademark rights, moral rights, software rights, chip rights, trade name rights and Knowhow in, and relating to, Zivver, its affiliates, its licensors and/or its business.

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| <b>Knowhow</b>        | all business secrets, secret formulas, inventions, designs, standards, (technical) data or information, processes, methods, raw materials and business methods, as well as all related information, knowledge, details, trade practices and improvements. |
| <b>Offer</b>          | the offer of services by Zivver to the Customer, as included in the offer document, physically or digitally, provided to the Customer.  |
| <b>Parties</b>        | the Customer and Zivver.  |
| <b>Person</b>         | any legal entity, firm, cooperation, partnership or other business entity, as well as any natural person.   |
| <b>Right of Use</b>   | a limited, world-wide, non-exclusive, non-transferable (except as permitted in Section 14.5), non-sublicensable right during the term of this Agreement to use the Services and related documentation   |
| <b>Schedule</b>       | A schedule to the Agreement, whereby all schedules form an integral part of the Agreement.  |
| <b>Services</b>       | the services that Zivver provides to the Customer to help Customer secure its communications and as further described in the Offer.   |
| <b>Submitted Data</b> | data submitted by Customer to Zivver through the Services.  |
| <b>Taxes</b>          | all taxes, duties, and other governmental charges   |
| <b>Third Party</b>    | a Person that is not a Party.   |
| <b>User Terms</b>     | the user terms and conditions which are available on Zivver's website, as may be amended from time to time.   |
| <b>Website</b>        | <a href="http://www.zivver.com">www.zivver.com</a> along with related websites  |
| <b>Zivver</b>         | Zivver Corporation, based in Wilmington, Delaware, United States of America registered under company number 5698771 and with an address at 228 East 45th Street, Suite 9E, NY 10017, New York, United States of America.                                  |



- 1.1. Headings shall not affect the interpretation of this Agreement.
- 1.2. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular
- 1.3. Unless the context otherwise requires, a reference to one gender shall include a reference to other genders.
- 1.4. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.5. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.6. A reference to writing or written includes e-mail and Zivver-messaging but excludes fax.

## **2. AGREEMENT AND APPLICABILITY OF GENERAL TERMS AND CONDITIONS**

- 2.1. The Agreement comes into force and effect in accordance with the Offer.
- 2.2. The General Terms and Conditions form a part of and are incorporated by reference into the Agreement. These General Terms and Conditions apply to and govern the access to and the use of the Services and all (future) offers by Zivver.
- 2.3. In case of any conflict between the documents, the following descending order of precedence applies:
  - (a) the Offer
  - (b) these General Terms and Conditions
  - (c) Schedules
- 2.4. Amendments and additions to the Agreement, including these General Terms and Conditions, are only valid if these have been agreed by the Parties in writing. Zivver reserves the right to unilaterally amend the General Terms and Conditions. Amendments to the General Terms and Conditions shall also apply to already concluded Agreements, taking into account a period of 20 Business Days after announcing such changes on the Website
- 2.5. In the event that the Customer is not willing to accept changes to the General Terms and Conditions and such changes have a demonstrable material adverse effect for the Customer, it is entitled, up to the date that such new General Terms and Conditions come into full force and effect, to terminate the Agreement by written notice to Zivver.
- 2.6. Minor amendments and amendments that are required because of (a change in)



legislation can always be made in the General Terms and Conditions. Zivver is not obliged to announce such changes and it does not entitle the Customer to terminate the Agreement.

### **3. TERM AND TERMINATION OF THE AGREEMENT**

- 3.1. The Agreement has the term as agreed in the Offer and will automatically be renewed by successive periods of twelve (12) months, unless agreed otherwise in the Offer and subject to any limitations under statutory law. Either Party may terminate the Agreement for convenience against the end of the contractual term. Termination requires that the terminating Party gives written notice of termination to the other Party no later than two (2) months before the end of the then current contract period. The Agreement will subsequently terminate by the end of the then current contractual term.
- 3.2. In case of a material breach of the Agreement by the Customer, Zivver is entitled to terminate this Agreement and/or terminate access to or provision of the Service upon written notice, if the matters set forth in a breach notice are not cured to Zivver's reasonable satisfaction within a thirty (30) day period. The consequences of termination do not give the Customer any right to compensation.
- 3.3. Without affecting any other right or remedy available to it, this Agreement may be terminated agreement with immediate effect upon written notice to the other party:
  - (a) by Zivver, if Customer fails to pay any amount when due hereunder and such failure continues for thirty (30) days after Customer's receipt of written notice of nonpayment; or
  - (b) End Users breach the terms and conditions that apply to their use of the Services; or
  - (c) by either party, if the other party (i) becomes insolvent, (ii) is generally unable to pay, or fails to pay, its debts as they become due, (iii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, (iv) makes or seeks to make a general assignment for the benefit of its creditors, or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business;
- 3.4. In deviation of article 3.1, Zivver shall have the right to terminate (part of) the Agreement for convenience at any moment without any further liability if Zivver decides to discontinue (part of) the Services for all or a substantial part of its customers for any reason. Any prepaid fees in respect of these terminated Services shall be reimbursed pro-rata by Zivver to the Customer.
- 3.5. After termination of the Agreement, the Customer, for data exchanged via Zivver Secure Email and File Transfer, has the opportunity to download any data (from its End Users) still present on Zivver's systems within a period of sixty (60) days. The Customer itself is responsible for promptly downloading such data.



- 3.6. If this Agreement is terminated for any reason: (a) Customer will pay to Zivver any fees, reimbursable expenses, compensation, or other amounts that have accrued prior to the effective date of the termination; (b) any and all liabilities accrued prior to the effective date of the termination will survive and will be immediately due and payable; and (c) Customer will provide Zivver with a written certification signed by an authorized Customer representative certifying that all use by Customer of the Services and related documentation has been discontinued.
- 3.7. Upon termination of the Agreement, any Section that is intended by its nature to survive expiry or termination shall so survive. The following Sections shall in any event remain in full force and effect:
- (a) Section 8 - Indemnity
  - (b) Section 9 - Limitation of Liability
  - (c) Section 12 - Intellectual Property and Right of Use;
  - (d) Section 13 - Confidentiality; and
  - (e) Section 14.9 and 14.10 - Governing Law and Choice of Forum

#### **4. RESPONSIBILITIES OF THE CUSTOMER**

The Customer will do and/or omit everything that is reasonably required and desired to ensure that the Services are performed correctly in a timely manner. The Customer will ensure in particular, but not exclusively, that:

- (a) all data indicated by Zivver as being reasonably necessary are promptly submitted to Zivver;
- (b) provide co-operation to Zivver in all matters relating to the provision and receipt of the Services as described in the Offer (including making personnel available where necessary);
- (c) provide Zivver with such information and materials that Zivver may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) the Service is not used by any persons other than the agreed End Users.

#### **5. DESCRIPTION OF THE SERVICES**

- 5.1. Zivver shall provide the Services included in the Offer, which Services the Customer hereby purchases in accordance with the terms and conditions of the Agreement.
- 5.2. During the term of the Agreement, the Customer may purchase additional services, accounts or licenses from Zivver, which shall be governed by the terms of this Agreement and which will not affect the term of the Agreement, unless the Parties explicitly agree otherwise. At the beginning of each month, for invoicing purposes and unless the Parties explicitly agree otherwise, Zivver shall (i) calculate the number of licenses, accounts and/or use of the Services on each day of the previous month; (ii) add each daily total together (the "**Active Licenses**"); and (iii) divide the Active Licenses by the calendar days in the previous month. If Zivver establishes that more



services or licenses have been used, or accounts are created by a Customer than licenses haven been purchased, Zivver may charge the Customer for the additional services, licenses or accounts in line with the pricing included in the Offer.

- 5.3. During the term of the Agreement, the agreed number of licenses of the Customer cannot be reduced and the services cannot be downgraded by the Customer.
- 5.4. The Customer is only permitted to use the Services in the intended manner described in the Offer and on a fair use basis. If the Customer uses the Services in any other way (e.g. using a single account with an entire organization and communicating with a substantial number of guest users or using more accounts than agreed in the Offer), then this shall constitute a material breach of the Agreement, and Zivver reserves the unilateral right and the Customer hereby accepts such right: (i) to invoice the Customer without any further notice for an amount reflecting the actual use of the Service; and/or (ii) to terminate / suspend the Services for an indefinite period of time or until a new agreement has been reached with the Customer on continuance of the Services; and/or (iii) to terminate the Agreement.
- 5.5. The Customer agrees that any End User permitted by the terms of the Offer to access and/or use the Service must agree to comply with the User Terms. The User Terms shall apply to any use by End Users of the Services. In the event of a conflict between the provisions of the Agreement and the provisions of the User Terms, the provisions of the Agreement shall prevail. The Customer hereby accepts the User Terms and commits to ensure that its End Users shall comply with them.

## **6. MAINTENANCE AND MODIFICATION OF THE SERVICES**

- 6.1. Zivver is entitled to take its systems, or parts thereof, temporarily out of service for maintenance, modification or improvement purposes. This may include (but is not limited to) dealing with technical issues and making changes or updates to reflect changes in legal, regulatory or commercial requirements. Zivver will endeavor to do so outside office hours as far as possible. Zivver will notify the Customer accordingly. Zivver is never liable for compensation for damage or losses in connection with taking systems out of service for the purposes set out in this Section.
- 6.2. Zivver is entitled to modify its systems, or parts thereof, from time to time in order to improve or introduce functionalities and to resolve errors. If a modification leads to a considerable change in a functionality, Zivver will promptly notify the Customer. In the event of modifications that are relevant to multiple Customers, it is not possible to leave out a specific modification only for the Customer's benefit. Zivver is not liable to compensate for any damage or losses caused by such a modification. Should the aforesaid change in an existing functionality have substantial adverse consequences for the Customer, the Customer is entitled to terminate the Agreement in writing, subject to a one (1) month's notice period.
- 6.3. Starting point is that the improved version of existing functionalities of the solution purchased by Customer will be made available to Customer free of charge. Without



prejudice to what is stated in the next sentence, Zivver reserves the unilateral right to charge Customer for making available new and/or additional functionalities that relate to functionalities already purchased by the Customer and which - at the discretion of Zivver - offer significant added value. Zivver is only entitled to charge these amounts if: (A) Customer has been informed in writing about (i) the new/additional functionality, (ii) the applicable costs, and (iii) Customer's right to opt out of activation of this functionality (the so-called opt-out right); and (B) 30 days have expired after such information has been shared and Customer has not made use of the opt-out right. In addition, Customer retains the right to deactivate such new and/or additional functionality at any time during the term of the Agreement and, as soon as technical feasible, the functionality will be deactivated and no further costs will be charged for this functionality.

## **7. PRICE AND INVOICES**

- 7.1. Customer will pay Zivver the fees and any other amounts owing under the Agreement, plus any applicable sales, use, excise, or other taxes, as specified in the applicable Offer. Unless otherwise agreed, Customer will pay all amounts due within thirty (30) days of the date of the applicable invoice, for which the Customer accepts possible electronic invoicing. The Parties agree that Zivver may change the fees for Services at any time upon thirty (30) days prior written notice to Customer, effective on the next renewal period; provided that in such event, Customer is not entitled to terminate the Agreement.
- 7.2. The annual fixed costs of the Services will be invoiced upon the commencement of the Agreement and subsequently on an annual basis. The variable costs for the Services will be invoiced on a quarterly basis, or a different basis if agreed in the Offer, in arrears based on subsequent costing. Implementation of the Services will be invoiced upon completion of the implementation.
- 7.3. All amounts payable under the Agreement are denominated in US Dollars (“USD”) and exclude sales tax and other governmental levied duties unless stated otherwise, and Customer will pay all such amounts in USD.
- 7.4. Other than net income taxes imposed on Zivver, Customer will bear Taxes resulting from this Agreement. Customer will pay any additional Taxes as are necessary to ensure that the net amounts received by Zivver after all such Taxes are paid are equal to the amounts that Zivver would have been entitled to in accordance with this Agreement as if the Taxes did not exist.
- 7.5. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees and judicial and extra-judicial collection costs) incurred by Zivver to collect any amount that is not paid when due.



- 7.6. Zivver only accepts payment by Customer by means of bank transfer and will not accept payment by Customer in the form of credit card, cash or check. However, for purchases of the Services via the online portal on the Website, Zivver only accepts payment by Customer by means of credit card.
- 7.7. For authenticating users with multi-factor authentication, such as SMS, Zivver charges the costs per use of the relevant authentication method as included in the Offer. If a user has activated Trusted Device Authentication and opens a message secured by multi-factor authentication on a trusted device, Zivver only charges an amount equal to the relevant cost for such multi-factor authentication for the initial decryption of the message, regardless how often the specific message is accessed on the trusted device.

## **8. INDEMNITY**

- 8.1. Customer will defend Zivver and its licensors from any actual or threatened third-party claim arising out of or based upon Customer's use of the Services, including in connection with (i) the Customer's use of the Services and/or any use of the Services by End Users, (ii) the content of the data traffic or information originating from the Customer and/or its End Users, or (iii) Customer's breach of any of the provisions of this Agreement or End Users breaching the applicable terms and conditions. Zivver will (a) give Customer prompt written notice of the claim, and (b) assist Customer with the defense and settlement of the claim as Customer may reasonably request and at Customer's expense.
- 8.2. Customer will indemnify Zivver against: (a) all damages, costs, and attorneys' fees finally awarded against Zivver in any proceeding under Section 8.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Zivver in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without Customer's consent after Customer has accepted defense of such claim); and (c) if any proceeding arising under Section 8.1 is settled, Customer will pay any amounts to any third party agreed to by Customer in settlement of any such claims.

## **9. LIMITATION OF LIABILITY**

- 9.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, ZIVVER WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF GOODWILL, OR LOSS OF BUSINESS, EVEN IF ZIVVER IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.
- 9.2. UNDER NO CIRCUMSTANCES WILL ZIVVER'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS





BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO ZIVVER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION) IN RELATION TO THE SPECIFIC SERVICES THE CLAIM RELATES TO.

- 9.3. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY ZIVVER TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION 9 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.
- 9.4. Zivver cannot influence any End User's use of the Services and the information sent or otherwise processed via the Services. As a consequence, the Customer itself is and remains responsible for use of the Services and for the consequences of use of the Services by its End Users.

## **10. WARRANTIES; DISCLAIMER**

- 10.1. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement; and (c) the execution, delivery, and performance of this Agreement does not violate the laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.
- 10.2. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THIS SECTION 10, ZIVVER MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. ZIVVER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. ZIVVER DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICES. ZIVVER DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SERVICES WILL BE SECURE, UNINTERRUPTED, OR THAT CUSTOMER'S USE OF THE SERVICES SHALL RESULT IN ITS COMPLIANCE WITH REGULATORY REQUIREMENTS APPLICABLE TO ITS PLANS. ZIVVER EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON CUSTOMER'S USE OF THE SERVICES. ZIVVER PROVIDES THE SERVICES ON AN 'AS IS' BASIS AND IMPLEMENTATION ON AN BEST EFFORTS BASIS.



## 11. PRIVACY

- 11.1. Zivver processes personal data at the request of the Customer to enable proper use of the Services. The Customer is responsible to inform the End Users of such processing of personal data and the Customer ensures that there is a legal ground for the use of the Services by the Customer.
- 11.2. The terms of the Data Processing Agreement as available on [www.zivver.com/data-processing](http://www.zivver.com/data-processing), as amended from time to time, are hereby incorporated by reference and will apply to the extent that Personal Data is processed by Zivver.

## 12. INTELLECTUAL PROPERTY AND RIGHT OF USE

- 12.1. Subject to the terms and conditions of this Agreement, Zivver hereby grants Customer the Right of Use for the term of the Agreement. Customer's right to use the Services is subject to any scope limitations that may be set forth in an Offer.
- 12.2. Customer hereby grants to Zivver and its licensors the right to use any Submitted Data necessary for Zivver or its licensors to provide the Services. Zivver may use Submitted Data to perform its obligations hereunder. Customer represents and warrants that it has obtained all necessary consents, permissions or approvals as may be necessary for Customer to submit such Submitted Data to Zivver in connection with the delivery of the Services.
- 12.3. Any information that the Customer or its End Users save, send or otherwise process via the Services is and remains the property of the Customer and/or its End Users.
- 12.4. Customer's use of the Services shall be limited to End Users. Customer shall be responsible for: (a) identifying and authenticating users, (b) approving access to such users to the Services, (c) maintaining the confidentiality of all usernames, passwords and user account information, and (d) ensuring that each End User reads and accepts the User Terms. Customer shall be responsible for all activities that occur under its users' usernames, passwords or accounts. Zivver is not responsible for any harm caused by Customer's users, including individuals who were not authorized to have access to the Services.
- 12.5. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to: (a) rent, lease, or otherwise permit third parties to use the Services or related documentation; (b) use the Services to provide Services to third parties, other than affiliates; (c) transmit viruses, worms, malicious codes or similar through the Services; nor (d) circumvent or disable any security or other technological features or measures of the Services.
- 12.6. The Right of Use explicitly excludes a right for the Customer to inspect, obtain, copy and change the source code of the software appurtenant to the Services. The Right



of Use does not entitle the Customer to grant one or more sublicenses to third parties, unless Zivver has granted its prior written permission to do so. Customer shall not sell, resell, distribute, rent, lease, license, sublicense, or assign the Right of use to any Third Party.

- 12.7. Nothing in this Agreement shall restrict Zivver from using and exploiting in full the analyses, insights, learnings, and Services improvements (including improvements to algorithms from machine learning) obtained or resulting from the Services or from using, Submitted Data to create such analyses, insights and learnings; provided, however, any public disclosure of such analyses, insights and learnings shall be done in such a way that Customer is not identifiable.
- 12.8. Customer will use its best efforts to prevent any unauthorized access or use of the Services and provided related documentation and immediately notify Zivver in writing of any unauthorized access or use that comes to Customer's attention. If there is unauthorized access or use by anyone who obtained access to the Services directly or indirectly through Customer, Customer will take, at its expense, all steps reasonably necessary to terminate the unauthorized access or use. At its expense, Customer will cooperate and assist with any actions taken by Zivver to prevent or terminate unauthorized access or use of the Services or related documentation, and remediation of the event.
- 12.9. Zivver grants to Customer a limited right to use the Services and related documentation under this Agreement. Customer will not have any rights to the Services or related documentation except as expressly granted in this Agreement. Zivver reserves to itself all rights to the Services and related documentation not expressly granted to Customer in accordance with this Agreement. These restrictions also explicitly, but not exclusively, apply in case of custom made Zivver e-learning modules.
- 12.10. Zivver will not access confidential information (such as personal messages) that the Customer saves, sends, receives or otherwise processes via the Services, insofar as it is not necessary for the provision and proper operation of the Services, for which Zivver and its licensors hereby acquires a right of use. The foregoing does not apply if it is explicitly agreed with Zivver or if Zivver is obliged to do so pursuant to a statutory provision or court order. In such case, Zivver will undertake to limit access to the information as far as possible and within its power.
- 12.11. If the Customer and/or an End User sends information to Zivver for the purpose of feedback on an error or a suggestion for improvement, Zivver may use and exploit this on a worldwide, irrevocable, royalty-free basis

### **13. CONFIDENTIALITY**

- 13.1. Nothing in this Section 13 will limit Zivver's ability to use Submitted Data in accordance with Section 12.2.



- 13.2. During and after the term of this Agreement, each party will: (a) use the other party's Confidential Information solely for the purpose for which it is provided; (b) not disclose the other party's Confidential Information to a third party unless the third party must access the Confidential Information to perform in accordance with this Agreement, and the third party has executed a written agreement that contains terms that are substantially similar to the terms contained in this13; and (c) maintain the secrecy of, and protect from unauthorized use and disclosure, the other party's Confidential Information to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.
- 13.3. If either party is required by law to disclose the Confidential Information or the terms of this Agreement, the disclosing party must give prompt written notice of such requirement before such disclosure, to the extent permitted by law, and assist the non-disclosing party in obtaining an order protecting the Confidential Information from public disclosure.
- 13.4. Upon the termination or expiration of this Agreement, or upon earlier request, each party will deliver to the other all Confidential Information that it may have in its possession or control. Notwithstanding the foregoing, neither party will be required to return materials that it must retain in order to receive the benefits of this Agreement or properly perform in accordance with this Agreement.
- 13.5. Parties agree to keep the contents of the Agreement, as well as the contents and functioning of the Services, confidential.

#### **14. MISCELLANEOUS**

- 14.1. Zivver will be and act as an independent contractor (and not as the agent or representative of Customer) in the performance of this Agreement. This Agreement will not be interpreted or construed as: (a) creating or evidencing any association, joint venture, partnership, fiduciary relationship, or franchise between the Parties; (b) imposing any partnership, franchise or fiduciary obligation or liability on either party; or (c) prohibiting or restricting Zivver's performance of any services for any third party or the provision of products to any third party.
- 14.2. The Parties hereby agree that Customer is solely responsible for compliance with applicable data privacy and employment laws and regulations applicable to Customer's use of the Services and shall operate in compliance with such laws. Customer implements, and makes any decisions based on, any outputs of the Services in its sole discretion and at its own risk.
- 14.3. If any provisions in the Agreement or in any attached annexes prove to be void or invalid, it will not affect the validity of the Agreement as a whole. In such case, the Parties will replace that provision by one or more new provisions reflecting the purport of the original provision as far as is possible under the law.
- 14.4. The Agreement, including any attached annexes, contains the entire agreement



between the Parties relating to the subject of this Agreement and supersedes all earlier written, as well as oral agreements made by the Parties in this regard. Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

- 14.5. Customer may not assign its right, duties, or obligations under this Agreement without prior written notice to the Zivver, other than in connection with a sale or change of control of Customer whether by merger or otherwise, where the applicable Agreement is also transferring. If notice is given, this Agreement will bind Customer's successors and assigns. Any attempt by Customer to transfer its rights, duties, or obligations under this Agreement except as expressly provided in this Agreement is void. Zivver is entitled to assign or transfer its rights and obligations under this Agreement to a Third Party that acquires the Services or the related business of Zivver and/or its shareholders
- 14.6. Subject to Section 13 regarding confidentiality and unless otherwise agreed in writing, Customer will: (a) make one or more representatives reasonably available for reference inquiries from potential Zivver customers partners, and investors; (b) permit Zivver to create and publish a case study describing in general terms the nature of Customer's use of the Services; (c) permit Zivver to issue and publish a press release containing a quotation from a representative of Customer announcing that Customer has subscribed to use the Services and the general context of the intended use; and (d) allow Customer's name and logo to be posted on Zivver's Website and in marketing and advertising materials, subject to compliance with Customer's brand guidelines or other specifications regarding logo usage.
- 14.7. Zivver may utilize a subcontractor or other third party to perform its duties under this Agreement so long as Zivver remains responsible for all of its obligations under this Agreement.
- 14.8. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by email to the appropriate party and respective email address reasonably provided such receiving party or to such other address as the notifying party has been advised in writing by the other party hereto. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section 14.8. Notices are deemed given two (2) Business Days following the date of receipt.
- 14.9. The Parties acknowledge and agree that any controversy or claim arising out of or relating to this Agreement, or the breach thereof, not settled by negotiation shall be determined and settled by arbitration in New York County, New York administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The award rendered thereon by the arbitrator(s) shall be final and binding on the Parties thereto, and judgment thereon may be entered in any court of competent jurisdiction.



- 14.10. This Agreement is governed by the laws of the State of Delaware. We operate the Service from our offices in the state of New York, and we make no representation that materials included in the Service are appropriate or available for use in other locations.
- 14.11. An action for breach of this Agreement by Customer or any other action otherwise arising out of this Agreement for Customer must be commenced within one (1) year from the date the right, claim, demand, or cause of action first occurs or be barred forever.
- 14.12. Zivver will not be liable for or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond Zivver's reasonable control, so long as Zivver uses all commercially reasonable efforts to avoid or remove such causes of non-performance.
- 14.13. Zivver and Customer intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of, any person other than the Customer and Zivver, including any permitted assignees.
- 14.14. Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.
- 14.15. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.16. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. If any material limitation or restriction on the use of the Services under this Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use the Services will immediately terminate.
- 14.17. This Agreement, including all annexes, is the final and complete expression of the agreement between these Parties regarding Customer's use of the Services. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement, except that this Agreement does not supersede any prior nondisclosure or comparable agreement between the Parties executed prior to this Agreement being executed, nor does it affect the validity of any agreements between the Parties relating to professional services relating to the Services that Zivver may provide. No employee, agent, or other representative of Zivver has any authority to bind Zivver with respect to any statement, representation, warranty, or other expression unless



the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought. Zivver will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Customer in any receipt, acceptance, confirmation, correspondence, or otherwise, unless Zivver specifically agrees to such provision in writing and signed by an authorized agent of Zivver.

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