

Zowie Terms and Conditions: Subscription Services

Please read these Zowie Subscription Services Terms and Conditions (“Terms”) carefully, because, together with the Order Form executed by you and Zowie, they constitute a binding agreement between you (“Customer”) and Zowie, Inc. (“Zowie”) and govern your use of Zowie’s Services. Zowie and Customer may be referred to herein collectively as the “Parties” or individually as a “Party”. In consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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1. Overview

1.1 General

These Terms govern the terms and conditions under which Zowie will deliver and Customer will receive any or all of the Services, as set forth in any applicable Order Form. The specific Services to be provided hereunder are identified in the Order Form(s) signed by the Parties. Each Order Form submitted, accepted and executed by the Parties is hereby incorporated by reference into these Terms. In the event of conflict between the terms of the Order Form and the terms set forth in these Terms, the terms of the Order Form will govern.

1.2 Reserved Rights

Customer acknowledges that Zowie may unilaterally make changes or amend these Terms, provided that if it does so, it will give Customer at least 30 days' notice prior to such changes becoming effective.

1.3 Definitions

(a) “De-identified Data” means any data that is derived or aggregated in deidentified form from (i) any Customer Materials; or (ii) Customer’s and/or its Authorized Users’ customers’ access and/or use of the Services, including, without limitation, any usage data or trends with respect to the Services.

(b) “Annual Automated Resolutions Maximum” means the limit on the number of Automated Resolutions between the Subscription Services and end users of Customer’s website, email (or other channel), as set forth in the applicable Order Form, based on Customer’s Subscription Services tier.

(c) “Annual Manually Replied Ticket Maximum” means the limit on the number of Manually Replied Tickets between the Subscription Services and end users of Customer’s website, email (or other channel), as set forth in the applicable Order Form, based on Customer’s Subscription Services tier.

(d) “Authorized User” means an employee or contractor whom Customer has authorized to access and use the Services.

(e) “Automated Resolution” means a Ticket in which the Subscription Services uses built-in AI to recognize the end user’s intent and respond to messages or otherwise conducting the conversation, without involving an Authorized User.

(e) “Customer Materials” means all information, data, content and other materials, in any form or medium, that is submitted, posted, collected, transmitted or otherwise provided by or on behalf of Customer through the Services or to Zowie in connection with Customer’s access and/or use of the Services, but excluding, for clarity, De-identified Data and any other information, data, data models, content or materials owned or controlled by Zowie and made available through or in connection with the Services.

(f) “Documentation” means the operator and user manuals, training materials, specifications, minimum system configuration requirements, compatible device and hardware list and other similar materials in hard copy or electronic form if and as provided by Zowie to Customer (including any revised versions thereof) relating to the Services, which may be updated from time to time upon notice to Customer.

(g) “Intellectual Property Rights” means patent rights (including, without limitation, patent applications and disclosures), inventions, copyrights, trade secrets, know-how, data and database rights, mask work rights, and any other intellectual property rights recognized in any country or jurisdiction in the world.

(h) “Manually Replied Ticket” or “Manually Replied Conversation” means a Text Chat or Email interaction in which an Authorized User responds to an end user using Subscription Services. It ends when the Authorized User marks it as closed and does not have a fixed

time limit.

Manually Replied Tickets or Manually Replied Conversations conducted via Text Chat start when the end user sends a message or initiates a chat.

Manually Replied Tickets or Manually Replied Conversations conducted via Email starts with the first message sent by end user in the email thread.

(i) “Order Form” means a (i) mutually executed order form or other mutually agreed upon ordering document; (ii) purchase order issued by Customer and accepted by Zowie in writing; or (iii) quote issued by Zowie and accepted by Customer, in each case which references these Terms and sets forth the applicable Services to be provided by Zowie.

(j) “Person” means any individual, corporation, partnership, trust, limited liability company, association, governmental authority or other entity.

(k) “Ticket” means any of the following: (1) text conversation initiated by an end user, beginning with the first message and ending with the last message sent within the same session (“Text Chat”) or (2) email thread (“Email”) or (3) a voice connection initiated by an end user, established on a dedicated endpoint from start until the end of connection, no longer than five minutes (“Phone Call”) or (4) a voice connection established within a Text Chat channel from start until end of the connection (“Voice Chat”). Session for Text Chat starts with the first message and finishes sixty (60) minutes after the last end user’s message. Session for Email

finishes once a Ticket has been resolved. Sessions for both Phone Call channel and Voice Chat finish after the end of conversation. If duration of a Phone Call exceeds five minutes, a new Ticket will be initiated and counted accordingly for every additional five minutes.

(f) “Automated Conversation” means an interaction (as specified below) with an end user through one of the channels (Text Chat, Email, Voice Chat, or Phone Call) in which the Subscription Services interacts with an end user using built-in AI, including responding to messages or otherwise conducting the conversation.

Billing options regarding Automated Conversations are applied in the Order Form, based on Customer’s Subscription Services.

Text Chat Automated Conversation:

Automated Conversations conducted via Text Chat start when the end user sends a message or selects an option from an initial menu or engages with a proactive chat message. Text Chat Automated Conversation ends sixty (60) minutes after the last end user’s message or upon the user closing the conversation by clicking “end chat”, whichever occurs first.

Email Automated Conversation:

Automated Conversations conducted via Email start with the first message sent by the end user in the email thread. Email Automated Conversation ends forty eight (48) hours after the last end user email.

Voice Chat Automated Conversation:

Automated Conversations conducted via Voice Chat are handled through the Subscription Services interface for voice

communication. Voice Chat Automated Conversation starts when the end user establishes a voice connection and ends when the end user exits the interface for voice communication.

Phone Call Automated Conversation:

Automated Conversations conducted via Phone Call are handled using a traditional phone conversation. Phone Call Automated Conversation starts when the end user establishes a connection and ends at the end of the call.

(l) “Zowie IP” means the Services, the underlying software provided in conjunction with the Services, algorithms, interfaces, technology, databases, tools, know-how, processes and methods used to provide or deliver the Services, the Documentation, and De-identified Data, including all improvements, modifications or enhancements to, or derivative works of, the foregoing (regardless of inventorship or authorship), and all Intellectual Property Rights in and to any of the foregoing.

(m) “Subscription Services” means Zowie’s proprietary software-as-a-service platform, and all associated technology, in object code format only, which is made available by Zowie to Customer pursuant to an Order Form and is intended to enable Customer to create and operate chatbots on Customer’s website or other property that respond to end user requests and inquiries.

(n) “Services” means the Subscription Services and Customization.

(o) “Customization” means any custom integrations or modification work provided by Zowie to Customer.

2. Services; Access and Use

2.1 Services

Subject to the terms and conditions of these Terms and any Order Form, Zowie hereby grants to Customer a limited, non-exclusive, non-transferable (except in compliance with Section 10.6) right to access and use the Services during the Term, solely for Customer's internal business purposes.

2.2 Restrictions

Customer will not at any time and will not permit any Person (including, without limitation, Authorized Users) to, directly or indirectly:

- (i) access or use the Services in any manner beyond the scope of rights expressly granted in these Terms;
- (ii) modify or create derivative works of the Services or Documentation, in whole or in part;
- (iii) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain improper access to any software component of the Services, in whole or in part;
- (iv) frame, mirror, sell, resell, rent or lease any access or use of

the Services to any other Person, or otherwise allow any Person to access or use the Services for any purpose other than for the benefit of Customer in accordance with these Terms;

(v) access or use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable law;

(vi) contact any end user to Customer's property using contact information obtained through use of the Services without obtaining such end user's express written consent;

(vii) interfere with, or disrupt the integrity or performance of, the Services, or any data or content contained therein or transmitted thereby;

(viii) access or search the Services (or download any data or content contained therein or transmitted thereby) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than software or Services features provided by Zowie for use expressly for such purposes; or

(ix) access or use the Services, Documentation or any other Zowie Confidential Information for benchmarking or competitive analysis with respect to competitive or related products or services, or to develop, commercialize, license or sell any product, service or technology that could, directly or indirectly, compete with the Services.

2.3 Authorized Users

Customer will not allow any Person other than Authorized Users to access or use the Services. Customer may permit Authorized Users to access and/or use the Services, provided that Customer ensures each Authorized User complies with all applicable terms and conditions of these Terms. Customer will be responsible for all acts, omissions and obligations of Authorized Users in connection with the activities contemplated by these Terms and/or the Services, as though such acts, omissions and/or obligations were those of Customer. Customer will, and will require all Authorized Users to, use all reasonable means to secure user names and passwords, hardware and software used to access the Services in accordance with market standard security protocols, and will promptly notify Zowie if Customer knows or reasonably suspects that any user name and/or password has been compromised.

2.4 API

In order to use the Services on Customer's properties, Customer may be given a key for Zowie's application programming interface ("API"). Customer is solely responsible for the security of the API key, is required to take appropriate measures to safeguard the API key and shall be responsible for any unauthorized access to the API key. Customer's property must maintain absolute compatibility with the API in order to be granted access to the Services.

2.5 Third-Party Services

Certain features and functionalities within the Services may allow Customer and its Authorized Users to interface or interact with, access and/or use compatible third-party services, products,

technology and content (collectively, “Third-Party Services”) through the Services. Zowie does not provide any aspect of the Third-Party Services and is not responsible for any compatibility issues, errors or bugs in the Services or Third-Party Services caused in whole or in part by the Third-Party Services or any update or upgrade thereto. Customer is solely responsible for maintaining the Third-Party Services and obtaining any associated licenses and consents necessary for Customer to use the Third-Party Services in connection with the Services. Customer acknowledges that the use of Third-Party Services may require Customer to enter into an agreement or accept the terms of service of the Third-Party Services provided and that Zowie shall not be a party to such agreement or terms. To the maximum extent possible under applicable law, Zowie disclaims any and all liability for any damages, losses or costs arising from Third-Party Services.

2.6 Reservation of Rights

Subject to the limited rights expressly granted hereunder, Zowie reserves and, as between the Parties will solely own, the Zowie IP and all rights, title and interest in and to the Zowie IP. No rights are granted to Customer hereunder (whether by implication, estoppel, exhaustion or otherwise) other than as expressly set forth herein.

2.7 Support

Zowie will provide reasonable technical support to Customer by electronic mail in connection with its use of the Services on weekdays during the hours of 9:00 a.m. to 5:00 p.m. Eastern Time, with the exception of U.S. federal holidays (“Support Hours”), subject to the following conditions:

(i) prior to initiating any support request, Customer (and its own personnel responsible for information technology support) will have first attempted to resolve the issue generating the need for such support; and

(ii) Customer will reasonably cooperate with Zowie support staff as needed to resolve the issue. Customer may initiate a helpdesk ticket during Support Hours by emailing support@zowie.ai.

2.8 Feedback

From time to time, Customer or its employees, contractors, or representatives may provide Zowie with suggestions, comments, feedback, instructions or the like with regard to the Services (collectively, “Feedback”). Customer hereby grants Zowie a perpetual, irrevocable, royalty-free and fully-paid up license to use and exploit all Feedback in connection with Zowie’s business purposes, including, without limitation, the testing, development, maintenance and improvement of the Services. Customer acknowledges that, to the extent such Feedback is implemented into the Services, Zowie is the exclusive owner of such implementation and Customer gains no rights in the Services.

3. Fees and Payment

3.1 Fees

Customer will pay Zowie the fees set forth in the relevant Order Form in accordance with the terms therein (“Fees”) and without offset or deduction. Zowie will issue invoices to Customer in

accordance with the Order Form, and Customer will pay all amounts set forth on any such invoice no later than seven (7) days after the date of such invoice. If Customer has signed up for automatic billing, Zowie will charge Customer's selected payment method (such as a credit card, debit card, gift card/code, or other method available in Customer's home country) for any Fees on the applicable payment date, including any applicable taxes. If Zowie cannot charge Customer's selected payment method for any reason (such as expiration or insufficient funds), Customer remains responsible for any uncollected amounts, and Zowie will, in its sole discretion, (i) attempt to charge the payment method again; or (ii) issue an invoice to Customer which shall be due immediately on receipt. In accordance with local law, Zowie may update information regarding Customer's selected payment method if provided such information by Customer's financial institution.

3.2 Payments

Payments due to Zowie under these Terms must be made in U.S. dollars by check, credit card, debit card, wire transfer of immediately available funds to an account designated by Zowie or such other payment method mutually agreed by the Parties. All payments are non-refundable and neither Party will have the right to set off, discount or otherwise reduce or refuse to pay any amounts due to the other Party under these Terms. If Customer fails to make any payment when due, late charges will accrue at the rate of 1.5% per month or, if lower, the highest rate permitted by applicable law. Zowie may suspend all Services until all overdue payments are made in full. Customer will reimburse Zowie for all reasonable costs and expenses incurred (including reasonable attorneys' fees) in collecting any late payments or interest.

3.3 Taxes

Customer is responsible for all sales, use, ad valorem and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, multinational or local governmental regulatory authority on any amount payable by Customer to Zowie hereunder, other than any taxes imposed on Zowie's income. Without limiting the foregoing, in the event that Customer is required to deduct or withhold any taxes from the amounts payable to Zowie hereunder, Customer will pay an additional amount so that Zowie receives the amounts due to it hereunder in full, as if there were no withholding or deduction.

4. Confidential Information

4.1 Definition

As used herein, "Confidential Information" means any information that one Party (the "Disclosing Party") provides to the other Party (the "Receiving Party") in connection with these Terms, whether orally or in writing, that is designated as confidential or that reasonably should be considered to be confidential given the nature of the information and/or the circumstances of disclosure. For clarity, the Services and the Documentation will be deemed Confidential Information of Zowie. However, Confidential Information will not include any information or materials that:

- (i) are at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the Receiving Party;

(ii) are rightfully known by the Receiving Party prior to receiving such information or materials from the Disclosing Party;

(iii) are rightfully acquired by the Receiving Party from a third party who has the right to disclose such information or materials without breach of any confidentiality or non-use obligation to the Disclosing Party; or

(iv) are independently developed by or for the Receiving Party without use of or access to any Confidential Information of the Disclosing Party.

These Terms will constitute Confidential Information of each Party but may be disclosed on a confidential basis to a Party's advisors, attorneys, actual or bona fide potential acquirers, investors or other sources of funding (and their respective advisors and attorneys) for due diligence purposes.

4.2 Obligations

The Receiving Party will maintain the Disclosing Party's Confidential Information in strict confidence, and will not use the Confidential Information of the Disclosing Party except as necessary to perform its obligations or exercise its rights under these Terms. The Receiving Party will not disclose or cause to be disclosed any Confidential Information of the Disclosing Party, except

(i) to those employees, representatives, or contractors of the Receiving Party who have a bona fide need to know such

Confidential Information to perform under these Terms and who are bound by written agreements with use and nondisclosure restrictions at least as protective as those set forth in these Terms, or

(ii) as such disclosure may be required by the order or requirement of a court, administrative agency or other governmental body, subject to the Receiving Party providing to the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or otherwise contest the disclosure.

5. Customer Materials and Data

5.1 Ownership

Zowie acknowledges that, as between Customer and Zowie and except as set forth in Section 5.2, Customer owns and retains all right, title and interest in and to all Customer Materials.

5.2 License

Notwithstanding anything in these Terms to the contrary, Customer hereby grants to Zowie

(a) a non-exclusive, worldwide, royalty-free right and license to use, host, reproduce, display and perform publicly, and modify the Customer Materials solely for the purpose of hosting, operating, improving and providing the Services, and

(b) a non-exclusive, worldwide, royalty-free, perpetual, irrevocable right and license to use, host, reproduce, display and perform publicly, and modify the Customer Materials solely for related internal operations and functions such as operational analytics and reporting, internal financial reporting and analysis, audit functions, archival, and other internal business purposes.

5.3 Data Security

Each Party will use commercially reasonable efforts and take no less than industry standard precautions to store, collect, transmit, handle and receive all data received from the other Party in connection with these Terms, and will cooperate with one another in good faith with respect to any issue, inquiry or incident involving the security of such data to the extent necessary to comply with applicable laws, rules and regulations including, without limitation, all applicable data protection and privacy laws.

5.4 Authority

Customer represents and warrants that

(a) it has obtained and will obtain and continue to have, during the Term, all necessary rights, authority and licenses for the access to and use of the Customer Materials by Zowie (including any personal data provided or otherwise collected pursuant to Customer's privacy policy) as contemplated by these Terms; and

(b) Zowie's use of the Customer Materials in accordance with these Terms will not violate any applicable laws or regulations or cause a breach of any agreement or obligations between Customer

and any third party.

5.5 Customer Materials Deletion.

Within ninety (90) days following the termination of the last outstanding Order Form, Zowie may export the Customer Materials stored within the Services at the Customer's written request. Zowie will make such Customer Materials available to the Customer in a file for download. After ninety (90) days from the termination of the last outstanding Order Form, Zowie shall have no obligation to maintain or provide any such Customer Materials and may thereafter, unless legally prohibited from doing so, delete all such Customer Materials.

5.6 De-identified Data

Customer acknowledges and agrees that Zowie may de-identify any data contained within Customer Materials or derived from Customer's and/or its Authorized Users' or customers' access and/or use of the Services to create De-identified Data. Any de-identification shall be done in compliance with the applicable data protection regulations. Customer further acknowledges that Zowie may use such De-identified Data, without limitation, and such De-identified Data shall be Zowie's exclusive property.

5.7 Data processing agreement

If the Customer is subject to the EU General Data Protection Regulation (GDPR) or any other applicable laws requiring the conclusion of data processing agreements, the Parties agree that

the Data Processing Agreement available at <https://getzowie.com/data-processing-agreement> applies to the processing of personal data under the Order Form and is hereby incorporated by reference into these Terms.

6. Representations and Warranties

6.1 Mutual Warranties

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

- (i) it is duly organized, validly existing and in good standing in its jurisdiction of organization and has the right to consent to these Terms; and
- (ii) the execution, delivery and performance of these Terms and the consummation of the transactions contemplated hereby are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitute a valid and binding agreement of such Party.

6.2 Disclaimer

EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES AND OTHER ZOWIE IP ARE PROVIDED ON AN “AS IS” BASIS, AND ZOWIE MAKES NO WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ITS AUTHORIZED USERS OR TO ANY OTHER PARTY REGARDING THE ZOWIE IP, THE SERVICES OR ANY OTHER SERVICES OR MATERIALS PROVIDED HEREUNDER.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ZOWIE HEREBY DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, ZOWIE HEREBY DISCLAIMS ANY WARRANTY THAT USE OF THE SERVICES WILL BE ERROR-FREE, BUG-FREE OR UNINTERRUPTED.

7. Indemnification

7.1 Zowie Indemnification

Subject to Section 8, Zowie will defend and indemnify Customer, its affiliates and each of its and its affiliates' employees, contractors, directors, suppliers and representatives against any liabilities, claims, and expenses (included reasonable attorneys' fees) due to an unaffiliated third party ("Losses") that arise from any claim that Customer's authorized access or use of the Services infringes or misappropriates such third party's Intellectual Property Rights.

7.2 Exclusions

Zowie's obligations under Section 7.1 will not apply if the Losses directly or indirectly arise from or as a result of: (i) Customer's breach of these Terms, negligence, willful misconduct or fraud; (ii) any Customer Materials; (iii) Customer's failure to use any enhancements, modifications, or updates to the Services that have

been provided by Zowie; (iv) modifications to the Services by anyone other than Zowie; or (v) combinations of the Services with software, data or materials not provided by Zowie.

7.3 IP Remedies

If Zowie reasonably believes the Services (or any component thereof) could infringe any third party's Intellectual Property Rights, Zowie may, at its sole option:

(iii) modify or replace the Services, or any component or part thereof, to make it non-infringing; or

(iv) procure the right for Customer to continue using the Services.

If Zowie determines that neither alternative is commercially practicable, Zowie may terminate the applicable Order Form, in its entirety or with respect to the affected component, by providing written notice to Customer. In the event of any such termination, Zowie will refund to Customer a pro-rata portion of the Fees that have been prepaid for the remaining term of the terminated portion of the Services. The rights and remedies set forth in this Section 7 will constitute Customer's sole and exclusive remedy for any infringement or misappropriation of Intellectual Property Rights in connection with the Services.

7.4 Customer Indemnification

Subject to Section 8, Customer will defend and indemnify Zowie, its affiliates and each of its and its affiliates' employees, contractors, directors, suppliers and representatives against any Losses that arise from:

- (i) any Customer Materials, including, without limitation, (A) any claim that the Customer Materials infringe, misappropriate or otherwise violate any third party's Intellectual Property Rights or privacy or other rights; or (B) any claim that the use, provision, transmission, display or storage of Customer Materials violates any applicable law, rule or regulation;
- (ii) any of Customer's products or services;
- (iii) access or use of the Services by Customer, including, without limitation, any breach of the license restrictions in Section 2.2; or
- (iv) Customer's failure to provide sufficient notice to or collect sufficient consent from its end users to data tracking and processing through Services.

7.5 Indemnification Procedures

The Party seeking defense and indemnity (the "Indemnified Party") will promptly notify the other Party (the "Indemnifying Party") of any claim for which indemnity is being sought and will reasonably cooperate with the Indemnifying Party in the defense and/or settlement thereof. The Indemnifying Party will have the sole right to conduct the defense of any claim for which the Indemnifying Party is responsible hereunder (provided that the Indemnifying Party may not settle any claim without the Indemnified Party's prior written approval which shall not be unreasonably withheld, unless the settlement is for a monetary amount, unconditionally releases the Indemnified Party from all liability without prejudice, does not require any admission by the Indemnified Party, and does not place restrictions upon the Indemnified Party's business, products or

services). The Indemnified Party may participate in the defense or settlement of any such claim at its own expense and with its own choice of counsel or, if the Indemnifying Party refuses to fulfill its obligation of defense, the Indemnified Party may defend itself and seek reimbursement from the Indemnifying Party.

8. Limitations of Liability

8.1 Exclusion of Damages

EXCEPT FOR:

- (I) ANY INFRINGEMENT OR MISAPPROPRIATION BY ONE PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS,
- (II) FRAUD OR WILFUL MISCONDUCT BY EITHER PARTY, OR
- (III) BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS,

NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR THE COST OF COVER OR SUBSTITUTE SERVICES OR OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, THE ZOWIE IP OR THE PROVISION OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON CONTRACT (INCLUDING INDEMNIFICATION), WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE

POSSIBILITY OF SUCH LOSS OR DAMAGE.

8.2 Total Liability

EXCEPT FOR A BREACH OF CUSTOMER'S PAYMENT OBLIGATIONS, IN NO EVENT WILL EITHER PARTY'S TOTAL LIABILITY (INCLUDING INDEMNIFICATION) TO THE OTHER PARTY OR ITS AUTHORIZED USERS IN CONNECTION WITH THESE TERMS, THE ZOWIE IP OR THE PROVISION OF THE SERVICES EXCEED THE FEES ACTUALLY PAID BY CUSTOMER TO ZOWIE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

8.3 Basis of the Bargain

THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 8 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN ZOWIE AND CUSTOMER, AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

9. Term and Termination

9.1 Termination of Order Forms

Each Order Form may be terminated pursuant to its terms, which

shall prevail over these Terms. If there is no termination provision in an Order Form, then such Order Form is concluded for a fixed term and may not be terminated prior to the end of its term, except in accordance with Section 9.2.

These Terms shall remain in full force and effect indefinitely unless and until all applicable Order Forms have expired or been terminated in accordance with their terms.

9.2 Termination for Breach

Either Party may terminate any Order Form if the other Party materially breaches these Terms, and such breach remains uncured fifteen (15) days after the non-breaching Party provides the breaching Party with written notice of such breach.

9.3 Survival

This Section 9 and Sections 1.2, 2.2, 3.2, 4, 5, 6.2, 7, 8 and 10 shall survive any termination or expiration of these Terms.

9.4 Effect of Termination

Upon expiration or termination of these Terms:

- (a) the rights granted pursuant to Section 2.1 will terminate; and
- (b) each Party will return or destroy, at the Disclosing Party's sole option, all of Disclosing Party's Confidential Information in its possession or control, including permanent removal of such Confidential Information (consistent with customary industry

practice for data destruction) from any storage devices or other hosting environments that are in the Receiving Party's possession or under its control, and certify such return or destruction to the Disclosing Party. No expiration or termination will affect Customer's obligation to pay all Fees that may have become due or otherwise accrued through the effective date of expiration or termination or entitle Customer to any refund of any Fees already paid, except that the Fees for any unused term of the Services shall be refundable if Customer terminates any Order Form for breach by Zowie pursuant to Section 9.2.

10. General

10.1 Entire Agreement

These Terms, including any Order Forms and exhibits, are the complete and exclusive agreement between the Parties with respect to its subject matter and supersede any and all prior or contemporaneous agreements, communications and understandings, both written and oral, with respect to their subject matter. Any Order Form may be amended or modified only by a written document executed by duly authorized representatives of the Parties.

10.2 Notices

All notices required or permitted under these Terms will be in writing, will reference these Terms, and will be sent to the address or email address set forth in the Order Form or to such other address as may be specified by the relevant Party to the other Party in accordance with this Section 10.2.

Such notices will be deemed given:

- (a) when delivered personally;
- (b) one (1) business day after deposit with a nationally recognized express courier, with written confirmation of receipt;
- (c) three (3) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or
- (d) when sent by email, on the date the email was sent without a bounce back message if sent during normal business hours of the receiving Party, and on the next business day if sent after normal business hours of the receiving Party.

10.3 Waiver

Either Party's failure to enforce any provision of these Terms will not constitute a waiver of future enforcement of that or any other provision. No waiver of any provision of these Terms will be effective unless it is in writing and signed by the Party granting the waiver.

10.4 Severability

If any provision of these Terms is held invalid, illegal or unenforceable, that provision will be enforced to the maximum extent permitted by law, to most closely reflect the underlying intentions of the Parties, and the remaining provisions of these Terms will remain in full force and effect.

10.5 Governing Law; Jurisdiction

These Terms will be governed by and construed in accordance with the laws of the State of New York without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. The Parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal action or proceeding arising under these Terms will be brought exclusively in the federal or state courts located in New York, New York and the Parties irrevocably consent to the personal jurisdiction and venue therein.

10.6 Assignment

Customer will not assign or transfer any Order Form, by operation of law or otherwise, without Zowie's prior written consent. Any attempt to assign or transfer any Order Form without such consent will be void. Zowie may assign or transfer any Order Form without Customer's consent to any third party. Subject to the foregoing, these Terms and all Order Forms are binding upon and will inure to the benefit of each of the Parties and their respective successors and permitted assigns.

10.7 Equitable Relief

Each Party agrees that a breach or threatened breach by such Party of any of its obligations under Section 4 or, in the case of Customer, Section 2.2, would cause the other Party irreparable harm and significant damages for which there may be no adequate remedy under law and that, in the event of such breach or

threatened breach, the other Party will have the right to seek immediate equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

10.8 Force Majeure

Neither Party will be responsible for any failure or delay in the performance of its obligations under these Terms (except for any payment obligations) due to causes beyond its reasonable control, which may include, without limitation, labor disputes, strikes, lockouts, shortages of or inability to obtain energy, raw materials or supplies, denial of service or other malicious attacks, telecommunications failure or degradation, pandemics (including but not limited to SARS-CoV-2 (COVID-19) or any mutation thereof), epidemics, public health emergencies, governmental orders and acts (including government- imposed travel restrictions and quarantines), material changes in law, war, terrorism, riot, or acts of God.

10.9 Publicity

Subject to the provisions of Section 4, each Party shall have the right to publicly announce the existence of the business relationship between the Parties. In addition, Zowie may use Customer's name, trademarks, and logos (collectively, "Customer's Marks") on Zowie's website and in its marketing materials to identify Customer as

Zowie's customer, and for the purpose of providing the Services to Customer, provided that Zowie shall use commercially reasonable efforts to adhere to the usage guidelines furnished by Customer with respect to Customer's Marks.

10.10 Subcontracting

Zowie may use subcontractors, and other third-party providers ("Subcontractors") in connection with the performance of its own obligations hereunder as it deems appropriate; provided that Zowie remains responsible for the performance of each such Subcontractor. Notwithstanding anything to the contrary in these Terms, with respect to any third-party vendors including any hosting (e.g. AWS) or payment vendors (e.g. PayPal), Zowie will use commercially reasonable efforts to guard against any damages or issues arising in connection with such vendors, but will not be liable for the acts or omissions of such third-party vendors except to the extent that it has been finally adjudicated that such damages or issues are caused directly by the gross negligence or willful misconduct of Zowie.

10.11 Export Regulation

Customer will comply with all applicable federal laws, regulations and rules that prohibit or restrict the export or re-export of the Services or software, or any Customer Materials, outside the United States ("Export Rules"), and will complete all undertakings required by Export Rules, including obtaining any necessary export license or other governmental approval.

10.12 U.S. Government End Users

The Services, software and Documentation are “commercial computer software” and “commercial computer software documentation,” respectively, as such terms are used in FAR 12.212 and other relevant government procurement regulations. Any use, duplication, or disclosure of the Services by or on behalf of the U.S. government is subject to restrictions as set forth in these Terms.

10.13 Relationship of the Parties

The relationship between the Parties is that of independent contractors. Nothing in these Terms will be construed to establish a partnership, joint venture or agency relationship between the Parties. Neither Party will have the power or authority to bind the other or incur any obligations on the other’s behalf without the other Party’s prior written consent.

10.14 No Third-Party Beneficiaries

No provision of these Terms is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the Parties and their respective successors and assigns.