

## TERMS AND CONDITIONS

### 1. SAAS SERVICES AND SUPPORT

Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services in accordance with the service level terms attached to the Proposal. As part of the registration process, Customer will identify an administrative user name and password for Customer's Company account. Company will notify Customer if it deems the registration of or cancel passwords are inappropriate, and the Customer will not be allowed to use such passwords. RESTRICTIONS AND RESPONSIBILITIES

### 2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("**Software**"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

2.2 Customer represents, covenants, and warrants that Customer will use the Services only in compliance with Company's Acceptable Use Policy available at: <https://subzee.io/wp-content/uploads/2021/04/Subzee-Acceptable-Use-Policy.pdf> (the "**Policy**") and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Services. Although Company has no obligation to monitor Customer's use of the Services, Company may do so and may prohibit the use of Services by providing Customer with a notice if it believes that any use of the Services may be in violation of the foregoing.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Equipment**"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of such account or the Equipment.

### 3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("**Customer Data**"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information (and in case of Personal Data – any precautions required by applicable law), and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public not as a result of any action or omission of the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it by a third party without violation of any obligation of confidentiality, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law or by a governmental authority, provided that, prior to disclosing such information pursuant to this clause, Receiving Party will, if possible and lawful, give prior notice thereof to Disclosing Party and provide Disclosing Party with the opportunity to contest such disclosure.

3.2 Customer shall own all right, title and interest in and to the Customer Data. Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.3 Notwithstanding anything to the contrary and subject to the provisions of the Company's privacy policy available under <https://subzee.io>, and subject to the limitations imposed by applicable law, Company shall have the right to collect and analyze aggregated and anonymized data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies, and Company will be free (during and after the term hereof) to use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings. To the extent required under applicable law, Customer will obtain from its end-users all consents required in order to enable the Company's use of information as set forth above.

3.4 Other than the rights expressly granted herein, nothing in this Agreement shall be construed as granting or conferring

upon Customer, any right by license or otherwise, whether expressed or implied, and all rights not expressly granted to Customer herein are reserved by the Company.

#### 4. PRIVACY AND DATA PROTECTION

4.1 Privacy Definitions. In this Paragraph 4, the following terms shall have the following meanings:

- i. “**Applicable Privacy Laws**” means all applicable international, national, federal, and state data protection and privacy laws, (including re EU Privacy Law as applicable to the processing of Personal Data in the European Union);
- ii. “**Controller**” means an entity that determines the purposes and means of processing Personal Data;
- iii. “**EU Privacy Law**” means: (aa) prior to 25 May 2018, EU Directive 95/46/EC and any applicable national legislation implementing it; (bb) from 25 May 2018 onwards, EU Regulation 2016/679 (the “**General Data Protection Regulation**”) and any applicable national legislation made under or pursuant to it; and (cc) EU Directive 2002/58/EC and any applicable national legislation implementing it; in each case as amended or superseded;
- iv. “**Israeli Privacy Law**” means the Israeli Privacy Protection Law, 5741-1981 and the regulations promulgated thereunder, including without limitation, the Protection of Privacy Regulations (Transfer of Data to Databases outside the State's Borders), 5761-2001, all as may be amended from time to time; and
- v. “**Personal Data**” means any information relating to an identified or identifiable natural person; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

4.2 Customer is a Controller of Personal Data that it collects from end-users and the Company processes data provided by Customer in order to provide its Services.

4.3 Customer hereby represents and warrants that is not subject to or required to comply with the EU Privacy Law. Customer undertakes to immediately notify the Company upon any change to in its compliance obligations in connection with the EU Privacy Law. Customer hereby warrants that it shall comply with the Israeli Privacy Law in connection with this Agreement.

4.4 Each party shall, at all times during the Term, comply with its respective published privacy and cookie policies and disclosures. Each party shall ensure that it informs the respective end-users in a legally sufficient manner of the Personal Data that it collects, how it uses and shares such Personal Data, and how such end-users can opt out of such use in accordance with Applicable Privacy Laws.

4.5 Each party shall implement appropriate technical and organizational security measures to protect Users' Personal Data from accidental or unlawful destruction, loss, alteration, and unauthorized disclosure or access, consistent with the requirements of Applicable Privacy Laws.

4.6 If either party receives any inquiry, complaint or correspondence (a “**Third Party Notice**”) from an individual, regulator, or other third party concerning the processing of Users' Personal Data in connection with the Services, it shall promptly inform the other party and the parties shall cooperate in good faith and as reasonably necessary to address the requirements of such Third Party Notice.

4.7 Neither party shall process (nor permit any third party to process) any Personal Data relating to EU Users in a territory that is outside of the European Economic Area unless it first implements appropriate safeguards consistent with the requirements of EU Privacy Law to enable such processing to occur lawfully outside of the European Economic Area. In addition, neither party shall transfer (nor permit any third party to transfer) any Personal Data relating to Israeli end-users in a territory that is outside of the State of Israel, except in accordance with the Israeli Privacy Law, including, without limitation, by requiring the recipient to guarantee in writing that it shall take adequate measures to ensure the privacy of the Israeli data subjects, and that the data received shall not be transferred to any other person or entity, whether in that territory or in any other location.

#### 5. PAYMENT OF FEES

5.1 Customer will pay Company the then applicable fees described in the Proposal for the Services and Implementation Services in accordance with the terms therein (the “**Fees**”). If Customer's use of the Services exceeds the service capacity set forth in the Proposal or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Service Term or then-current renewal term, upon thirty (90) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

5.2 Full Payment of the Fees will be made according to the payment terms detailed in the Proposal. Unpaid amounts, are subject to a finance charge at the same rate as the highest rate of interest applicable to late payments in Bank Leumi Le-Israel B.M, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all

taxes associated with Services other than taxes based on Company's net income.

## **6. TERM AND TERMINATION**

6.1 Subject to earlier termination as provided below, this Agreement is for the Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Service Term (collectively, the "Term"), unless either party requests termination in writing (including by e-mail) at least thirty (30) days prior to the end of the then-current term.

6.2 Notwithstanding the above, Customer may terminate this Agreement at any time, upon 5 months prior written notice (including by e-mail), and Company may terminate this Agreement upon 30 days prior written notice.

6.3 In addition to any other remedies it may have, either party may also terminate this Agreement with immediate effect upon written notice (including by e-mail), if the other party materially breaches any of the terms or conditions of this Agreement (including, without limitation, any failure to pay Fees when due). Customer will pay in full for the Services up to and including the last day on which the Services are provided. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of thirty (30) days, but thereafter Company may, but is not obligated to, delete stored Customer Data. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **7. WARRANTY AND DISCLAIMER**

Company shall use commercially reasonable efforts consistent with prevailing industry standards to maintain the Platform (as such term is defined in the Proposal) and the deliverables (as detailed in the Proposal) under the Implementation Services in a manner which minimizes errors and interruptions in the Platform and perform the Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall provide advance notice in writing or by e-mail (to the extent possible) of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES (INCLUDING IMPLEMENTATION SERVICES) WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. IN ADDITION, COMPANY DOES NOT WARRANT THE SECURITY OF CUSTOMER'S DATA RESIDING ON COMPANY'S PLATFORM. HOWEVER, GIVEN THE CONFIDENTIAL NATURE OF CERTAIN OF THIS DATA, COMPANY WILL USE COMMERCIALY REASONABLE EFFORTS TO

SAFEGUARD THE SECURITY OF THIS DATA BY PROTECTING IT IN THE SAME MANNER IT WOULD PROTECT ITS OWN SECURE DATA. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## **8. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY, AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; OR (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL.

TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAW, IN NO EVENT WILL COMPANY'S LIABILITY UNDER THIS AGREEMENT EXCEED, IN THE AGGREGATE, THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 3 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by either party except with the other party's prior written consent, except that the Company may transfer and assign any of its rights and obligations under this Agreement, to any of its affiliates or subsidiaries, without consent. Notwithstanding the foregoing, either party may assign the Agreement without the consent of the other in connection with any merger (by operation of law or otherwise), consolidation,

reorganization, change in control or sale of all or substantially all of its assets related to this Agreement or similar transaction. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and either party does not have any authority of any kind to bind the other party in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of Israel without regard to its conflict of laws provisions. Both Company and Customer submit any dispute arising hereunder to the exclusive jurisdiction of the competent courts of Tel Aviv, Israel.

