

End User License Agreement

Last updated: April, 2024

This Standard End User License Agreement (this “EULA”) is applicable for Maltego Monitor, also known as PublicSonar (the “Product”). The Customer Order sets out the specific details of one or more Services to be provided by Provider to Customer, such as fees and services description.

1 DEFINITIONS

- 1.1 “**Account**” means a unique account created for Customer to enable Customer to access and use the Subscription Services.
- 1.2 “**Affiliate**” means an entity that controls, is controlled by or is under common control with a party, where “control” means ownership of 50% or more of the shares, equity interest or other securities entitled to vote for election of directors or other managing authority.
- 1.3 “**Authorized User**” means an employee of Customer who has been authorized by Customer to use the Services solely for the benefit of Customer or the Resellers Customer.
- 1.4 “**Provider**” CrowdSense B.V. with chamber of commerce registry number: 55605389 and offices at Zuid Hollandlaan 7, 2596 AL, The Hague, The Netherlands.
- 1.5 “**Customer**” means the customer set forth on the Customer Order and/or the Reseller’s Customer, being the end user of the Services.
- 1.6 “**Customer Data**” means the data entered into the Services by Customer and its Authorized Users for the purpose of using the Services or facilitating Customer’s use of the Services, including data such as account and user details and search, filter and alert parameters; and excluding Third Party Content.
- 1.7 “**Customer Order**” means a document setting out the specific details of one or more specific Services to be provided to Customer by Provider, such as fees and services description which is agreed upon and signed by both parties.
- 1.8 “**Effective Date**” means the date the Customer Order is executed by both parties.
- 1.9 “**Intellectual Property Rights**” means any and all industrial property rights and intellectual property rights, including but not limited to copyrights, trademarks, design rights, trade secrets, data base rights, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, all moral rights related and any filed applications for an industrial- and/or intellectual property right which have not been granted yet, including the right to make an application.
- 1.10 “**Professional Services**” means time-and-materials services as identified in the Customer Order, such as consulting services, onboarding support, implementation services etc.
- 1.11 “**Reseller**” means a person or company that, directly or indirectly, engages in a resale service of the Product.
- 1.12 “**Services**” means, collectively, Subscription Services and Professional Services.
- 1.13 “**Subscription Services**” means the subscription services relating to the Product provided by Provider to Customer, as identified in the Customer Order. The Subscription Services may include the use of the Product’s web-based applications, its Mobile Application, the Product’s API, technical support, and documentation such as user manuals and online help files.

- 1.14 **“Subscription Term”** means the subscription term set forth in the Customer Order for the Services.
- 1.15 **“Third Party Content”** means data, information and materials collected from third party data providers, as listed on the Customer Order, such as social media content (e.g. public tweets), made available to Customer and its Authorized Users through the Services.

2 THE AGREEMENT

- 2.1 **The Agreement.** The Agreement is executed by means of the execution of the Customer Order by both parties. The Customer Order may be executed by means of an online process (click and accept or electronic signature) or signed offline by Provider and Customer (wet signature). The Agreement is comprised of this EULA, the Customer Order and any documents referenced in the Customer Order. Terms in the Customer Order, including any documents referenced in the Customer Order, shall only override the terms of this EULA if this has been specifically stipulated in the Customer Order and only with respect to the Service and EULA article identified in the Customer Order.
- 2.2 Provider will provide, and Customer will pay for, all Services set out in the Customer Order, subject to the terms of the Agreement.
- 2.3 Provider is entitled to modify and make changes to the EULA that are referred to herein or that may otherwise be published on our website(s) from time to time. Simple or insignificant changes (assessed from the Customer’s perspective) to the EULA may be implemented with immediate effect at Provider’s own discretion; however, any material changes to the EULA or any changes to the Agreement must be notified in writing (email) to the Customer with at least a one (1) month ahead of such amendment coming into effect.

3 PROVISION OF SERVICES

- 3.1 **Use of the Services.** Subject to the terms and conditions of the Agreement, Provider grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right during the term of the Agreement to use the Services set forth therein. Customer’s right to use the Services is subject to the use limitations set forth in the Customer Order and contingent upon Customer’s full compliance with the terms of the Agreement. Customer shall ensure that each of its Authorized Users comply with the terms and conditions of the Agreement and will be liable for all use of the Services by its Authorized Users. Customer agrees that Provider can access Customer’s Account, including Customer Data, to the extent that such access is reasonably required, in Provider’s sole discretion, to provide Customer with the Services. Provider will not disclose Customer Data to any third party except if compelled by law, permitted by Customer, or as provided in Article 8.
- 3.2 **Use Restrictions.** Customer may use the Services solely for its own internal (business) operations. Except as otherwise explicitly provided in the Agreement, Customer will not, and will not permit or authorize third parties to:
- (a) license, sublicense, sell, rent, lease, or otherwise permit third parties to use the Services;
 - (b) use the Services to provide services to third parties (e.g., as a service bureau);
 - (c) circumvent or disable any security or other technological features or measures of the Services;
 - (d) circumvent local or international legislation concerning data collection & citizen privacy rights;
 - (e) reverse engineer any element of the Services, or use the Services or any of Provider’s Confidential Information (as defined below) to compete with the Services;
 - (f) modify, adapt or hack the Services to falsely imply any sponsorship or association with Provider, or otherwise attempt to gain unauthorized access to the Services or its related systems or networks;
 - (g) use the Services in any manner that interferes with or disrupts the integrity or performance of the Services or the

components of the Services;

(h) use automated scripts to collect information from or otherwise interact with publicsonar.com or the Services;

3.3 **Responsibility.** During the Subscription Term, Provider will:

- (a) provide the Services to Customer with reasonable skill and care;
- (b) not make a material adverse change to the functionality of the Services;
- (c) provide the Services in material accordance with any descriptions of the Services referred to in a Customer Order; and
- (d) process any personal data within Customer Data or Third Party Content (if any) in accordance with a Data Processing Addendum.

Other than as set out in this Agreement, all other guarantees and conditions, whether express or implied, are excluded, subject to applicable law.

3.4 **Compliance with Laws.** Customer will use the Services in compliance with all applicable laws and regulations and in a manner that does not infringe on the rights of any third party or violate any third party's privacy rights.

3.5 **Protection Against Unauthorized Use.** Customer will use reasonable efforts to prevent any unauthorized use of the Services and immediately notify Provider in writing of any unauthorized use that comes to Customer's attention. If there is unauthorized use by anyone who obtained access to the Services directly or indirectly through Customer, Customer will take all steps reasonably necessary to terminate the unauthorized use. Customer will cooperate and assist with any actions taken by Provider to prevent or terminate unauthorized use of the Services.

3.6 **Right to Suspend Services.** Provider may suspend Customer's use of the Services if Provider reasonably and in good faith believes such suspension is necessary to prevent unauthorized use of the Services or to prevent an ongoing violation of any applicable laws or regulations. Provider will use commercially reasonable efforts to notify Customer prior to any such suspension. Customer and its Authorized Users will use commercially reasonable efforts to cure any breach immediately upon notice. Provider will only suspend the Services to the extent necessary to prevent such unauthorized use or violation.

3.7 **Reservation of Rights.** Provider grants to Customer a limited right to use the Services under the Agreement. Customer will not have any rights to the Services except as expressly granted in the Customer Order or in this EULA. Provider reserves to itself and its licensors all rights to the Services not expressly granted to Customer, such as but not limited to the user and data protection rights set by third-party content providers. Provider and its licensors retain all Intellectual Property Rights in and to the Services.

4 USE OF THIRD PARTY CONTENT

4.1 **Terms of Service of Content Providers.** Except as otherwise explicitly provided in the Agreement, Customer will not use Third Party Content in violation of the third-party content provider's acceptable use policy, terms of use, API terms of service, depending on the data sources used as stated in the Customer Order:

- (a) Twitter / X Developer Agreement and Policy, located at <https://developer.twitter.com/en/developer-terms/agreement-and-policy>,
- (b) YouTube's Developer Policies, located at <https://developers.google.com/youtube/terms/developer-policies-guide>,

PublicSonar offers the possibility to retrieve information from YouTube using the [YouTube API](#).

[YouTube Terms of Service](#) are included in PublicSonar Terms of Services and, by enabling YouTube as a source of data, end-users acknowledge and agree that such data are subject to the following Terms & Conditions:

- [YouTube Terms of Service](#);

- Google Privacy policy;

- (c) Facebook Platform policy, located at <https://developers.facebook.com/policy/>,
- (d) EventRegistry Terms of Service, located at <https://eventregistry.org/terms>,
- (e) Mastodon general Terms of Service, located at <https://mastodon.social/terms> and the specific terms of Service of the instances used by the Customer,
- (f) Telegram API Terms of Service, located at <https://core.telegram.org/api/terms>,
- (g) Or other third-party content provider agreement listed in the Customer Order.

4.2 **Twitter / X / X Terms and Conditions.** Customer may not use, or knowingly display, distribute, or otherwise make available Twitter / X Content (as defined in the Twitter / X Developer Agreement and Policy, and information derived from Twitter / X Content:

- (a) for surveillance purposes, including but not limited to:
 - (i) investigating or tracking Twitter / X's users or their Twitter / X Content; and,
 - (ii) tracking, alerting, or other monitoring of sensitive events (including but not limited to protests, rallies, or community organizing meetings);
- (b) for the purposes of conducting or providing surveillance, analyses or research that isolates a group of individuals or any single individual for any unlawful or discriminatory purpose or in a manner that would be inconsistent with Twitter / X's users' reasonable expectations of privacy; or
- (c) to target, segment, or profile individuals based on health (including pregnancy), negative financial status or condition, political affiliation or beliefs, racial or ethnic origin, religious or philosophical affiliation or beliefs, sex life or sexual orientation, trade union membership, data relating to any alleged or actual commission of a crime, or any other sensitive categories of personal information prohibited by law.

In case of doubt about this Article 4, Customer is requested to seek advice from Provider. No rights can be derived from advice provided by Provider to Customer. Customer shall take notice of the Twitter / X's Guidelines for Law Enforcement, available at <https://t.co/le>, which are intended for law enforcement authorities seeking information about Twitter / X accounts. Provider shall have the right to suspend the Services immediately if Provider has reasonable argument to support that Customer has violated any of the restrictions in this Article 4.

4.3 **Third Party Content Removal.** Provider is entitled to remove Third Party Content from Customer's Account or suspend access by Customer to Third Party Content through the Services if it is required to do so by the relevant third party data provider. Provider will provide reasonable advance notice of its intended removal or suspension unless this is not possible for legal considerations.

4.4 **Government Use and Use Case Approval.** If Customer is a government entity or an entity performing services on behalf of a government entity, each of Customer's use cases, including changes to existing use cases and additions of new use cases must be approved by Provider in writing prior to the use of the Services. This term applies not only prior to the use of the Services, but also during an active Subscription Term. Failure to obtain approval for any use case will result in immediate suspension and potential termination pursuant to this Article and Article 7 of this EULA.

4.5 **Right to Audit.** Provider may, in Provider's sole discretion, audit Customer's compliance. Customer shall reasonably cooperate with Provider's audit and provide access to records, equipment, information and personnel requested by Provider related to Customer's use of the Services. Provider may conduct audits only during Customer's normal business hours and in a manner that does not unreasonably interfere with Customer's day to day operations.

4.6 **Right to Perform Compliance Tests.** Provider shall have the right to assess Customer's compliance by performing daily manual and/or automated compliance tests on Customer's search queries. Provider may, in Provider's sole discretion, modify Customer's search queries if Provider reasonably and in good faith believes modification is necessary to prevent a violation of any applicable regulations. Provider will use commercially reasonable efforts to notify Customer prior to any such modification and will only modify Customer's search queries to the extent necessary to prevent such violation.

4.7 **Data Usage Policy.** Usage of Services is monitored on a continuous basis. A Data Usage Policy (DUP) applies.

5 DATA PROCESSING AND DATA PROTECTION

5.1 **Controller/Processor.** Customer accepts that for all Third Party Content that is personal data, Customer shall act as the controller and Provider as its processor. Parties agree to enter into a Data Processing Addendum ("DPA"), which shall apply to the processing on behalf of Customer by Provider of all Third Party Content that is personal data. The DPA is located on the PublicSonar website and is hereby deemed to be incorporated by reference into this Agreement unless it is replaced by another valid Processing Agreement from the Customer.

5.2 **Compliance with data protection laws.** Customer shall ascertain that it has a lawful basis for processing Third Party Content that is personal data in accordance with article 6 of the General Data Protection Regulation 2016/679, and shall comply with all applicable laws related to privacy and data protection in respect of its processing of Third Party Content that is personal data in the course of its use of the Services, and any processing instructions it issues to Provider.

5.3 **Sub processors.** For some functionalities PublicSonar works with sub-processors. When using these functionalities, Customer accept the use of these sub-processors and take all responsibilities in their role as controller. An up to date list of subprocessors can be requested from Provider

6 TERM AND TERMINATION

6.1 **Agreement Term.** The Agreement commences on the Effective Date and will remain in effect for the duration of the Subscription Term. It will automatically renew for additional periods equal to the length of the Subscription Term unless either party provides written notice to the other party at least ninety (90) days prior to the expiration of the Subscription Term or has otherwise terminated the Agreement in accordance with this EULA.

6.2 **Termination for Cause.** Either party may terminate the Agreement

- (a) upon thirty (30) days written notice to the other party of a material breach by the other party if such breach remains uncured at the expiration of such period, or
- (b) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

Provider shall have the right to terminate the Agreement immediately if Provider reasonably determines that Customer is acting or has acted in a way that could present substantial reputational harm to Provider or its current or prospective partners or customers.

6.3 **Post-Termination Obligations.** If the Agreement is terminated for any reason,

- (a) Customer will pay to Provider any fees or other amounts that have accrued prior to the effective date of the termination,
- (b) any liability accrued prior to the effective date of the termination will survive, and
- (c) Customer will discontinue all use of the Services.

Upon termination of the Agreement, Provider shall remove Customer's account information and account settings after thirty (30) days, and Customer will not be able to recover this data or content. All provisions of this EULA that, by their nature, are intended to survive termination (including those related to third party claims and limitations on liability) will remain in effect.

7 CONFIDENTIALITY

7.1 **Definition of Confidential Information.** For the purpose of this Agreement, "Confidential Information" means non-public information of Provider or Customer disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which (i) a reasonable person would consider confidential or (ii) is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information will not, however, include any information that:

- (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party;
- (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party other than as a result of a violation of this Agreement by the receiving party;
- (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party, as shown by the receiving party's files and records;
- (d) is obtained by the receiving party from a third party without a breach of the third party's obligations of confidentiality; or
- (e) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession.

7.2 **Protection of Confidential Information.** The receiving party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and the parties' respective rights therein, at all times exercising at least a reasonable level of care. Each party agrees to restrict access to the Confidential Information of the other party to those employees, advisors and other representatives who require access in order to perform its obligations hereunder and who agreed to be bound by these obligations of confidentiality and non-disclosure.

8 INTELLECTUAL PROPERTY AND USE OF CUSTOMER DATA

8.1 **Use of Customer Data.** Subject to Provider's confidentiality obligations, Customer hereby grants to Provider throughout the Agreement Term and after the Agreement Term as necessary for any Provider post-termination obligations to Customer, the necessary rights or license to use Customer Data solely as necessary for Provider to perform its obligations under this Agreement or improve the Services.

8.2 **Intellectual Property Rights.** Provider owns all right, title and interest to (a) Provider's trademarks, trade names, service marks, logos and slogans (collectively, the "Provider Marks") and (b) the Services, including all documentation, algorithms, software, data, databases or other technology utilized, and all related Intellectual Property Rights in any of the foregoing. The Agreement does not confer on Customer any Intellectual Property Rights or other rights to the Services other than its right to use the Services under Article 3 and does not confer on Customer any rights to the Provider Marks. Except as otherwise provided herein, Customer owns all right, title and interest to Customer Data. This Agreement does not confer on Provider any Intellectual Property Rights or other rights in relation to Customer Data other than its right to use and disclose in accordance with this EULA.

8.3 **Keyword Database.** Provider maintains a database with keywords covering a wide range of topics of interest (the "Keyword Database"). Provider may make available to Customer a (partial) copy of the Keyword Database for the purpose of performing the

Services. Provider grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable, revocable right to use the (partial) copy of the Keyword Database. Customer may make changes to the (partial) copy of the Keyword Database. All Intellectual Property Rights in the Keyword Database vest in Provider, unless otherwise stated in the Customer Order.

- 8.4 **Third Party Content Ownership.** The parties expressly acknowledge that, as between Customer, Provider and the third-party content provider, the third-party content provider and/or its end users own and retain all worldwide right, title and interest in and to all Third Party Content (and any derivative works or enhancements of either), including, but not limited to, all Intellectual Property Rights therein.
- 8.5 **Statistical Data.** Customer acknowledges and agrees that Provider shall have the right to utilize data capture, syndication, and analysis tools, and other similar tools, to extract, compile, synthesize, and analyze any non-personally and non-Customer identifiable data or information resulting from Customer's use of the Services ("Statistical Data"). Statistical Data may be collected by Provider for any lawful business purpose without a duty of accounting to Customer, provided that Statistical Data is used only in an anonymized, de-identified, or aggregated form, without specifically identifying the source of Statistical Data. On creation, Provider shall own all Intellectual Property Rights in Statistical Data.
- 8.6 **Customer Feedback.** Customer grants Provider a royalty-free, non-exclusive, perpetual, irrevocable, worldwide, transferrable, sub-licensable license to use, copy, modify, or distribute any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or its Authorized Users relating to the Services, including, without limitation, by incorporating the same into the Services, provided this shall not include any Confidential Information.

9 GUARANTEES

- 9.1 **No Guarantee.** Except as otherwise provided herein, Provider does not provide any guarantee whether express, implied (either in fact or by operation of law), or statutory, as to any matter whatsoever. More in particular Provider:
- (a) expressly disclaims all implied guarantee of merchantability, fitness for a particular purpose, title, and non-infringement on its behalf and on behalf of its licensors;
 - (b) does not guarantee that Third Party Content is accurate or complete or that any Third Party Content services will always be accessible to Customer via the Services;
 - (c) disclaims and makes no representation or warranty with respect to the Third Party Content or any portion thereof and assumes no liability for any claim that may arise with respect to the Third Party Content or Customer's use, misuse or inability to use the same; and
 - (d) disclaims all liability for any malfunctioning, impossibility of access, or poor use conditions of the Services due to inappropriate or malfunctioning Customer equipment, disturbances related to Internet service providers, to the saturation of the Internet network or any other error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, user communications, problems related to the services or its use, loss of personal content on the sites not within Provider's reasonable control.

10 INTELLECTUAL PROPERTY RIGHT INFRINGEMENT

- 10.1 **Defense and Indemnification.** Provider will fully defend Customer and Customer's officers, directors, employees, agents, permitted successors and assigns from or settle any claim, proceeding, or suit ("Claim") brought by a third party against Customer alleging that Customer's use of the Services infringes or misappropriates any Dutch Intellectual Property Rights of any third party, and

indemnify Customer from all damages, costs, and attorneys' fees finally awarded in any such Claim or paid to any third party to settle any such Claim, except as provided in Article 12. Provider's obligation under this Article is contingent on:

- (a) Customer giving Provider prompt written notice of the Claim;
- (b) Customer granting Provider full and complete control over the defense and settlement of the Claim; and
- (c) Customer providing assistance in connection with the defense and settlement of the Claim as Provider may reasonably request, at Provider's cost.

Customer will not defend or settle any Claim eligible for indemnification under this Article without Provider's prior written consent.

10.2 Infringement Remedy. If Customer is enjoined or otherwise prohibited from using the Services or a portion thereof based on an allegation that the Services violate any third party Intellectual Property Rights (including a Claim), or if Provider reasonably determines that such prohibition is likely, then Provider will, at its sole expense and option:

- (a) obtain for Customer the right to use the allegedly infringing portions of the Services;
- (b) modify the allegedly infringing portions of the Services so as to render them non-infringing without substantially diminishing or impairing their functionality; or
- (c) replace the allegedly infringing portions of the Services with non-infringing items of substantially similar functionality.

If Provider determines that the foregoing remedies are not commercially reasonable, then Provider may terminate the impacted Customer Order, or portion thereof, and will promptly provide a prorated refund to Customer for any prepaid fees received by Provider for any Services that have not yet been performed at the time of termination.

10.3 Exclusions from Obligations. Provider will have no obligation under this Article 10 for any infringement or misappropriation to the extent that it arises out of or is based upon:

- (a) use of the Services in combination with other products or services if such infringement or misappropriation would not have arisen but for such combination;
- (b) any aspects of the Services that are provided to comply with designs, requirements, or specifications required by or provided by Customer, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications;
- (c) use of the Services by Customer for purposes not intended or outside the scope of the license(s) granted to Customer;
- (d) Customer's failure to use the Services in accordance with written instructions provided by Provider, if the infringement or misappropriation would not have occurred but for such failure; or
- (e) any modification of the Services not made or authorized in writing by Provider where such infringement or misappropriation would not have occurred absent such modification.

10.4 Limited Remedy. This Article 10 states Provider's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party Intellectual Property Right by use of the Services.

11 CUSTOMER INDEMNIFICATION

11.1 Customer will, at its sole expense, defend Provider and its officers, directors, employees, agents, successors and assigns from any actual or threatened third party Claim arising out of or based upon

- (a) Customer's breach of any of its obligations under the Agreement,

- (b) Customer's use of a Third-party Service, or
- (c) any of the exclusions stated in Article 10.3, and indemnify Provider from all damages, costs, and attorneys' fees finally awarded in any such Claim or all amounts that Customer agrees to pay to any third party to settle any such Claim.

Customer's obligation under this Article is contingent on:

- (a) Provider giving Customer prompt written notice of the Claim;
- (b) Provider granting Customer full and complete control over the defense and settlement of the Claim, provided that Customer may not settle or defend any Claim unless Customer unconditionally releases Provider of all liability and such settlement does not affect Provider's business or Services; and
- (c) Provider providing assistance in connection with the defense and settlement of the Claim as Customer may reasonably request. Provider will not defend or settle any Claim eligible for indemnification under this Article without Customer's prior written consent.

12 LIMITATIONS OF LIABILITY

- 12.1 **Third-party Services.** The Services may contain links to, or otherwise may allow Customer to connect to and use, certain third-party products, services or software under separate terms and conditions (collectively, "Third-party Service") in the context of Customer's use of the Services. Customer accepts that its use of said Third-party Services is governed solely by the terms and conditions of such Third-party Service (including, but not limited to, the Twitter / X Terms of Service located at www.twitter.com/tos and the YouTube Terms of Service located at www.youtube.com/t/terms), and Provider does not endorse nor is responsible for such Third-party Service. Provider is not liable for any damage or loss arising from or in connection with Customer's access or use of any such Third-party Service. Customer acknowledges that Provider does not control the features and functionality of any Third-party Service and that such Third-party Service may change its features and functionality without any notice to Provider. Provider shall not be liable to Customer for any refunds or any damage or loss arising from or in connection with any changes made by a Third-party Service or any resulting changes to the Services.
- 12.2 **Exclusion of consequential and related damages.** Neither party or its affiliates will, under any circumstances, be liable to the other party, under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, or otherwise, for consequential, incidental, indirect, special, exemplary, enhanced, or punitive damages arising out of or related to this Agreement, including but not limited to lost profits, revenue, business, or data; business interruption; or loss of goodwill or reputation, regardless of whether the party is apprised of the likelihood of such damages occurring or any losses or damages were otherwise foreseeable.
- 12.3 **Cap on liability.** Under no circumstances will the aggregate liability of Provider and its respective affiliates of all kinds arising out of or related to the Agreement, (including but not limited to guarantee and indemnity claims), regardless of the forum and regardless of whether any action or claim is based on contract, tort (including negligence), strict liability, or any other legal or equitable theory, exceed the total amount paid by Customer to Provider under the Customer Order for the current Subscription Term in which the incident occurred that gave rise to the damages.
- 12.4 **Independent allocations of risk.** Each provision of the Agreement that provides for a limitation of liability, disclaimer, or exclusion of damages is intended to allocate the risks of the Agreement between the parties. This allocation is reflected in the pricing offered by Provider 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 the Agreement. The limitations in this Article 12 will apply notwithstanding the failure of essential purpose of any limited remedy.

12.5 **Mobile Application Terms.** Use of the Mobile Application requires a mobile device that is compatible with the Services. Provider does not guarantee that the Mobile Application will be installable and fully work on any mobile device. Customer acknowledges that Provider may from time to time issue upgraded versions of the Mobile Application and may automatically electronically upgrade the version of the Mobile Applications. Customer consents to such automatic upgrading. Standard carrier data charges may apply to use of the Mobile Applications.

13 GENERAL

13.1 **Publicity.** Except as otherwise stated on the Customer Order either party may use the name and logo of the other party in public statements, such as customer or vendor lists, with the prior written approval of the other party (not to be unreasonably withheld or delayed). Customer also agrees to consider the following upon Provider's reasonable request:

- (a) serving as a reference or hosting onsite reference visits,
- (b) collaborating on press releases announcing or promoting the relationship between Customer and Provider, and
- (c) collaborating on case studies or other marketing collateral following successful deployment of the Services.

13.2 **Export Compliance and Anti-Corruption.** The Services may be subject to export laws and regulations of The Netherlands and other jurisdictions. Customer shall comply with all applicable export control and trade embargo laws, rules and regulations ("**Export Control Laws**"). Each party confirms that it is not named on any U.S. and E.U. government denied-party list. Customer shall not permit users to access or use the Services in a U.S. and E.U.-embargoed country or in violation of any Dutch export law or regulation. Customer further confirms that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value in connection with this Agreement (excluding any reasonable gifts and entertainment provided in the ordinary course of business).

13.3 **Assignability.** Neither party may assign its right, duties, and obligations under this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld or delayed, except that a party may assign this Agreement without the other party's consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law) if the successor agrees to assume and fulfill all of the assigning party's obligations under this Agreement.

13.4 **Subcontractors.** Provider may utilize a subcontractor or other third party to perform its duties under this Agreement so long as Provider remains responsible for all of its obligations under this Agreement.

13.5 **Notices.** 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, Dutch mail, or insured courier, return receipt requested, to the appropriate party at the address set forth on the signature page of the applicable Customer Order. Either party may change its address for receipt of notice by notice to the other party in accordance with this Article. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier or sending an email.

13.6 **Force Majeure.** Neither party will 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 its reasonable control, so long as that party uses all commercially reasonable efforts to avoid or remove the causes of non-performance.

13.7 **Governing Law.** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the Netherlands, without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the national and local courts in the Netherlands in connection with any action arising out of or in connection with this Agreement.

- 13.8 **Waiver.** The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.
- 13.9 **Severability.** 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.
- 13.10 **Variations.** This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 13.11 **Counterparts.** This Agreement may be executed in multiple counterparts and may be signed electronically or via facsimile.
- 13.12 **Survival.** Article 3 (Use of the Services), Article 4 (Use of Third Party Content), Article 5 (Data Use Compliance), Article 6 (Fees and Payment), Article 8 (Term and Termination), Article 9 (Confidentiality), Article 10 (Intellectual Property Rights and Use of Customer data), Article 11 (Guarantees), Article 12 (Intellectual Property Infringement), Article 13 (Customer Indemnification), Article 14 (Limitation of Liability), and Article 15 (General) will survive any termination of the Agreement.