

Last Updated: December 3, 2019

TERMS OF SERVICE

THESE TERMS OF SERVICE ("Agreement") CONSTITUTES A BINDING CONTRACT BETWEEN GRAMSOFT LTD. ("Brew") AND THE CUSTOMER ("Customer") THAT SUBSCRIBES TO THE SERVICE (DEFINED BELOW). BY SUBSCRIBING TO THE SERVICE, CLICKING THE "ACCEPT", "AGREE" (OR SIMILAR) BUTTON, AND/OR OTHERWISE ACCESSING OR USING THE SERVICE, CUSTOMER AND EACH AUTHORIZED USER OF THE CUSTOMER HEREBY ACKNOWLEDGE THAT THEY HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING:

(a) THIS AGREEMENT, AND

(b) OTHER SUPPLEMENTAL TERMS AND POLICIES REFERENCED HEREIN, WHICH ARE STATED TO BE INCORPORATED INTO THIS AGREEMENT BY REFERENCE.

(c) IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF YOUR EMPLOYER OR OTHER ENTITY, YOU HEREBY REPRESENT AND WARRANT THAT THAT YOU HAVE FULL AUTHORITY TO BIND SAID ENTITY TO THIS AGREEMENT.

1. DEFINITIONS

- 1.1. "Affiliate" means, with respect to either party, any person, organization or entity controlling, controlled by, or under common control with, such party, where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, organization or entity, whether through the ownership of voting securities or by contract or otherwise.
- 1.2. "Content" means any text, data, information, files, images, graphics, sounds, music, videos, code, audio clips, links, and/or other similar materials.
- 1.3. "Customer Content" means any Content inputted or uploaded to the Service, or transmitted through the Service, by or on behalf of Customer.
- 1.4. "Documentation" means any user guide for the Service that Brew provides or makes available to Customer.
- 1.5. "Feature" means any module, tool, functionality, or feature of the Service.
- 1.6. "Intellectual Property" means any and all inventions, invention disclosures, discoveries, improvements, works of authorship, technical information, data, databases, know-how, show-how, designs, ideas, drawings, logos, utility models, topography and semiconductor mask works, specifications, formulas, methods, techniques, processes, software (including object code, source code, APIs, and non-literal aspects), algorithms, architecture, records, documentation, and other similar intellectual property or technology, in any format and media, anywhere in the world.
- 1.7. "Intellectual Property Rights" means any and all rights, titles, and interests in and to Intellectual Property (under any jurisdiction or treaty, whether protectable or not, and whether registered or unregistered) and includes without limitation patents, copyright and similar authorship rights, personal rights (such as Moral Rights, rights of privacy, and publicity rights), architectural, building and location (and similar geography-based) rights, mask work rights, trade secret and similar confidentiality rights, design rights, industrial property rights, trademark, trade name, trade dress and similar branding rights, as well as: (a) all applications, registrations, renewals, extensions, continuations, continuations-in-part, divisions or reissues of the foregoing rights; and (b) all goodwill associated with the foregoing rights.
- 1.8. "Law" means any federal, state, foreign, regional or local statute, regulation, ordinance, or rule of any jurisdiction.

1.9. "Moral Rights" means any rights of paternity or integrity, or any right to claim authorship of a work, to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, any work, whether or not such would be prejudicial to the honor or reputation of the creator of the work, and any similar right, existing under judicial or statutory Law of any jurisdiction, or under any treaty.

1.10. "Order Form" means the form submitted online or via email and approved in writing by Customer (including, if applicable, by digital signature) when subscribing to the Service.

1.11. "Privacy Policy" means Brew's then-current Privacy Policy available at <https://www.getbrew.com/legal/privacy-policy> ("Privacy Policy").

1.12. "Service" means Brew's proprietary software-as-a-service for market intelligence, as operated by Brew's proprietary platform and other Intellectual Property.

1.13. "Service Plan" means the Basic, Pro, Enterprise or Custom Subscription plan Customer has subscribed to via the Order Form.

1.14. "Brew Content" means any Content (excluding Customer Content) appearing or made available on or in the Service.

1.15. "Update" means an upgrade or update (such as a fix or patch) to or of the Service, excluding new Features.

2. SUBSCRIPTION RIGHTS AND RESTRICTIONS

2.1. Account. In order to access the Service, Customer is required to register for an account by submitting the information requested in the applicable web form or interface ("Account"). In the event the Service Plan permits multiple users of the Service, an account may need to be set up for each such user (each, a "User Account", and references herein to the "Account" shall be deemed to include all such User Accounts if applicable). Customer agrees that any such users must be employees of the Customer or, if approved in writing in advance by Brew, third party service providers of the Customer, and Customer shall in any event be primarily responsible and liable for all such users' use of the Service and their compliance with this Agreement. Under the Account, Customer may be required to set up access credentials, and the Service may also allow Customer to configure different permission levels among various Service Plans. Customer represents and warrants, on behalf of itself and its users (if applicable), that all information submitted during the registration process is, and will thereafter remain, complete and accurate. As between Brew and Customer, Customer alone shall be responsible and liable for maintaining the confidentiality and security of its Account credentials, as well as for all activities that occur under or in such Account. Customer shall immediately notify Brew in writing of any unauthorized access to, or use of, an account, or any other breach of security. Furthermore, Customer must make each user aware of the provisions of this Agreement and the Privacy Policy, prior to authorizing such user to access the Service. The Privacy Policy is hereby incorporated into this Agreement by reference

2.2. Subscription. Subject to the terms and conditions of this Agreement, Brew grants Customer a limited, non-exclusive, non-assignable, non-transferable, non-sublicensable right, during the Term (defined below), to access and use the Service solely for Customer's internal end-use purposes (collectively, the "Subscription").

The Subscription shall be subject to whatever other limitations or conditions (as such regarding Features, volume, duration, or location) are specified in the Service Plan. Use of the Service must be in accordance with the Documentation.

2.3. Free User Subscriptions. Brew may offer a free version of the Service which is feature-limited and/or functionality-limited (a "Free User Subscription"). In such case, and notwithstanding anything to the contrary in this Agreement, Brew and Brew Affiliates will have no warranty, indemnity, support, or other obligations or liabilities with respect to any Free User Subscription.

2.4. Restrictions. As a condition to the Subscription, Customer shall not do (or permit or encourage to be done) any of the following (in whole or in part): (a) copy, "frame" or "mirror" the Service or Brew Content; (b) sell, assign, transfer, lease, rent, sublicense, or otherwise distribute or make available the Service or Brew Content to any third party (such as offering it as part of a time-sharing, outsourcing or service bureau environment); (c) publicly perform, display or communicate the Service or Brew Content; (d) modify, alter, adapt, arrange, or translate the Service or Brew Content; (e) decompile, disassemble, decrypt, reverse engineer, extract, or otherwise attempt to discover the source code or non-literal aspects (such as the underlying structure, sequence, organization, file formats, non-public APIs, ideas, or algorithms) of, the Service or Brew Content; (f) remove, alter, or conceal any copyright, trademark, patent, or other proprietary rights notices displayed on or in the Service or Brew Content; (g) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Service or Brew Content; (h) make a derivative work of the Service or Brew Content, or use them to develop any service or product that is the same as (or substantially similar to) it; (i) store

or transmit any robot, malware, Trojan horse, spyware, or similar malicious item (for example, by way of Customer Content) intended (or that has the potential) to damage or disrupt the Service or Brew Content; (j) employ any hardware, software, device, or technique to pool connections, devices or users that directly access or use the Service or Brew Content (sometimes referred to as 'virtualization', 'multiplexing' or 'pooling') in order to circumvent any limitations or conditions on the scope of the Subscription; (k) forge or manipulate identifiers in order to disguise the origin of any data or content inputted or uploaded to, or transmitted through, the Service or Brew Content by Customer; or (l) take any action that imposes or may impose (as determined in Brew's reasonable discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support the Service or Brew Content, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure.

2.5. Reservation of Rights. For the avoidance of doubt, the Service and Brew Content (including any copies thereof) are only licensed hereunder, and no title in or to the Service or Brew Content (or such copies) passes to Customer. Any rights not expressly granted herein are hereby reserved by Brew and its licensors, and, except for the Subscription, Customer is granted no other right or license to the Service or Brew Content, whether by implied license, estoppel, exhaustion, operation of law, or otherwise.

2.6. Delivery. The Service will be delivered electronically. Unless specified otherwise in the Order Form, the Service shall be deemed accepted upon delivery.

2.7. Data Backup. The Service is not intended to, and will not, operate as a data storage or archiving product or service, and Customer agrees not to rely on the Service for the storage of any Customer Content whatsoever. Customer is solely responsible and liable for the maintenance and backup of all Customer Content.

3. UPDATES AND SUPPORT.

3.1. Updates. All references herein to the "Service" shall include any Updates provided by or on behalf of Brew under this Agreement. Brew may from time to time provide Updates, but shall not be under any obligation to do so. Such Updates will be supplied according to whatever then-current internal policies Brew may have in place, and some Updates may in any event be limited, suspended or restricted by geography, volume, duration or any other criteria decided by Brew in its sole discretion. Some Updates may include automatic updating or upgrading without any notice or obligation to Customer, and Customer consents to any such automatic updating or upgrading of the Service. In some cases, Customer may be required to install the Update manually. An Update may be accompanied by separate or additional terms and conditions, as well as additional fees (in each case, "Update Specific Terms"). Unless stated otherwise in Update Specific Terms, all Update Specific Terms apply in addition to (and not instead of) this Agreement.

3.2. Support. Brew (and/or an Brew Affiliate or subcontractor) will use commercially reasonable efforts to provide Service-related technical support and service levels as further described at <https://www.getbrew.com/legal/service-level-agreement>.

4. CUSTOMER CONTENT

As between Customer and Brew, Customer is solely responsible and liable for (and agrees to hold harmless and release Brew and all Brew Affiliates from) all Customer Content, Brew's processing of Customer Content, for all use of Customer Content (including without limitation use by others), as well as for the consequences of inputting, uploading, or transmitting Customer Content (including without limitation, for obtaining any licenses, permissions, consents, approvals, and authorizations from individuals appearing therein).

Customer hereby represents and warrants that: (a) its Customer Content does not, and will not, infringe, misappropriate, or violate any third party's Intellectual Property Rights, privacy rights (or other personal rights), or any Law; (b) its Customer Content is not, and will not be, disparaging, libelous, threatening, offensive, harassing, deceptive, abusive, promoting of violence, illegal drugs, illegal arms trafficking, or illegal gambling, and does not, and will not, contain obscenity or pornography, create any risk to a person's safety or health, impersonate another person, compromise national security, or interfere with an investigation by law enforcement; and (c) it has obtained, and will maintain during and after any termination of this Agreement, any and all licenses, permissions, consents, approvals, and authorizations required in connection with Customer Content. The content, nature, frequency, and quantity of Customer Content has not been specifically requested or authorized (and may or may not be reviewed) by Brew, and is submitted to the Service at Customer's sole risk and discretion. Unless specifically requested by the Service, or strictly required for use of the Service, Customer represents and warrants that Customer Content will not include any Sensitive Data (as defined below), unless Sensitive Data is specifically requested by the Service or Brew.

“Sensitive Data” means any (i) categories of data enumerated in Article 9(1) of the European Union’s General Data Protection Regulation (Regulation 2016/679, aka the GDPR) or any successor Law; (ii) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented (“HIPAA”), and Customer also agrees that Brew is not acting as Customer’s Business Associate or subcontractor (as such terms are defined under HIPAA); (iii) credit, debit or other payment card data subject to the Payment Card Industry Data Security Standards (“PCI DSS”); (iv) other information subject to regulation or protection under specific Laws, such as the United States’ Gramm-Leach-Bliley Act (or related Laws); (v) social security numbers, national insurance numbers, driver’s license numbers or other government ID numbers; or (vi) any data similar to the foregoing that is protected under foreign or domestic Laws.

5. PAYMENT

- 5.1. Fees. Customer agrees to pay all fees stated in the Order Form and according to the Service Plan (“Fees”), and in accordance with the Service Plan’s applicable billing cycle (“Billing Cycle”) and other payment terms.
- 5.2. General. Unless expressly stated otherwise in the Order Form or Service Plan: (a) all Fees are stated, and are to be paid, in US Dollars via credit card; (b) all Fees are payable in advance; (c) all payments under this Agreement are non-refundable, and are without any right of set-off or cancellation; and (d) any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of the rate of one and a half percent (1.5%) per month and the highest amount permitted by applicable Law. Amounts payable under this Agreement are exclusive of all applicable sales, use, consumption, VAT, GST, and other taxes, duties or governmental charges, except for taxes based upon Brew’s net income. In the event that Customer is required by any Law applicable to it to withhold or deduct taxes for any payment under this Agreement, then the amounts due to Brew shall be increased by the amount necessary so that Brew receives and retains, free from liability for any deduction or withholding, an amount equal to the amount it would have received had Customer not made any such withholding or deduction.
- 5.3. Payment Method and Processing. Currently, Brew only accepts payment via certain supported credit cards, and Customer represents that it is the authorized user of the card. Customer shall provide Brew accurate and complete billing information, and agrees to promptly notify Brew of any changes to the Customer’s billing information. For certain payment cards, there may be a temporary charge of \$0.01 to verify the card’s validity (but this amount will be refunded as soon as the card is confirmed). Customer authorizes Brew (either directly or through third parties) to request and collect payment (and otherwise charge, refund or take any other billing actions) from Customer on a recurring basis, including without limitation via Brew’s payment provider or Customer’s designated banking account, and to make any inquiries Brew deems necessary to validate Customer’s designated payment account or financial information, in order to ensure prompt payment (including for the purpose of receiving updated payment details from Customer’s payment, credit card or banking account provider – such as, updated expiry date or card number as may be provided to Brew by Customer’s credit card company). Payment of Fees may be processed through a third-party payment processing service (which will receive and process Customer’s billing information), and additional terms may apply to such payments.

6. OWNERSHIP

- 6.1. Service. As between the parties, Brew is, and shall be, the sole and exclusive owner of all Intellectual Property Rights in and to: (a) the Service; and (b) any and all improvements, derivative works, modifications, and/or customizations of/to the Service, regardless of inventorship or authorship. Customer shall make, and hereby irrevocably makes, all assignments necessary or reasonably requested by Brew to ensure and/or provide Brew the ownership rights set forth in the preceding sentence.
- 6.2. Customer Data. As between the parties, Customer is, and shall be, the sole and exclusive owner of all Customer Content.
- 6.3. Feedback and Statistical Data. In the event that Customer (or any person on Customer’s behalf) provides any suggestions or similar feedback regarding the Service and/or Brew Content, or any part thereof (“Feedback”), and/or to the extent Brew receives de-identified statistical (or similar) information or data regarding Customer’s use of the Service and/or Brew Content (“Statistical Data”), Brew shall be entitled, in perpetuity, to use and commercially exploit such Feedback and Statistical Data without any obligation or restriction whatsoever.

7. CONFIDENTIALITY

Each party and/or its Affiliates (the "Recipient") may have access to certain non-public or proprietary information and materials of the other party and/or its Affiliates (the "Discloser"), whether in tangible or intangible form ("Confidential Information"). Confidential Information shall not include information and material which: (a) at the time of disclosure by Discloser to Recipient hereunder, was in the public domain; (b) after disclosure by Discloser to Recipient hereunder, becomes part of the public domain through no fault of the Recipient; (c) was rightfully in the Recipient's possession at the time of disclosure by the Discloser hereunder, and which is not subject to prior continuing obligations of confidentiality; (d) is rightfully disclosed to the Recipient by a third party having the lawful right to do so; or (e) independently developed by the Recipient without use of, or reliance upon, Confidential Information received from the Discloser. The Recipient shall not disclose the Discloser's Confidential Information to any third party, except to its employees, advisers, agents and investors, subject to substantially similar written confidentiality undertakings. Recipient shall take commercially reasonable measures, at a level at least as protective as those taken to protect its own Confidential Information of like nature, to protect the Discloser's Confidential Information within its possession or control, from disclosure to a third party. The Recipient shall use the Discloser's Confidential Information solely for the purposes of performing under this Agreement. In the event that Recipient is required to disclose Confidential Information of the Discloser pursuant to any Law, regulation, or governmental or judicial order, the Recipient will (a) promptly notify Discloser in writing of such Law, regulation or order, (b) reasonably cooperate with Discloser in opposing such disclosure, (c) only disclose to the extent required by such Law, regulation or order (as the case may be). Upon termination of this Agreement, or otherwise upon reasonable written request by the Discloser, the Recipient shall promptly return to Discloser its Confidential Information (or if embodied electronically, permanently erase it, and if requested, certify such erasure in a signed writing).

8. DISCLAIMERS

THE SERVICE, BREW CONTENT, AND ALL OTHER SERVICES AND ITEMS PROVIDED OR MADE AVAILABLE BY BREW ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS, AND WITHOUT ANY REPRESENTATION, WARRANTY, GUARANTEE, OR CONDITION OF ANY KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET POSSESSION, NON-INFRINGEMENT, TITLE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR DEALING, OR USAGE OF TRADE, ALL OF WHICH ARE HEREBY DISCLAIMED BY BREW AND ITS LICENSORS;

BREW DOES NOT MAKE ANY REPRESENTATION, WARRANTY, GUARANTEE, OR CONDITION REGARDING THE EFFECTIVENESS, USEFULNESS, RELIABILITY, COMPLETENESS, OR QUALITY OF THE SERVICE, BREW CONTENT, OR OTHER SERVICES AND ITEMS PROVIDED OR MADE AVAILABLE BY BREW, THAT CUSTOMER'S USE THEREOF WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE, OR REGARDING THE SATISFACTION OF, OR COMPLIANCE WITH, ANY GOVERNMENT REGULATIONS OR STANDARDS.

The above disclaimers apply to the maximum extent permitted by applicable Law. If Customer is a consumer under its applicable Law, Customer may have legal rights in its country of residence which would prohibit the above disclaimers from (fully or partially) applying to Customer (for example, some jurisdictions' Laws do not allow the disclaimer of certain implied warranties or conditions, and do not allow limitations to be imposed on statutory rights), and, to the extent the above disclaimers are prohibited, then Customer and Brew agree that they will not apply to Customer.

9. LIMITATION OF LIABILITY

9.1. EXCEPT FOR BREACHES OF CONFIDENTIALITY UNDER SECTION 7 (CONFIDENTIALITY), A BREACH OF THE SUBSCRIPTION, AND/OR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT, FOR:

- (a) ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES;
- (b) ANY LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF REVENUE, OR LOSS OF ANTICIPATED SAVINGS;
- (c) ANY LOSS OF, THEFT OF, OR DAMAGE TO, CUSTOMER CONTENT, DATA, NETWORKS, HARDWARE, REPUTATION, OR GOODWILL; AND/OR
- (d) THE COST OF PROCURING ANY SUBSTITUTE GOODS OR SERVICES.

9.2. THE COMBINED AGGREGATE LIABILITY OF BREW AND ALL BREW'S AFFILIATES UNDER, OR OTHERWISE IN CONNECTION WITH, THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY CUSTOMER (IF ANY) TO BREW OR AN BREW AFFILIATE DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY.

9.3. THE FOREGOING EXCLUSIONS AND LIMITATIONS SHALL APPLY: (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW; (B) EVEN IF A PARTY HAS BEEN ADVISED, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF LOSSES, DAMAGES, OR COSTS; (C) EVEN IF ANY REMEDY IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE; AND (D) REGARDLESS OF THE THEORY OR BASIS OF LIABILITY, INCLUDING WITHOUT LIMITATION BREACH OF WARRANTY, NEGLIGENCE, MISREPRESENTATION, STRICT LIABILITY, OR OTHER CONTRACT, TORT OR STATUTORY LIABILITY.

10. INDEMNIFICATION.

If any third party (including, but not limited to, a regulatory or governmental authority) brings any kind of demand, claim, suit, action or proceeding against Brew, an Brew Affiliate, and/or any of their respective directors, officers, employees, or representatives (each, an "Indemnitee"), and it is based upon or arises from:

(a) Customer's use of the Service;

(b) Customer's breach of any provision of this Agreement; and/or

(c) any demand, claim, suit, action, or proceeding brought by, or loss or damage incurred or suffered by, any employee or client of Customer

(each of the foregoing, an "Indemnity Claim") then, upon written request by Brew (to be decided in its sole discretion), Customer agrees to assume full control of the defense and settlement of the Indemnity Claim; provided, however, that (c) Brew reserves the right, at any time thereafter, to take over full or partial control of the defense and/or settlement of the Indemnity Claim, and in such cases Customer agrees to reasonably cooperate with Brew's defense activities at Customer's own cost and expense; and (d) Customer shall not settle any Indemnity Claim, or admit to any liability thereunder, without the express prior written consent of the Indemnitee(s).

In addition, and regardless of whether (or the extent to which) Customer controlled or participated in the defense and/or settlement of an Indemnity Claim, Customer agrees to indemnify and hold harmless the Indemnitee(s) for and against: (e) any costs and expenses (including reasonable attorneys' fees) incurred by the Indemnitee(s) in the defense of the Indemnity Claim; and (f) any amounts awarded against, or imposed upon, the Indemnitee(s) under such Indemnity Claim, or otherwise paid in settlement of the Indemnity Claim (including without limitation any fines or penalties).

11. TERM AND TERMINATION

11.1. Term. The term of this Agreement shall commence as of the start date of the Service Plan (set out in the Order Form) and, unless terminated in accordance with this Section 11 (a) shall continue in full force and effect for the Subscription term stated in the applicable Service Plan (the "Initial Term"), and (b), following the Initial Term, shall automatically renew for successive periods of equal length (each, a "Renewal Term", and together with the Initial Term, the "Term").

11.2. Termination by Brew for Convenience. Brew reserves the right to terminate this Agreement for convenience, at any time, and without notice or obligation to Customer, and Customer agrees that Brew shall have no liability to Customer for any such termination; provided, however, that if terminated by Brew under this paragraph, then Brew shall refund to Customer a pro-rated amount of any pre-paid and unused Fees based on the remainder of the then-current Initial Term or Renewal Term (as the case may be).

11.3. Termination by Brew for Cause. Brew may terminate this Agreement immediately upon notice to Customer (which may be via email or via the functionality of the Service): (a) if Customer commits a material breach under this Agreement (and default of any payment obligations shall be deemed a material breach); and/or (b) upon the occurrence of any of the following events in respect of Customer: (i) a receiver is appointed for Customer, which appointment is not dismissed within sixty (60) days; (ii) Customer makes a general assignment for the benefit of its creditors; (iii) Customer commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief Law, which proceedings are not dismissed within sixty (60) days; or (iv) Customer is liquidating, dissolving or ceasing normal business operations.

11.4. Termination by Customer. Customer may terminate this Agreement for convenience, for cause, or for any other reason, at any time, via the functionality offered via the Service. In such case, termination will take effect at the end of the then-current Billing Cycle (and until that date Customer will still be able to use the Service), and Customer will not be charged for the subsequent Billing Cycle. For the avoidance of doubt, any pre-paid Fees will not be refunded. If Customer objects to any provision of this Agreement, or becomes dissatisfied with the Service in any way, Customer agrees that its sole remedy, and Brew's sole obligation liability, is for Customer to terminate this Agreement as aforementioned

12. CONSEQUENCES OF TERMINATION; SURVIVAL

Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities that accrued as of the effective date of termination. Upon termination of this Agreement:

- (a) the Subscription will automatically terminate and be deemed revoked, and Customer will immediately lose all access to, and use of, the Service;
- (b) Customer's Account and related access credentials shall be terminated, and Customer shall be responsible for download or backing up any Customer Content, and Brew shall not be required (unless required by applicable Law) to retain any Customer Content on Brew's databases and servers hosting the Service; and
- (c) Customer shall promptly pay any unpaid amounts that are outstanding as of termination.

Sections 6 (Ownership) through 14 (Miscellaneous) inclusive, as well as any other provision which is intended to survive termination of this Agreement, shall survive termination.

13. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement (including its validity) shall be governed by, and construed in accordance with, the laws of the State of Israel, without regard to any conflicts of laws rules or principles. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to this Agreement and are hereby disclaimed.

Any claim, dispute or controversy under, or otherwise in connection with, this Agreement (a "Dispute") shall be subject to the exclusive jurisdiction and venue of the courts located in Tel Aviv-Jaffa, Israel. Customer hereby irrevocably and unconditionally submits to the personal jurisdiction of such courts and waives any jurisdictional, improper venue, inconvenient forum, or other objections to such jurisdiction and venue. Notwithstanding the foregoing, Brew reserves the right to seek equitable relief in any court worldwide of competent jurisdiction. Furthermore, the parties hereby irrevocably and unconditionally waive the right to litigate such Disputes in court before a jury.

14. MISCELLANEOUS

14.1. Entire Agreement. This Agreement represents the entire agreement between Brew and Customer with respect to the subject matter hereof, and supersedes and replaces any and all prior and contemporaneous oral and/or written agreements, understandings and statements between Customer and Brew with respect to such subject matter. Customer acknowledges and agrees that in entering into this Agreement it has not relied on any statement or representation (whether negligently or innocently made) not expressly set out in this Agreement, such as statements and explanations in any FAQs, summaries or explanatory guides regarding this Agreement, or other marketing material on the Brew website. To the extent of any conflict or inconsistency between these terms and conditions on the one hand, and the Order Form on the other hand, the former shall prevail (unless the Order Form expressly overrides a provision herein). The Section headings in this Agreement are for convenience of reading only, and shall not to be used or relied upon for interpretive purposes.

14.2. Modifications to Agreement. Brew may, from time to time and in its sole discretion, modify the terms and conditions of this Agreement, with notice to Customer in accordance with Section 14.12 (Notices). Except as otherwise indicated below, modifications to this Agreement will take effect at the next renewal of your Subscription and will automatically apply as of the next Renewal Term (if any). Notwithstanding the foregoing, in some cases (for example, to address compliance with Laws, or as necessary for new Features) Brew may specify that such modifications become effective during Customer's then-current Term. If the effective date of a modification is during Customer's then-current Term, and the modification is material and adverse (that is, it expands Customer's obligations and liabilities in a material way) and Customer objects to the modification, then, as Customer's sole remedy, and Brew's sole obligation and liability, Customer may terminate the Agreement upon written notice to Brew and receive a pro-rated refund of any pre-paid Fees hereunder based on the remaining period of the then-current Initial Term or Renewal Term (as the case may be); provided, however, that in order to exercise this right, Customer must provide Brew with written notice of its objection and termination (which notice must include an explicit reference to the modification to which Customer objects) within thirty (30) days of Brew's notice of the modification.

14.3. Age Representation. Customer represents that it is at least thirteen (13) years old, but in any event of a legal age to form a binding contract. Children under the age of thirteen (13) are not permitted to purchase a Subscription or submit an Order Form. If Customer is between thirteen (13) and eighteen (18) years old, Customer's review of (and any performance under) this Agreement must involve Customer's parent or guardian.

14.4. Brew Affiliates. At Brew's sole discretion, any Brew obligation hereunder may be performed (in whole or in part), and any Brew right or remedy may be exercised (in whole or in part), by an Brew Affiliate. Without limiting the generality of the foregoing, Brew may assign its right to invoice and receive payments under this Agreement to an Brew Affiliate.

- 14.5.GDPR. Customer hereby represents and warrants that it will: (i) provide all appropriate notices, (ii) obtain all required informed consents and/or have any and all ongoing legal bases, and (iii) comply at all times with any and all applicable privacy and data protection Laws (including, without limitation, the EU General Data Protection Regulation (“GDPR”)), for allowing Brew to use and process Customer Data in accordance with this Agreement (including, without limitation, the provision of such Customer Data to Brew (or access thereto) and the transfer of such Customer Data by Brew to its Affiliates, and subcontractors, including transfers outside of the European Economic Area), for the provision of the Service and the performance of this Agreement. To the extent that Customer is an entity and is providing or making available to Brew via the Service personal data of needs a data processing agreement, Customer shall request from download Brew’s Data Processing Agreement (“DPA”) available upon request on the Brew website and return it signed to Brew as described therein. In the event Customer fails to comply with any data protection or privacy Law (such as the GDPR) and/or any provision of the DPA, and/or fails to return an executed version of the DPA to Brew, then: (a) to the maximum extent permitted by law, Customer shall be solely and fully responsible and liable for any such breach, violation, infringement, and/or processing of personal data without a DPA by Brew and/or its Affiliates (including, without limitation, their respective employees, officers, directors, subcontractors and agents); (b) in the event of any claim of any kind related to any such breach, violation, or infringement, and/or any claim related to processing of personal data without a DPA, Customer shall defend, hold harmless and indemnify Brew and its Affiliates (including, without limitation, their employees, officers, directors, subcontractors and agents) from and against any and all losses, penalties, fines, damages, liabilities, settlements, costs and expenses, including reasonable attorneys’ fees; and (c) any limitations on, or exclusions of, of Customer’s liability under this Agreement shall not apply in connection with the above subparagraphs (a) and (b).
- 14.6.Assignment. Brew may assign this Agreement (or any of its rights and/or obligations hereunder) without Customer’s consent, and without notice or obligation to Customer. This Agreement is personal to Customer, and Customer shall not assign (or in any other way transfer) this Agreement (or any of its obligations or rights hereunder) without Brew’s express prior written consent. Any prohibited assignment shall be null and void.
- 14.7.Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, then: (a) the remaining provisions of this Agreement shall remain in full force and effect; and (b) the Parties hereto agree that the court making such determination shall have the power to limit the provision, to delete specific words or phrases, or to replace the provision with a provision that is legal, valid and enforceable and that most closely approximates the original legal intent and economic impact of such provision, and this Agreement shall be enforceable as so modified in respect of such jurisdiction. In the event such court does not exercise the power granted to it as aforesaid, then such provision will be ineffective solely as to such jurisdiction (and only to the extent and for the duration of such illegality, invalidity or unenforceability), and will be substituted (in respect of such jurisdiction) with a valid, legal and enforceable provision that most closely approximates the original legal intent and economic impact of such provision.
- 14.8.Third Party Software Rights. If Customer’s authorized use of the Service results in any software code being distributed to Customer, and such software code is owned by a third party (“Third Party Software”), and is subject to its own licensing terms or notices (“Third Party Software Terms”) that render ineffective (or otherwise prohibit) any usage restrictions in this Agreement, then nothing in this Agreement is intended to prohibit (and nothing in this Agreement shall be construed as prohibiting) Customer from engaging in such restricted uses.
- 14.9.Remedies. Except as may be expressly stated otherwise in this Agreement, no right or remedy conferred upon or reserved by any party under this Agreement is intended to be, or shall be deemed, exclusive of any other right or remedy under this Agreement, at law or in equity, but shall be cumulative of such other rights and remedies.
- 14.10.Waiver. No failure or delay on the part of any party in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. Any waiver granted hereunder must be in writing (for waivers by Customer, emails will be acceptable; for waivers by Brew, the writing must be duly signed by an authorized representative of Brew), and shall be valid only in the specific instance in which given.
- 14.11.Relationship. The relationship of the parties is solely that of independent contractors. Nothing in this Agreement shall be deemed to create any employment, fiduciary, joint venture, agency or other relationship between the parties.
- 14.12.Notices. Customer agree that Brew may send Customer notices by email, via Customer’s Account, by regular mail, and/or via postings on or through the functionality of the Service. Except as stated otherwise in this Agreement or required by Law applicable to Customer, Customer agrees to send all notices to Brew, to info@getbrew.com.
- 14.13.No Third Party Beneficiaries. Except as otherwise expressly provided in this Agreement (such as Brew Affiliates), there shall be no third-party beneficiaries of or under this Agreement.
- 14.14.U.S. Government Rights. The Service is “commercial computer software” and the Documentation is “commercial computer software documentation,” pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. If Customer is an agency, department, employee or other entity of the United States Government, then Customer’s access to and use of the Service shall be subject solely to the terms and conditions of this Agreement.

- 14.15. Export Compliance. Customer represents and warrants (on behalf of itself and its User Account, if applicable) that: (a) it is not a resident of (or will use the Service in) a country that the U.S. government has embargoed for use of the Service, nor is Customer named on the U.S. Treasury Department's list of Specially Designated Nationals or any other applicable trade sanctioning regulations of any jurisdiction; and (b) its country of residence and/or incorporation (as applicable) is the same as the country specified in the contact and/or billing address provided to us. In the event Customer breaches this Section (in whole or in part), or otherwise violates any Export Control Laws (defined below) in connection with the Service, Customer agrees to indemnify and hold harmless Brew and all Brew Affiliates (including ours and their respective directors, officers, and employees) for any fines and/or penalties imposed upon Brew or an Brew Affiliate (or such persons) as a result of such breach or violation. "Export Control Laws" means all applicable export and re-export control Laws applicable to Customer and/or Brew, as well as the United States' Export Administration Regulations (EAR) maintained by the US Department of Commerce, trade and economic sanctions maintained by the US Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations (ITAR) maintained by the US Department of State.
- 14.16. Force Majeure. Brew shall not be responsible for any failure to perform any obligation or provide any service hereunder because of any (a) act of God, (b) war, riot or civil commotion, (c) governmental acts or directives, strikes, work stoppage, or equipment or facilities shortages, and/or (d) other similar cause beyond Brew's reasonable control. For the avoidance of doubt, any problems relating to the hosting of the Service shall not be deemed within Brew's reasonable control.
- 14.17. Third Party Charges. Customer's use of the Service may require and utilize an internet connection or data access. To the extent that third party service provider or carrier charges for internet or data usage are applicable, Customer shall be solely responsible and liable for those charges.
- 14.18. Language; Electronic Contract. The language of this Agreement is expressly agreed to be the English language. By entering into the Agreement, Customer hereby irrevocably waives to the maximum extent legally permitted, any Law applicable to Customer requiring that the Agreement be localized to meet Customer's language (as well as any other localization requirements), or requiring an original (non-electronic) signature or delivery or retention of non-electronic records. Brew may be able (but is not obligated) to provide Customer with copies of this Agreement on written request; however, please be sure to print a copy of this Agreement for Customer's own records.