

Software Agreement

Last updated on August 19, 2021

This Software Agreement (the “**Terms**”) apply to and govern the use of the Rookout proprietary application management software that helps organizations collect, manage, debug and enhance the performance of application in production environment (the “**Service**”).

Key Points

The following key points of these Terms are brought for your convenience only. They do not substitute the full Terms.

- A. **Your relationship with us.** These Terms are a binding agreement between the individual or entity identified during registration to the Service. You must ensure that your employees, consultants and agents that you designate to use and deal with the Service for your benefit fully comply with these Terms.
- B. **Use and License.** Subject to these Terms, the completion of your registration and your payment of the applicable fees, you may, during the Term, access and use the Service strictly for your internal business purposes. To this end, we grant you a limited license to install Rookout Software, as further provided herein.
- C. **Data.** You are responsible to thoroughly review the Service’s output data frequently, check for any alerts or warnings issued by the Service, address the findings specified in the Output Data and determine what actions are appropriate in light thereof. We are not responsible or liable for your reliance upon, or use of, the Output Data, your actions in connection with the Output Data, or any consequences resulting therefrom. We will process, handle and use your Service Data and Feedback as explained in section 6 below and will take precautions to maintain the confidentiality of your data.
- D. **Fees.** You will pay us, as of your registration to the Service, the monthly subscription fees, in accordance with the packages, schemes, amounts and subscription cycle presented to you upon registration.
- E. **Restrictions.** You may not use the Service in any of the objectionable manners explained in section 8 below.
- F. **Term.** Upon the end of each subscription cycle, your subscription will be automatically renewed for successive subscription cycles, unless you notify us by email at least 14 days before the end of the subscription cycle, that you wish to terminate your subscription. We may also terminate your subscription by providing you a prior notice of termination by email at least 14 days before the end of the subscription cycle.

- G. **Intellectual property.** All legal rights in the Service, including all intellectual property rights, are ours. Obviously, we don't own the Output Data and any other data originates from your systems and applications.
- H. **Disclaimer of warranty.** The Service is provided for use "as is". We disclaim all warranties and representations with respect to the Service and the Output Data.
- I. **Limitation of liability.** Both your own and our liabilities are limited as set out in section 10 below.
- J. **Indemnity.** You agree to indemnify us in case of a third-party complaint, claim, plea, or demand in connection with your breach of any provision or representation in these Terms.
- K. **Law & jurisdiction.** Use of the Service is governed by the laws of the State of Israel and most disputes will be adjudicated in courts in Tel Aviv Israel.

Terms of Service

1. Your relationship with us

These Terms are a binding agreement between the individual or entity identified during registration to the Service ("**you**" or "**your**"), and Rookout Ltd., a company organized under the laws of the State of Israel, company registration number 51-573346-7, whose registered address is at 10 Beit Shamai, Tel-Aviv 6701838, Israel ("**we**", "**us**", "**our**", "**Rookout**" or the "**Company**").

In case of an entity, the individual signing-up to the Service for the entity confirms that they have the proper authority to legally bind the entity to these Terms. They also confirm they agree, on behalf of that entity, to be contractually bound by these Terms.

2. Definitions.

- 2.1. "**Rookout Software**" means the Company's proprietary software code to be installed on servers that you lawfully own or control for the purpose of collecting and processing the Data, producing the Output Data and providing the Service.
- 2.2. "**Data**" mean Client Data and Output Data, collectively.
- 2.3. "**Feedback**" means information or content concerning enhancements, changes or additions to the Service that you request, desire or suggest.
- 2.4. "**Fees**" means the applicable service fees, as set forth in section 7.
- 2.5. "**Output Data**" means the various reports, alerts, analytics, recommendations, notices, and other types of information and data that the Service may generate, provide or make available to you, whether through the Service's web-based interface, an output file, or otherwise.
- 2.6. "**Client Data**" means software code, logs, application performance information and any other types of information that originate from your applications or production environment.
- 2.7. "**Service Data**" means the data we collect and process in the course of providing the Service, about the use of the Service, including data, bandwidth utilization, and statistical or

aggregated information about the use of the Service and all pertinent information at your disposal concerning bugs, errors and malfunctions in the Software, performance of the Software, its compatibility and interoperability.

2.8. “Term” means the period of these Terms as specified in section 9 below.

3. Interpretation. As used herein, the term “including”, means including, but not limited to, and without limitation, to the generality of the preceding phrase.

4. License and Use.

4.1. Subject to these Terms and your payment of the applicable Fees, you may, during the Term, access and use the Service, strictly for your ability to monitor and debug your production environment. Without derogating from the foregoing, Rookout hereby grants you a limited, non-exclusive, non-transferable, and non-sublicense-able license, to use the Rookout Software during the Term, within your internal DevOps activities.

4.2. You must ensure that your employees, consultants and agents that you designate to use and deal with the Service for your benefit fully comply with these Terms. You are liable to us for all acts or omissions of those that use and deal with the Service for your benefit, as though you yourself had performed those acts or omissions.

5. Registration and user account.

5.1. You must be registered in order to use the Service. In order to apply for registration, you must complete our online application form in which we will indicate the mandatory fields for completion. If you do not provide the required information in these fields, you will not be able to register. You must provide true, accurate and complete information.

5.2. If you choose to register with your Gmail or GitHub account, you give us access to retrieve your profile information on the respective website. The particular categories of information we retrieve from your online accounts are the scope of information that the respective online website makes available to us by default, according to your privacy settings. The information we collect in this manner typically includes your full name, email address and other profile information such as profile picture, date of birth and gender – to the extent you have these in your profile and we receive access to them.

5.3. Login to the Service is authenticated with a password, which you should periodically change. You must maintain the confidentiality of your account login details.

6. Data.

6.1. You are solely and exclusively responsible: (i) for all actions you take in response to the Output Data; (ii) to thoroughly review the Output Data frequently, check for any alerts or warnings issued by the Service, address the findings specified in the Output Data and determine what actions are appropriate in light thereof; and (iii) to carry out such actions as you deem appropriate as a result of the Output Data.

- 6.2. We are not responsible or liable for your Data or your reliance upon and use of the Output Data, your actions in connection with the Output Data, or any consequences resulting therefrom.
- 6.3. You acknowledge and agree that we may process your Data on your behalf in order to provide you with the Service. You and Rookout agree to adhere to the Data Processing Addendum attached to these Terms in respect of the Data.
- 6.4. You further acknowledge and agree that we will handle and use (by ourselves or using trusted third-party service providers such as cloud service providers) the Service Data and Feedback as follows:
- 6.4.1.** To provide the Service to you, conduct administrative and technical activities necessary to maintain and provide the Service and to improve and customize the Service;
 - 6.4.2.** To conduct analysis or generate metrics related to the Software;
 - 6.4.3.** For commercial and marketing purposes, and publication of case studies and white papers, provided that we may only publish anonymized and aggregated Service Data and Feedback that does not identify you and is not traceable to you;
 - 6.4.4.** To bill and collect Fees, enforce these Terms and take any action in any case of dispute, or legal proceeding of any kind involving you with respect to the Service;
 - 6.4.5.** To prevent fraud, misappropriation, infringements, and other illegal activities and misuse of the Service;
 - 6.4.6.** To provide the Service to you and other customers, to enhance the Service, to develop new products and services, for research and testing and for any other purpose we determine. You will not be entitled to any remuneration from us, for our use of such Feedback and Service Data; and
- 6.5.** We may disclose or share your Data, if we are required, or reasonably believe we are required, by law, pursuant to a subpoena, order, or decree, issued by a competent judicial or administrative authority, provided that, to the extent legally permitted, we will endeavor to give you prompt notice of the requirement prior to such disclosure, to allow you, at your cost and expense, to intervene and protect its interests in your Data.
- 6.6. Subject to the foregoing, we will take precautions to maintain the confidentiality of your Data, in a manner no less protective than we use to protect our own similar assets, but in no event less than reasonable care. We will not use or disclose your Data except as described above or otherwise subject to your express, prior, written permission. Our personnel, staff, advisors and consultants will access your Data on a strict 'need to know' basis, subject to these Terms.

- 6.7. We may delete your Data from the Service, upon termination of these Terms. You are responsible for maintaining back-up copies of your Data. The Service does not provide, and is not intended as, data back-up service.
- 6.8. You will not be entitled to receive any remuneration from us for any use, utilization, publication or examination of such Service Data and Feedback, without prejudice to our obligation under Section 6.4.3 above.

7. Fees.

- 7.1. In consideration of the provision of the Service to you, you will pay us, as of your registration to the Service, the monthly subscription Fees, in accordance with the packages, schemes, amounts and subscription cycle presented to you upon registration or separately agreed with you in writing.
- 7.2. Changes you make in your subscription package, scheme or amount will take effect in the subsequent subscription cycle.
- 7.3. All Fees are quoted in US Dollars, unless expressly stated otherwise. Fees are payable by third-party payment processing provider. We may, from time to time, and without specific notice to you, add additional payment methods to the then-current payment methods, or cease to use previously supported payment methods. We may require additional information from you before completing payment transactions.
- 7.4. You must keep the billing information you provided to us upon registration current, complete, and accurate, and notify us promptly in case of any change in your billing information.
- 7.5. We will charge you for the applicable subscription Fees at the beginning of each subscription cycle. By registering to the Service, you give your consent to purchasing a subscription to the Service, in accordance with the schemes, amounts and subscription cycle presented to you upon registration, and to being billed for the applicable Fees, in addition to any applicable taxes (such as sales tax, value added tax), and any surcharges or commissions charged by the payment processor or your selected payment method.
- 7.6. All your payment obligations are non-cancelable and all amounts paid in connection with the Service are non-refundable. If you terminate your account and subscription, you are not entitled to any refund (pro-rata or otherwise), for any Fees you have paid for the terminated subscription during that subscription cycle. You are responsible for paying all Fees applicable to your subscription to the Service, whether or not you actively used, accessed or otherwise benefited from the Service.
- 7.7. Payment methods are processed and handled through relevant third party payment processors. Payment methods are therefore subject not only to these Terms, but also the terms and conditions of these third parties pursuant to your contractual relations with them. You acknowledge that the third parties processing any of the payment methods may charge

you commission on their end of the transaction. We are not responsible for such commission, which is strictly within your contractual relations with the relevant payment processor.

- 7.8. Fees that we are unable to charge through the payment method you provided is deemed an overdue Fee. Failure to settle any overdue Fee within twenty (20) calendar days of its original due date will constitute a material breach of these Terms. Without derogating from any other rights and remedies available to us under applicable law, overdue Fees will accrue interest at the rate of three-quarters of one percent (0.75%) per month or part thereof, cumulative monthly on the linked capital from the due date until the date of actual payment. You will reimburse us for all legal costs and attorney fees we incur in the course of collecting your overdue Fees.
- 7.9. We may modify, adapt, improve, or enhance the Service, or any of its features, user interface, design or any other aspect related to it, without being obligated to provide you notice thereof. If we enhance the Service to include new or additional features or capabilities, we reserve the right to amend these Terms or the applicable Fees and obtain your consent to such amendments. If you do not agree to the amendments in their entirety, we reserve the right to terminate these Terms at the end of the subscription cycle pursuant to subsections 9.1 and 9.3 below.

8. Restrictions.

- 8.1. Except as relevant law may otherwise require to be permitted, you may, and may not permit any third party to, not modify, make derivative works of, disassemble, de-compile, reverse engineer or otherwise attempt to discover the source code, object code or any part of the Service, or any software, documentation or data related to the Services, or otherwise attempt to discover its underlying code, structure, implementation or algorithms.
- 8.2. You may not, and may not permit any third party to, modify, translate, or create derivative works based on the Services.
- 8.3. You may not, and may not permit any third party to, use the Services for timesharing or service bureau purposes or for any purpose other than your own use.
- 8.4. You may not, and may not permit any third party to use the Services other than in accordance with this Agreement and in compliance with all applicable laws and regulations.
- 8.5. You may not use the Service in order to develop, or create, or permit others to develop or create, a product or service similar or competitive to the Service.
- 8.6. Except for your Data, you may not offer the Service to third parties, including by reselling, licensing, renting, leasing, transferring, lending, timesharing, assigning or redistributing the Service or any part thereof.
- 8.7. You may not perform or attempt to perform any of the following in connection with the Service:

- 8.7.1. Breaching the security of the Service, identifying, probing or scanning any security vulnerabilities in the Service,
 - 8.7.2. Accessing data not intended for you, or accessing an account you are not authorized to access;
 - 8.7.3. Interfering with, circumventing, manipulating, overloading, impairing or disrupting the operation, or the functionality of the Service;
 - 8.7.4. Working around any technical limitations in the Service;
 - 8.7.5. Using any tool to enable features or functionalities that are otherwise disabled, inaccessible or undocumented in the Service;
 - 8.7.6. Collecting or processing information or data about the Service's subscribers; or
 - 8.7.7. Sending any virus, worm, Trojan horse or other malicious or harmful code or attachment.
 - 8.7.8. Using robots, crawlers and similar applications to scrape, harvest, collect or compile content from or through the Service.
- 8.8. YOU MAY NOT USE THE SERVICE FOR ANY ACTIVITY THAT CONSTITUTES, OR ENCOURAGES CONDUCT THAT WOULD CONSTITUTE, A CRIMINAL OFFENSE, GIVE RISE TO CIVIL LIABILITY OR OTHERWISE VIOLATE ANY APPLICABLE LAW.
- 8.9. WE MAY EMPLOY MEASURES TO DETECT AND PREVENT FRAUDULENT OR ABUSIVE USE OF THE SERVICE, AS WELL AS MISUSE OF THE SERVICE. WE MAY SUSPEND OR TERMINATE YOUR ACCOUNT ON AND ACCESS TO THE SERVICE, WITHOUT PRIOR NOTICE, IF WE, IN OUR SOLE DISCRETION, BELIEVE THAT YOU HAVE ENGAGED IN FRAUDULENT OR ABUSIVE USE, OR MISUSE, OF THE SERVICE.
- 8.10. You will cooperate with us in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as we may reasonably request.

9. Term and Termination

- 9.1. These Terms commence when you apply to register to the Service, and terminate upon the termination, cancellation or expiration of your subscription to the Service.
- 9.2. Upon the end of each subscription cycle, your subscription will be automatically renewed for successive subscription cycles, unless you notify us, by email to cancel@rookout.com, at least 14 days before the end of the subscription cycle, that you wish to terminate your subscription. Your account and subscription will then be terminated upon the end of that subscription cycle.
- 9.3. In addition, we may terminate your account on, and subscription to, the Service, upon the end of any then-current subscription cycle, by providing you a prior notice of termination by

email (to the email you provided upon registration) at least 14 days before the end of the subscription cycle.

9.4. In addition to the foregoing, either party may terminate these Terms:

9.4.1. In the event of a breach of these Terms by the other party, where the breach remains uncured for thirty (30) days following written notice thereof from the non-breaching party to the breaching party, but if a breach is of a nature that cannot be cured, then the non-breaching party may terminate the terms immediately upon notice to the other party;

9.4.2. If the terminating party is required to do so by law;

9.4.3. If the other party becomes or is declared insolvent or bankrupt, is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which proceedings are not dismissed within ninety (90) days of their commencement, makes an assignment for the benefit of creditors, or takes or is subject to any such other comparable action in any relevant jurisdiction.

9.5. Immediately upon termination of these Terms:

9.5.1. We may terminate your account on the Service and delete your Data (if stored) in our systems;

9.5.2. You must cease any and all use of the Service and Rookout Software;

9.5.3. Permanently uninstall the Rookout Software from all computers and other devices in its possession or control;

9.5.4. We will charge you for all then-outstanding Fees (if any) incurred in your final subscription cycle;

9.6. Sections in these Terms that by their purpose of nature should survive termination of these Term, will so survive.

10. Service quality; Service modifications; Disclaimer of Warranty and Limitation of Liability

10.1. We will endeavor to have the Service operate properly. However, as a service that relies on back-end software, your applications, infrastructure, servers, third-party networks and continuous internet connectivity, we do not guarantee that the Service will operate in an uninterrupted or error-free manner, or that it will always be available, free from errors, omissions or malfunctions.

10.2. If we receive notice of any failure or malfunction, or if we become aware of them by ourselves, we will attempt to regain the Service's availability as soon as practicable. However, such incidents will not be considered a breach of these Terms.

10.3. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT IN THE EVENT OF INTENTIONAL MISCONDUCT, BREACH OF CONFIDENTIALITY OBLIGATIONS, YOUR INDEMNITY OBLIGATIONS HEREIN OR INFRINGEMENT OF OUR INTELLECTUAL PROPERTY RIGHTS,

NEITHER YOU OR ROOKOUT, INCLUDING THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS, AND ANYONE ACTING ON THEIR BEHALF, WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, STATUTORY OR PUNITIVE DAMAGES, LOSSES (INCLUDING LOSS OF PROFIT, LOSS OF BUSINESS OR BUSINESS OPPORTUNITIES AND LOSS OF DATA), COSTS, EXPENSES AND PAYMENTS, EITHER IN TORT, CONTRACT, OR IN ANY OTHER FORM OR THEORY OF LIABILITY (INCLUDING NEGLIGENCE), ARISING FROM, OR IN CONNECTION, WITH THESE TERMS, ANY USE OF, OR THE INABILITY TO USE THE SERVICE, THE CLIENT DATA OR THE OUTPUT DATA, ANY RELIANCE UPON THE OUTPUT DATA OR ANY ERROR, INCOMPLETENESS, INCORRECTNESS OR INACCURACY OF THE SERVICE OR THE OUTPUT DATA.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT IN THE EVENT OF INTENTIONAL MISCONDUCT, BREACH OF CONFIDENTIALITY OBLIGATIONS, INFRINGEMENT OF OUR INTELLECTUAL PROPERTY RIGHTS, YOUR INDEMNITY OBLIGATIONS HEREIN OR LIABILITY ARISING FROM FAILURE TO PAY THE FEES DUE, THE TOTAL AND AGGREGATE LIABILITY EACH PARTY (INCLUDING THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS, AND ANYONE ACTING ON THEIR BEHALF), FOR DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS, THE SERVICE OR THE OUTPUT DATA, SHALL BE LIMITED TO TWO TIMES THE FEES PAYABLE TO US FOR THE SUBSCRIPTION CYCLE IN WHICH THE EVENT PURPORTEDLY GIVING RISE TO THE CLAIM OCCURRED.

10.4. ALTHOUGH WE USE SKILL AND EFFORTS TO DEVELOP THE SERVICE AND HAVE THE SERVICE PROVIDE ACCURATE, RELIABLE, EFFECTIVE AND ACTIONABLE OUTPUT DATA, WE DO NOT GUARANTEE, MAKE NO REPRESENTATION, AND PROVIDE NO WARRANTY ABOUT THE RELIABILITY, EFFECTIVENESS, ACCURACY OR COMPLETENESS OF THE SERVICE OR OUTPUT DATA, THE EXPECTED BUSINESS OR CROP RESULTS, OUTCOME OR YIELDS OR ANY OTHER OPERATIONAL BENEFITS FROM UTILIZING THE SERVICE.

10.5. THE SERVICE IS PROVIDED TO YOU "AS IS" WITHOUT ANY WARRANTIES OF ANY KIND. WE AND OUR AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS. WE DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, THE CLIENT DATA AND THE OUTPUT DATA, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, NON-INFRINGEMENT, TITLE, SECURITY, COMPATIBILITY OR PERFORMANCE.

11. **Export Control.** Notwithstanding anything else, You may not provide to any person or export or re-export or allow the export or re-export of the Services or anything related thereto or any direct product thereof (collectively "**Controlled Subject Matter**"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. Without limiting the foregoing Customer acknowledges and agrees that the Controlled Subject Matter will not be used or transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, "Embargoed Countries"), or to

or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "**Designated Nationals**"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. Use of the Service is representation and warranty that the user is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Controlled Subject Matter may use or include encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations. As defined in FAR section 2.101, any software and documentation provided by Rookout are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

12. Intellectual Property.

- 12.1. The Service is a proprietary offering of Rookout, protected under copyright laws and international copyright treaties, patent law, trade secret law and other intellectual property rights of general applicability. The Service is made available for use and access and is not sold or licensed.
- 12.2. Except for your limited access to use the Service and the Output Data according to these Terms, these Terms do not grant you or assign to you, any license, right, title, or interest in or to the Service, Service Data and Feedbacks or the intellectual property rights associated with it. All rights, title and interest, including copyrights, patents, trademarks, trade names, trade secrets and other intellectual property rights, and any goodwill associated therewith, in and to the Service or any part thereof, including computer code, graphic design, layout and the user interfaces of the Service, whether or not based on or resulting from Feedback, but excluding your Data, are and will remain at all times, owned by, or licensed, to us. You will not copy, distribute, reproduce or use any of the foregoing except as expressly permitted under this Agreement.
- 12.3. We may identify you as a customer on our website and in other online or offline marketing materials.

13. Indemnity.

- 13.1. You agree to indemnify and hold harmless us and our directors, officers, employees, and subcontractors, upon our request and at your own expense, from, and against, any damages, loss, costs, expenses and payments, including reasonable attorney's fees and

legal expenses, arising from any third-party complaint, claim, plea, or demand in connection with your breach of any provision or representation in these Terms.

- 13.2. If we seek indemnification from you, we will provide you with (i) prompt written notice of any indemnifiable claim; (ii) all reasonable assistance and cooperation in the defense of such indemnifiable claim and any related settlement negotiations, at your expense; and (iii) exclusive control over the defense or settlement of such indemnifiable claim, provided, however, that we may settle or reach compromise on any such claim without your consent, if and to the extent such settlement or compromise does not impose any liability (monetary, criminal or otherwise) on you. We will have the right to participate, our own expense, in the defense (and related settlement negotiations) of any indemnifiable claim with counsel of our own selection.

14. Governing Law and Venue.

- 14.1. Regardless of your jurisdiction of incorporation, the jurisdiction where you engage in business, where you access the Service from, these Terms and your use of the Service will be exclusively governed by and construed in accordance with the laws of the State of Israel, excluding any otherwise applicable rules of conflict of laws, which would result in the application of the laws of a jurisdiction other than Israel.
- 14.2. Any dispute, controversy or claim which may arise out of or in connection with these Terms or the Service, shall be submitted to the sole and exclusive jurisdiction of the competent courts in the Tel Aviv district in Israel. Subject to the following sentence, you and us, each hereby expressly consent to the exclusive personal jurisdiction and venue of such courts, and waive any objections related thereto including objections on the grounds of improper venue, lack of personal jurisdiction or *forum non conveniens*.
- 14.3. Notwithstanding the foregoing, we may also lodge a claim against you: (a) pursuant to the indemnity clause above, in any court adjudicating a third party claim against us; and (b) for interim, emergency or injunctive relief in any other court having general jurisdiction over you.
15. **Assignment.** You may not assign these Terms without our prior written consent, which we shall not unreasonably withhold or deny. Any purported assignment without our prior written consent is void. Notwithstanding the foregoing, and to the greatest extent permissible by law, each party may assign these Terms in their entirety, including all right, duties, liabilities, performances and obligations herein, upon notice to the other party and without obtaining the other party's further specific consent, to a third-party, upon a merger, acquisition, change of control or the sale of all or substantially all of the assigning party's equity or assets. By virtue of such assignment, the assignee assumes the assignor's stead, including all right, duties, liabilities, performances and obligations hereunder, and the assignor is released therefrom.

16. Relationship of the parties. The relationship between the parties hereto is strictly that of independent contractors, and neither party is an agent, partner, joint venturer or employee of the other.

17. Subcontracting. We may subcontract or delegate the performance of our obligations under these Terms, or the provision of the Service (or any part thereof), to any third party of our choosing, provided however, that we remain liable to you for the performance of our obligations under these Terms. You acknowledge and agrees that the technical means by which we provide the Service is at our sole discretion.

18. Confidentiality.

18.1. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to the Disclosing Party's technology or business (hereinafter referred to as "Confidential Information" of the Disclosing Party).

18.2. The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (i) to give access to such Proprietary information solely to those employees with a need to have access thereto for purposes of this Agreement, and (iii) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary information that the party takes with its own proprietary information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without any action by, or involvement 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 [without restriction] by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to contest such order. In any event, Rookout may collect data with respect to and report on the aggregate response rate and other aggregate measures of the Services' performance.

18.3. Customer acknowledges that Rookout does not wish to receive any proprietary information from you that is not necessary for Rookout to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, Rookout may reasonably presume that any unrelated information received from you is not confidential or proprietary Information.

19. Complete Terms and Severability. These Terms constitute the entire and complete agreement between you and us concerning the subject matter herein. These Terms supersede all prior oral or written statements, understandings, negotiations and representations with respect to the

subject matter herein. If any provision of these Terms is held invalid or unenforceable, that provision shall be construed in a manner consistent with the applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining provisions will remain in full force and effect. These Terms may be modified or amended only in writing, signed by the duly authorized representatives of both parties.

20. **No waiver.** Neither party will, by mere lapse of time, without giving express notice thereof, be deemed to have waived any breach, by the other party, of any terms or provisions of these Terms. The waiver, by either party, of any such breach, will not be construed as a waiver of subsequent breaches or as a continuing waiver of such breach.

Data Processing Addendum

1. Capitalized terms used in this Addendum but not defined herein have the meaning ascribed to them in Regulation (EU) 2016/679 (GDPR) (referred to as “**Data Protection Law**”).
2. This Addendum applies only where Rookout Processes Personal Data as a Data Processor on behalf of the Customer and under the Customer’ instructions, where the Customer is a Data Controller subject to the GDPR with respect to the Personal Data that Rookout Processes, pursuant to Section 6.4 of the Terms. This Addendum does not apply to Rookout’s Processing Personal Data of Customer’s representatives to market or promote its products, to administer the business or contractual relationship between Rookout and the Customer or in other instances Rookout operates as the Data Controller.
3. Customer commissions, authorizes and requests that Rookout provide Customer the Platform, which involves Processing Personal Data.
4. Rookout will Process the Personal Data only on Customer’s behalf and for as long as Customer instructs Rookout to do so. Rookout shall not Process the Personal Data for any purpose other than the purpose set forth in the next section.
5. The subject matter and purposes of the Processing activities are the provision of the Platform, including maintenance, support, enhancement and deployment of the same. The Personal Data Processed may include, without limitation:
 - 5.1. Names, titles and contact information of Customer’s staff.
6. The Data Subjects, as defined in the Data Protection Law, about whom Personal Data is Processed are:
 - 6.1. Data subjects relating to Customer’s production environment.
7. Rookout will Process the Personal Data only as set forth in this Addendum. Customer and Rookout are each responsible for complying with the Data Protection Law applicable to them in their roles as Data Controller and Data Processor, respectively.
8. Customer shall at a minimum –
 - 8.1. Substantiate the legal basis of and legitimize the Processing of Personal Data through the Platform, as necessary under Data Protection Law. Customer may only use the Platform to process personal data pursuant to a recognized and applicable lawful basis under Data Protection Law, such as (by way of example only) consent or legitimate basis.
 - 8.2. Have, properly publish and abide by an appropriate privacy policy that complies with all Data Protection Law relating to Personal Data and its Processing through the Platform.
9. Rookout will Process the Personal Data only on documented instructions from Customer that are provided through the Platform’s various control and configuration options, unless Rookout is otherwise required to do so by law to which it is subject (and in such a case, Rookout shall inform Customer of that legal requirement before processing, unless that law prohibits such information

on important grounds of public interest). Rookout shall immediately inform Customer if, in Rookout's opinion, an instruction is in violation of Data Protection Law. Customer may use the Platform's various control and configuration options to assist it in connection with its obligations under the GDPR.

10. Customer is solely responsible for determining the lawfulness of the data processing instructions it provides to Rookout and shall provide Rookout only instructions that are lawful under Data Protection Law.
11. Rookout, through the Platform's various control and configuration options available to Customer, will follow Customer's instructions to accommodate Data Subjects' requests to exercise their rights in relation to their Personal Data, including accessing their data, correcting it, restricting its processing or deleting it. Rookout will pass on to Customer requests that it receives from Data Subjects regarding their Personal Data Processed by Rookout.
12. Additional instructions of the Customer outside the scope of the Platform's control and configuration options require prior and separate agreement between Customer and Rookout, including agreement on additional fees (if any) payable to Rookout for executing such instructions. If Rookout declines to follow Customer's reasonable instructions outside the scope of the Platform's control and configuration options, then Customer may terminate this Addendum and the Terms, without liability for such premature termination.
13. Customer acknowledges and agrees that Rookout uses the sub-processors listed in Appendix 1 to Process Personal Data.
14. Customer authorizes Rookout to engage another sub-processor for carrying out specific processing activities of the Platform, provided that Rookout informs Customer at least 14 days in advance of any new or substitute sub-processor, in which case Customer shall have the right to object, on reasoned grounds, to that new or replaced sub-processor. If Customer so objects, and Rookout notifies Customer in writing that it nevertheless opts to use that new or replaced sub-processor, then Customer may terminate the Terms for convenience, without liability to Rookout for such premature termination.
15. Rookout and its sub-processors will only Process the Personal Data in member states of the European Economic Area, in territories or territorial sectors recognized by an adequacy decision of the European Commission, as providing an adequate level of protection for Personal Data pursuant to Articles 45 or 46 of the GDPR, or using adequate safeguards as required under Data Protection Law governing cross-border data transfers (e.g., Model Clauses). To this end, Customer authorizes Rookout to enter on Customer's behalf into Model Clauses agreements with sub-processors.
1. Rookout and the Customer hereby enter into the standard contractual clauses for the transfer of personal data to processors established in third countries ("Controller to Processor EU Model Clauses"), pursuant to EU Commission Decision 2010/87/EU (<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32010D0087>), which

are incorporated hereto by reference. For the purpose of the Controller to Processor EU Model Clauses:

- Customer is the 'data exporter'.
- Rookout is the Data Importer
- The parties' contact information is specified in the Terms and the registration process
- The Data Subjects are as set out in Section 6 above
- The applicable law for the Controller to Processor EU Model Clauses shall be the Republic of Ireland
- The categories of Personal Data are as set out in Section 5 above
- Technical and organizational security measures implemented by the data importer are as set out in the annual audit report from an independent reputable third party regarding Rookout's data processing and data protection measures.

16. In the event that the foregoing mechanism for cross-border data transfers is invalidated by a regulatory authority under Applicable Law or any decision of a competent authority under Data Protection Law, the parties shall discuss in good faith and agree such variations (such agreement not to be unreasonably withheld or delayed) to this Addendum as are required to enable a valid cross-border data transfers. In the event the parties are unable to agree on such variations, despite good faith efforts, either party may terminate the Terms by providing written notice to the other party, without cost or liability for such premature termination. Further, in the event that the European Commission establishes processor to processor standard contractual clauses, the parties will enter into those clauses as promptly as reasonably practicable.
17. Rookout will procure that the sub-processors Process the Personal Data in a manner consistent with Rookout's obligations under this Addendum and Data Protection Law, particularly Article 28 of the GDPR, with such obligations imposed on that sub-processor by way of law or contract, in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet the requirements of the GDPR.
18. In Processing Personal Data, Rookout will implement appropriate technical and organizational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access in accordance with Rookout's IT Security Policy. including, without limitation: the pseudonymization or encryption of Personal Data, in transit and at rest, the ability to ensure the on-going confidentiality, integrity, availability, and resilience of Processing systems and services, the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident, and a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing.
19. Rookout will ensure that its staff authorized to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

20. Rookout will make available to the Customer all information necessary to demonstrate compliance with the obligations under Data Protection Law, including records of processing activities required pursuant to Article 30(2) of the GDPR. Rookout shall allow for and contribute to audits, including carrying out inspections on Rookout's business premises conducted by Customer or another auditor mandated by Customer during normal business hours and subject to a prior notice to Rookout of at least 30 days as well as appropriate confidentiality undertakings by Customer covering such inspections in order to establish Rookout's compliance with this Addendum and the provisions of the applicable Data Protection Law as regards the Personal Data that Rookout processes on behalf of Customer. If such audits entail material costs or expenses to Rookout, the parties shall first come to agreement on Customer reimbursing Rookout for such costs and expenses.
21. At Customer's request, Rookout shall provide to Customer a copy of an annual audit report from an independent reputable third party regarding Rookout's data processing and data protection measures. The audit report shall be obtained based on a recognized standard for such audit reports (e.g. ISAE 3000 or SSAE-SOC 2).
22. Rookout shall without undue delay notify Customer of any 'Personal Data Breach' (as this term is defined and used in Data Protection Law) that it becomes aware of regarding Personal Data of Data Subjects that Rookout Processes. Rookout will use commercial efforts to mitigate the breach and prevent its recurrence. Customer and Rookout will cooperate in good-faith on issuing any statements or notices regarding such breaches, to authorities and Data Subjects.

The notification to Customer referenced in this Section shall include at least the following information:

- A description of the nature of the Personal Data Breach including, where possible, the categories and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned;
- The name and contact details of the data protection officer on behalf of Rookout or other contact point where more information can be obtained;
- A description of the likely consequences of the Personal Data Breach; and
- A description of the measures taken or proposed to address the Personal Data Breach, including measures to mitigate its possible adverse effects.

If it is not possible to provide the above information pursuant with the notification, Rookout shall provide this information as soon as it is available.

23. Rookout will assist Customer with the preparation of data privacy impact assessments and prior consultation as appropriate, provided, however, that if such assistance entails material costs or expenses to Rookout, the parties shall first come to agreement on Customer reimbursing Rookout for such costs and expenses.

24. Rookout will provide Customer prompt notice of any request it receives from authorities to produce or disclose Personal Data it has Processed on Customer's behalf, so that Customer may contest or attempt to limit the scope of production or disclosure request, unless Rookout is prohibited by law to provide this notice.
25. In the event that Customer's Personal Information processed by Rookout is subject to the California Consumer Privacy Act of 2018 (CCPA), Cal. Civ. Code §1798.100 *et seq.*, and Customer is a Business under the CCPA, the following will apply (with any capitalized terms in this Section 25 that were not defined in this Addendum shall have the meaning ascribed to them in the CCPA, Cal. Civ. Code §1798.140):
- 25.1. The parties acknowledge and agree that Rookout is a Service Provider.
- 25.2. Rookout is prohibited from retaining, using or disclosing Customer's Personal Information for: (a) any purpose other than the purpose of properly performing, or for any commercial purpose other than as reasonably necessary to provide, the technical support for Rookout's product and/or services or as otherwise permitted under 11 CCR §999.314(c); (b) Selling the Customer's Personal Information; and (c) retaining, using or disclosing the Customer's Personal Information outside of the direct business relationship between the parties, except as permitted under 11 CCR §999.314(c).
- 25.3. If Rookout receives a request from a California Consumer of the Customer, about his or her Personal Information, Rookout shall not comply with the request itself, inform the consumer that Rookout is merely a Service Provider that follows Customer's instruction, and inform the Consumer that they should submit the request directly to the Customer and provide the Consumer with the Customer's contact information. Section 11 of this Addendum shall apply mutatis mutandis to CCPA requests from a California Consumer of the Customer.
26. All notices required or contemplated under this Addendum to be sent by Rookout will be sent either by electronic mail to Customer to the email address that Rookout has on file for the Customer's main contact person, or, at Rookout's choice, through In-app notices.
27. Upon Customer's request, Rookout will delete the Personal Data it has Processed on Customer's behalf under this Addendum from its own and its sub-processor's systems, or, at Customer's choice, use the Platform's tools to obtain the data before its deletion, and upon Customer's request, will furnish written confirmation that the Personal Data has been deleted pursuant to this section.
28. The duration of Processing that Rookout performs on the Personal Data is for the period set out in the Terms between the parties. This Addendum shall prevail in the event of inconsistencies between it and the Terms between the parties or subsequent agreements entered into or purported to be entered into by the parties after the date of this Addendum – except where explicitly agreed otherwise in writing.

29. The parties' liability under this Addendum shall be pursuant to the liability clauses in the various parts of the Terms.

Appendix 1 – Sub-processors

| Name of sub processor | Address | Location where data is processed | Purpose of processing |
|------------------------------|---|---|------------------------------|
| Google, LLC. | 1600 Amphitheatre Parkway, Mountain View, CA | United States | Cloud Services |
| Amazon Web Services, Inc. | Inc., 410 Terry Avenue North, Seattle, WA | United States | Cloud Services |
| Eightyfourcodes AB | Sveavägen 98, 113 50 Stockholm, Sweden | United States | Cloud Services |
| Logshero Ltd. | 3 Kalman Magen, Tel Aviv, Israel 6107075 | United States | Software Monitoring |
| DataDog, Inc. | 620 8th Ave 45th Floor New York, NY | United States | Software Monitoring |
| LogRocket, Inc. | 101 Main St., Cambridge, MA | United States | Software Monitoring |
| Bugsnap, Inc. | 110 Sutter St, Suite 1000 San Francisco, CA | United States | Software Monitoring |
| Functional Software, Inc. | 132 Hawthorne Street, San Francisco, CA | United States | Software Monitoring |
| Atlassian Corporation Plc | Level 6 341 George Street Sydney, NSW, 2000 | United States | Client Communications |

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|--|--|---------------|--------------------------|
| | Australia | | |
| Salesforce.com, Inc. | 415 Mission Street, San Francisco, CA | United States | Client Communications |
| Adobe, Inc. | 345 Park Ave, San Jose, CA | United States | Client Communications |
| CloudFlare Inc. | 101 Townsend St San Francisco, CA | United States | Cloud Services |
| Cisco Systems, Inc. | 170 West Tasman Dr. San Jose, CA | United States | Cloud Services |
| International Business Machine (IBM) Corporation | 1 New Orchard Road Armonk, New York 10504-1722 United States | United States | Cloud Services |
| Hubspot | 1 Harbour Pl, Suite 175. Portsmouth, NH 03801. United States | United States | Client Communications |
| Strattic | Ki'akh St 5, Jerusalem Israel | United States | Cloud Services |
| Intercom | 55 2nd Street, 4th Floor, San Francisco, CA 94105 | United States | Client Communications |

| | | | |
|-------|---|---------------|-----------------------|
| Zoho | 4141 Hacienda Drive, Pleasanton, CA 94588, USA | United States | Client Communications |
| Drift | 153 Kearny St, 5th Floor San Francisco, CA 94104 | United States | Client Communications |