**GynIsUs, Ltd – Infectious Disease Monitor Terms of Service**

This agreement between GynIsUs, Ltd. (“***we***”, “***us***”, “***our***” or “***Company***”), and you, a Hospital or a healthcare system (“**Hospital**”, “***you***” or “***your***”) consists of (a) these Terms of Service, (b) the business associate agreement entered into between you and us, and (c) the Order (as defined below), if applicable (collectively, this “***Agreement***”). This Agreement governs your use of our infectious disease monitor platform (our “***Platform***”) (as defined below), or any other technology or services offered to you by us that are not covered by other specific agreements, in connection with our proprietary Platform (the “***Service***”).

BY EXECUTING AN ORDER OR OTHERWISE CLICKING A BOX INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOU HAVE READ THIS AGREEMENT AND ARE BOUND BY THIS AGREEMENT, AND YOU HEREBY AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE AN INDIVIDUAL ENTERING INTO THIS AGREEMENT ON BEHALF OF A LEGAL ENTITY, YOU HEREBY REPRESENT AND WARRANT TO US THAT YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF SUCH ENTITY AND BIND SUCH ENTITY TO THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT, IN WHICH CASE, THE TERMS “YOU” AND “YOUR” WILL REFER TO SUCH ENTITY. IF YOU DO NOT ACCEPT ALL THE TERMS AND CONDITIONS IN THIS AGREEMENT OR ARE NOT AN AUTHORIZED REPRESENTATIVE OF THE LEGAL ENTITY THAT WISHES TO ENTER INTO THIS AGREEMENT, DO NOT EXECUTE AN ORDER, ACCEPT THESE TERMS OF SERVICE, OR OTHERWISE USE THE PLATFORM. YOU MAY NOT ENTER INTO THIS AGREEMENT OR OTHERWISE USE THE SERVICE OR THE PLATFORM IF YOU ARE A COMPETITOR TO THE COMPANY.

You may gain access to the Platform by (a) executing an Order or (b) by registering online and clicking a box indicating your acceptance of this Agreement.

1. **Definitions.**
   1. “***Aggregated Data***” means aggregated data and insights derived from the Hospital Data and your access or use of the Platform, which do not identify you or any User, cannot with reasonable means be attributed or traced back to the Hospital Data and does not contain any PHI.
   2. “***Business Associate Agreement”*** or “***BAA***” means the business associate agreement entered into between the Parties, which is incorporated into this Agreement by reference.
   3. “***Dashboard***” means the dashboard offered to Hospitals who have registered for the Service, consisting of a web-based interface, made available as a service via the Internet, through which registered Hospitals may access and use the functionality and features of the Service.
   4. “***Feedback***” means information, suggestions or feedback concerning the Service or the Platform that you provide to the Company.
   5. “***Hospital Data***” means data, content or other information provided by you to the Company (via the Platform or otherwise), excluding Feedback.
   6. “***Order***” means a written ordering document executed by an authorized representative of each of you and the Company that incorporates these Terms of Service by reference, or an online registration form or process through which you register for the Service. The Order will specify the terms of your subscription, the fees related thereto, if any, and the duration of the Term.
   7. “***Platform***” means the GynIsUs Infectious Disease Monitor system, including the Dashboard.
   8. “***Platform Data***” means data, analytics, insights, content or other information created or generated by the Platform.
   9. “***Protected Health Information***” or “***PHI***” means protected health information as defined in the federal regulations at 45 C.F.R. Parts 160 and 164 (the “Privacy Standards”), promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“***HIPAA***”) and the Health Information Technology for Economic and Clinical Health Act of 2009 (“***HITECH***”),
   10. “***Service***” means the functionality offered to you through the Platform which operates as a system to monitor infectious disease spreads and interactions within a Hospital.
   11. “***Subscription Fees***” mean the fees quoted in an applicable Order for the Service.
   12. “***Term***” means the Initial Term (as defined below) plus any Renewal Term(s) (as defined below).
   13. “***User***” means an individual who accesses the Platform and uses the Service.
2. **Interpretation.** As used herein, the term “including”, means including, but not limited to, and without limitation, to the generality of the preceding phrase. All examples in this Agreement and all “i.e.” and “such as” notations, indicate an illustration, by way of example only, of the preceding phrase, without limiting its generality.
3. **Access to Platform; Service Offering**
   1. **Evaluation**. If you access the Service on an evaluation or beta basis via the Dashboard (the “***Evaluation Service***”), then you may use the Evaluation Service only for evaluation purposes and for a period of thirty (30) days beginning on the date the Company provides you with login credentials, unless otherwise set forth in the Order or as otherwise provided in writing by the Company (the “***Evaluation Period***”). Notwithstanding any other provision of this Agreement, the Company provides the Evaluation Service, and access to the Platform in connection therewith, (i) free of charge and without support and (ii) “AS IS” without indemnification or warranty of any kind. The Company does not provide any support with respect to the Evaluation Service. Also, certain features or services may not be available for the Evaluation Service. Continued use of the Platform after the Evaluation Period requires that you (A) execute an Order or register online and (B) submit the applicable payment, if payment is required for the selected Service. Upon expiration of the Evaluation Period, you will not have access to the Evaluation Service.
   2. **SaaS Subscription**. If you execute an Order or register online and the Order or registration indicates your subscription to the Service, then subject to the terms and conditions of this Agreement and your payment of all applicable fees, the Company hereby grants to you a nonexclusive, nonsublicensable, nontransferable right, during the Term, to access and use the Service and the Platform Data provided to you in the Dashboard, strictly for your internal business purposes.
4. **Registration and User Account**
   1. You must be registered in order to use the Service. In order to register, you must complete our online application form, or a paper form that we may agree to provide to you, in which we 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.
   2. Login to the Dashboard is authenticated with a password, which you should periodically change. You must maintain the confidentiality of your account login details for your general account and for the Dashboard.
   3. You are solely responsible for the security of your and your users’ login credentials and will not provide such login credentials to any third party. You are responsible for any use that occurs under your or your users’ login credentials. If you believe an unauthorized person has gained access to your or your users’ login credentials, you will notify us as soon as possible. You will ensure that your users comply with all terms and conditions of this Agreement and you remain responsible and liable for the acts and omissions of your users. If you become aware of any violation by any of your users, you will immediately terminate such user’s access to the Service.
5. **Data**
   1. As between you and the Company, you retain all right, title, and interest in the Hospital Data, except for the limited license expressly granted by you to the Company in this Section. You hereby grant to the Company a nonexclusive, royalty-free, fully paid up right and license to copy, display, distribute, modify and otherwise use Hospital Data, solely as necessary to provide the Service to you and for the purpose of creating Aggregated Data, subject the terms and conditions of the BAA.
   2. The Parties shall only process, use, and disclose PHI in accordance with the terms and conditions of the BAA.
   3. In addition, to the extent you provide any Feedback to the Company, you hereby grant to the Company a nonexclusive, perpetual, irrevocable, royalty-free, sublicensable, transferable license to copy, display, distribute, perform, modify and otherwise use such Feedback or subject matter thereof in any way and without limitation.
   4. We may delete the Hospital Data from the Service upon termination of this Agreement. You are responsible for maintaining back-up copies of all Hospital Data. The Service does not provide, and is not intended to be, a data back-up service.
6. **Confidentiality.** As used in this Agreement, “***Confidential Information***” means, subject to the exceptions set forth in the following sentence, any information or data, regardless of whether it is in tangible form, disclosed by either you or the Company (the “***Disclosing Party***”) that the Disclosing Party has either marked as confidential or proprietary, or has identified in writing as confidential or proprietary within thirty (30) days of disclosure to the other party, or which should reasonably be understood to be confidential (the “***Receiving Party***”); provided, however, that a Disclosing Party’s business plans, strategies, technology, research and development, current and prospective customers, billing records, and products or services will be deemed Confidential Information of the Disclosing Party even if not so marked or identified. The Company’s Confidential Information includes, without limitation, the Service, the Platform, the terms and conditions of this Agreement and any information related to any of the foregoing. Your Confidential Information includes the Hospital Data, excluding Aggregated Data derived therefrom. Information will not be deemed Confidential Information if such information: (a) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (c) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (d) is developed independently by the Receiving Party without use of any Confidential Information of the Disclosing Party. Each party agrees that it will use the Confidential Information of the other party solely to perform its obligations or exercise its rights under this Agreement. Neither you nor the Company will disclose, or permit to be disclosed, the other party’s Confidential Information directly or indirectly, to any third party without the other party’s prior written consent. Both you and the Company will use commercially reasonable measures to protect the confidentiality and value of the other party’s Confidential Information. Notwithstanding any provision of this Agreement, either party may disclose the other party’s Confidential Information, in whole or in part: (i) to its employees, officers, directors, consultants and professional advisers (e.g., attorneys, auditors, financial advisors, accountants and other professional representatives) who have a need to know and are legally bound to keep such Confidential Information confidential by confidentiality obligations or, in the case of professional advisors, are bound by ethical duties to keep such Confidential Information confidential consistent with the terms of this Agreement; and (ii) as required by law (in which case each party will provide the other with prior written notification thereof, will provide such party with the opportunity to contest such disclosure, and will use its reasonable efforts to minimize such disclosure to the extent permitted by applicable law). Both you and the Company agree to exercise due care in protecting the Confidential Information of the other party from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it. Both you and the Company will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in this Agreement.
7. **Fees**
   1. In consideration of the provision of the Service to you, we may charge you a Subscription Fee and you will pay us the fees set forth in the Order in accordance with the terms and conditions of this Agreement.
   2. If any fees are due based on your Order, said fees will be quoted in U.S. Dollars and will be paid by you in U.S. Dollars, unless expressly stated otherwise. Fees are payable by wire transfer, check, major credit cards, or a transfer from your bank account. The payment terms of the fees will be provided in the applicable Order. All amounts due shall be paid within thirty (30) days from the date of invoice..
   3. Unless otherwise set forth in the Order, the applicable Subscription Fees will be due and payable at the beginning of each subscription cycle set forth in the Order. All fees are exclusive of all sales, use, excise, value added, withholding and other taxes and all taxes imposed by any governmental authority upon your use of the Service will be paid by you, provided that such obligation may not be applicable if you have a tax-exempt status and you provide the Company with your tax-exempt certification.
   4. The Subscription Fees paid in connection with the Service are non-refundable, except as expressly set forth herein. You are responsible for paying all Subscription Fees applicable to your subscription to the Service, whether or not you actively used, accessed or otherwise benefited from the Service.
   5. Failure to pay the Subscription Fees due within thirty (30) calendar days of its original due date will constitute a material breach of this Agreement and, without limiting any remedies available to the Company, the Company may: (i) terminate this Agreement; or (ii) suspend performance of or access to the Service, until payment is made current. Without derogating from any other rights and remedies available to us under applicable law, overdue Subscription Fees will accrue interest at the lesser of the rate of one and one half percent (1.5%) per month or part thereof, cumulative monthly on the total amount due from the due date until the date of actual payment and the maximum rate permitted by applicable law. You will reimburse us for all legal costs and attorney’s fees we incur in the course of collecting your overdue fees.
   6. We may modify, adapt, improve, or enhance the Service, or any of its features, user interface, design or any other aspect related to it, at any time without notice.
8. **Restrictions**
   1. You shall not modify, make derivative works of, disassemble, de-compile or reverse engineer any part of the Service or Platform, or otherwise attempt to discover its underlying code, structure, implementation or algorithms.
   2. You shall not access or use the Service or Platform for any purpose other than as expressly permitted under this Agreement.
   3. You shall not use the Service or Platform in order to develop, or create, or permit others to develop or create, a product or service similar or competitive to the Service or Platform.
   4. You shall not offer the Service or Platform to third parties, including by reselling, licensing, renting, leasing, transferring, lending, timesharing, assigning or redistributing the Service, Platform or any part thereof.
   5. You shall not perform or attempt to perform any of the following in connection with the Service or Platform:
      1. Breaching the security of the Service or Platform, or identifying, probing or scanning any security vulnerabilities in the Service or Platform;
      2. Accessing data not intended for you, or accessing an account you are not authorized to access;
      3. Interfering with, circumventing, manipulating, overloading, impairing or disrupting the operation, or the functionality of the Service or Platform;
      4. Working around any technical limitations in the Service or Platform;
      5. Using any tool to enable features or functionalities that are otherwise disabled, inaccessible or undocumented in the Service or Platform;
      6. Collecting or processing information or data about the Company’s customers;
      7. Sending any virus, worm, Trojan horse or other malicious or harmful code or attachment; or
      8. Using robots, crawlers, scrapers, and similar applications to scrape, harvest, collect or compile content from or through the Service or Platform.
   6. You will only use the Service and Platform in compliance with all applicable laws, rules and regulations, and you represent and warrant that the Hospital Data does not and will not violate any third-party rights or any applicable laws.
   7. You will not, and will not allow or assist third parties to, publish, distribute or disclose the results of any benchmark tests performed on the Platform or otherwise use any testing results related to the Platform for your marketing purposes, or for development of competing technology.
   8. YOU MAY NOT USE THE SERVICE OR PLATFORM 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.
   9. WE MAY EMPLOY MEASURES TO DETECT AND PREVENT FRAUDULENT OR ABUSIVE USE OF THE SERVICE, AS WELL AS MISUSE OF THE SERVICE AND PLATFORM. WE MAY SUSPEND OR TERMINATE YOUR ACCOUNT ON AND ACCESS TO THE SERVICE AND PLATFORM, WITHOUT PRIOR NOTICE, IF WE, IN OUR SOLE DISCRETION, BELIEVE THAT YOU HAVE ENGAGED IN FRAUDULENT OR ABUSIVE USE, OR MISUSE, OF THE SERVICE OR PLATFORM.
9. **Term and Termination**
   1. This Agreement commences upon execution of the Order or when you click a box agreeing to this Agreement, and, unless earlier terminated as set forth herein, continues in effect for the initial term set forth in the Order (or, if you are accessing an Evaluation Service only, as set forth in Section 3(a) above) (the “***Initial Term***”). Except for use of the Evaluation Service, unless otherwise set forth in the Order, this Agreement will automatically renew for additional periods of equal duration (each, a “***Renewal Term***”), unless either party gives notice of non-renewal at least thirty (30) days’ prior to the end of the then-current term.
   2. Either party may terminate this Agreement upon written notice to the other party:
      1. In the event of a material breach of this Agreement by the other party, where the breach remains uncured for fifteen (15) 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 this Agreement immediately upon written notice to the other party;
      2. If the terminating party is required to do so by applicable law;
      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, if involuntary, proceedings are not dismissed within sixty (60) 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.
   3. Immediately upon expiration or termination of this Agreement:
      1. We may terminate your account on the Service and delete the Hospital Data stored in our systems, provided that such deletion adheres to the terms and conditions of the BAA with respect to PHI;
      2. You must cease any and all use of the Service and Platform; and
      3. We will charge you for all then-outstanding fees (if any) incurred prior to the effective date of expiration or termination.
10. The following Sections will survive the expiration or termination of this Agreement: 1, 2, 5, 6, 7, 8, 9, 10, 12(a), 12(b), 13, 14, 16, 18, and 19.
11. **Disclaimers and Limitation of Liability**
    1. We do not guarantee that the Service and Platform will operate in an uninterrupted or error-free manner, or that it will always be available, free from errors, omissions or malfunctions.
    2. If we receive notice of any failure or malfunction, or if we otherwise become aware of any such failure or malfunction, we will attempt to regain the Service’s availability as soon as practicable. However, such incidents will not be considered a breach of this Agreement. Without limiting the foregoing, in no event will the Company be responsible for any slow-downs, failures or other malfunctions that are caused by your breach of this Agreement, including any usage limitations set forth in the Order.
    3. You are solely and exclusively responsible: (i) for all actions you take in response to your usage of the Service and Platform; (ii) to check for any alerts or warnings issued by the Service and determine what actions are appropriate in light thereof; and (iii) to carry out such actions as you deem appropriate as a result of your usage of the Service and Platform. We are not responsible or liable for your reliance upon, or use of, the Service or Platform, your actions in connection with the Service or Platform, or any consequences resulting therefrom.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR LIABILITY ARISING FROM A PARTY’S (I) GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT, (II) BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (III) INDEMNIFICATION OBLIGATIONS HEREUNDER OR (IV) INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY, INCLUDING ITS RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SHAREHOLDERS, ADVISORS, AND ANYONE ACTING ON ITS BEHALF (A) WILL 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 THIS AGREEMENT, ANY USE OF, OR THE INABILITY TO USE THE SERVICE OR PLATFORM, ANY RELIANCE UPON THE SERVICE OR PLATFORM OR ANY ERROR, INCOMPLETENESS, INCORRECTNESS OR INACCURACY OF THE SERVICE OR PLATFORM; AND (B) WILL BE LIABLE FOR DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICE AND THE PLATFORM, WHICH EXCEED THE TOTAL FEES PAID OR PAYABLE BY YOU TO THE COMPANY IN THE TWELVE (12) MONTHS PRECEDING THE EVENT PURPORTEDLY GIVING RISE TO THE CLAIM.

* 1. ALTHOUGH WE USE SKILL AND EFFORTS TO DEVELOP THE SERVICE AND HAVE THE SERVICE PROVIDE ACCURATE, RELIABLE, EFFECTIVE AND ACTIONABLE DATA, WE DO NOT GUARANTEE, MAKE NO REPRESENTATION, AND PROVIDE NO WARRANTY ABOUT THE RELIABILITY, EFFECTIVENESS, ACCURACY OR COMPLETENESS OF THE SERVICE OR PLATFORM, THE EXPECTED BUSINESS RESULTS, OUTCOMES OR ANY OTHER OPERATIONAL BENEFITS FROM UTILIZING THE SERVICE AND PLATFORM.
  2. We are not responsible for any medical diagnosis, DECISIONS ABOUT MEDICAL TREATMENT, ANY HEALTH CONDITIONS, SPREAD AND/OR CONTAINMENT OF ANY DISEASES ON YOUR PREMISES or GIVING ANY health advice. We do not conduct medical tests, create medical records or diagnose medical conditions. We do not make any guarantee, and make no representations or judgments about the accuracy, adequacy, completeness, credibility, authenticity, validity, OR integrity OF ANY OF THE PLATFORM DATA GENERATED FROM YOUR USE OF THE SERVICE.
  3. THE SERVICE AND PLATFORM IS PROVIDED TO YOU “AS IS”. WE DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, NON-INFRINGEMENT, TITLE, SECURITY, COMPATIBILITY OR PERFORMANCE.

1. **Support and Maintenance**
   1. During the Term, we, either directly or with the assistance of third parties, will use commercially reasonable efforts to provide you technical support for technical questions, problems and inquiries regarding the Service or Platform, during our business days and hours. We will also use commercially reasonable efforts to provide any additional support services set forth in the Order in accordance with the terms therein, to the extent applicable.
   2. We will attempt to respond to your technical questions, problems and inquiries within a reasonable time. However, we:
      1. May decline to provide such support for matters that we deem, at our sole discretion, to require unreasonable time, effort, costs or expenses;
      2. Make no warranties to any specific response-time or to the successful or satisfactory resolution of the question, problem or inquiry.
   3. For the purpose of our provision of technical support for your technical questions, problems and inquiries, you will cooperate, and work closely with us, to reproduce malfunctions, including conducting diagnostic or troubleshooting activities, as we reasonably request.
   4. In the event you would like to engage the Company for services beyond the general support assistance described above, the Company may agree to provide such services for an additional fee. All such services, and the fees related thereto, shall be described in a subsequent writing and mutually agreed upon.
2. **Intellectual Property**
   1. The Service and Platform are proprietary to the Company. The Platform is made available for use and access on a subscription basis and is not sold.
   2. Except for your limited access to use the Platform according to the subscription under this Agreement, this Agreement does not grant to you or assign to you, any right, title, or interest in or to the Service or Platform or any associated intellectual property rights. As between the parties, 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, Platform, the Aggregated Data, or any part thereof, including computer code, graphic design, layout and the user interfaces, whether or not based on or resulting from Feedback, are and will remain at all times owned by the Company. You will not do, or cause to be done, any acts or things contesting or in any way impairing or tending to impair any portion of the right, title and interest of the Company in and to its intellectual property rights. You will not delete or in any manner alter the copyright, trademark, or other proprietary rights notices or markings that appear on the Platform as delivered or made available to you.
   3. Unless you notify us otherwise in writing, we may identify you as a customer and user of the Service on our website and in other online or offline marketing materials and press releases, and we may publish case studies and other marketing materials related to your use of the Service. We acknowledge that your company name and logo are protected by intellectual property rights. You hereby grant to the Company a non-exclusive, royalty-free and fully paid up license, to use your name, logo, and website URL, on our website and in other online or offline marketing materials relating to the Service. We will use this content strictly in accordance with any usage guidelines you provide to us.
3. **Indemnification**
   1. You agree to indemnify and hold harmless us and our directors, officers, employees, and contractors, 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 complaint, claim, plea, or demand brought by a third party in connection with, arising from or otherwise related to (a) your breach of this Agreement or (b) your gross negligence or willful misconduct.
   2. If we seek indemnification from you, we will provide you with (i) prompt written notice of any indemnifiable claim; (ii) 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.
4. **Governing Law and Venue; Arbitration**
   1. Regardless of your place of residence and business or where you access or use the Service, this Agreement will be governed by and construed solely in accordance with the laws of the State of New York, excluding any otherwise applicable rules of conflict of laws, which would result in the application of the laws of a jurisdiction other than the State of New York.
   2. ANY AND ALL DISPUTES, CLAIMS OR CONTROVERSIES BETWEEN YOU AND THE COMPANY REGARDING THIS AGREEMENT OR THE USE OF THE SERVICE, WHICH ARE NOT AMICABLY RESOLVED, SHALL BE SETTLED THROUGH BINDING ARBITRATION (RATHER THAN IN COURT), ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION (AAA) UNDER ITS COMMERCIAL ARBITRATION RULES.

* 1. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.
  2. THE FEDERAL ARBITRATION ACT AND FEDERAL ARBITRATION LAW APPLY TO THESE TERMS.
  3. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED. HOWEVER, AN ARBITRATOR CAN AWARD ON AN INDIVIDUAL BASIS THE SAME DAMAGES AND RELIEF AS A COURT (INCLUDING INJUNCTIVE AND DECLARATORY RELIEF OR STATUTORY DAMAGES) AND MUST FOLLOW THESE TERMS AS A COURT WOULD.
  4. PAYMENT OF FILING, ADMINISTRATION AND ARBITRATOR FEES WILL BE GOVERNED BY THE AAA'S COMMERCIAL ARBITRATION RULES. THESE FEES WILL BE SHARED AS FOLLOWS: ONE THIRD BY YOU AND TWO THIRDS BY US, UNLESS THE ARBITRATOR: (I) DETERMINES THAT THE CLAIMS ARE FRIVOLOUS, IN WHICH CASE THE CLAIMANT SHALL BEAR ALL SUCH FEES ARISING FROM THE FRIVOLOUS CLAIM; OR (II) DETERMINES THAT THE FEES SHOULD BE ALLOCATED DIFFERENTLY.
  5. YOU AND THE COMPANY HEREBY ACKNOWLEDGE, AGREE AND COVENANT THAT ANY DISPUTES SHALL ONLY BE ADJUDICATED IN ARBITRATION ON AN INDIVIDUAL BASIS, AND NOT IN CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE PROCEEDINGS.
  6. YOU MAY OPT-OUT OF THE ABOVE ARBITRATION CLAUSE BY EMAILING US TO THE EMAIL ADDRESS PROVIDED IN THE ORDER WITHIN 21 DAYS OF YOU ENTERING INTO THESE TERMS FOR THE FIRST TIME, AN OPT-OUT NOTICE THAT IDENTIFIES YOURSELF AND CLEARLY SETS OUT YOUR CHOICE TO OPT OUT OF DISPUTE RESOLUTION BY ARBITRATION. IN CASE OF SUCH OPT-OUT, ANY AND ALL DISPUTES, CLAIMS OR CONTROVERSIES BETWEEN YOU AND US REGARDING THESE TERMS OR THE USE OF THE SERVICE, WHICH ARE NOT AMICABLY RESOLVED, SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE AND FEDERAL COURTS IN NEW YORK COUNTY IN THE STATE OF NEW YORK, USA.
  7. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION, EITHER PARTY MAY FILE: (A) AN IMPLEADER CLAIM AGAINST THE OTHER PARTY IN ANY COURT OF COMPETENT JURISDICTION ADJUDICATING A THIRD PARTY CLAIM THAT IS SUBJECT TO THE INDEMNIFICATION PROVISIONS OF THIS AGREEMENT; (B) IN ANY COURT OF COMPETENT JURISDICTION A CLAIM CONCERNING THE INFRINGEMENT (OR ALLEGED INFRINGEMENT) OF INTELLECTUAL PROPERTY RIGHTS (INCLUDING COPYRIGHTS AND TRADE SECRETS).

1. **Assignment.** You may not assign this Agreement without our prior written consent. Any purported assignment without our prior written consent is void. To the greatest extent permissible by law, we may assign this Agreement, including all right, duties, liabilities, performances and obligations herein, including in connection with a merger, acquisition, change of control or the sale of all or substantially all of our equity or assets. By virtue of such assignment, the assignee assumes our stead, including all right, duties, liabilities, performances and obligations hereunder, and we are released therefrom. Any assignments in violation of this Section shall be null and void.
2. **Relationship of the Parties.** The relationship between the parties hereto is strictly that of independent contractors, and neither party is an agent, partner, joint venture or employee of the other.
3. **Subcontracting.** We may subcontract or delegate the performance of our obligations under this Agreement, or the provision of the Service or Platform (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 this Agreement. You acknowledge and agree that the technical means by which we provide the Service and Platform is at our sole discretion.
4. **Complete Agreement and Severability.** This Agreement constitutes the entire and complete agreement between you and us concerning the subject matter herein. This Agreement supersedes all prior oral or written statements, understandings, negotiations and representations with respect to the subject matter herein. If any provision of this Agreement 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.
5. **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 this Agreement. 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.
6. **Force majeure.** The Company will not be liable for any delay or failure to perform any obligations under this Agreement due to any cause beyond the Company’s reasonable control, including acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications or other utility failures, earthquakes, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism or war, or an epidemic or a pandemic.