

Last Revised: June 25, 2021

Hivewire Business Services Agreement

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1. AGREEMENT

This Business Services Agreement establishes the terms and conditions to which you (“**you**” or “**Client**”) and Hivewire, Inc. (“**Hivewire**” or the “**Company**”) (collectively, the “**Parties**”) agree with respect to the use of the Hivewire application (the “**Product**”) and any other software, onboarding, implementation, or other professional services that may be provided by the Company (collectively with Product, the “**Services**”). This Business Services Agreement, along with the Company’s [Terms of Use](#), [Privacy Policy](#), and any relevant or applicable Services Addenda (defined below), which are incorporated herein, are referred to collectively as the “**Agreement**”. The Parties acknowledge receipt of and agree to be bound by the Agreement, and Client’s use of the Services shall be subject to the terms of the Agreement. The Agreement is effective immediately upon your first access to the Services. If you access the Services on behalf of an entity then “you” or “Client” includes both you and that entity, and you represent and warrant that (a) you are an authorized representative of the entity with the authority to bind the entity to the Agreement, and (b) you agree to the Agreement on that entity’s behalf.

2. IMPLEMENTATION

2.1. Implementation. Company shall provide professional services to Client including, but not limited to, onboarding, training, data conversion, integrations, and other consulting services related to Client’s use of the Services, (collectively, the “**Implementation Services**”), and as specifically agreed to in writing (a “**Services Addendum**”). A Services Addendum may also contain additional terms including, but not limited to: pricing; subscription terms and information; and other additional services to be performed and/or deliverables to be provided to Client by Company. Client will be responsible for:

- (a) establishing and maintaining procedures to examine and confirm results prior to use;
- (b) adopt procedures to identify and correct Client’s errors and omissions, and any errors and omissions of any employee, contractor, customer, or representative of Client that is authorized by client to access the Services (a “**User**”); and
- (c) designate authorized primary and secondary points of contact who will coordinate communication, activities, and make decisions during the Initial Term (as defined in Section 4.3 below) and any renewal terms (together, the “**Term**”).

2.2. Client Responsibilities. Client acknowledges and agrees that Company’s ability to meet its obligations under the Agreement is dependent upon the timely, accurate, and complete satisfaction of Client’s responsibilities under the Agreement. Company shall be entitled to rely on all decisions and approvals by Client’s points of contact.

3. USE RIGHTS AND RESTRICTIONS

3.1. Grant of Access. Subject to the terms of the Agreement, Company grants Client for the Term a non-transferable, non-exclusive, limited right for Client's Users to access the Services solely for the internal business purposes of Client.

3.2. Restrictions. Client shall not itself, and shall ensure its Users do not:

- (a) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, or otherwise permit any third party not authorized by the Agreement or by Company, in writing, to access or use the Services;
- (b) translate, modify, or develop any derivative works based on the Services;
- (c) decipher, disassemble, reverse assemble, reverse engineer, decompile, or otherwise attempt to derive source code, specifications, architecture, structure, or any other components or elements of the Services;
- (d) use the Services to send or store material containing viruses or other harmful computer code, scripts, agents, files, or programs;
- (e) utilize or access the Services in any way, in whole or in part, to build a competitive product or service;
- (f) disrupt, delay, or otherwise interfere with the integrity or performance of the Services, the Company's ability to maintain and deploy the Services, or data stored within the Services;
- (g) use the Services to provide processing services to third parties, without written authorization by Company;
- (h) collect or disclose performance, capacity, or benchmark statistics on the Services or other Services;
- (i) attempt to gain unauthorized access to the Services or related systems;
- (j) violate Company's intellectual property rights or in any way disrupt or impede Company's ability to protect, assert, or defend its intellectual property rights; or
- (k) otherwise use the Services except as expressly permitted by the Agreement.

3.3. Users. Client shall ensure that all Users obtaining access to the Services are aware of their acceptance, by access to and use of the Services, of the Terms of Use, Privacy Policy, and, as applicable, this Business Services Agreement and any relevant Services Addenda. Client agrees it will not make any warranty, representation or commitment to any User with respect to the Services except as may be expressly set forth in the Agreement, and Client shall be solely responsible for any warranties, representations or commitments to Users. Client shall ensure that all Users are at least 18 years old. Client is solely responsible and liable for all activities that occur under User accounts. Any breach of the Agreement by Client's Users shall be deemed a breach by Client hereunder. Client shall provide access credentials and Services links only to individuals that Client intends to be Users and shall ensure that Users maintain secrecy of any such access credentials and links. Company has no obligation to verify the identity of any person who gains access to the Services through access credentials or links provided by Client. Client must immediately take all necessary steps, including providing notice to Company, to effect the termination of an account or deactivation of a link for any User if there is any compromise in the security of that account or if unauthorized use is suspected or has occurred.

3.4. Updates. Company may make available, from time to time and at its sole discretion, updates and upgrades to the Services. Client will be responsible for the cost of any modifications to its infrastructure that may be required in connection with implementation of any updates or upgrades. Company may modify, alter, add and/or substitute features of the Services from time to time, in whole or in part, without any notice to Client.

3.5. Integrations. Client may integrate the Services with Client's accounts or subscriptions to third-party services or applications, and Company may provide Client with assistance in integrating such accounts as provided for in an applicable Services Addenda. Company does not warrant or endorse and does not assume and will not have any liability or responsibility to Client or any User for any such third-party services or applications, including any integrations, whether connected or setup by Client or Company.

3.6. Free Trials. If Company provides Client with a free trial to access and use the Services, Services will be made available in accordance with the terms of the Agreement on a trial basis free of charge until the earlier of:

- (a) the end of the free trial period;
- (b) the start date of any paid subscription to the Services; or
- (c) termination of the free trial by Company in Company's sole discretion.

Any data inputted or transmitted through the Services, and any configurations made to the Services during the free trial period will be permanently lost unless Client purchases a paid subscription to the Services, or exports such data, before the end of the free trial period.

NOTWITHSTANDING SECTION 9 (“**INDEMNIFICATION**”) BELOW, DURING THE FREE TRIAL THE PLATFORM IS PROVIDED “AS-IS” WITHOUT ANY WARRANTY AND COMPANY SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY TO CLIENT OF ANY TYPE WITH RESPECT TO THE PLATFORM FOR THE DURATION OF THE FREE TRIAL PERIOD.

3.7. Email and Other Notifications. At Company's sole discretion, Company may provide Client the ability to enable custom notification processes and/or authenticate custom domains through the Services or a third-party integration for purposes including, but not limited to, sending email, text, and other types of notifications. Client understands and agrees that, if enabled, the Services will be able to send notification emails, text messages, and/or other types of notifications to Users and external recipients on behalf of Client and Client's Users, and that these notifications will be generated by the Services but may appear to be sent by such other Users.

3.8. Compliance with Applicable Laws. In undertaking any activity under this Agreement, Client shall comply with any and all laws, rules, regulations and relevant industry standards applicable to its performance of its obligations under this Agreement. Without limiting the foregoing, Client will fully comply with:

- (a) the U.S. Foreign Corrupt Practices Act and will not make any payment to third parties that would cause Client or Company to violate such statute;
- (b) all export laws and regulations of the U.S. Department of Commerce and all other U.S. agencies and authorities, including the Export Administration Regulations promulgated by the Bureau of Industry and Security (as codified in 15 C.F.R. Parts §§ 730-774); and
- (c) all applicable data protection, information security and privacy laws, rules, regulations and relevant industry standards ("**Data Protection Laws**"), including without limitation (i) the GDPR, (ii) the UK DPA, (iii) the Health Insurance Portability and Accountability Act, (iv) the California Consumer Privacy Act, (v) the Gramm-Leach-Bliley Act and (vi) the PCI Data Security Standards.

4. FINANCIAL TERMS

4.1. Subscription Plans. Company may offer plans that allow Client to use certain aspects of the Services, either for free or for a fee (a "**Subscription Plan**"). Company may change Subscription Plans by offering new services for additional fees and charges and adding or amending fees and charges for existing Subscription Plans in Company's sole discretion. Any change to a Subscription Plan's pricing or payment terms will become effective in the billing cycle following notice of such change as provided in the Agreement. Subscription Plans may set allotments for use of particular features of the Services. Use in excess of a Subscription Plan's allotment may result in additional fees, as specified in the plan, and such fees will be included in a subsequent invoice or charged automatically via the payment method associated with Client's account ("**Payment Method**").

4.2. Billing and Payment. For any paid Subscription Plan, Client agrees to make payments, and Company may automatically charge the Payment Method, as described below, until Services are terminated in accordance with the terms of the Agreement. If Client elects to use a paid Subscription Plan, Client agrees to the pricing and payment terms specified at checkout or as detailed in the applicable Services Addendum. By providing Company with Payment Method, Client authorizes Company to provide payment information to third parties to process and complete subscription payments, in United States dollars, plus any applicable

taxes and any other transaction-related fees or charges, and any applicable recurring charges as described below. Company currently uses Stripe as the third-party service provider for payment services, and Client agrees to be bound by Stripe's Services Agreement, available at stripe.com/us/legal. Client agrees that all payments for transactions are non-refundable and non-transferable except as expressly provided in the Agreement. Client shall reimburse Company for any expenses incurred, including interest and reasonable attorneys' fees, in collecting amounts due to Company hereunder.

4.3. Renewals. Client's subscription shall continue until terminated by Client or until Company terminates access to or use of the Services in accordance with the Agreement. All Subscription Plans will automatically renew for successive terms equal to either (a) the period specified in the Services Addendum, if applicable, or (b) a period of one month (the "**Initial Term**"), unless either party notifies the other of its intent to not renew at least 30 days prior to the end of the then-term. Client authorizes Company to automatically charge the Payment Method at the beginning of each renewal period. By electing to purchase a Subscription Plan, Client acknowledges and agrees to recurring payments, and accepts responsibility for all recurring payment obligations prior to cancellation of the subscription by Client or Company.

4.4. Cancellations. If Company terminates Client's subscription, except in the event of Client's breach of the Agreement or failure to pay fees when due, Company will grant a prorated refund for the remaining unused portion of the Term. Client must provide notice of desire to cancel at least 30 days before the end of the Term, and shall not be entitled to any refund of fees already paid.

4.5. Late Payments. Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less (plus the costs of collection).

5. CONFIDENTIALITY

5.1. Confidential Information. Confidential Information means nonpublic information that relates to or is provided by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") that the Disclosing Party designates as being confidential or that under the circumstances surrounding disclosure should be treated as confidential ("**Confidential Information**"). Confidential Information includes, without limitation: information relating to the disclosing party's software or hardware products that may include source code, API data files, documentation, specifications, databases, networks, system design, file layouts, tool combinations and development methods as well as information relating to the disclosing party's business or financial affairs, which may include business methods, marketing strategies, pricing, competitor information, product development strategies and methods, customer lists and financial results. Confidential Information also includes information received from third parties that the Disclosing Party is obligated to treat as confidential.

5.2. Exceptions. Confidential Information shall not include any information that the Disclosing Party can show:

- (a) is already known to the Receiving Party prior to disclosure pursuant to this Agreement;
- (b) is or becomes publicly known through no wrongful act of the Receiving Party;
- (c) is received by the Receiving Party from a third party without any restriction on confidentiality; or
- (d) is approved for release by prior written authorization of the Disclosing Party.

5.3. Confidentiality Obligations. The Receiving Party agrees to maintain the confidentiality of the Disclosing Party's Confidential Information and to use at least the same care and precaution in protecting the Disclosing Party's Confidential Information as the Receiving Party uses to protect its own Confidential Information, but in no event less than a reasonable degree of care. Without limiting the generality of the foregoing, the Receiving Party shall not publish or disclose the Disclosing Party's Confidential Information to third parties other than its employees, personnel, attorneys, advisors, and potential investors who are bound to keep such information confidential. Either party may only use Confidential Information in order to fulfill its obligations under this Agreement.

5.4. Required Disclosures. Notwithstanding the provisions of this Section 5, Receiving Party shall not be in breach of the Agreement if it, or any of its Representatives disclose Confidential Information

- (a) in response to a valid order by a court or other governmental body of competent jurisdiction;
- (b) as required by law; or
- (c) if such disclosure was necessary to establish the relative rights of the Parties in a legal proceeding; provided, that Receiving Party promptly notifies Disclosing Party in writing of any such requirement so that Disclosing Party may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement.

Receiving Party will reasonably cooperate with Disclosing Party so that it can seek a protective order or other appropriate remedy or limitation, and Disclosing Party will reimburse all reasonable costs (including reasonable attorneys' fees and expenses) incurred by Receiving Party in connection with a written request for specified assistance and cooperation by Disclosing Party.

6. OWNERSHIP – INTELLECTUAL PROPERTY RIGHTS

6.1. Company Rights. The Services, all materials used in the performance of any Implementation Services (other than any Client Materials (as defined below)) and all deliverables provided in the performance of any Implementation Services will at all times remain the exclusive, sole and absolute property of Company or its licensors. Client does not acquire any right, title, or interest in or to the Services or any deliverables provided as part of the Implementation Services except the limited right to access and use them in accordance with the terms of the Agreement. All rights, title and interest (including all intellectual property rights) in or to the Services not expressly granted under the Agreement are reserved by Company and its licensors. If Client or its Users elect to provide Company with any feedback, comments, or suggestions for improvements of any kind related to the Services ("**Feedback**"), the Feedback will be the sole and exclusive property of Company and Client hereby assigns all rights in and to the Feedback to Company. Company will have the right to use and disclose such Feedback in any manner and for any purpose, without remuneration, compensation, or attribution to Client or its Users.

6.2. Client Rights. Client retains sole and exclusive ownership to:

- (a) the Client Data;
- (b) content, materials or technology supplied by Client to Company in connection with Company's provision of the Services or the Implementation Services (the "**Client Materials**");
- and
- (c) Client's name, trademarks and logos (the "**Client Marks**").

Client hereby grants Company a non-exclusive, royalty-free, fully-paid, non-sublicensable (except to Company's contractors performing services on its behalf) license during the Term to (i) use, copy, display and reproduce the Client Marks and (ii) use, transmit, reproduce, display, distribute and prepare derivative works of the Client Materials, in each case as necessary to provide the Services and any Implementation Services to Client. Client also grants Company a non-exclusive, royalty-free license to use the Client Marks to identify Client as a customer of Company on promotional materials and Company's website. Any use of the Client Marks shall be in accordance with Client's standard trademark guidelines, if any such guidelines are provided to Company.

7. DATA

7.1. Data Processing. Where and only to the extent that Company processes any Client Data (as defined in Section 7.8 below) relating to an identified or identifiable natural person to the extent that such information is protected as "personal data" or "personal information" under applicable Data Protection Laws ("**Personal Data**") on behalf of the Client in the course of providing the Services and/or to the extent required by Data Protection Laws, Client and Company agree that this Section 7 applies to Company's provision of the Services.

7.2. Role of the Parties. Client is responsible for determining the purposes and means of the processing of Personal Data (the “**Controller**” of Personal Data) and Company shall only be responsible for processing Personal Data on behalf of the Controller, including as a “service provider” as defined under the CCPA (a “**Processor**” of Personal Data). Nothing in the Agreement shall prevent Company from using or sharing any data that Company would otherwise collect and process independently of Client’s use of the Services.

7.3. Client Obligations. Client agrees that (a) it shall comply with its obligations as a Controller under Data Protection Laws in respect of its processing of Personal Data and any processing instructions it issues to Company; and (b) it has provided notice and obtained (or shall obtain) all consents and rights necessary under Data Protection Laws for Company to process Personal Data and provide the Services pursuant to the Agreement.

7.4. Company Processing of Personal Data. As a Processor, Company shall process Personal Data only for the following purposes:

- (a) to perform the Services in accordance with the Agreement;
- (b) to perform any steps necessary for the performance of the Agreement;
- (c) to comply with other reasonable instructions provided by Client to the extent they are consistent with the terms of the Agreement and only in accordance with Client’s documented lawful instructions; and
- (d) as permitted or required by applicable Data Protection Laws.

Client and Company agree that the Agreement details Client’s complete and final instructions to Company in relation to the processing of Personal Data and processing outside the scope of these instructions (if any) shall require prior written agreement between Client and Company.

7.5. Company Data. Notwithstanding anything to the contrary in the Agreement, Client acknowledges that Company shall have a right to use and disclose data relating to and/or obtained in connection with the operation, support and/or use of the Services for its legitimate business purposes, such as billing, account management, technical support, product development and sales and marketing. To the extent any such data is considered “personal data” or “personal information” under Data Protection Laws, Company is the Controller of such data and accordingly shall process such data in compliance with Data Protection Laws.

7.6. Authorized Sub-processors. Client understands and agrees that Company may engage its affiliates or third parties (“**Sub-processors**”) to assist in fulfilling its obligations with respect to providing the Services pursuant to the Agreement, and to process Personal Data on Client’s behalf. Client agrees to Company’s use of the Google Cloud Platform as a Sub-processor, and understands and agrees to the terms and limitations contained in the [Google Cloud Platform Terms of Service](#) and the [HIPAA Compliance on Google Cloud Platform](#). Client acknowledges and agrees that Client Data may be transferred and processed in the United States and anywhere in the world where Company, its affiliates and/or its Sub-processors maintain data processing operations. Client agrees that Company shall not be held responsible or liable for any Sub-processor failures including, but not limited to: data breaches, security incidents, and loss of data.

7.7. Client Privacy Policy. Client shall implement a privacy policy that clearly and conspicuously explains how Client collects, processes, stores, uses, enhances and/or discloses any data that is provided, uploaded or otherwise submitted through the Services and shall make such privacy policy publicly available to its Users and any other relevant individuals in accordance with Data Protection Laws. Client’s privacy policy shall appropriately reflect Company’s use and processing of Client Data under the Agreement. Client shall ensure that its privacy policy complies with all Data Protection Laws, and Client shall strictly comply with its privacy policy.

7.8. Client Data. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all electronic information, in any form, that Client or any User provides, uploads, or otherwise submits through the Services (the “**Client Data**”). Client shall only disclose, submit or provide to Company Client Data as necessary for Company to provide the Services to Client. Client hereby grants Company a non-exclusive, royalty-free, fully-paid, worldwide license (with the right to sublicense) during the Term to access, use, reproduce and create derivative works of the Client Data in order to provide the Services for Client and fulfill Company’s obligations under the Agreement. Client hereby represents and warrants that Client has provided all necessary and appropriate notices and opt-outs, and has obtained all necessary and appropriate consents, approvals and rights to collect, process, use, store, enhance and disclose the Client Data and allow Company to use, store, disclose and otherwise process such Client Data as contemplated by the Agreement, including to and from Users wherever required under applicable law. Client shall obtain and retain throughout the Term and for 3 years after its termination records sufficient to demonstrate it has provided all such notices and opt-outs and obtained all such consents, approvals and rights.

7.9. No Sensitive Information. Unless specifically agreed to by Company in the Services Addendum, Client will not submit to the Services any Client Data that is:

- (a) patient, medical or other protected health information regulated by the Health Insurance Portability and Accountability Act of 1996;
- (b) credit, debit or other payment card data subject to PCI DSS;
- (c) nonpublic personal information subject to regulation or protection under the Gramm-Leach-Bliley Act (or related rules or regulations);
- (d) social security numbers, driver’s license numbers or other government ID numbers; or
- (e) any information about individuals or other data similar to the foregoing that is protected under foreign or domestic laws or regulations (collectively, and hereinafter referred to as, “**Prohibited Data**” or “**Sensitive Data**”).

Notwithstanding the foregoing, Client is not prohibited from including any link that contains Prohibited Data stored outside the Services, provided that at no point is Prohibited Data stored in or submitted to the Services. Notwithstanding any other provision to the contrary, Company shall have no liability under the Agreement for any Client Data submitted in violation of this Section 7.9. In the event that Company agrees to Client’s use of the Services to process Sensitive Data, Client warrants that Client and Client’s Users comply with all applicable laws, regulations, and policies, including but not limited to Data Protection Laws. With the exception of Company’s gross negligence, Client agrees to indemnify and hold harmless Company against any and all claims and suits brought by any party, including government agencies, for violations of any laws relating to the protection, handling, storage, and/or processing of Sensitive Data.

7.10. Public Record Views. Client agrees that User-generated public links that provide limited access to the Services ("**Public Record Views**") shall not be used to display, store, enter, or otherwise transmit in any way, Prohibited Data. Client shall indemnify and hold harmless Company for any Client or User misuse of Public Record Views, and shall ensure that all Users:

- (a) understand and comply with the terms of the Agreement;
- (b) understand the proper use of, and how to protect information contained in, Public Record Views; and
- (c) protect, control the release of, and disable when appropriate, all links to Public Record Views.

8. DISCLAIMERS

8.1. General Warranty Disclaimer. THE PLATFORM AND ALL OTHER SERVICES ARE PROVIDED "AS IS," AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY, USEFULNESS, SECURITY OR CONTENT OF THE PLATFORM OR OTHER SERVICES, OR ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. FURTHERMORE, HIVEWIRE DOES NOT WARRANT THAT THE SERVICES WILL BE FREE OF ERROR, VIRUSES OR OTHER MALICIOUS CODE, WILL BE UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED OR THAT THE SERVICES WILL OPERATE IN COMBINATION WITH CUSTOMER'S CONTENT OR APPLICATIONS, OR WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEMS, SERVICES OR DATA NOT PROVIDED BY HIVEWIRE.

8.2. Connections over the Internet. Client acknowledges that use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent security precautions and illegally gain access to the services and customer data. Accordingly, Company cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the internet.

8.3. Use of Third Party Materials in the Services. Certain Services may display, include, or make available content, data, information, applications, or materials from third parties ("**Third Party Materials**") or provide links to certain third party websites. By using the Services, Client acknowledges and agrees that the Company is not responsible for examining or evaluating the content, accuracy, completeness, availability, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect of such Third Party Materials or websites. Company does not warrant or endorse and does not assume and will not have any liability or responsibility to Client or any other person for any Third Party Materials, or for any other materials, products, services, or websites of third parties.

9. INDEMNIFICATION

9.1. Company Indemnification. Company shall indemnify, defend and hold harmless Client and Client's affiliates, and each of their officers, members, shareholders, directors, employees, and agents (collectively, the "**Client Indemnified Parties**"), from and against all liabilities, obligations, losses, damages, fines, judgments, Settlements, charges, expenses (including reasonable attorneys' and accountants' fees and disbursements), and costs arising from a claim, demand, proceeding, suit, or action by a third party ("**Third Party Claims**"), incurred by or asserted against any of the Client Indemnified Parties, to the extent the Third Party Claims relate to, arise out of, or result from any actual or alleged infringement of any third party's IP Rights by the Services. Company shall have no obligation under this Section 9.1 or otherwise regarding claims that arise from or relate to:

- (a) Client's or its Users' use of the Services other than as contemplated by the Agreement;
- (b) any modifications made to the Services by any person other than Company or its authorized representative;
- (c) any combination of the Services with services or technologies not provided by or expressly authorized by Company;
- (d) use of any version other than the latest commercially available version of the Services made available to Client; or
- (e) Client's or its Users' use of the Services or portion thereof after Company has terminated the Agreement or such portion of the Services in accordance with this Section 9.1.

HIVEWIRE'S OBLIGATIONS IN THIS SECTION 9.1 SHALL BE ITS SOLE AND EXCLUSIVE LIABILITY TO CUSTOMER, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS INVOLVING THE PLATFORM OR ANY OTHER SERVICES.

9.2. Client Indemnification. Client shall indemnify, defend, and hold harmless Company and Company's officers, shareholders, directors, employees and agents (collectively, the "**Company Indemnified Parties**"), from and against all Third Party Claims incurred by or asserted against any of the Company Indemnified Parties to the extent the Third Party Claims relate to, arise out of, or result from:

- (a) breach of any representation or warranty of Client contained in the Agreement;
- (b) Client's failure to comply with any federal, state, and local laws applicable to Client in its use of the Services; or
- (c) Client's or its Users' access and use of the Services and other Services; or
- (d) Company's use of the Client Materials and Client Data in accordance with the terms of the Agreement.

9.3. Indemnification Procedures. Promptly after a party seeking indemnification obtains knowledge of the existence or commencement of any Third Party Claim, the party to be indemnified (the “**Indemnified Party**”) will notify the other party (the “**Indemnifying Party**”) of the Third Party Claim in writing; provided, however, that any failure to give this notice will not waive the Indemnified Party’s rights except to the extent that the rights of the Indemnifying Party are actually prejudiced by this failure to give notice. The Indemnifying Party will assume the defense and settlement of the Third Party Claim with counsel reasonably satisfactory to the Indemnified Party at the Indemnifying Party’s risk and expense; provided, however, that the Indemnified Party (a) may join in the defense and settlement of the Third Party Claim and employ counsel at its own expense, and (b) will reasonably cooperate with the Indemnifying Party in the defense and settlement of the Third Party Claim. The Indemnifying Party may settle any Third Party Claim without the Indemnified Party’s written consent unless the settlement:

- (i) does not include a release of all covered claims pending against the Indemnified Party;
- (ii) contains an admission of liability or wrongdoing by the Indemnified Party; or
- (iii) imposes any obligations upon the Indemnified Party other than an obligation to stop using any infringing items.

9.4. Infringement Remedies. If a Third Party Claim exists under Section 9.1, and in addition to Company’s obligations in this Section 9, Company shall, at its expense and in its discretion, take one or more of the following actions:

- (a) procure for Client the right to continue use of the infringing portion(s) of the Services;
- (b) replace the infringing portion(s) of the Services with functionally equivalent non-infringing the Services; or
- (c) modify the infringing portion(s) of the Services to be non-infringing and functionally equivalent.

If Company cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Client and Company shall terminate the Agreement and Company shall provide Client a pro-rated refund as provided in Section 4.4.

10. LIMITATION OF LIABILITY

HIVEWIRE SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, STATUTORY OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF THE SERVICES, WHETHER ALLEGED AS A BREACH OF CONTRACT OR TORTIOUS CONDUCT OR ANY OTHER THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF USE OR DATA, DAMAGE TO SYSTEMS OR EQUIPMENT, COST OF COVER OR OTHER PECUNIARY LOSS, EVEN IF HIVEWIRE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE CUMULATIVE LIABILITY OF HIVEWIRE TO CLIENT FOR ANY CLAIMS, WHETHER ARISING IN

CONTRACT, TORT, OR OTHERWISE, SHALL NOT IN ANY EVENT EXCEED THE AMOUNT OF FEES PAID TO HIVEWIRE HEREUNDER IN THE SIX MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING ALLOCATION OF RISK AND LIMITATION OF LIABILITY HAS BEEN NEGOTIATED AND AGREED BY THE PARTIES AND FORMS THE BASIS OF THEIR WILLINGNESS TO ENTER INTO THIS BUSINESS SERVICES AGREEMENT AND THE AGREEMENT.

11. ARBITRATION, CLASS-ACTION WAIVER, AND JURY WAIVER

11.1. Arbitration. If Client pursues a legal claim against Company, Client agrees to arbitration (with limited exceptions). Therefore, the exclusive means of resolving any dispute or claim arising out of or relating to the Agreement (including any alleged breach thereof) or the Services shall be BINDING ARBITRATION administered by JAMS under the JAMS Streamlined Arbitration Rules & Procedures, except as modified by Company's Arbitration Procedures, which can be found [here](#). The one exception to the exclusivity of arbitration is that either party has the right to bring an individual claim against the other in a small-claims court of competent jurisdiction, or, if filed in arbitration, the responding party may request that the dispute proceed in small claims court if the party's claim is within the jurisdiction of the small claims court. If the responding party requests to proceed in small claims court before the appointment of the arbitrator, the arbitration shall be administratively closed, and if requested after the appointment of the arbitrator, the arbitrator shall determine if the dispute should be decided in arbitration or if the arbitration should be administratively closed and decided in small claims court. Whether Client chooses arbitration or small-claims court, Client may not under any circumstances commence or maintain against the Company any class action, class arbitration, or other representative action or proceeding.

11.2. Waiver. By using the Services in any manner, Client agrees to the above arbitration agreement. In doing so, CLIENT GIVES UP THE RIGHT TO GO TO COURT to assert or defend any claims between Client and the Company (except for matters that may be taken to small-claims court). CLIENT ALSO GIVES UP THE RIGHT TO PARTICIPATE IN A CLASS ACTION OR OTHER CLASS PROCEEDING. Client's rights will be determined by a NEUTRAL ARBITRATOR, NOT A JUDGE OR JURY, and the arbitrator shall determine all issues regarding the arbitrability of the dispute. Client is entitled to a fair hearing before the arbitrator. The arbitrator can grant any relief that a court can, but Client understands that arbitration proceedings are different from trials and other judicial proceedings, and that decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

11.3. Enforcement. Any proceeding to enforce this arbitration agreement, including any proceeding to confirm, modify, or vacate an arbitration award, may be commenced in any court of competent jurisdiction. In the event that this arbitration agreement is for any reason held to be unenforceable, any litigation against the Company (except for small-claims court actions) may be commenced only in the federal or state courts located in Utah County, Utah. Client hereby irrevocably consents to the jurisdiction of those courts for such purposes.

12. TERMINATION

12.1. Termination. Either party may terminate the Agreement immediately upon written notice at any time if the other party fails to cure any material breach or provide a written plan of cure reasonably acceptable to the non-breaching party within 30 days of being notified in writing of such breach, except for breach of payment obligations which shall have a 10 day cure period.

12.2. Suspension. Company will be entitled to suspend Client's and its Users' access to the Services immediately upon written notice to Client in the event Client or its Users breach Section 3.2 or if, in Company's reasonable judgment, there is a security risk created by Client that may interfere with the proper continued provision of the Services or the operation of Company's network or systems. Client remains obligated for all payment obligations under this Agreement in the event of suspension.

12.3. Effect of Termination. Upon termination or expiration of the Agreement, all licenses set forth thereunder shall terminate, and Client's right to access the Services shall cease. No termination or expiration of the Agreement shall affect any rights or liabilities of a party that accrued prior to the date of termination or expiration, including any fees accrued or payable to Company prior to the effective date of termination or expiration. Upon any termination or expiration of this Agreement, Company shall have no obligation to maintain or provide any Client Data to Client and may thereafter delete all Client Data in its systems or otherwise in its possession or under its control.

12.4. Survival. Sections 1, 4, 5, 6, 7.8, 7.9, 7.10, 8, 9, 10, 11, 12.2, 12.3, 12.4, and 13 shall survive termination of this Agreement.

13. MISCELLANEOUS PROVISIONS

13.1. Independent Contractor. Company and Client agree that its relationship with the other party is that of an independent contractor. Neither Company nor Client are, or shall be deemed for any purpose to be, employees or agents of the other and neither party shall have the power or authority to bind the other party to any contract or obligation.

13.2. Governing Law. Utah law and the Federal Arbitration Act will apply if there is a dispute (except where prohibited by law). Except where this arbitration agreement is prohibited by law, the laws of the State of Utah, excluding Utah's conflict of laws rules, will apply to any disputes arising out of or relating to the Agreement, the Product, or the Services. Notwithstanding the foregoing, the Arbitration Agreement in Section 11 above shall be governed by the Federal Arbitration Act.

13.3. Venue. Any claims that are not submitted to arbitration for any reason must be litigated in Utah County, Utah (except for claims brought in small claims court, or where prohibited by law). Except for claims that may be properly brought in a small claims court of competent jurisdiction in the county or other jurisdiction in which Client resides or in Utah County, Utah, all claims arising out of or relating to this Agreement, to the Services, or to Client's relationship with Company that for whatever reason are not submitted to arbitration will be litigated exclusively in the federal or state courts of Utah County, Utah, U.S.A. Client and Company consent to the exercise of personal jurisdiction of courts in the State of Utah and waive any claim that such courts constitute an inconvenient forum.

13.4. Modifications. Company may modify this Business Services Agreement at any time by posting a revised version on the Company website and/or application, which modifications will become effective as of the first day of the calendar month following the month in which they were first posted; provided, however, that if a Services Addendum specifies an Initial Term of 12 months or longer, the modifications will instead be effective immediately upon the start of the next renewal term, if any.

13.5. Severability. In the event one or more of the provisions of this Agreement is held to be invalid or otherwise unenforceable by a court of competent jurisdiction for the matter in question, the enforceability of the remaining provisions shall be unimpaired.

13.6. Waiver. The failure of either party at any time to enforce any right or remedy available to it under this Agreement with respect to any breach or failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

13.7. Assignment. Neither party shall assign the Agreement or any of its rights and obligations hereunder without the prior written consent of the other party; provided, however, that either party may assign the Agreement and all of its rights and obligations hereunder to an affiliate or as part of a merger or sale of substantially all the assets or stock of such party. Any assignment by either party in violation of this section shall be null and void. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

13.8. Equitable Remedies. The parties agree that (a) the unauthorized disclosure of Confidential Information may cause irreparable harm to the party whose information is disclosed and (b) Client's breach of Section 3.2 may cause irreparable harm to Company. In such event, the applicable affected party shall be entitled to seek injunctive or other equitable relief seeking to restrain such use or disclosure without the necessity of posting any bond.

13.9. Force Majeure. Neither party shall incur any liability to the other party on account of any loss, claim, damage or liability to the extent resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations), if and to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without any negligence on the part of the party seeking protection under this section, including, without limitation, acts of God, strikes, lockouts, riots, acts of war, terrorism, earthquake, fire, explosions, any law or direction of any governmental entity, pandemics, epidemics, emergencies, civil unrest, viruses or denial of service attacks, telecommunications failure, or failure of the internet or internet service provider. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

13.10. Notices. Any notice required or permitted under this Agreement or required by law must be in writing and must be:

- (a) delivered in person;
- (b) sent by first class registered mail, or air mail, as appropriate; or
- (c) sent by electronic mail.

Notices shall be considered to have been given upon receipt of confirmation or acknowledgment of delivery, provided in each case that delivery in fact is accomplished. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this section.

13.11. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Arbitration Procedure (post to separate page on website)

- Overview. Arbitration is an alternative to litigation where a neutral person (the arbitrator) hears and decides the parties' dispute. Arbitration proceedings are designed to provide parties with a fair hearing in a manner that is faster and less formal than court proceedings. The following procedures (the "**Arbitration Procedures**") are applicable to all arbitration proceedings involving you and Hivewire.

- Pre-Arbitration Dispute Resolution. Hivewire is interested in resolving disputes amicably and efficiently. So before you commence an arbitration, we suggest that you contact us to explain your complaint, as we may be able to resolve it without the need for arbitration. You may contact us online or at Hivewire Legal, 881 Baxter Drive STE 100, South Jordan, UT 84095.
- Administrator. The administrator for the arbitration is JAMS, an organization that is not affiliated with Hivewire. JAMS facilitates, but does not itself conduct, the arbitration. The arbitrator who will hear and decide your dispute will be chosen from JAMS's roster of neutral arbitrators. For information on JAMS, please visit its website, <https://www.jamsadr.com/>. Information about JAMS's rules and fees for resolving disputes can be found at JAMS's Streamlined Arbitration Rules & Procedures page, <https://www.jamsadr.com/rules-streamlined-arbitration/>.
- Applicable Rules. The arbitration will be governed by JAMS's Streamlined Arbitration Rules & Procedures (the "**JAMS Rules**"), as modified by these Arbitration Procedures. If there is any inconsistency between the JAMS Rules and these Arbitration Procedures, the Arbitration Procedures will control. However, if the arbitrator determines that strict application of the Arbitration Procedures would not result in a fundamentally fair arbitration, the arbitrator may make any order necessary to provide a fundamentally fair arbitration that is consistent with the JAMS Rules.
- Commencing an Arbitration. To commence an arbitration against Hivewire, you must complete a short form, submit it to JAMS, and send a copy to Hivewire at Hivewire Legal, 881 Baxter Drive STE 100, South Jordan, UT 84095. To learn more about commencing an arbitration and to obtain a form to institute arbitration, please visit the JAMS website and download the form available at: https://www.jamsadr.com/files/Uploads/Documents/JAMS_Arbitration_Demand.pdf. You may represent yourself in the arbitration or have a lawyer (or some other representative) act on your behalf. Upon receipt of an arbitration claim, Hivewire may assert any counterclaims it may have against the complaining party.
- Fees. You are responsible for paying your portion of the fees set forth in the JAMS fee schedule for consumer disputes. Hivewire will pay all remaining fees. If your claim against Hivewire is for less than \$1,000, and you succeed on the merits, we will pay all fees. If you believe you cannot afford the JAMS fee, you may apply to JAMS for a fee waiver.
- Discovery. Each party may (a) request relevant, non-privileged documents from the other party; and (b) request that the other party provide the particulars of its claims or defenses. Any such discovery requests must be served on the other party within 21 days after the arbitrator's appointment. The responding party shall provide the requesting party with all responsive, non-privileged documents, the requested particulars, and/or any objections to the requests within 15 days after receipt of the requests. Any disputes about discovery or requests for extensions shall be submitted promptly to the arbitrator for prompt resolution. In ruling on any discovery dispute or extension request, the arbitrator shall take into consideration the nature, amount, and scope of the

underlying arbitration claim, the cost and other effort what would be involved in providing the requested discovery, the case schedule, and whether the requested discovery is necessary for the adequate preparation of a claim or defense.

- Communications with the Arbitrator. Whenever communicating with the arbitrator, the parties must include each other – for example, by including the other party on a telephone conference call and copying the other party on any written submissions, such as letters or emails. To the extent practicable, conferences with the arbitrator will take place by telephone conference call or email. Ex parte communications are not permitted with any arbitrator.
- Confidentiality. Upon either party's request, the arbitrator will issue an order requiring that confidential information of either party disclosed during the arbitration (whether in documents or orally) may not be used or disclosed except in connection with the arbitration or a proceeding to enforce the arbitration award and that any permitted filing of confidential information must be done under seal.
- Arbitration Hearing. The Parties agree to waive an oral Hearing and submit the dispute to the Arbitrator for an Award based on written submissions and other evidence as the Parties may agree, unless a party requests an oral Hearing in writing within 10 days after the arbitrator's appointment.
- Arbitration Award. The arbitrator will render a written decision within 30 days after the hearing or, if no hearing was held, within 14 days after any rebuttal or supplemental statements are due. The decision must clearly specify the relief, if any, awarded and contain a brief statement of the reasons for the award.