Terms of Services

This Customer Services Agreement (which includes all Order Forms submitted and all Exhibits attached hereto), available at www.wizehire.com/terms and as amended from time to time and effective on the date posted on our Website ("**Agreement**"), is made by and between Wizehire, Inc. ("**Wizehire**", "**we**", "**us**", or "**our**") and the customer ("**Customer**") identified in the order form ("**Order Form**"), and is effective as of the date submitted ("**Effective Date**"). The individual who has submitted an Order Form to Wizehire represents that the individual (i) is at least 18 years of age, (ii) has read and understood the terms and conditions of this Agreement, (iii) has full legal authority to bind Customer to this Agreement, and (iii) agrees, on behalf of Customer, that Agreement forms a binding agreement between Customer and Wizehire (together referred to as the "**Parties**", and each, a "**Party**").

IMPORTANT: THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION PROVISION REQUIRING ALL CLAIMS TO BE RESOLVED BY WAY OF BINDING ARBITRATION, AND ALSO CONTAINS A CLASS ACTION WAIVER. PLEASE CAREFULLY REVIEW SECTIONS 20-22 OF THIS AGREEMENT FOR MORE INFORMATION.

1. DEFINITIONS

A. "**Confidential Information**" means all confidential, proprietary, or nonpublic information that is marked or described as confidential, or which contains content that would reasonably be considered to be, or is or provided under circumstances reasonably indicating it is, confidential or proprietary as provided or disclosed by or obtained from a Party (as "**Discloser**") and received by the other Party or its affiliates (as "**Recipient**"). Customer's Confidential Information includes, but is not limited to, all Customer Data. Wizehire's Confidential Information includes, but is not limited to, the Software and any other software, data, processes, documentation, and all security and privacy-related documents provided to or obtained by Customer under this Agreement relating to Wizehire or its service providers or contractors.

B. "**Customer Data**" means all data provided or uploaded to the Software by Customer or its representatives

C. "**Customer PI Data**" means Customer Data that identifies or can reasonably be used to identify a specific individual.

D. "**De-Identified Data**" means Customer Data that is not identifiable to a specific individual, company, or to Customer, such as by having been: (i) anonymized or pseudonymized; (ii) aggregated with the data of other customers or additional data sources; and/or (iii) presented in a way which does not reveal Customer or any individual's identity.

E. "**Derivative Information**" means, collectively, (i) information derived or generated from or based on Customer PI Data, but not containing Customer PI Data, (ii) Customer PI Data which has been de-identified or anonymized so that it no longer identifies a specific individual; and, (iii) Customer PI Data which has been aggregated with other data but which no longer identifies a specific individual. During this Agreement and after

any expiration or termination Wizehire may create and use Derivative Information internally for any legitimate business purpose of Customer without a duty of notifying or accounting to Customer, such purposes including, but not limited to, (a) to create, test, train, improve, correct, protect, and inform software and algorithms, machine learning and product automation models and verification automation and quality detection; (b) to develop, create, extract, compile, synthesize, analyze and commercialize statistics, analytics, metrics, reports, benchmarks, measures, and other information, and (d) to improve existing or develop new products and services.

F. "**Market**" means (a) all locations on a city, state basis within a core-based statistical area ("**CBSA**") as defined and delineated by the United States Office of Management and Budget, and (b) for all locations not comprised within a CBSA, a county, parish, borough or other state-level administrative region for which a location is contained therein.

G. "**Services**" means the services provided by Wizehire pursuant to this Agreement and as set forth in the applicable Order Form.

H. "**Software**" means Wizehire's proprietary online hosted software platform and the areas to which Customer is provided access as part of the Services.

I. "**Website**" means wizehire.com.

2. SERVICES AND SUPPORT

A. Grant of Right of Access. Subject to Customer's continued compliance with the terms of this Agreement, Wizehire hereby grants to Customer during the Service Term (as defined in Section **4A**.) a limited, nonexclusive, non-transferable right to access and use the Software and receive the Services in the Market(s) solely for Customer's internal business purposes, pursuant to the applicable Order Form(s) entered into during this Agreement.

B. The Services are provided by Wizehire for use by Customer within and limited to the geographic boundaries of the Market.

C. Availability. Wizehire will use commercially reasonable efforts to provide continuous access to the Software and Services in accordance with the Service Level Policy attached hereto as Exhibit A. The Software or the Services may be unavailable during scheduled or unscheduled maintenance periods or during an emergency (e.g., a Force Majeure Event, as described below). Wizehire will try to notify Customer, where practicable, of unavailability of the Software or the Services in the event of an emergency. Wizehire can subcontract services or use service providers, such as, but not limited to, hosting, storage, development, and technical support, which provide services inside or outside the United States. Wizehire will be responsible for its contractors and service providers' acts and omissions related to this Agreement.

D. Support. Wizehire will provide Customer with the technical support services in accordance with the Service Level Policy set forth in Exhibit A.

3. ACCOUNT REGISTRATION AND SECURITY

A. As part of the account registration process, Customer will create an administrative user name and password for Customer's company account for use by Customer's user administrator ("**User Administrator**"). Wizehire reserves the right to refuse registration of passwords or to cancel passwords it deems inappropriate. All of the information that Customer supplies to Wizehire in creating Wizehire's account must be accurate and kept current. Wizehire reserves the right to invalidate any password and require it to be changed Wizehire believe it has become unsecure. Wizehire may use the email address provided to send Customer notifications, service messages, updates.

B. Authorized User Administration; Account Security. At all times during this Agreement, Customer shall designate one or more employees to serve as the User Administrator for Customer. The User Administrator shall be solely responsible for authorizing, issuing and deauthorizing login credentials ("**Login Credentials**") to authorized users of Customers ("**Authorized Users**"), administering security profiles of Authorized Users, and inputting data regarding the Authorized Users. Customer agrees that each Authorized User will be assigned unique Login Credentials, and that no Login Credentials will be shared or otherwise utilized by two or more individuals at any time. Customer shall be solely responsible for the security of Login Credentials issued to each Authorized User. Customer shall promptly deauthorize all Authorized Users that are no longer to have access to the Services. Customer agrees to comply with the procedures specified by Wizehire from time to time regarding obtaining and updating passwords or

other security measures for the Services. Customer is responsible for all acts and failures to act of its Authorized Users. Wizehire shall have no responsibility or liability for any damage or loss caused by the failure of Customer to deauthorize an Authorized User (e.g., a terminated employee) or for any unauthorized access of an Authorized User's Login Credentials (unless due to Wizehire's negligence).

4. TERM

A. Term: Subject to earlier termination as provided in Section 14, this Agreement is for the Service Term as specified in the Order Form ("Service Term") and (i) for a month-to-month Service Term shall automatically renew each month, and (ii) for an annual Service Term shall automatically renew at the end of the Service Term.

5. PRICING; PAYMENT TERMS

A. Pricing: Pricing for the Services is published on our website at www.wizehire.com/pricing. For customers with a month-to-month Service Term (as described in Section **4A**.), Wizehire may adjust pricing by providing Customer with at least thirty (30) days' prior notice. For customers with an annual Service Term, Wizehire may adjust pricing at renewal.

B. Payment Terms. Customer agrees to pay Wizehire the then-applicable fees stated in the Order Form for the Services in accordance with the terms therein (the "**Fees**"). Wizehire invoices for Fees in advance. Payment for the initial invoice is due on receipt. Payment for future invoices will be automatically charged on the invoice date to the payment method on file. Overdue amounts are subject to interest of lesser of 1.5% per month or the maximum permitted by law, plus all expenses of collection. If Customer's account is overdue, unless Customer has timely disputed an invoice pursuant to Section 5.C, Wizehire may suspend or terminate the Service.

C. Payment Issues. If Customer's use of the Services exceeds the Service Capacity set forth on the Order Form or otherwise requires the payment of additional Fees (per the terms of this Agreement), Customer shall be invoiced for such usage and Customer agrees to pay the additional Fees in the manner provided herein. If Customer believes that Wizehire has invoiced Customer incorrectly, Customer must contact Wizehire's customer support department in writing no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, and provide a reasonably detailed description of the issue. Wizehire will not suspend access to the Software due to Customer's dispute of amounts due so long as Customer pays the undisputed portion of the invoiced amount and works in good faith with Wizehire to resolve the issue.

D. Authorization for Recurring Charges. Notwithstanding anything contained in this Agreement to the contrary, and only if full one-time up-front payment for the Service Term was not made, from and after the Effective Date Customer hereby agrees to pay Wizehire by credit card or automated clearing house (ACH) transfers ("**Transfers**"). Customer shall authorize Wizehire (via its third-party payment processor) to direct pre-authorized payments whereby, among other things, Wizehire shall be authorized to initiate recurring Transfers from Customer's bank or credit card account (the "**Payment Account**") to Wizehire in the amounts required under this Agreement. Until all amounts due are paid in full, Wizehire's authorization for direct Transfers as hereby provided shall be irrevocable and such Transfers shall continue. For so long as any undisputed amounts remain outstanding, Customer shall: (i) not revoke Wizehire's authority to initiate such Transfers as hereby contemplated; (ii) not change, modify, close or otherwise affect the Payment Account; (iii) ensure that all receipts are deposited only into the Payment Account and ensure that the Payment Account has sufficient funds at all times to make the payments contemplated hereby; and, (iv) be responsible for all costs, expenses or other fees and charges incurred by Wizehire as a result of any failed or returned Transfers, whether resulting from insufficient sums being available in the Payment Account, or otherwise. Customer hereby agrees to undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or reasonably requested by Wizehire in order to effectuate the requirements of this Agreement. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Wizehire's net income.

6. REFERRALS

A. Wizehire may recommend third-party services to Customer and may receive a referral or other fee or consideration for doing so.

7. RESTRICTIONS AND RESPONSIBILITIES

A. Customer may use the Software only for lawful purposes and in accordance with this Agreement.

B. Customer agrees not to use the Software:

- In any way that violates any applicable federal, state, local or international law or regulation (including, without limitation, any laws regarding the export of data or software to and from the US or other countries);

- To impersonate or attempt to impersonate Wizehire, its employees, another user or any other person or entity (including, without limitation, by using email addresses or screen names associated with any of the foregoing);

- In any manner that could interfere with, disable, overburden, damage, or impair the Software or interfere with any third party's use of the Software, including their ability to engage in real time activities through the Software; or,

- To engage in any other conduct that restricts or inhibits anyone's use or enjoyment of the Software, or which, as determined by Wizehire, may harm us or users of the Software or expose them to liability.

C. Additionally, Customer agrees not to:

- Use any robot, spider or other automatic device, process or means to access the Software for any purpose, or remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Software;

- Introduce any viruses, Trojan horses, worms, logic bombs, malware, or other material which is malicious or technologically harmful;

- Attempt to gain unauthorized access to, interfere with, damage or disrupt any parts of the Software, the server on which the Software is stored, or any server, computer or database connected to the Software;

- Attack the Software via a denial-of-service attack or a distributed denial-of-service attack;

- Engage, or permit others to engage in the practices of "screen scraping," "data scraping," or any other activity with the purpose of obtaining lists of users or other information or content, other than to the extent permitted by applicable law;

- Frame or mirror the Software or reformat it in any way or use deep links;

- Use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Software or its contents;

- Use meta tags or code or other devices containing any reference to us or the Software (or any of our trademarks, trade names, service marks, logos, or slogans) to direct any person to any other website for any purpose;

- Introduce any keystroke logging or any other monitoring code into the Software;

- Create or access user accounts using any automated means or under false pretenses; or,

- Otherwise use the Software or the Services in any manner that exceeds the scope set forth in this Agreement.

D. Customer may not remove or export from the United States or allow the export or re-export of the Services, Software or anything related thereto, or any direct product thereof 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. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.2277014(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.

8. SUSPENSION OF SERVICE

A. <u>Suspension</u>. Other than as set forth in Sections 5.B and 5.C, Wizehire may immediately suspend or restrict access to the Software or the Services, in whole or in part, with or without notice to Customer for any legitimate reason, including, but not limited to, if: (a) Wizehire reasonably believes that Customer has violated any applicable law which may have a potentially adverse effect on Wizehire or its other customers; (b) Wizehire reasonably believes that it is necessary to protect the servers, systems, infrastructure, data, or information of Wizehire or its respective third-party providers or other customers, from a denial of service attack, security breach, introduction of a virus or other malware, ransomware attack, or similar event; (c) requested or ordered by a law enforcement agency, government agency, or similar authority; (d) Customer fails to cooperate with Wizehire to investigate suspected violations of this Agreement; or, (e) Wizehire experiences product/service delivery challenges. Upon removal, cessation or mitigation of the underlying cause for any of the above in this paragraph that occurs, Wizehire will promptly resume providing access to the Software or the affected Service. During any period of suspension under this Section 8, Client's payment obligations shall not be suspended and there no credit or refund will be provided. During any suspension, Customer will not be permitted to: (i) add, upgrade, downgrade or modify any of the Services; (ii) request an emergency restoration; (iii) transfer any Services; or, (iv) access any of the websites, email accounts or User Content associated with the suspended Services or account. Wizehire will not be responsible for any loss or damages arising from any suspension pursuant to this Section 8.

9. USE OF CUSTOMER DATA

A. As between Customer and Wizehire, Customer owns all right, title and interest in Customer Data. Customer hereby grants to Wizehire (and its service providers and contractors who are under written obligations of confidentiality commensurate in scope and duration with those in this Agreement) a nonexclusive, royalty-free right and license to use Customer Data during this Agreement, and after expiration or termination as provided in this Agreement, for Wizehire's performance of the Services under this Agreement and for research, business, product, and services development and improvement purposes.

B. Notwithstanding anything to the contrary, Wizehire shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Software and the Services and related systems and technologies (including, without limitation, Customer Data and data derived therefrom), and Wizehire will be free (during this Agreement and after any expiration or termination) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Software and the Services and other Wizehire offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

10. USER FEEDBACK; THIRD-PARTY SOCIAL MEDIA POSTINGS

A. By submitting any ideas or suggestions to us (through our Website, social media sites, or other digital platforms, or through Google or other review sites, or other means) related to the Website or Services (collectively, "**Feedback**") Customer agrees that such Feedback shall be deemed, and shall remain, Wizehire's property, and Customer agrees to and does hereby assign to Wizehire all Customer's right, title, and interest in and to all Feedback (including without limitation intellectual property rights) and waives all moral rights thereto) without compensation or further notice to Customer. Wizehire shall be entitled to use of the Feedback without restriction for any purpose whatsoever, commercial or otherwise, without compensation or further notice to Customer. None of the Feedback shall be subject to any obligation of confidentiality on Wizehire's part and Wizehire shall not be liable for any use or disclosure of any Feedback.

11. USER CONTENT

A. Wizehire's Website may permit the posting or submission for posting of content, including, but not limited to, reviews, comments, or other textual content, resumes, CVs, personality profiles, responses to employment or job-related questions or questionnaires, files, images, photographs, videos, animation, sounds, musical works, data, or other materials and content by Customer (collectively, "**User Content**"). Wizehire does not endorse or approve any User Content submitted or posted. Wizehire respects the intellectual property rights of others. Customer must have the legal right to

submit to Wizehire or, where permitted, post any User Content to the Website. Customer is solely responsible for any User Content that it submits for posting to the Website. All User Content submitted for posting to the Website is deemed nonconfidential.

B. Customer agrees to not submit, upload or post any User Content to the Website that infringes or may infringe the copyright, trademark or other intellectual property rights of a third party or that violates any third party's right of privacy or right of publicity.

C. Customer also agrees to take sole responsibility for any royalties, fees or other monies owed to any person or entity by reason of any User Content Customer posts or transmits through the Website.

D. User Content License. Customer retains copyright and any other rights Customer has in the User Content. Customer hereby expressly grant to Wizehire and to its affiliates, parents, subsidiaries, agents, representatives, licensors or other third-party partners, and our successors and assigns, a nonexclusive, worldwide, perpetual, irrevocable, transferrable, sub-licensable license and right to use User Content without restriction, such use including, but not limited to, the right to quote, re-post, publish, use, adapt, translate, archive, store, reproduce, modify, create derivative works from, syndicate, license, print, use for research and machine learning, and sublicense, distribute, transmit, broadcast, and otherwise communicate User Content to third parties, and publicly display or perform the User Content and to provide such User Content to any other user of the Website or the Service, or any portion thereof, in any manner or form and in any medium or forum, whether now known or hereafter devised, without notice, payment or attribution of any kind to Customer or any third party (collectively, the "**License**"). Customer hereby grant us all licenses, consents and clearances to enable the use such User Content for such purposes. Customer waives and agrees not to assert any moral or similar rights it may have in such User Content.

E. User Content Submission and Posting Guidelines. Customer is responsible for all User Content that it submit to Wizehire. Customer may not submit or post User Content that: is not Customer's own original creation or that Customer does not have permission to use; Infringes the copyright, trademark, patent right, or other proprietary right of any person or that is used without the permission of the owner; Customer knows to be inaccurate; is pornographic, sexually explicit, or obscene; exploits children or minors; violates the rights of privacy or publicity of any person; is harassing, libelous, slanderous, or defamatory; contains any personally identifying information about any person without their consent or about any person who is a minor; may be deemed generally offensive to the public, including blatant expressions of bigotry, prejudice, racism, hatred, profanity or religious or political radicalism; includes advertisements, promotions, solicitations, spam, or offers to sell any goods or services for any commercial purpose; is off topic; is intended to provide professional advice, including but not limited to, the provision of medical treatment, or legal, financial or investment advice; is intended to solicit, recommend, endorse, or offer to buy or sell any securities or other financial instruments, tout stocks, or recommend that any particular security, portfolio of securities, transaction, or investment strategy; violates any local, state, federal, and/or international laws or regulations; promotes or provides instructional information about illegal or illicit activities.

F. Removal of User Content. Wizehire reserves the right (but have no obligation) to remove, block, edit, move or disable User Content that is objectionable to Wizehire for any reason. The decision to remove User Content at any time is in Wizehire's sole and final discretion. To the maximum extent permitted by applicable law, Wizehire does not assume any responsibility or liability for User Content or for any failure to or delay in removing User Content or other Content. Customer is solely responsible for its User Content and may be held liable for User Content that it posts.

G. DMCA Notice. If Customer believes that any content posted on the Wizehire website violates Wizehire's User Content Submission and Posting Guidelines or Customer's intellectual property rights, Customer can report such violation to Wizehire in accordance with the Digital Millennium Copyright Act (17 U.S.C. §512, "**DMCA**"). In the case of an alleged infringement, please provide the following information:

- A description of the copyrighted work or other intellectual property that Customer claims has been infringed;

- A description of where the material that Customer claims is infringing is located on the website (including the exact URL);

- An address, a telephone number, and an email address where Customer can be contacted;

- A statement that Customer has a good faith belief that the use is not authorized by the copyright or other intellectual property rights owner, by its agent, or by law;

- A statement by Customer under penalty of perjury that the information in Customer's notice is accurate and that Customer is the copyright or intellectual property owner or are authorized to act on the owner's behalf; and,

- Customer's electronic or physical signature, or that of the person authorized to act on behalf of the owner of the copyright or other right being infringed.

- Wizehire may request additional information before Wizehire remove allegedly infringing material. Customer may report a copyright violation by providing the above information to the designated agent at: Wizehire, Inc., 5030 Inker Street, Houston, Texas 77007, Attn: Sid Upadhyay; email: **copyright@wizehire.com**.

- Wizehire has the right to terminate the user account of any user who repeatedly submits content that violates Wizehire's User Content Submission and Posting Guidelines or policies. A repeat infringer is a user who has been notified of infringing activity more than twice and/or has had User Content removed from the Website more than twice.

12. CONFIDENTIALITY

A. Each Party (as a "**Receiving Party**") understands that the other Party (as a "**Disclosing Party**") has disclosed or may disclose confidential, nonpublic or proprietary business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Proprietary Information of Wizehire includes, but is not limited to, non-public information regarding features, functionality and performance of the Software and the Services. Proprietary Information of Customer includes Customer Data. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in the Receiving Party's 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 or (e) is required to be disclosed by law.

13. INTELLECTUAL PROPERTY

A. Wizehire shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Services or support, and (c) all intellectual property rights related to any of the foregoing.

B. The Software is protected under the copyright laws and other intellectual property laws of the United States and other countries. Wizehire reserves all rights not expressly granted herein. Unless otherwise noted, Wizehire's trademarks, service marks, trade names, logos or other designations of source displayed on the Software are property of Wizehire or its affiliates or licensors. All third-party trademarks, service marks, trade names, logos or other designations of source are the property of their respective owners. All use of Wizehire's brands shall inure to Wizehire. All use of Customer's brands by Wizehire shall inure to the benefit of Customer.

14. TERMINATION

A. Termination. Customer may terminate this Agreement for convenience by providing Wizehire written notice as follows: for Customers on a month-to-month Service Term, at any time, and, for Customers on an annual Service Term, at least thirty (30) days before the end of the then-current Service Term. Either Party may terminate this Agreement upon written notice if the other Party materially breaches any of the terms of this Agreement and fails to cure such breach (if curable using commercially reasonable efforts; failure to timely pay amounts when due being deemed incurable) within thirty (30) days of such notice. In the event of termination, other than termination by Wizehire for convenience or by Customer within the opt-out period, if applicable), Customer will be responsible for payment of Fees through the end of the Service Term (if not already paid) and such payment will be immediately due.

B. Effects of Termination. Upon expiration or termination of this Agreement, the rights granted under this Agreement by Wizehire will automatically terminate and Customer and any user accessing or using the Software or the Services on behalf of Customer, will immediately cease. Termination of this Agreement shall not affect either Customer's obligation to pay any sums due hereunder or any additional remedies available to Wizehire in law or equity. Pre-payments or deposits will not be refunded to Customer. Upon Customer's request within thirty (30) days after termination, Wizehire will provide Customer with access to Customer Data. Wizehire has the right to delete Customer Data after three (3) months following the effective date of any termination.

C. Survival. The following Sections shall survive any expiration or termination of this Agreement: Sections 1 (Definitions), 7.B-7.C (Restrictions and Responsibilities), 9 (Use of Customer Data), 11.D (User Content License), 12 (Confidentiality), 16 (Limitation of Liability), 17 (Indemnification), 20 (Dispute Resolution), 21 (Class Action Waiver), 22 (Waiver of Jury Trial), 24 (Miscellaneous).

15. WARRANTY AND DISCLAIMER

A. Wizehire shall use commercially reasonable efforts to maintain continuous availability of the Software. Wizehire will perform the Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Wizehire or by third-party providers, or because of other causes beyond Wizehire's reasonable control, but Wizehire shall use commercially reasonable efforts to provide advance notice in e-mail of any scheduled service disruption.

B. Wizehire does not make any warranty as to the results that may be obtained from use of the SOFTWARE OR Services. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND WIZEHIRE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, FREEDOM FROM COMPUTER VIRUS, AND WARRANTIES ARISING FROM COURSE OF DEALING, OR COURSE OF PERFORMANCE OR USAGE OF TRADE. WIZEHIRE DOES NOT REPRESENT OR WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE OR RELATED TO THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SOFTWARE OR THE SERVICES OR THE SERVER THAT ENABLES THE SOFTWARE TO BE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WIZEHIRE DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS REGARDING THE USE OF THE CONTENT IN THE SOFTWARE IN TERMS OF ITS COMPLETENESS, CORRECTNESS, ACCURACY, ADEQUACY, USEFULNESS, TIMELINESS, RELIABILITY OR OTHERWISE. DEPENDING ON THE STATE IN WHICH CUSTOMER'S BUSINESS IS LOCATED, SOME OR ALL OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER. WIZEHIRE IS NOT RESPONSIBLE FOR THE ACTIONS OR INFORMATION OF THIRD PARTIES, AND CUSTOMER HEREBY RELEASES WIZEHIRE FROM ANY CLAIMS AND DAMAGES, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY CLAIM CUSTOMER MAY HAVE AGAINST ANY SUCH THIRD PARTIES.

16. LIMITATION OF LIABILITY

A. EXCEPT FOR BODILY INJURY OF A PERSON, WIZEHIRE AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS, AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY FOR: (A) ERROR OR INTERRUPTION OF USE OR FOR LOSS, UNAVAILABILITY, INACCURACY, OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; OR, (B) ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL WIZEHIRE'S TOTAL AGGREGATE LIABILITY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO WIZEHIRE FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE ACT THAT GAVE RISE TO THE ALLEGED LIABILITY, IN EACH CASE, WHETHER OR NOT WIZEHIRE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. INDEMNIFICATION

A. Customer agrees to indemnify, defend, and hold Wizehire and its officers, directors, employees, agents, affiliates, and service providers harmless from and against any and all liability, losses, damages, fines, penalties, assessments, costs, and expenses (including attorneys' fees and costs) incurred by Wizehire through or related to Customer's use of the Software or the Services or Customer's posting or submission of User Content (if permitted) in violation of this Agreement (including, but not limited to, negligent or wrongful conduct, infringement of any third party's intellectual property, confidentiality, privacy or publicity rights). Wizehire reserves the right, at Customer's expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Customer, and in such case, Customer agrees to cooperate with Wizehire's defense of such claim. This Section 17 shall survive any termination of this Agreement.

18. FORCE MAJEURE EVENTS

A. A "**Force Majeure Event**" means a cause or event beyond the reasonable control of the Party claiming delay of performance, including, but not limited to, (i) labor disputes, strikes, or lockouts (but excluding nonunion labor shortage or disputes), or labor unavailability or workplace closure or restrictions or travel restrictions as required or recommended by government or agency (or implemented as company-wide policy by the Party suffering the delay in performance) due to pandemic, epidemic, or other widespread health emergency (e.g., viruses or other diseases, such as, but not limited to, COVID-19, SARS, etc.); (ii) riots, war, acts of terrorism, or other civil disturbance; (iii) fire, flood, earthquake, tornado, hurricane, snow, ice, lightning, or other natural disasters, elements of nature or acts of God, (iv) outages, cable cuts, power crisis shortages, infrastructure outages or failures, internet failures, interruption or failure of telecommunications carriers or digital transmission links, network congestion, computer equipment failures, telecommunication equipment or other equipment failures, electrical power failures, loss of or fluctuations in heat, light, or air conditioning, all of the foregoing in this Subsection (iv) being of or due to third-party providers or utility service providers; (v) acts of computer, system, or network sabotage or file lockup (e.g., ransomware attack), DDOS or other network attacks, intrusion, or other failures not arising out of a breach of Wizehire's data security obligations set forth in this Agreement; (vi) any law, order, regulation, direction, action or request of the United States, state or local governmental agency, department, commission, court, bureau, corporation or other instrumentality of any one or more of such instrumentality, or of any civil or military authority, or national emergencies, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown; (vii) change in law or regulation making performance impracticable without having material impact on such Party's ability to perform under this Agreement without material increase in cost, resources, or time; or, (viii) national or regional shortage of adequate power or telecommunications or transportation.

B. With the exception of the payment of monies owed, if by reason of a Force Majeure Event, either Party is unable to perform in whole or in part its obligations as set forth in this Agreement, then such Party shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make such Party liable to the other Party. A Party shall promptly notify the other Party in the event of a Force Majeure Event affecting the Party's ability to perform. Neither Party shall be liable for any loss, injury, delays or damages suffered or incurred by the other Party due to the above causes. In the event a Force Majeure Event occurs whereby Wizehire is unable to perform its material obligations as set forth in this Agreement for a period of thirty (30) consecutive days, Customer shall have the right to terminate this Agreement upon notice to Wizehire without termination liability, other than for fees owed prior to such termination.

19. COMPLIANCE WITH LAWS

A. Each Party agrees to perform its obligations in accordance with all applicable laws and regulations then in effect.

B. Cooperation with Law Enforcement and Government Agencies; Required Disclosures.

- Wizehire may involve and cooperate with law enforcement authorities in prosecuting users who violate this Agreement. Customer acknowledges that Wizehire have no obligation to monitor Customer's access to or use of the Software or the Services, but Wizehire have the right to do so for the purpose of providing the Software and the Services, to ensure Customer's compliance with this Agreement, or to comply with applicable law or the order or requirement of a court, administrative agency or other governmental or regulatory body.

- Customer understands and agrees that Wizehire may disclose Customer Data if required to do so by law, court order, legal process, or subpoena, including to respond to any government or regulatory request (after, if permitted, giving reasonable notice to Customer and using commercially reasonable efforts to provide Customer with the opportunity to seek a protective order or the equivalent (at Customer's expense), or if Wizehire believes that such action is necessary to (a) conform to the law, comply with legal process served on Wizehire or its affiliates or partners, or investigate, prevent, or take action regarding suspected or actual illegal activities; (b) to enforce this Agreement (including for billing and collection purposes), take precautions against liability, to investigate and defend ourselves against any third-party claims or allegations, to assist government enforcement agencies, or to protect the security or integrity of the Software or Services; or, (c) to exercise or protect the rights, property, or the safety of Wizehire, its users, or others.

20. DISPUTE RESOLUTION

A. <u>Time Limitation</u>. Any claim or action against Wizehire must be brought within twelve (12) months of the cause arising, otherwise such claim or action is permanently barred.

B. **<u>MANDATORY BINDING ARBITRATION</u>**

- Other than for the grounds set forth in Section 20.C (labeled "Exceptions to Agreement to Arbitrate"), in the event of any dispute, claim, question or disagreement arising from or relating to the Agreement or the breach thereof or the access or use of the Software or Services, the Parties hereto shall use reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, the Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both Parties. If the Parties do not reach such solution within a period of thirty (30) days, then, upon notice by either Party to the other, such dispute, claim, question or disagreement shall be resolved by binding arbitration in Houston, Texas in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "**AAA**"), subject to the limitations of this Section. This agreement to arbitrate will be specifically enforceable under the prevailing law of any court having jurisdiction. Notice of a demand for arbitration shall be filed in writing with the other Party hereto and with the AAA. The demand for arbitration shall be made within a reasonable time after the dispute has arisen, and in no event shall any such demand be made after the date when institution of legal or equitable proceedings based on such dispute would be barred by the applicable statute of limitations. The Parties agree that one (1) arbitrator who is experienced in software-as-a-service agreements shall arbitrate the dispute. The arbitrator shall be selected by the joint agreement of the Parties, but if they do not so agree within twenty (20) days after the date of the notice of a demand for arbitration referred to above, the selection shall be made pursuant to the Commercial Arbitration Rules of the AAA from the panels of business arbitrators maintained by the AAA. The decision of the arbitrator shall be made in writing and shall be final. Judgment may be entered upon it in any court having jurisdiction thereof, and the decision shall not be subject to vacation, modification or appeal, except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act, the terms of which Sections the Parties agree shall apply. The expenses of arbitration, including and the fees and expenses of the arbitrator and the AAA, shall be shared equally by the Parties.

- The arbitrator will have no authority to award attorneys' fees, punitive damages, or any other monetary relief not measured by the prevailing Party's actual damages and each Party irrevocably waives any claim thereto. The award may include equitable relief. The arbitrator will not make any ruling, finding, or award that does not otherwise conform to this Agreement. The arbitrator may render a summary disposition relative to all or some of the issues, provided that the responding Party has had an adequate opportunity to respond to any such application for such disposition.

- The Parties agree to treat all aspects of the arbitration as confidential, as provided in the AAA Rules. Before making any disclosure permitted by the Rules, a Party shall give written notice to the other Party and afford such Party a reasonable opportunity to protect its interests. Further, judgment on the arbitrators' award may be entered in any court having jurisdiction.

C. <u>Exceptions to Agreement to Arbitrate</u>. Wizehire and Customer agree that Wizehire may bypass arbitration and go to court to resolve disputes relating to: (a) intellectual property, or (b) Customer's violation of the User Content Submission and Posting Guidelines.

21. CLASS ACTION WAIVER

A. Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Customer agrees that neither it nor Wizehire will seek to have any dispute heard as a class action or in any other proceeding in which either Party acts or proposes to act in a representative capacity, and each Party hereby waives any right to assert consolidated claims with respect to any disputes subject to arbitration under this Agreement or any disputes between the Parties. No arbitration or proceeding will be combined with another without the prior written consent of all Parties to all affected arbitrations or proceedings.

22. WAIVER OF JURY TRIAL.

A. Each Party irrevocably and unconditionally waives any right Wizehire or Customer may have to a trial by jury for any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

23. NOTICES

A. Customer hereby consents to receive mail and electronic communications (email, text/SMS, and/or by telephone) from Wizehire and/or by Wizehire posting notices on Customer's account profile page in the Software concerning Wizehire's Services (collectively, "**Communications**"). Communications may be those that Wizehire is required to send by law (e.g., data privacy or security incident-related notifications) concerning Wizehire, Customer's account or information, the Software, or the Services ("**Required Communications**"). The Communications may also be those that Wizehire sends for other reasons. Customer may change the email or phone number on file by visiting Customer's account profile page or by contacting Wizehire.

B. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and three (3) days after mailing, if sent by certified or registered mail, return receipt requested.

24. MISCELLANEOUS

A. Governing Law. All legal proceedings arising out of use of the Software, the Services, and/or relating to this Agreement and the relationship between Wizehire and Customer shall be construed in accordance with the laws of the State of Texas, without reference to conflicts of laws principles. Customer understands and agrees that the Services are deemed to have been provided in the state of Texas. To the extent litigation is permitted pursuant to this Agreement, each Party hereby irrevocably and unconditionally submits to the jurisdiction of courts located in Houston, Texas, and the Parties consent to the exclusive personal and subject matter jurisdiction of such courts and expressly waive any right each may otherwise have to cause any such action or proceeding to be brought or tried elsewhere.

B. Case Study. Customer hereby grants Wizehire permission to create, beginning about sixty (60) days after the Service Start Date, a case study describing Customer project generalities, and may use during this Agreement and after any expiration or termination such a case study for marketing of its services to third parties. Customer grants Wizehire permission to use and publish Customer's name and brands in Wizehire marketing materials and on the Wizehire website solely for the purpose of identifying Customer as a Wizehire client. Customer retains the right to request removal of its name and brands at any time.

C. Agreement. This Agreement, including all Exhibits attached hereto and documents incorporated by reference herein (e.g., by hyperlink) (and updates thereto), and any other terms agreed to by way of Customer's express consent or Customer's use of the Software or the Services shall constitute the entire and exclusive understanding and agreement between the Parties regarding this subject matter, and shall supersede any and all prior or contemporaneous agreements, representations, or understandings relating thereto. The terms in any Customer purchase order or business form will not amend or modify this Agreement and are expressly rejected by Wizehire. In the event that any part of this Agreement is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. The failure of Wizehire to exercise or enforce any right or provision of this Agreement, including any failure to act with respect to a breach, will not

constitute a waiver of such right or Wizehire's right to act with respect to subsequent or similar breaches. The headings of sections and paragraphs in this Agreement are for convenience only and shall not affect its interpretation. The background recitals on the cover page form a material part of this Agreement.

D. <u>Modifications to the Agreement</u>. Wizehire may modify this Agreement from time to time in its sole discretion, and all changes are effective as of the date posted to the Website and apply to all access to and use of the Services thereafter. However, any changes to the dispute resolution provisions set forth in Section 20 will not apply to any disputes for which the Parties have actual notice on or prior to the date the change is posted on the Website. Customer's continued use of the Services following the posting of the revised Agreement means that Customer accepts and agrees to the revised Agreement. Customer is expected to check this Website page periodically so Customer is aware of any changes, as they are binding on Customer.

E. This Agreement is not assignable, transferable, or sublicensable by Customer except with Wizehire's prior written consent and any such assignment or the like in violation hereof shall be of no power or effect. Wizehire may assign, transfer, and/or convey any or all of its rights and/or obligations under this Agreement without consent. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Wizehire in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees.

EXHIBIT A
Service Level Policy

This Service Level Policy ("**SLP**") forms part of the Agreement. While Wizehire will not modify this SLP arbitrarily, Wizehire may do so from time-to-time, but will not materially diminish the overall support commitments or modify the performance credits. The notification will set out the effective date of the revised SLP. The remedies set forth in this SLP are Customer's sole and exclusive remedy for issues covered by the SLP.

1. **Availability of the Services**. Wizehire will use commercially reasonable efforts to maintain availability of the Wizehire Platform for Customer's and its Authorized User's use 24x7, except during the following, during which the Wizehire Platform may be partially or totally unavailable:

    A. "**Scheduled Maintenance**": Scheduled maintenance, which includes updates and other routine maintenance, will be conducted between 7:00 p.m. – 2:00 a.m. (Eastern US Time) weekdays, weekends and/or holidays. However, maintenance may also occur at any other time as is necessary to provide top tier service to Wizehire's customers. Wizehire may change planned maintenance windows at its sole discretion and will notify Customer of any such changes that affect previously notified plans, provided such maintenance is done during low-volume times. Wizehire will use commercially reasonable efforts to provide Customer with at least 24 hours' prior notice if Scheduled Maintenance downtime will occur at such other time.

    B. "**Unscheduled Maintenance**": Maintenance not previously planned which is needed to resolve issues that are critical for customers and/or performance of the Platform. Wizehire will notify Customers when possible via email prior to the unscheduled maintenance. When and where practicable, Wizehire will try to conduct unscheduled maintenance between 9:00 p.m. and 2:00 a.m. (Eastern US Time).

    C. Force Majeure Events (as defined in the Agreement).

    D. Unauthorized use or misuse of the Platform by Customer or anyone using any of Customer's authorized user's login Credentials.

2. **Availability Goal**: Wizehire shall use commercially reasonable efforts to ensure that the Services shall be available 99% of the time, measured on an average monthly basis, excluding holidays, weekends, scheduled and unscheduled maintenance, and Force Majeure Events. If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime

resulting from outages of third-party connections or utilities or other reasons beyond Wizehire's reasonable control will also be excluded from any such calculation.

3. **Performance Credits**: Customer's sole and exclusive remedy, and Wizehire's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than two hours, Wizehire will credit Customer 5% of Service fees for each period of 30 or more consecutive minutes of downtime; provided that no more than one such credit will accrue per day. Downtime shall begin to accrue as soon as Customer (with notice to Wizehire) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Wizehire in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one week of Service Fees in any one calendar month in any event. Wizehire will only apply a credit to the month in which the incident occurred. Wizehire's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Wizehire to provide adequate service levels under this Service Level Policy.

4. **Support**: Wizehire will provide support to Customer via telephone, live chat, and electronic mail on weekdays during the hours of 7:00 a.m. through 7:00 p.m. Eastern Time, with the exclusion of federal and Wizehire company holidays ("Support Hours"). Customer may initiate a helpdesk ticket during Support Hours by calling 877-292-4568 or any time by emailing **team@wizehire.com** Wizehire will use commercially reasonable efforts to respond to all helpdesk tickets within one (1) business day.