Terms of Service

AGREEMENT

1.   Definitions

1.1   In this Agreement:

"**Access Credentials**" means the usernames, passwords and other credentials enabling access to the Hosted Services, including both access credentials for the User Interface and access credentials for the API;

"**Agreement**" means this agreement including any Schedules, and any amendments to this Agreement from time to time;

"**API**" means the application programming interface for the Hosted Services defined by the Provider and made available by the Provider to the Customer;

"**Charges**" means the following amounts:

(a)   the amounts specified in Section 2 of Schedule 1 (Hosted Services particulars);

"**Data Protection Laws**" means all applicable laws relating to the processing of Personal Data;

"**Documentation**" means the documentation for the Hosted Services produced by the Provider and delivered or made available by the Provider to the Customer;

"**Effective Date**" means the date of execution of this Agreement;

"**Force Majeure Event**" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"**Hosted Services**" means subzero.cloud, as specified in the Hosted Services Specification, which will be made available by the Provider to the Customer as a service via the internet in accordance with this Agreement;

"**Hosted Services Specification**" means the specification for the Platform and Hosted Services set out in Section 1 of Schedule 1 (Hosted Services particulars) and in the Documentation;

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these "intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Personal Data**" has the meaning given to it in the Data Protection Laws;

"**Platform**" means the platform managed by the Provider and used by the Provider to provide the Hosted Services, including the application and database software for the Hosted Services, the system and server software

used to provide the Hosted Services, and the computer hardware on which that application, database, system and server software is installed;

"**Provider**" means subZero Cloud S.R.L, a company incorporated in Romania(registration number 37521270) having its registered office at str. VasileAlecsandri nr. 1410072 Oradea, jud. BihorRomania, EU;;

"**Schedule**" means any schedule attached to the main body of this Agreement;

"**Services**" means any services that the Provider provides to the Customer, or has an obligation to provide to the Customer, under this Agreement;

"**Term**" means the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2; and

"**User Interface**" means the interface for the Hosted Services designed to allow individual human users to access and use the Hosted Services.

2. Credit

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3. Term

3.1 This Agreement shall come into force upon the Effective Date.

3.2 This Agreement shall continue in force indefinitely, subject to termination in accordance with Clause 13 or any other provision of this Agreement.

4. Hosted Services

4.1 The Provider shall provide, or shall ensure that the Platform will provide, to the Customer upon the Effective Date the Access Credentials necessary to enable the Customer to access and use the Hosted Services.

4.2 The Provider hereby grants to the Customer a worldwide, non-exclusive licence to use the Hosted Services by means of the User Interface and the API in accordance with the Documentation during the Term.

4.3 Except to the extent expressly permitted in this Agreement or required by law on a non-excludable basis, the licence granted by the Provider to the Customer under Clause 4.2 is subject to the following prohibitions:

(a) the Customer must not sub-license its right to access and use the Hosted Services;

(b) the Customer must not make any alteration to the Platform, except as permitted by the Documentation; and

(c) the Customer must not conduct or request that any other person conduct any load testing or penetration testing on the Platform or Hosted Services without the prior written consent of the Provider.

4.4 The Customer shall implement and maintain reasonable security measures relating to the Access Credentials to ensure that no unauthorised person or

application may gain access to the Hosted Services by means of the Access Credentials.

4.5 The Provider shall use all reasonable endeavours to maintain the availability of the Hosted Services to the Customer at the gateway between the public internet and the network of the hosting services provider for the Hosted Services, but does not guarantee 100% availability.

4.6 For the avoidance of doubt, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:

(a) a Force Majeure Event;

(b) a fault or failure of the internet or any public telecommunications network;

(c) a fault or failure of the Customer's computer systems or networks;

(d) any breach by the Customer of this Agreement; or

(e) scheduled maintenance carried out in accordance with this Agreement.

4.7 The Customer must not use the Hosted Services:

(a) in any way that is unlawful, illegal, fraudulent or harmful; or

(b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity.

4.8 For the avoidance of doubt, the Customer has no right to access the software code (including object code, intermediate code and source code) of the Platform, either during or after the Term.

4.9 The Provider may suspend the provision of the Hosted Services if any amount due to be paid by the Customer to the Provider under this Agreement is overdue, and the Provider has given to the Customer at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Hosted Services on this basis.

5. Scheduled maintenance

5.1 The Provider may from time to time suspend the Hosted Services for the purposes of scheduled maintenance to the Platform.

6. No assignment of Intellectual Property Rights

6.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from the Provider to the Customer, or from the Customer to the Provider.

7. Charges

7.1 The Customer shall pay the Charges to the Provider in accordance with this Agreement.

7.2 All amounts stated in or in relation to this Agreement are, unless the context requires otherwise, stated inclusive of any applicable value added taxes.

7.3 The Provider may elect to vary any element of the Charges by giving to the Customer not less than 30 days' written notice of the variation

8. Payments

8.1 The Provider shall issue invoices for the Charges to the Customer in advance of the period to which they relate.

8.2 The Customer must pay the Charges to the Provider within the period of 30 days following the issue of an invoice in accordance with this Clause 8, providing that the Charges must in all cases be paid before the commencement of the period to which they relate.

8.3 The Customer must pay the Charges by debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Provider to the Customer from time to time).

9. Warranties

9.1 The Provider warrants to the Customer that:

(a) the Provider has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement;

(b) the Provider will comply with all applicable legal and regulatory requirements applying to the exercise of the Provider's rights and the fulfilment of the Provider's obligations under this Agreement; and

(c) the Provider has or has access to all necessary know-how, expertise and experience to perform its obligations under this Agreement.

9.2 The Provider warrants to the Customer that:

(a) the Platform will be free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

(b) the Platform will incorporate security features reflecting the requirements of good industry practice.

9.3 The Customer warrants to the Provider that it has the legal right and authority to enter into this Agreement and to perform its obligations under this Agreement.

9.4 All of the parties' warranties and representations in respect of the subject matter of this Agreement are expressly set out in this Agreement. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this Agreement will be implied into this Agreement or any related contract.

10. Acknowledgements and warranty limitations

10.1 The Customer acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be wholly free from defects, errors and bugs.

10.2 The Customer acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this Agreement, the Provider gives no warranty or representation that the Hosted Services will be entirely secure.

10.3 The Customer acknowledges that the Hosted Services are designed to be compatible only with that software and those systems specified as compatible in the Hosted Services Specification; and the Provider does not warrant or represent that the Hosted Services will be compatible with any other software or systems.

10.4 The Customer acknowledges that the Provider will not provide any legal, financial, accountancy or taxation advice under this Agreement or in relation to the Hosted Services; and, except to the extent expressly provided otherwise in this Agreement, the Provider does not warrant or represent that the Hosted Services or the use of the Hosted Services by the Customer will not give rise to any legal liability on the part of the Customer or any other person.

11. Limitations and exclusions of liability

11.1 Nothing in this Agreement will:

(a) limit or exclude any liability for death or personal injury resulting from negligence;

(b) limit or exclude any liability for fraud or fraudulent misrepresentation;

(c) limit any liabilities in any way that is not permitted under applicable law; or

(d) exclude any liabilities that may not be excluded under applicable law.

11.2 The limitations and exclusions of liability set out in this Clause 11 and elsewhere in this Agreement:

(a) are subject to Clause 11.1; and

(b) govern all liabilities arising under this Agreement or relating to the subject matter of this Agreement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this Agreement.

11.3 Neither party shall be liable to the other party in respect of any losses arising out of a Force Majeure Event.

11.4 The Provider shall not be liable to the Customer in respect of any special, indirect or consequential loss or damage.

11.5 The liability of each party to the other party under this Agreement in respect of any event or series of related events shall not exceed the greater of:

(a) $250; and

(b) the total amount paid and payable by the Customer to the Provider under this Agreement in the 12 month period preceding the commencement of the event or events.

12. Force Majeure Event

12.1 If a Force Majeure Event gives rise to a failure or delay in either party performing any obligation under this Agreement (other than any obligation to make a payment), that obligation will be suspended for the duration of the Force Majeure Event.

12.2 A party that becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in that party performing any obligation under this Agreement, must:

(a) promptly notify the other; and

(b) inform the other of the period for which it is estimated that such failure or delay will continue.

12.3 A party whose performance of its obligations under this Agreement is affected by a Force Majeure Event must take reasonable steps to mitigate the effects of the Force Majeure Event.

13. Termination

13.1 Either party may terminate this Agreement by giving to the other party at least 30 days' written notice of termination.

13.2 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if the other party commits a material breach of this Agreement.

13.3 Either party may terminate this Agreement immediately by giving written notice of termination to the other party if:

(a) the other party:

(i) is dissolved;

(ii) ceases to conduct all (or substantially all) of its business;

(iii) is or becomes unable to pay its debts as they fall due;

(iv) is or becomes insolvent or is declared insolvent; or

(v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;

(b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or

(c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up.

14. Effects of termination

14.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): Clauses 1, 4.8, 8.2, 11, 14 and 15.

14.2 Except to the extent that this Agreement expressly provides otherwise, the termination of this Agreement shall not affect the accrued rights of either party.

15. General

15.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.

15.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).

15.3   This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.

15.4   Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.

15.5   This Agreement is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.

15.6   Subject to Clause 11.1, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.

15.7   This Agreement shall be governed by and construed in accordance with Romanian law.

15.8   The courts of Romania shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

SIGNED BY [*[individual name]* on ...., the Provider] OR [*[individual name]* on ...., duly authorised for and on behalf of the Provider]:

....

SIGNED BY [*[individual name]* on ...., the Customer] OR [*[individual name]* on ...., duly authorised for and on behalf of the Customer]:

....

SCHEDULE 1 (HOSTED SERVICES PARTICULARS)

1.   Specification of Hosted Services

[Specify Hosted Services and any relevant usage limitations]

2.   Financial provisions

[Insert financial provisions]