



Terms of Service

Last modified: February 10, 2020

Thank you for signing up to receive one or more of the proprietary platforms as a service provided by Headset, Inc., a Delaware corporation (“**Headset**”, “**we**”, “**us**”, and their derivatives). These Terms of Service (“**Terms of Service**”), together with the DPA (defined below) and any Order (defined below), constitute an agreement (this “**Agreement**”) by and between Headset and the corporation, LLC, partnership, sole proprietorship, or other business entity executing this Agreement (“**Customer**”, “**you**”, “**your**” and their derivatives). This Agreement is effective as of the date (such date, the “**Effective Date**”) Customer (1) clicks “Accepted and Agreed To” (or equivalent language) in response to a prompt from Headset; (2) enters into an Order with Headset (including electronically); or (3) otherwise indicates that it agrees to be bound by these Terms of Service.

1. HEADSET SERVICES.

Headset provides the Bridge™ (“**Bridge**”), Retailer™ (“**Retailer**”) and Insights™ (“**Insights**”) platforms (collectively, the “**Headset Services**” and each a “**Headset Service**”) that are designed to give retailers and vendors of cannabis-related products competitive advantages in the market. This Agreement (including, for clarity, any Orders between you and Headset) apply to your use of each of the Headset Services.

2. DEFINITIONS.



A. **“Add on”** means integrations, applications and other add-ons that are used with the Headset Services.

B. **“Affiliate”** means any entity that is controlled by, in control of, or is under common control with you or Headset, where “control” means either the power to direct the management or affairs of such entity or ownership of 50% or more of the voting securities of such entity.

C. **“Aggregate/Anonymous Data”** means: (i) data generated by aggregating Customer Data with other data so that results cannot be linked to or associated with a particular user of the Headset Services (or any Authorized User) or any particular individual and (ii) anonymous learnings, logs and data regarding use of the Headset Services.

D. **“Authorized Users”** means Customer’s duly authorized employees that are acting for Customer’s benefit and on its behalf. Contractors working for Customer may be Authorized Users only with the express, written consent of Headset.

E. **“Confidential Information”** means code, inventions, know-how, product plans, technical and financial information exchanged under this Agreement that is identified as confidential at the time of disclosure or should reasonably be considered confidential based on the circumstances surrounding the disclosure and the nature of the information disclosed. Confidential Information does not include information that: (i) is or becomes public knowledge through no fault of the Receiving Party; (ii) was known by the Receiving Party prior to receipt of the Confidential Information; (iii) is rightfully obtained by the Receiving Party from a third-party without breach of any confidentiality obligation; or (iv) is independently developed by the Receiving Party without using the Disclosing Party’s Confidential Information. Headset’s Confidential Information specifically includes Licensed Data and Data Derivatives.

F. **“Customer Data”** means data in electronic form input or collected through the Headset Services by or from Customer, including, but not limited to, Submitted Data, Retailer Data, and Customer Personal Data.

G. “**Customer Personal Data**” has the meaning set forth in the DPA.

H. “**Data Derivatives**”, and each a “**Data Derivative**”, means compilations, arrangements, analyses, articles, derivative works, and/or other works of authorship that incorporate, are derivative of, make use of, and/or are based on Licensed Data.

I. “**Disclosing Party**” means the party disclosing Confidential Information to the Receiving Party.

J. “**Documentation**” means Headset’s end user technical documentation provided with the Headset Services.

K. “**DPA**” means the Customer Data Processing Addendum and located is [here](#) .

L. “**Headset Services**” has the meaning assigned that term in Section 1 of this Agreement. “Headset Services” do not include any Third-Party Product.

M. “**Licensed Data**” has the meaning assigned in Section 4.a. of these Terms of Service. For clarity, Licensed Data does not include Customer Data.

N. “**Order**” means any Headset ordering documentation or online sign-up or subscription flow that references these Terms of Service.

O. “**Privacy Policy**” means Headset’s Privacy Policy and is available [here](#).

P. “**Receiving Party**” means the party receiving Confidential Information from the Disclosing Party.

Q. “**Retailer Data**” means data collected from Customers’ use of Retailer that relates to records of sales, including, by way of example, data taken from a given User’s point-of-sale system.

R. “**Submitted Data**” means data uploaded, inputted or otherwise submitted by Customer to any Headset Service, including Third-Party Content.



S. “**Subscription Term**” means the initial term for the subscription to the applicable Headset Service, as specified in an Order, and any subsequent renewal terms.

T. “**Third-Party Content**” means content, data or other materials that Customer provides to Headset, including through the Headset Services, from Customer’s third-party data or service providers, including through Add-Ons used by Customer.

U. “**Third-Party Product**” means any Add-On, applications, integrations, software, code, online services, systems and other products not developed by Headset.

V. “**User**” means any individual who uses the Headset Services on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.

W. The “**Website**” means the website operated by Headset available at <http://headset.io>.

Other terms are defined in other Sections of this Agreement.

3. ACCOUNT REGISTRATION AND USE

Customer must register an account with Headset in order to access any of the Headset Services. Information provided at the time of registration of an account must be accurate, current and complete, and Customer agrees to make any updates to such information where necessary to keep it up to date. Any personal information of Authorized Users provided to us or collected by us is governed by the Privacy Policy.

4. RIGHT TO USE HEADSET SERVICES AND LICENSED DATA

- a. *Use by Customer.* Subject to all of the terms and conditions of this Agreement (including any applicable Order(s)), and any and all exhibits and policies that are referenced by the foregoing, Headset grants Customer a non-exclusive, non-



transferable, non-sublicensable right and license during the applicable Subscription Term to access and use the following solely (except as may otherwise be provided in a given Order) for Customer's internal business purposes only in accordance with this Agreement (including without limitation any Order) and the Documentation: (i) the Headset Service(s) designated on Customer's Order(s), (ii) the data that Headset makes available to Customer through the Headset Service(s) designated on Customer's Order(s) ("**Licensed Data**"), and (iii) the Data Derivatives that Headset makes available to Customer through the Headset Service(s) designated on Customer's Order(s).

- b. *Use by Others.* Customer may permit its Authorized Users to use the Headset Service(s) designated in Customer's Order(s) and corresponding Licensed Data and Data Derivatives, provided such Authorized Users' use must be for Customer's benefit only and remain in compliance with this Agreement and each Order. Customer will be responsible and liable for all of its Authorized Users' use and access and their compliance with the terms and conditions herein.
- c. *General Restrictions.* Customer must not and must not allow its Authorized Users or any third-party to: (i) rent, lease, copy, transfer, sublicense or provide access to the Headset Services, any Licensed Data, or any Data Derivatives to any third-party (except Authorized Users as specifically authorized above); (ii) incorporate the Headset Services, any Licensed Data, or any Data Derivative (or any portion of the foregoing) into, or use them with or to provide, any other site, product or service; (iii) use the Headset Service), any Licensed Data, or any Data Derivative (or any portion of the foregoing) for time sharing purposes or for a third-party's benefit; (iv) publicly disseminate information regarding the performance of the Headset Services (which constitutes Headset's Confidential Information); (v) modify or create a derivative work of the Headset Services, any Licensed Data, or any Data Derivative (or any portion of the foregoing); (vi) reverse engineer, disassemble, decompile, translate, or otherwise seek to obtain or derive the source code, underlying ideas, algorithms, file formats or non-public APIs to any Headset Service, except to the extent expressly permitted by applicable law and then only upon advance notice to Headset; (vii) break or circumvent any security measures or rate limits for Headset Services, including as may be described in



any applicable Order; (viii) distribute any portion of the Headset Service, any Licensed Data, or any Data Derivative to any third-party; or (ix) remove or obscure any proprietary or other notices contained in any of the Headset Services, Licensed Data, or Data Derivative.

5. CUSTOMER DATA.

- a. *Rights in Customer Data.* Except as otherwise provided herein or in any Order, Customer retains all right, title and interest (including any intellectual property rights) in and to the Customer Data. Customer hereby grants Headset a non-exclusive, worldwide, royalty-free right and license during the Subscription Term to collect, and in perpetuity to use, copy, store, transmit (including to third-parties where requested by Customer under Section 5(e) below), modify and create derivative works of the Customer Data solely to the extent necessary to provide the Headset Services and related services to Customer and as otherwise provided below.
- b. *Aggregate/Anonymous Data.* Customer agrees that Headset will have the right to generate Aggregate/Anonymous Data, including by aggregating and anonymizing Customer Data. Notwithstanding anything to the contrary herein, the parties agree that, as between the parties, Aggregate/Anonymous Data, including any derivative works based thereon, is Headset's intellectual property, which Headset may use for any business purpose during or after the term of this Agreement (including without limitation to develop and improve Headset's products and services and to create and distribute reports and other materials, including, without limitation, to other Users through Insights). Except as otherwise provided under this Agreement, Headset will not distribute Aggregate/Anonymous Data in a manner that specifically identifies Customer or any Authorized User. To the extent that Aggregate/Anonymous Data includes deidentified information derived from Customer Personal Data ("deidentified information"), Headset implements adequate procedures to ensure that deidentified information cannot reasonably identify, relate to, describe, be capable of being associated with, or be linked, directly or indirectly, to a particular

individual. Without limiting the generality of the foregoing, Customer agrees that Aggregate/Anonymous Data may be used in a way that identifies products sold by Customer or its Affiliates.

- c. *Security.* Headset uses commercially reasonable efforts to maintain technical and organizational measures designed to secure its systems from unauthorized access, use or disclosure, as described at <https://www.headset.io/security>. Except as expressly set forth in the foregoing, Headset takes no responsibility for implementing or maintaining security controls or measures for Customer Data other than its express obligations herein.
- d. *Storage.* Headset does not provide an archiving service. Headset expressly disclaims all obligations with respect to storage of Customer Data.
- e. *Permitted Disclosure of Customer Data.* Notwithstanding anything to the contrary in this Agreement, if a Customer affirmatively indicates that it wants Headset to share its Customer Data with a third party, or Customer otherwise opts in to such data sharing, Headset may share the applicable Customer Data with the relevant third party. For example, a Customer may opt in to share data with a particular third party by accepting an invitation through the Headset Services. A Customer may request that Headset stop sharing its Customer Data at any time by adjusting the applicable account settings, and Headset will use commercially reasonable efforts to promptly honor such request.
- f. *Data Processing.* Headset will process Customer Data in accordance with the terms set forth in the DPA.

6. CUSTOMER OBLIGATIONS

Customer agrees to: (a) obtain all necessary rights, releases and consents to allow Customer Data and Third-Party Content, if any, to be collected, used and disclosed in the manner contemplated by this Agreement and to grant Headset the rights herein; (b) use the Headset Services in accordance with applicable law and in compliance with this Agreement; (c) comply with any third-party terms applicable to any Third-Party Products used in connection with the Headset Services; and (d) not take any action



that would cause Headset or the Headset Services to become subject to any third-party terms. Customer represents and warrants that the collection, use and disclosure of Customer Data, Customer Personal Data and Third-Party Content will not violate third-party rights, including intellectual property, privacy and publicity rights. Customer agrees to keep the information it provided when creating an account up-to-date so that Headset may send notices, statements and other information by email or through Customer's account. Customer must ensure that any user IDs, passwords and other access credentials (such as API tokens) for the Headset Services are kept strictly confidential and not shared with any unauthorized person. If any Authorized User stops working for Customer, Customer must immediately terminate that person's access to its account and any Headset Service. Customer will be responsible for any and all actions taken using its and its Authorized Users' accounts, passwords or access credentials. Customer must notify Headset immediately of any breach of security or unauthorized use of its account. Accounts are granted to specific Customer named on the Order and must not be shared with others.

7. SUPPORT SERVICES

Headset makes available web-based support through the Website. Any support services are subject to this Agreement and Headset's support policies as indicated under the Order. Headset may also provide onboarding, deployment and other services at prices and scope set forth under an Order. Customer may use anything delivered as part of these additional services internally during its Subscription Term to support its authorized use of the applicable Headset Services, subject to the restrictions in Section 4. Headset's ability to deliver support services under this Section 7 will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer needed to deliver the support services.

8. FEES AND PAYMENT

Customer shall pay Headset the fees set forth in each Order (collectively, the “**Subscription Fee**”) for each Subscription Term. Except as may otherwise be stated in an Order, Headset will not be required to refund any Subscription Fee under any circumstances.

9. TERM AND TERMINATION

- a. *Term.* This Agreement is effective until all Subscription Terms for the Headset Services have expired or are terminated as expressly permitted in the Agreement (including any applicable Order or Orders).
- b. *Subscription Term.* By placing an Order for purchase of a Headset Service, Customer is agreeing to pay the applicable Subscription Fee set forth in the applicable Order for the entire Subscription Term. Customer cannot cancel or terminate a Subscription Term except as expressly permitted by Section 9.d. hereof or any applicable Order. If no subscription start date is specified when ordering a Headset Service, such subscription will begin when Customer first obtains access to the applicable Headset Service.
- c. *Suspension of Service.* Headset may suspend Customer’s access to any or all of the Headset Services if: (i) Customer fails to pay any amounts due hereunder or under any Order, (ii) Customer breaches any provision of this Agreement, or (iii) suspension is necessary to prevent harm or liability to other Users or third-parties; to comply with applicable laws, rules or regulations; or to preserve the security, stability, availability or integrity of the Headset Services. Headset will have no liability for suspending or disabling Customer’s access to the Headset Services. For avoidance of doubt, Customer will remain responsible for payment of any Subscription Fee during any period in which such Customer’s access to



the Headset Services has been suspended. Notwithstanding the foregoing, unless this Agreement has been terminated, Headset will reasonably cooperate with Customer to restore access to the Headset Service or Headset Services to which the Customer has subscribed once it verifies that Customer has resolved the condition requiring suspension.

- d. *Termination for Cause.* Either party may terminate this Agreement, including any Order, if the other party: (i) fails to cure any material breach of this Agreement (if curable) within thirty (30) days after written notice detailing the breach; (ii) commits a material incurable breach; (iii) ceases operation without a successor; or (iv) seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition or comparable proceeding, or if any such proceeding is instituted against that party (and not dismissed within sixty (60) days thereafter). Headset may also terminate this Agreement or any related Order immediately if Customer breaches any provision of this Agreement or commits repeated violations of this Agreement.
- e. *Effect of Termination.* Upon any expiration or termination of this Agreement, an Order, or a Subscription Term: (i) Customer's rights to use the applicable Headset Service(s) shall terminate and it must immediately cease use of all applicable Headset Services, Licensed Data, and Data Derivatives, and delete any applicable Headset Documentation, passwords or access codes and any other Headset Confidential Information in Customer's possession, custody or control and (ii) Customer's right to access any Customer Data in the applicable Headset Service will cease and Headset may delete any such data in its possession at any time. If Headset terminates this Agreement for cause as provided in Section 9.d, any payments for the remaining portion of the Subscription Term will become due and must be paid immediately by Customer. Except where this Agreement specifies an exclusive remedy, all remedies under this Agreement, including termination or suspension, are cumulative and not exclusive of any other rights or remedies that may be available to a party.
- f. *Survival.* Sections 2, 4.c., 5, 8, 9.e, 9.f, 10, 11, 12, 13, 14, 15, and 16 will survive any expiration or termination of this Agreement.

10. CONFIDENTIAL INFORMATION.

- a. *Nondisclosure.* Receiving Party shall not use Confidential Information for any purpose other than in connection with the receipt, provision or use of the Headset Services (the “**Purpose**”). Receiving Party may not: (i) disclose Confidential Information to any employee or contractor of Receiving Party unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Receiving Party with terms no less restrictive than those of this Section 10.a.; and (ii) shall not disclose Confidential Information to any other third-party without Receiving Party’s prior written consent or otherwise permitted under this Agreement. Without limiting the generality of the foregoing, Receiving Party shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Receiving Party shall promptly notify Disclosing Party of any misuse or misappropriation of Confidential Information that comes to Receiving Party’s attention. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Receiving Party shall give Disclosing Party prompt notice of any such legal or governmental demand and reasonably cooperate with Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at Disclosing Party’s expense.
- b. *Injunction.* Receiving Party agrees that breach of this Section 10 would cause Disclosing Party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Disclosing Party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- c. *Retention of Rights.* Except as expressly set forth under this Agreement, this Agreement does not transfer ownership of Headset’s Confidential Information or grant a license thereto. Headset will retain all right, title, and interest in and to all its Confidential Information.



- d. *Exception & Immunity.* Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Receiving Party is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
 - i. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (I) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (II) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - ii. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

11. IP and FEEDBACK.

- a. *Headset's IP Rights.* Headset retains all right, title, and interest in and to the Headset Services, including without limitation all software used to provide the Headset Services and all graphics, user interfaces, logos, and trademarks underlying, embodied in, and/or made available through the Headset Services, Licensed Data, Aggregate/Anonymous Data, and Data Derivatives. Except as expressly set forth under Section 4.a, this Agreement does not grant Customer any intellectual property license or rights in or to the Headset Services or any of its components or any of the Licensed Data, Aggregate/Anonymous Data, or Data Derivatives. Customer recognizes that the Headset Services and its components, Licensed Data, Aggregate/Anonymous Data, and Data Derivatives, Third Party Products are protected by copyright and other laws.
- b. *Feedback.* Headset has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer or Users provide to Headset, and



nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Headset's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the User in question. "**Feedback**" means any suggestion or idea for improving or otherwise modifying the Website or any of Headset's products or services, including the Headset Services.

12. INDEMNIFICATION.

a. Headset's Indemnification. Headset shall defend, indemnify, and hold harmless Customer and the Customer Associates (as defined below) against any third-party claim, suit, or proceeding arising out of or related to any (i) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content made available by Headset through the Headset Services and (ii) claims related to Headset's violation of applicable laws. Headset's obligations set forth in this Section 12.a. include retention and payment of attorneys and payment of court costs, as well as settlement at Headset's expense and payment of judgments. Headset's obligations set forth in this Section 12.a. do not apply with respect to (1) customized specifications expressly required by Customer; (2) modifications made by Customer after delivery of the Headset Services by Headset; (3) Customer's combination of the Headset Services with other products, processes or materials (including Customer Data) where the alleged infringement relates to such combination; (4) Customer's continued use of the allegedly infringing material after being notified by Headset in writing thereof or after being informed of modifications that would have avoided the alleged infringement; and (f) Customer's use of the Headset Services in violation of this Agreement. Customer will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. "**Customer Associates**" means Customer's officers,



directors, shareholders, parents, subsidiaries, agents, successors, and assigns.

b. Customer's Indemnification. Customer shall defend, indemnify, and hold harmless Headset and the Headset Associates (as defined below) against any third-party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the Headset Services, including, without limitation, (i) claims by Customer's employees, as well as by Customer's own customers; (ii) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data or Third-Party Content; (iii) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded through the Headset Services, including, without limitation, Customer Data or Third-Party Content; and (iv) claims related to Customer's violation of applicable laws. Customer's obligations set forth in this Section 12.b. include retention and payment of attorneys and payment of court costs, as well as settlement at Customer's expense and payment of judgments. Headset will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. "**Headset Associates**" means Headset's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.

13. **DISCLAIMERS.**

THE HEADSET SERVICES, LICENSED DATA, AND DATA DERIVATIVES ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. HEADSET MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE,



FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. HEADSET MAKES NO REPRESENTATION, WARRANTY OR GUARANTEE THAT HEADSET SERVICES, LICENSED DATA, AND DATA DERIVATIVES WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS, THAT LICENSED DATA, AND DATA DERIVATIVES OR CUSTOMER DATA WILL BE ACCURATE, COMPLETE OR PRESERVED WITHOUT LOSS, OR THAT THE HEADSET SERVICES WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR-FREE. HEADSET DOES NOT GUARANTEE THAT SECURITY MEASURES WILL BE ERROR-FREE AND WILL NOT BE RESPONSIBLE OR LIABLE FOR UNAUTHORIZED ACCESS BEYOND ITS REASONABLE CONTROL. HEADSET WILL NOT BE RESPONSIBLE OR LIABLE IN ANY MANNER FOR ANY THIRD-PARTY PRODUCTS, THIRD-PARTY CONTENT, OR NON-HEADSET SERVICES (INCLUDING FOR ANY DELAYS, INTERRUPTIONS, TRANSMISSION ERRORS, SECURITY FAILURES, AND OTHER PROBLEMS CAUSED BY THESE ITEMS), FOR CUSTOMER PERSONAL DATA RECEIVED FROM CUSTOMER IN BREACH OF THIS AGREEMENT, FOR THE COLLECTION, USE AND DISCLOSURE OF CUSTOMER DATA AUTHORIZED BY THIS AGREEMENT, OR FOR DECISIONS OR ACTIONS TAKEN (OR NOT TAKEN) BY CUSTOMER BASED UPON THE HEADSET SERVICES. THE DISCLAIMERS IN THIS SECTION SHALL APPLY TO THE MAXIMUM EXTENT NOT PROHIBITED BY APPLICABLE LAW, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, ANY STATUTORILY REQUIRED WARRANTIES UNDER APPLICABLE LAW, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD AND MAXIMUM EXTENT PERMITTED BY LAW.

14. LIMITATION OF LIABILITY.



- a. *Cap on Liability.* HEADSET'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WITH RESPECT TO ANY GIVEN CUSTOMER WILL NOT EXCEED THE TOTAL SUBSCRIPTION FEES ACTUALLY PAID BY OR ON BEHALF OF SUCH CUSTOMER TO HEADSET DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. *Other Damages.* IN NO EVENT WILL HEADSET, THE HEADSET ASSOCIATES, CUSTOMER, OR THE CUSTOMER ASSOCIATES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

15. THIRD-PARTY PRODUCTS AND INTEGRATIONS.

If Customer uses Third-Party Products in connection with the Headset Services, those products may make Third-Party Content available to Customer and may access Customer's instance of the Headset Services, including Customer Data. Customer is solely responsible for ensuring that it has the right to provide the Third-Party Content in connection with its use of the Headset Services. Headset does not warrant or support Third-Party Products or Third-Party Content and disclaims all responsibility and liability for these items and their access to the Headset Services, including their modification, deletion, disclosure or collection of Customer Data. Headset is not responsible in any way for Customer Data once it is transmitted, copied or removed from the Headset Services.

16. GENERAL.

- a. *Independent Contractors.* The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no Headset employee or contractor will be an employee of Customer.
- b. *Notices.* Headset may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to support@headset.io, and such notices will be deemed received 72 hours after they are sent.
- c. *Force Majeure.* No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- d. *Assignment & Successors.* Customer may not assign this Agreement or any of its rights or obligations hereunder without Headset's express written consent. Except to the extent forbidden in this Section 16.d., this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- e. *Severability.* To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- f. *No Waiver.* Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.

- g. *Choice of Law & Jurisdiction:* This Agreement will be governed solely by the internal laws of the State of Washington, including without limitation applicable federal law, without reference to: (i) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (ii) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (iii) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of King County, Washington. This Section 16.g. governs all claims arising out of or related to this Agreement, including, without limitation, tort claims.
- h. *Conflicts.* In the event of a conflict between these Terms of Service, the terms of any Order, and any Headset policy posted online (e.g., the Privacy Policy, the DPA), the order of precedence will be: (i) Order, (ii) these Terms of Service, and (iii) any Headset policy, provided that, where a particular term of a Headset policy indicates specifically that it is intended to supersede these Terms of Service, such term will control.
- i. *Construction.* This Agreement will not be construed in favor of or against either party by reason of authorship.
- j. *Technology Export.* Customer may not: (1) permit any third-party to access or use the Headset Services in violation of any U.S. law or regulation; or (2) export any software provided by Headset or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third-party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- k. *Entire Agreement.* This Agreement (including any Order) sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- l. *Amendment.* Headset may amend these Terms of Service from time to time by posting an amended version at the Website (or one of its subdomains). Where changes are material, Headset will use commercially reasonable efforts to

provide notice of such changes using the email address associated with Customer's account, if applicable. Such amendment will be deemed accepted and become effective thirty (30) days after the amended version is posted at the Website (the "**Proposed Amendment Date**"), and Customer's use of the Headset Services following the Proposed Amendment Date of an amendment will confirm Customer's consent thereto. These Terms of Service may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 16.I., Headset may revise the Privacy Policy and DPA at any time by posting a new version at the Website, and such new version will become effective

- m. *Attorneys' Fees.* In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.