

API TERMS OF SERVICE

January 31, 2023

Nexxt Intelligence Inc. (“**Company**”) owns certain software that it has developed and makes commercially available to its customers for use as a cloud based, managed software as a service offering.

In connection with the use of *inca* (the “**Service**”, as defined below), you and/or your organization or corporation (the “**Customer**”) hereby agree to the terms of service and conditions contained herein (collectively, the “**Terms of Service**”).

BY ACCEPTING THE TERMS OF SERVICE, EITHER BY: A) ACCEPTING THE TERMS OF SERVICE ONLINE, B) SIGNING THE ORDER FORM (AS DEFINED BELOW) WHICH REFERENCES THE TERMS OF SERVICE, OR C) USING, OR ACCESSING THE SERVICE AFTER BEING MADE AWARE OF THESE TERMS OF SERVICE, THE CUSTOMER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTOOD ALL OF THE PROVISIONS, AND HAS THE AUTHORITY TO AGREE TO, AND IS CONFIRMING THAT IT IS AGREEING TO, COMPLY WITH AND BE BOUND BY, ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN, TOGETHER WITH ANY ORDER FORM AND INCLUDING THE COMPANY’S PRIVACY POLICY LOCATED AT <https://next.in/privacy>, ALL OF WHICH ARE INCORPORATED BY REFERENCE AND DEEMED TO BE PART OF THE ENTIRE AGREEMENT ENTERED INTO BETWEEN COMPANY AND THE CUSTOMER.

IF, AFTER READING THE TERMS OF SERVICE, THE CUSTOMER DOES NOT ACCEPT OR AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN, THE CUSTOMER SHALL NOT USE, OR ACCESS THE SERVICE.

IF YOU ARE AN AGENT OR EMPLOYEE OF THE CUSTOMER THEN YOU HEREBY REPRESENT AND WARRANT THAT: (I) THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS DULY AUTHORIZED TO ACCEPT THIS AGREEMENT ON CUSTOMER’S BEHALF AND TO BIND THE CUSTOMER, AND (II) THE CUSTOMER HAS FULL POWER, CORPORATE OR OTHERWISE, TO ENTER INTO THIS AGREEMENT AND PERFORM ITS OBLIGATIONS HEREUNDER.

1. **Definitions**

1.1 In this Agreement:

“**Agreement**” means the Order Form and these Terms of Service.

“**Customer**” means the API Key holder who has enters into an agreement with Company through acceptance of this Agreement.

“**Customer Data**” means the data submitted by or for Customer to the Service or collected and processed by or for Customer using the Service, including the Survey Data as well as Personal Information belonging to Customer’s employees for the purpose of billing.

“**Data Protection Laws**” means all laws and regulations, including laws and regulations of Canada (including the *Personal Information Protection and Electronic Documents Act* (Canada) and the Canadian Anti-Spam Legislation, each as amended or superseded from time to time) applicable to the Processing of Personal Information under the Agreement.

“Documentation” means the written or electronic documentation, including user manuals, reference materials, installation manuals and/or release notes, if any, that Company generally makes available to subscribers to the Service, as the case may be.

“Fee” means the fee payable by Customer for a Subscription as set out in the Order Form.

“Malicious Code” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and trojan horses.

“Order Form” means (i) an electronic form provided by Company on its website for ordering Subscriptions, Support Services, and/or other services, or (ii) a written document executed by Company and Customer in respect to Customer’s purchases of Subscriptions, Support Services, and/or other services from Company.

“Personal Information” means any information relating to an identified or identifiable natural person as defined under applicable Data Protection Laws.

“Processing” means any operation or set of operations which is performed upon Personal Information, whether or not by automatic means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

“Service” means the API offering for which Customer is granted rights of access and use in accordance with this Agreement, including any ancillary services available in connection therewith, as such Service may be updated from time to time by Company in its sole discretion.

“Subscription” means the right granted by Company to Customer to access and use the Service in accordance with these Terms of Service and the applicable Order Form, for the Subscription Term specified in the applicable Order Form.

“Subscription Term” means the period of time that Customer is authorized by Company to access and use the Service (including the Documentation).

“Support Services” means the technical support services for the Service provided by Company as described in, and in accordance with, the Support Terms.

“Support Terms” means the terms on which Company, or an authorized support partner, provides Support Services to Customer.

“Survey Data” means all data that is processed by the API, excepting the API Key, including all input and output information.

“User” means an employee or contractor of Customer to whom Customer has supplied a user identification and password.

2. **The Service**

- 2.1 **Right to Use the Service.** Subject to the terms and conditions of this Agreement (including the applicable Order Form) and payment of the applicable Fees, Company hereby grants to Customer a non-exclusive, worldwide, non-transferable, non-sublicensable, internal right to (a) access and use (and to permit Users to access and use) the Service, solely during the Subscription Term; and (b) access and use, and to permit Users to access and use, the Documentation as reasonably necessary to support the Customer's permitted use of the Service during the Subscription Term.
- 2.2 **Reservation of Rights.** Company and its licensors own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trade-mark rights, trade secret rights and all other intellectual property rights), in and to the Service and Documentation and any copies, corrections, bug fixes, enhancements, modifications or new versions thereof, all of which shall be deemed part of the Service and subject to all of the provisions of this Agreement. Customer shall keep the Service and Documentation free and clear of all liens, encumbrances and/or security interests. Subject to the limited rights expressly granted in this Agreement, Company reserves all rights, title and interest in and to the Service and Documentation. No rights are granted to Customer pursuant to this Agreement other than as expressly set forth in this Agreement.
- 2.3 **Restrictions.** Customer shall not (and shall not allow Users or any third party to): (a) possess, download or copy the Service or any part of the Service, including but not limited any component which comprises the Service, but not including any output from the Service; (b) knowingly interfere with service to any of Company's users, host or network, including by means of intentionally submitting a virus, overloading, flooding, spamming, mail bombing or crashing the Service; (c) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the Service and/or Documentation, except to the extent that enforcement is prohibited by applicable law; (d) circumvent any timing restrictions that are built into the Service; (e) sell, rent, lend, transfer, distribute, license, or grant any rights in the Service or Documentation in any form to any person without the written consent of Company; (f) remove any proprietary notices, labels, or marks from the Service or Documentation; (g) create any "**links**" to or "**frame**" or "**mirror**" of the Service or any portion thereof; or (h) use the Service to create, collect, transmit, store, use or process any Customer Data that: (i) Customer does not have the lawful right to create, collect, transmit, store, use or process, or (ii) violates any applicable laws, or infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity).
- 2.4 **Aggregated Data.** Customer acknowledges and agrees that the Service compiles, stores and uses aggregated data and system usage, analytics and diagnostic information to monitor and improve the Service and for the creation of new products. All data collected, used, and disclosed by Company will be in aggregate, anonymized and/or de-identified form only and will not identify Customer, its Users, Customer Data, Personal Information, or any third parties utilizing the Service.
3. **Account Activation**
- 3.1 **Account.** Customer is required to open an account with Company (an "**Account**") in order to use the Service. During registration, a User will be asked to provide Personal Information in order to create an Account on behalf of Customer. Customer shall ensure that such Account activation information is accurate and complete and that such information remains current throughout the

Subscription Term. Customer is fully responsible for all activity that occurs in Customer's Account, including for any actions taken by its Users.

3.2 API Keys. Customer is responsible for keeping the API Key secure. Company will not be liable for any loss or damage caused by or arising from a failure by Customer or its Users to maintain the security of the Customer's Account and API Key.

3.3 Customer Responsibilities. Customer is also responsible for all activity in the Account and for Customer Data uploaded, collected, generated, stored, displayed, distributed, transmitted or exhibited on or in connection with Customer's Account.

4. Support Services

4.1 Support. Company shall provide the following support to Customer: (a) email support from 9:00 A.M. to 6:00 P.M. EST, Monday to Friday (excluding statutory holidays in the Province of Ontario) and any emails received outside of such hours will be responded to on a reasonable efforts basis within one (1) business day.

4.2 Service Levels; Availability. Company will use commercially reasonable efforts to ensure that the Service will achieve Service Availability (as defined below) of at least ninety-nine percent (99%) during each calendar month. "**Service Availability**" means the number of minutes in a month that the key components of the Service are operational as a percentage of the total number of minutes in such month, excluding downtime resulting from (a) scheduled maintenance, (b) events of force majeure, (c) malicious attacks on the Service, (d) issues associated with the Customer's network or equipment, or (e) inability to deliver the Service because of acts or omissions of Customer. Company reserves the right to take the Service offline for scheduled maintenance for which Customer has been provided reasonable notice and Company reserves the right to change its maintenance window upon prior notice to Customer.

5. Customer Data, Learned Elements and Personal Information

5.1 Ownership. Through use of the Service, Customer grants Company joint ownership of all Survey Data used in conjunction with the Service, and the parties agree that Company and Customer shall jointly own all right, title, and interest in such Survey Data. As regards other Customer Data, Customer exclusively owns all rights, title, and interest, and hereby authorizes Company to use such Customer Data as required to provide the Service in accordance with the terms hereof.

5.2 Learned Elements. Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation: Survey Data and data derived therefrom); and machine learning models, learned elements, biases, attributes, attribute transformations, weights and other data or works derived from the Survey Data (the "**Learned Elements**"), and Company will be free (during and after the Term hereof) 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 Services and other Company offerings, and (ii) disclose such data solely in anonymized and aggregate or other de-identified form in connection with its business. No other rights or licenses are granted except as expressly set forth herein.

- 5.3 Technical and Organizational Safeguards. In connection with the provision of the Service, Company will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Service and Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Company personnel except (a) to provide the Service and prevent or address service or technical problems, (b) as compelled by law and upon identification of lawful authority, (c) as expressly permitted in writing by Customer, or (d) as allowed under applicable Data Protection Laws. Company shall, in connection with the provision of the Service, comply with Data Protection Laws, as well as the Company's Privacy Policy.
- 5.4 Customer Data Portability and Deletion. Upon request by Customer made during the term hereof or within thirty (30) days after the effective date of termination of this Agreement, Company will make the Customer Data available to Customer for export or download as provided in the Documentation. After such thirty (30)-day period, Company will have no obligation to maintain or provide any Customer Data, and may thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited. Upon request by Customer at any time, Company will delete all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited, within 30 days. Customer hereby agrees that Learned Elements derived from Survey Data do not constitute Customer Data, and are therefore not subject to deletion nor to export at any time.
- 5.5 Customer's Obligations Regarding Personal Information. Customer hereby represents and warrants to, and covenants with Company that, all Survey Data will not contain any Personal Information, and that Customer assumes any liability in the event that Survey Data processed through the Service does contain Personal Data. Customer hereby acknowledges and agrees that Personal Information is only to be provided and processed to Company for the purpose of billing, and that no other Personal Information will be disclosed through the use of the Service.
- 5.6 Company's Processing of Personal Information. Company shall secure Personal Information with all necessary safeguards appropriate to the level of sensitivity of the Personal Information. Company shall only Process Personal Information on behalf of and in accordance with Customer's documented instructions and applicable Data Protection Laws for the following purposes: (a) Processing in accordance with the Agreement; (b) Processing initiated by Customer's Users or customers in their use of the Service; and (c) Processing to comply with other documented reasonable instructions provided by Customer where such instructions are consistent with the terms of the Agreement and applicable Data Protection Laws. Company shall ensure that its personnel engaged in the Processing of Personal Information: (x) are informed of the confidential nature of the Personal Information, (y) have received appropriate training on their responsibilities, and (z) are under contractual or statutory obligations to maintain the confidentiality of Customer Data. Company shall take commercially reasonable steps to ensure the reliability of any Company personnel engaged in the Processing of Personal Information.

6. **Customer Responsibilities**

- 6.1 Users. Customer is responsible for all activities that occur in User Accounts and for its and its Users' compliance with this Agreement. Customer shall: (a) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, and notify Company promptly of any such unauthorized access or use; and (b) use the Service only in accordance with the Documentation and applicable laws and government regulations.

- 6.2 Use Guidelines. Customer shall use the Service solely for its internal business purposes as contemplated by this Agreement and shall not interfere with or disrupt the integrity or performance of the Service or the data contained therein.
- 6.3 Equipment. Customer is solely responsible for acquiring, servicing, maintaining and updating all equipment, computers, software and communications services (such as Internet access) that are required to allow Customer to access and use the Service and for all expenses relating thereto. Customer agrees to access and use, and shall ensure that all Users access and use, the Service in accordance with any and all operating instructions or procedures that may be issued by Company from time to time.
- 6.4 Feedback. Customer may provide reasonable feedback to Company including, but not limited to, suitability, problem reports, suggestions and other information with respect to the Service ("**Feedback**"). Customer hereby grants to Company a fully paid-up, royalty-free, worldwide, assignable, transferable, sub-licenseable, irrevocable, perpetual license to use or incorporate into the Service, Documentation and any other Company products or services, or for any other purposes, any Feedback provided by Customer or its Users.

7. **Fees and Payment**

- 7.1 Fees. Customer shall pay all Fees specified in each Order Form. All Fees are quoted and payable in Canadian dollars, except as otherwise specified. Except as otherwise specified herein or in an Order Form, payment obligations are non-cancellable and Fees paid are non-refundable.
- 7.2 Invoicing and Payment. Fees for Subscriptions will be invoiced in advance and otherwise in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, charges are due net thirty (30) days from the invoice date. Customer is responsible for maintaining complete and accurate billing and contact information with Company.
- 7.3 Overdue Charges. Any payment not received from Customer by the due date may accrue (except with respect to charges then subject to a reasonable and good faith dispute), at Company's discretion, late charges at the rate of 1.5% of the outstanding balance per month (18% per annum), or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.
- 7.4 Suspension for Non-Payment. Company may immediately suspend Customer's Subscription to use the Service if Customer fails to make any payment due in respect of the Service and does not cure such non-payment within ten (10) business days after receiving notice of such failure. Any suspension of the rights hereunder by Company under the preceding sentence shall not excuse Customer from its obligation to make all payment(s) under the Agreement.
- 7.5 Payment Disputes. Company will not exercise its rights under Sections 7.3 or 7.4 hereof if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.
- 7.6 Taxes. Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, HST, GST, sales, value-added, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for

paying all Taxes associated with its purchases hereunder. If Company has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Company will invoice Customer and Customer will pay that amount unless Customer provides Company with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Company is solely responsible for taxes assessable against it based on its income, property and employees.

8. **Confidentiality Obligations**

- 8.1 **Definition of Confidential Information.** As used herein, “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Service and Documentation, Customer Data (which is the Confidential Information of the Customer), business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.
- 8.2 **Confidentiality.** Subject to Section 8.4, and unless the Disclosing Party expressly agrees in writing otherwise, the Receiving Party will: (a) use the Disclosing Party’s Confidential Information only during the Subscription Term and only as necessary to perform the Receiving Party’s obligations under this Agreement; (b) disclose the Disclosing Party’s Confidential Information only to the Receiving Party’s directors, officers, agents, employees and authorized subcontractors and their employees and only to the extent that such disclosure is necessary to perform the Receiving Party’s obligations or exercise the Receiving Party’s rights under this Agreement. Customer shall not disclose any performance, benchmarking, or feature-related information about the Service.
- 8.3 **Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care).
- 8.4 **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure.
- 8.5 **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.
- 8.6 **Return of Confidential Information.** Upon Disclosing Party’s written request upon expiration or termination of this Agreement (or at any earlier time upon written request by the Disclosing Party),

the Receiving Party will: (a) promptly deliver to the Disclosing Party all originals and copies, in whatever form or medium, of all the Disclosing Party's Confidential Information and all documents, records, data and materials, in whatever form or medium, containing such Confidential Information in the Receiving Party's possession, power or control and the Receiving Party will delete all of the Disclosing Party's Confidential Information from any and all of the Receiving Party's computer systems, retrieval systems and databases; and (b) request that all persons to whom it has provided any of the Disclosing Party's Confidential Information comply with this Section 8.6.

9. **Limited Warranties and Disclaimers**

9.1 **Limited Warranties.** Company hereby represents and warrants to Customer that:

- (a) During the Subscription Term the Service will perform materially in accordance with the Documentation;
- (b) the Service will not contain any Malicious Code;
- (c) it owns or otherwise has sufficient rights in the Service and Documentation to grant to Customer the rights to access and use the Service and Documentation granted herein.

9.2 **Remedy.** In the event of a breach of one or more of the warranties set forth in Section 9.1 hereof, Company shall use reasonable commercial efforts to correct such breach of the warranty. If Company is unable to remedy the breach of warranty within a reasonable time, Company shall refund the Fee paid for the Service.

9.3 **Exclusive Remedies.** THE WARRANTIES SET OUT IN SECTION 9.1 HEREOF ARE THE ONLY WARRANTIES PROVIDED BY COMPANY AND THE REMEDIES SET OUT IN SECTION 9.2 HEREOF ARE THE SOLE AND EXCLUSIVE REMEDIES OF CUSTOMER FOR A BREACH OF WARRANTY.

9.4 **General Warranty Disclaimers.** EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED HEREIN, THE SERVICE AND THE PROFESSIONAL SERVICES ARE PROVIDED "**AS IS**" AND "**AS AVAILABLE**" AND COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, AND THERE ARE NO CONDITIONS, ENDORSEMENTS, UNDERTAKINGS, GUARANTEES, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, (INCLUDING WITHOUT LIMITATION ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF QUALITY, PERFORMANCE, RESULTS, FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF THE TRADE) AS TO, ARISING OUT OF OR RELATED TO THE FOLLOWING: (I) THIS AGREEMENT; (II) THE SERVICE; AND/OR (III) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION OR CUSTOMER DATA TRANSMITTED TO OR FROM COMPANY VIA THE SERVICE. COMPANY DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT THE SERVICE WILL OPERATE ERROR-FREE OR UNINTERRUPTED OR THAT ALL PROGRAMMING ERRORS IN THE SERVICE CAN BE FOUND IN ORDER TO BE CORRECTED. COMPANY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

9.5 Internet Connectivity Disclaimer. Company makes the Service available for access via the Internet. Customer shall provide, at Customer's own expense, all necessary hardware, applications and Internet connectivity necessary to access the Service over the Internet. Customer is responsible for and shall ensure that Customer's computer equipment and an internet connection meets the minimum specifications published by Company in the Documentation and updated from time to time on the Company's website, and Customer shall periodically update Customer's computer equipment and/or Internet connection to meet such minimum specifications. Customer hereby acknowledges that the Service may be interrupted due to (a) website downtime for scheduled maintenance at Company's sole discretion, or (b) interruptions in Internet connectivity or other website downtime caused by circumstances beyond Company's control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer or telecommunications failures, or delays involving hardware or software not within Company's control or network intrusions. Customer hereby acknowledges and agrees that Company shall not, in any way, be liable for, or have responsibility with respect to, any such service interruptions and releases Company from any claims relating thereto.

10. Indemnification by Customer

Customer shall defend, indemnify and hold Company harmless against any loss, damage or costs (including reasonable legal fees) incurred in connection with any claims, demands, suits, or proceedings made or brought against Company by a third party (a) alleging that the Customer Data or Customer's use of the Service in violation of this Agreement, infringes the intellectual property rights of, or has otherwise harmed, a third party; (b) based on a breach of any Data Protection Laws or a breach of this Agreement; or (c) caused by any negligent act or omission of Customer or its employees, contractors or agents (each a "**Customer Indemnified Claim**"); provided, that Company (a) promptly gives written notice of the Customer Indemnified Claim to Customer; (b) gives Customer sole control of the defense and settlement of the Customer Indemnified Claim (provided that Customer may not settle or defend any Customer Indemnified Claim unless it unconditionally releases Company of all liability); and (c) provides to Customer, at Customer's cost, all reasonable assistance and information.

11. Limitation of Liability

11.1 Exclusion of Indirect and Consequential Damages. SUBJECT TO SECTION 11.3 HEREOF, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOST SAVINGS OR OTHER SIMILAR PECUNIARY LOSS).

11.2 Limitation of Liability. SUBJECT TO SECTION 11.3 HEREOF, IN NO EVENT SHALL EITHER PARTY'S MAXIMUM, CUMULATIVE AND AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR RELATING TO THE SUBJECT MATTER HEREOF FOR ALL CLAIMS, COSTS, LOSSES AND DAMAGES EXCEED THE AMOUNTS ACTUALLY PAID BY AND DUE FROM CUSTOMER HEREUNDER IN THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT ENLARGE THIS CUMULATIVE LIMIT.

11.3 Certain Damages Not Excluded or Limited. NOTWITHSTANDING THE FOREGOING, NO LIMITATION OF EITHER PARTY'S LIABILITY SET FORTH IN THIS AGREEMENT SHALL APPLY TO (I) DAMAGES ARISING FROM A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER, (II) INDEMNIFICATION CLAIMS SUBJECT TO THE LIMITATION CONTAINED IN SECTION 11.2 HEREOF, (III) DAMAGES ARISING FROM INFRINGEMENT OF A PARTY'S INTELLECTUAL PROPERTY RIGHTS; (IV) ANY CLAIMS FOR NON-PAYMENT, (V) FRAUD OR WILLFUL MISCONDUCT, OR (VI) BODILY INJURY OR DEATH.

12. **Term**

12.1 Term, Renewal. This Agreement commences on the date of the initial Order Form and shall continue until terminated earlier in accordance with the provisions of this Agreement or applicable law. This Agreement shall remain in effect and govern all Order Forms until (i) the end of the Subscription Term under such Order Form, (ii) such Order Form is terminated by the parties, or (iii) there has been full performance of the parties' respective obligations under such Order Form.

12.2 Subscriptions. Subscriptions commence on the earlier of the start date specified in the relevant Order Form and continue for the Subscription Term specified therein unless terminated earlier as provided for in this Agreement. Unless otherwise agreed upon in the applicable Order Form, Subscriptions shall automatically renew for additional periods of one (1) year at the list price then in effect at the time of renewal unless Customer gives Company written notice of non-renewal at least sixty (60) days prior to the end of the applicable Subscription Term.

12.3 Termination. A party may terminate this Agreement or a Service Subscription for cause (i) upon thirty (30) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4 Refund or Payment upon Termination. If this Agreement or a Service Subscription is terminated by Customer in accordance with Section 12.3, Company will refund Customer any prepaid Fees covering the remainder of the term of the Subscription Term after the effective date of termination. If this Agreement is terminated by Company in accordance with Section 12.3, Customer will pay any unpaid Fees covering the remainder of the Subscription Term for any current Subscriptions. In no event will termination relieve Customer of its obligation to pay any Fees payable to Company for the period prior to the effective date of termination.

12.5 Suspension of Access to Service. In addition to any termination rights of Company pursuant to this Agreement, extraordinary circumstances may require Company to suspend or terminate (where appropriate), as determined in Company's reasonable discretion, Customer's access to and/or use of, or otherwise modify, the Service in order to: (a) prevent material damages to, or material degradation of the integrity of, Company's or its provider's Internet network; or (b) comply with any law, regulation, court order, or other governmental order. Company will notify Customer of such suspension or termination action as far in advance of such suspension or termination as reasonably possible, and if such advance notice is not possible, then as soon as possible after such suspension or termination. In the event of a suspension, Company will limit such suspension to that which is minimally required and will promptly restore Customer's access to the Service as soon as the event giving rise to the suspension has been addressed (including by Customer agreeing to accept the risks associated with such suspension) or resolved. Unless

caused by a breach of this Agreement by Customer: (i) all Fees related to the Subscription, or other suspended services shall be waived for the duration of the suspension and any such waived Fees which have been pre-paid shall be refunded to Customer; and (ii) in the event of a termination in connection with this Section 12.5, Customer shall receive a refund of any and all prepaid Fees applicable to the remainder of the then-current Subscription Term.

13. **Assignment**

Customer may not assign any of its rights or obligations hereunder, whether by operation of law, change of control or otherwise, without the prior written consent of Company. Notwithstanding the foregoing, Company may assign this Agreement in its entirety (including all Order Forms), without consent of the Customer, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets to which this Agreement relates. Any attempt by Customer to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14. **Notices**

Any notice required or permitted to be given in accordance with this Agreement will be effective only if it is in writing and sent using: (a) the Service; (b) certified or registered mail; or (c) a nationally recognized overnight courier, to the appropriate party at the address set forth on the Order Form, with a copy, in the case of Company, to inca@nexxt.in. Each party hereto expressly consents to service of process by registered mail. Either party may change its address for receipt of notice by notice to the other party through a notice provided in accordance with this Section 14 (Notices). Notices are deemed given upon receipt if delivered using the Service, two (2) business days following the date of mailing, or one (1) business day following delivery to a courier.

15. **General**

15.1 **Waiver**. The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

15.2 **Unenforceable Provisions**. If any provision of this Agreement is held to be unenforceable or illegal, such decision shall not affect the validity or enforceability of such provisions under other circumstances or the remaining provisions of this Agreement and this Agreement shall be reformed only to the extent necessary to make it enforceable under such circumstances.

15.3 **Independent Contractors**. The relationship of Company and Customer established by this Agreement is that of independent contractors, and nothing contained in this Agreement will be construed to (i) give either party the power to direct and control the day to-day activities of the other, (ii) constitute the parties as legal partners, joint venturers, co-owners or otherwise as participants in a joint undertaking, or (iii) allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever. All financial and other obligations associated with the businesses of the parties are their sole respective responsibilities.

15.4 **Governing Law**. This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable, without regard to its conflict of law principles. The courts located in

the Province of Ontario shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement and each party hereby consents to the exclusive jurisdiction of such courts. The application of the *United Nations Convention on Contracts for the International Sale of Goods* to this Agreement is expressly excluded and does not apply to this Agreement.

- 15.5 Entire Agreement. This Agreement is the entire agreement between Customer and Company in respect to the subject matter hereof, superseding any other agreements or discussions, oral or written, and may not be changed except by a written license agreement with Company or a distributor of Company.
- 15.6 Remedies. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 15.7 Amendments. EXCEPT WHERE PROHIBITED BY APPLICABLE LAW OR AS OTHERWISE AGREED IN THE ORDER FORM, COMPANY MAY UNILATERALLY AMEND THESE TERMS OF SERVICE, IN WHOLE OR IN PART (EACH, AN "**AMENDMENT**"), BY: (I) GIVING CUSTOMER PRIOR NOTICE OF SUCH AMENDMENT; OR (II) POSTING NOTICE OF SUCH AMENDMENT ON THE WEBSITE. UNLESS OTHERWISE INDICATED BY COMPANY ANY SUCH AMENDMENT WILL BECOME EFFECTIVE AS OF THE DATE THE NOTICE OF SUCH AMENDMENT IS PROVIDED TO CUSTOMER OR IS POSTED ON THE WEBSITE (WHICHEVER IS THE EARLIER).
- 15.8 Language of Agreement. The parties hereto confirm that they have requested that this Agreement and all related documents be drafted in English. Any French translation hereof has been provided for information purposes only and does not have any legal value nor create any contractual relationship between the parties. Les parties aux présentes ont exigé que la présente entente et tous les documents connexes soient rédigés en anglais. Toute traduction de celle-ci est non-officielle, est fournie à des fins d'information seulement et ne crée aucun lien contractuel entre les parties.