

## Workai – Terms of Use

**NOTE: This Terms of Use contain Subscriber Agreement and apply to any organization that have paid for a subscription to or use free trial of the Services provided by ECS (“Subscriber”). Unless indicated otherwise, we refer to either Subscriber or End User as “you”, depending on the context.** The Subscriber shall assure that it owns or is otherwise entitled to all content submitted or uploaded to the Services by End Users and controls the use of the Services in accordance with applicable local laws, including but not limited to enabling or disabling third-party integrations, managing permissions, and accessing, modifying, or removing content that is submitted or uploaded to the Services. As we may modify these Terms of Use, you may receive notifications from us about updates. If you do not agree to, or cannot comply with, the modified Terms of Use, you must terminate Subscriber Agreement and stop using the Services. Your continued use of the Services after elapse of termination period constitutes your binding acceptance of such changes.

Effective July 1<sup>st</sup>, 2019

### 1. Subject Matter, Eligibility and Scope

**1.1. Eligibility.** To use the Services as a Subscriber you must agree to these Terms of Use (“**ToU**”) and assure that your End Users will comply with these ToU.

**1.2. ToU.** This ToU govern use of the Services provided to you by us from time to time on a cloud-based Platform. By accessing or using the Services, you acknowledge and agree that you have read, understand, and agree to be bound by these ToU and the Data Privacy Terms. If you do not agree to ToU, then you have no right to access or use the Services.

**1.3. Definitions.** Certain capitalized terms used in this document are defined in Section 2. Other capitalized terms shall have the meaning given to them in these ToU.

**1.4. Contract Formation.** We are only obliged to provide you with the Services if we conclude a Subscriber Agreement with you.

**1.5. Out of Scope.** The Services always exclude (i) the provision of any services that are not provided to you by ECS (including Third Party Applications or on-premise software provided by Third Parties and external websites), even if they interoperate with the Services or can be accessed from or integrated with the Services; (ii) any hardware intended for the connection of devices, systems, or other equipment to the Platform.

### 2. Definitions

**2.1. “Affiliate”** means Third Party that cooperates with ECS to provide the Services to you, including Suppliers.

**2.2. “Applicable Law”** means the law specified in Section 17.4.

**2.3. “Data Privacy Terms”** means the terms located at [<https://workai.com>]

**2.4. “ECS”** means Elastic Cloud Solutions Sp. z o.o. National Court Register number: 0000630696; Tax identification number: 9662105381, address: ul. Żurawia 71, 15-540 Białystok.

**2.5. “ECS Application”** means ECS software deployed on the Platform and/or interoperating with the Platform.

**2.6. “End User”** means individuals that belong to Subscriber team and are authorized by Subscriber to use the Platform.

**2.7. “Laws”** means any law, rule, regulation, norm, and directive including, without limitation, industry or company specific regulations, data privacy regulations, telecommunication and IT security law.

**2.8. “Manual”** means documents concerning the Services that either (i) contains information for End Users (ii) contains

information for Subscribers; both of those documents include rules concerning creating and editing content and the way of configuring of particular components of the Platform; Manual is a work of art in the meaning of Copyright and Neighbouring Rights Law of 4 February 1994 (Dz. U. No 24, item 83 with amendments).

**2.9. “Materials”** means any sample code, scripts, libraries, software development kits, technology, documentation, design, text, editorial materials, informational text, photographs, illustration, audio clips, video clips, artwork and other graphic materials, and names, logos, trademarks and services marks and other proprietary material or information made available to you by or on behalf of us or any Supplier in relation to our provision of Services.

**2.10. “Party”** means Subscriber and/or us, depending on the context.

**2.11. “Platform”** means cloud-based platform solution on which the Services are provided. The cloud-based platform is provided by Microsoft Azure. Microsoft Azure branded cloud-based solutions underlie software-as-a-service offerings from ECS.

**2.12. “Reseller”** means an entity independent of ECS that is allowed by us to resell our Services to Subscriber.

**2.13. “Services”** means software provided by ECS for remuneration or in 30-day free trial.

**2.14. “SLA”** means Service Level Agreement available at [<https://workai.com>].

**2.15. “Subscriber”** means any organization that concluded a Subscriber Agreement with us in relation to its economic or professional activity.

**2.16. “Subscriber Agreement”** means agreement concluded between ECS and Subscriber for our provision of Services on the Platform; organizations that have paid for a subscription to the Services or have opted for 30-day free trial of the Services are deemed to have entered into Subscriber Agreement with us. Subscriber Agreement permits Subscriber to make Services available for its teams of End Users.

**2.17. “Subscriber Account”** means a Azure Active Directory (or Office 365 for business subscription) (both referred to as “**Azure Active Directory**”)-based account enabling Subscriber to use the Services and manage User Accounts.

**2.18. “Subscription Term”** means a fixed period of 1 (one) year for which provision of Services is agreed.

**2.19. “Supplier”** means any supplier or licensor of ECS.

**2.20. “Third Party”** means any person or legal entity other than you or ECS.

**2.21. “Third Party Application”** means any application with which Subscriber can integrate the Services.

**2.22. “User Account”** means a Azure Active Directory-based account enabling End User to access and use the Services.

**2.23. “User Content”** means any information, text, files, program, software, code in any form, script, library, data or any other material that is submitted, entered, uploaded onto, stored on or otherwise made available on the Platform in connection with your use of the Services (“submitted to the Services”) under Subscriber or User Account. Your User Content excludes the Services and the Platform.

### **3. Subscriber Rights and Obligations**

**3.1. Administration of Subscriber’s Account.** Subscriber may specify one or more administrators (each an “Administrator”) to manage Subscriber Account. Administrators have the ability to access, monitor, use, export and disclose all content posted by End Users in accordance with applicable local laws and to create their own content as described in the Manual. Subscriber is responsible for selection of its Administrator and ensuring that each Administrator’s use of the Service complies with these ToU. ECS shall not be held liable for any actions on the part of Subscriber’s Administrator(s).

**3.2. Compliance.** Subscriber is responsible for use of the Services by its End Users and for their compliance with these ToU.

**3.3. Restrictions.** Subscriber will not: (i) rent, sell, resell or lease the Service to any Third Party; (ii) use the Service for any purpose where either the use or the failure of the Service might lead to personal injury, death or physical damage; or (iii) disassemble, decompile or reverse engineer the Services or attempt or assist anyone else to do so, unless such restriction is prohibited by Laws.

### **4. Access**

**4.1. Subscriber Account.** To access the Services, whether paid or 30-day free trial, Subscriber must integrate Services with Azure Active Directory account. Functionalities of the Services are the same in the free and paid version of the Services. You acknowledge that Azure Active Directory may block or suspend Subscriber Account and in such event we are not able to grant you access to the Services.

**4.2. User Account.** To access the Services, End User must (i) receive necessary authorization from the Subscriber, and (ii) have an account registered via Azure Active Directory. There is no possibility to use the Services without Azure Active Directory account. You acknowledge that Azure Active Directory may block or suspend User Account and in such event we are not able to grant you access to the Services.

**4.3. Access Information.** You agree to provide us with accurate information about your Azure Active Directory Account. It is your responsibility to ensure that your password remains confidential and secure as we do not have any possibility to retrieve it. You agree that you are fully responsible for all activities that occur under your user name on our Platform. We may assume that any communications we receive under User Account or Subscriber Account have been made by you.

**4.4. Unauthorized Account Use.** Subscribers and End Users are aware that we have no access to Subscriber Account or User Account. In case of problems with unauthorized use of your Subscriber Account or User

Account, you contact Microsoft Inc. directly. ECS will not be liable for any loss, damages, liability, expenses or attorneys’ fees that you may incur as a result of someone else using your password or account, either with or without your knowledge and/or authorization, and regardless of whether you have or have not advised Microsoft Inc. of such unauthorized use. However, you will be liable for losses, damages, liability, expenses and attorneys’ fees incurred by ECS or Third Party due to someone else using Subscriber Account or User Account. You will be obliged to exempt ECS from liability towards any Third Party arising from unauthorized use of Subscriber Account or User Account, in accordance with Section 13.2.

### **5. Our Proprietary Rights**

**5.1.** Services are owned and operated by ECS and contain Materials, as well as other sources, and are protected by Polish copyright laws, international treaty provisions, trademarks, service marks and other intellectual property laws. You agree to (i) abide by all applicable copyright and other laws, as well as any additional copyright notices or restrictions contained in the Services, and (ii) guarantee that End Users abide by all applicable copyright and other laws, as well as any additional copyright notices or restrictions contained in the Services.

**5.2.** You agree to protect the proprietary rights of ECS and all others having rights in the Services during and after the term of these ToU and to comply with all reasonable written requests made by ECS or any Supplier or otherwise to protect their and others’ contractual, statutory, and common law rights in the Services. You agree to notify ECS immediately upon becoming aware of any claim that the Services infringe upon any copyright, trademark, or other contractual, statutory, or common law rights. All present and future rights in and to trade secrets, patents, copyrights, trademarks, service marks, know-how, and other proprietary rights of any type under the laws of any governmental authority, domestic or foreign, including without limitation rights in and to all ECS Applications and registrations relating to the Services shall, as between you and ECS, at all times be and remain the sole and exclusive property of ECS. Any unauthorized use of any material contained on or through the Services may violate copyright laws, trademark laws, the laws of privacy and publicity and communications regulations and statutes.

**5.3.** You agree that ECS can use any suggestion, recommendation, feature request, or other feedback related to the Services and/or the Platform provided by you or on your behalf.

### **6. User Content**

**6.1. User Content.** The Services may allow you to create, submit, manage and share your User Content in accordance with the Manual, available at: [<https://workai.com>].

**6.2. Free User Content.** Subscriber shall assure that it owns or is otherwise entitled to all content submitted to the Services provided for 30-day free trial (“Free User Content”). Subscriber acknowledges that ECS might analyze which functionalities of the Services are used and which are not. ECS will not use, copy, reproduce, process, adapt, publish, transmit, host and display that Free User Content.

**6.3. End User Content.** Subscriber shall assure that it owns or is otherwise entitled to all content submitted to the paid Services by End Users (“End User Content”) and control End User Content. ECS maintains a limited, non-exclusive and non-transferable (except in connection with the sale or

transfer of its business) license to access, use, copy, reproduce, process, adapt, publish, transmit and display End User Content for the limited purposes of (i) providing the Services and associated Subscriber and End User support; (ii) displaying the End User Content to the Subscriber and other End Users; and (iii) analyzing and improving the Services. You acknowledge that Subscriber has right to remove End User Content at any time. Subscriber shall assure that End User complies with any of the Subscriber's internal terms and policies while using the Services.

**6.4. User Content Representations.** You acknowledge and agree that you have all required rights to submit User Content without violation of any third-party rights. You understand that ECS does not control, and is not responsible for User Content, and that by using the Services you may be exposed to User Content from End Users that is offensive, indecent, inaccurate, misleading or otherwise objectionable. Please also note that User Content may contain typographical errors, other inadvertent errors or inaccuracies. You agree that you will indemnify, defend, and hold harmless ECS for all claims resulting from User Content submitted by you or End Users. We reserve the right, at your expense, to assume the exclusive defense and control of such disputes, and in any event you will cooperate with us in asserting any available defenses. You agree to guarantee that End Users are aware of and comply with this Section.

**6.5. Rights in User Content.** We will not acquire any rights, title or interest in or to User Content, except as granted under the ToU. You grant ECS a worldwide, non-exclusive, unlimited, transferable, sub-licensable, royalty-free license for an indefinite period of time with regard to all the fields of exploitation referred to in Article 50 and 74 Sec. 4 and 94 Sec. 4 of the Copyright and Neighbouring Rights Law of 4 February 1994 (Dz. U. No 24, item 83 with amendments) to User Content for the purpose of providing the Services.

## **7. Provision of Services**

**7.1. Service Standards.** We provide the Services materially in accordance with the features and functionalities set out in Section 6.1 and in accordance with SLA. We will use commercially reasonable efforts to make the Services available to you, subject to operational requirements, including maintenance and security, as provided by SLA. If you bought our Services from Reseller, Reseller may have some obligations towards you in terms of provision of the Services, especially related to the first support line. Those obligations are specified in your contract with Reseller.

**7.2. Service Requirements.** Usage of the Services requires an active Microsoft Organizational Account, available with Azure Active Directory or Office 365 for Business subscription. For integration with Office 365/SharePoint Online an active Office 365 for Business or Microsoft 365 subscription is required. :

The Services can be accessed and used on all modern desktop, mobile, tablet devices, and browsers. We recommend to use the most up-to-date browser compatible with your operating system. The following desktop browsers are supported:

- i. Internet Explorer 11,
- ii. Microsoft Edge (current and last major revision),
- iii. Firefox (current and last major revision),
- iv. Chrome (current and last major revision),

- v. Opera (current and last major revision),
- vi. Safari (current and last major revision);

On mobile, we support the current and previous major releases of the following browsers:

- i. Safari,
- ii. Chrome,
- iii. Android;

ECS Applications require:

- i. iOS 10.0 or newer,
- ii. Android KitKat 4.4 or newer;

**7.3. Security.** We maintain a security program that is designed to protect against threats or hazards to the security of User Content and prevent unauthorized access to User Content. This paragraph contains ECS' entire obligation regarding the security of User Content, the Platform and the Services.

**7.4. Changes to the Services.** We provide Services in a multiuser environment and must therefore reserve the right to modify and discontinue Services. We may modify a Service at any time without degrading its functionality or security features. For current subscriptions, we may degrade the functionality of a Service or discontinue a Service only in case of (i) legal requirements; (ii) changes in the services imposed by ECS' Affiliates; (iii) the termination of our relationship with a provider of software and/or services used by us which are material for the provision of such Service; or (iv) security risks. In the event of such termination or discontinuation of the Services, we will refund any prepaid amounts for the applicable Services on a pro-rata basis for the remainder of the Subscription Term. We do not maintain prior versions of a Service.

**7.5. Changes to the ToU.** The ToU published at the date of conclusion of the Subscriber Agreement shall apply until the end of the Subscription Term. Any change to the ToU will only apply from the beginning of a renewed subscription, unless a change during a current Subscription Term is required as a result of (i) legal requirements; (ii) changes in the Services imposed by ECS' Suppliers; (iii) the termination of our relationship with a provider of software and/or services used by us which are material for the provision of the Services; or (iv) security risks. In such cases, any Subscriber may terminate the Subscriber Agreement within 10 days following our notice showing the changes, effective at the end of the month when Subscriber terminates the Subscriber Agreement. If Subscriber chooses to do so, we will refund any prepaid amounts for the Services on a pro-rata basis for the remainder of the Subscription Term. The changes enter into force after the Subscriber accepts them within the 10-day period or after the 10-day period elapses without termination of the Subscriber Agreement. This Section shall not apply to changes in documents referred to in these ToU.

**7.6. Subcontractors, Location of Data Centers.** To support the rendering of the Services, we may use resources in various countries, including subcontractors. The location of data centers used by us for the storage of User Content depends upon possibilities available within Azure Active Directory. We store your data at centers that are the closest to your premise location. In any case, if you are based in Europe, your data will not be transferred outside of Europe. For the time being, we use the following data centers:

- Europe: France, Germany and the Netherlands (if you are based in Europe),
- United States of America (if you are based in United States of America),

If you are not based in Europe or in the United States of America, one of the data centers in the above locations will be assigned to you automatically, depending on their availability and distance between you and such data center.

**7.7. Monitoring of Usage.** Without limiting any of our rights in these ToU, ECS or ECS' Affiliates may monitor Subscriber's and End Users' usage of Services and Third Party Applications for internal purposes, including: (i) for security and availability reasons; (ii) to the extent required to ensure compliance with the ToU; (iii) to detect, prevent, and suspend any use of Services exceeding the permitted use under the ToU; (iv) to provide Subscriber with reports on its End Users' use of the Services; and (v) to offer to Subscriber, in accordance with any applicable legal requirements, only with Subscriber prior consent, our paid Services during the 30-day free trial and after elapse of that time; (vi) to inform Subscriber about any functionalities of the Platform that are not used and that might be beneficial for Subscriber. We monitor which functionalities of the Services are used by End Users and Subscriber and how, but we collect those data on general level and always anonymously, for purposes of improvement of our Services and of your experience of the Services. We may monitor End Users usage of the Services at Subscriber's request in a manner not specified in this Section. You will not block or interfere with our monitoring, but may use encryption technology or firewalls to help keep User Content confidential. We may also use usage information on an aggregated basis to improve the Services and ECS' Affiliates' services.

**7.8. Monitoring by Subscriber.** Subscriber shall assure that End Users acknowledge that we enable Subscriber to monitor usage of the Services by End Users from its teams, including browsing of webpages by End Users, time spent on particular pages and End Users' usage of particular functionalities of the Services.

**8. Data Privacy.** Each Party shall comply with all applicable data privacy laws and regulations governing the protection of personal data in relation to their respective performance under the ToU.

## 9. Use of Services

**9.1. Use Rights.** Subscriber and End Users have a right to access and use the Services only in a manner that complies with all legal requirements that apply to Subscriber's and End Users' use of the Services, including the ECS Data Privacy Terms and these ToU. ECS grants Subscriber a non-exclusive, unlimited, transferable, royalty-free license with regard to the reproduction of the Manual for a duration of Subscription Term. Immediately after expiration or termination of Subscriber Agreement, Subscriber must remove the Manual from any carriers or destroy the Manual as well as all copies of it that Subscriber obtained in connection with using the Services. Subscriber must ensure the same removal by its End Users. In any case, Services on the Platform may only be accessed by End Users and Subscriber via their Azure Active Directory Subscriber Account or User Account.

**9.2. Acceptable Use.** You agree that your and End Users' use of ECS must comply at all times with the following rules:

**9.2.1. Disruption of the Service.** You may not:

- i. access, tamper with, or use non-public areas (that are not accessible to you in accordance with this ToU or the Manual) of the Services, our computer systems, or the technical delivery systems of our providers;
- ii. probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measure that we use in provision of the Services;
- iii. access or search the Services by any means other than our publicly supported interfaces;
- iv. attempt to disrupt or overwhelm our infrastructure by intentionally imposing unreasonable requests or burdens on our resources (e.g. using "bots" or other automated systems to send requests or complaints to our servers at a rate beyond what could be sent by a human user during the same period of time);
- v. interfere with or disrupt the access of any Subscriber or End User, including, without limitation, by sending a virus, overloading, flooding, spamming, mail-bombing the Services, or by scripting the creation of User Content in such a manner as to interfere with or create an undue burden on the Services.

**9.2.2. Misuse of the Service.** You may not utilize the Service to carry out, promote or support:

- i. any unlawful or fraudulent activities;
- ii. the impersonation of another person or entity or the misrepresentation of an affiliation with a person or entity in a manner that does or is intended to mislead, confuse, or deceive others;
- iii. activities that are defamatory, libelous or threatening, constitute hate speech, harassment, or stalking;
- iv. the publishing or posting personal data of people other than End Users, in particular such as credit card numbers, street address or PESEL numbers without appropriate legal basis;
- v. the sending unsolicited communications, promotions advertisements, or spam;

**9.2.3.** the publishing of or linking to malicious content intended to damage or disrupt another user's browser or computer; Content Standards Within the Service. You may not submit User Content to the Services that:

- i. violates Applicable Law or the Laws, any third party's intellectual property rights, or anyone's right of privacy or publicity;
- ii. is deceptive, fraudulent, illegal, obscene, pornographic, defamatory, libelous or threatening, constitutes hate speech, harassment, or stalking;
- iii. contains viruses, bots, worms, or similar harmful materials; or
- iv. contains any information that you do not have a right to make available under law or any contractual or fiduciary duty

**9.3. Violations.** In addition to any other remedies that may be available to us, we reserve the right to immediately suspend or terminate your account or your access to the Services upon notice and without liability for ECS should you fail to abide by the terms of these ToU contained in Sections 3.3, 5.2 or 9.2. If ECS becomes aware of any use of

Subscriber or User Account in a manner that might cause legal responsibility of ECS or in any other way be significantly harmful for ECS, ECS retains the right to terminate access to Subscriber Account or User Account.

**9.4. Credentials.** We do not store credentials of Subscriber or End Users. The only information about access data we have are logins for Azure Active Directory account. We are not able to change or retrieve your access credentials.

**9.5. Responsibility for End Users and Other Persons.** You are responsible for all activities that occur under Subscriber Account and/or under User Accounts and any use of the Services by any End User or any Third Party to whom you facilitate or permit access to the Services, and all liabilities or other consequences arising from such activities or use, as if these were your own acts. This does not apply to the extent a damage or breach is caused by our violation of the ToU. Subscriber will ensure that all End Users and any Third Party to whom it facilitates or permits access to the Services, comply with Subscriber's obligations under the ToU. Should Subscriber become aware of any violation of obligations under the ToU, he will immediately terminate the relevant person's access to the Services.

**9.6. Obligations when Using Services.** Subscriber is responsible that its own and End Users' use of the Services complies with the Laws at all times. Subscriber shall (i) obtain, at its own expense, any rights, consents and permits from vendors of software and services used in connection with the Services which are necessary for ECS and its Affiliates to provide the Services and (ii) always keep up to date any software that could be integrated with the Services by installing updates and patches as they become available. Subscriber shall remain responsible for the security of their systems and of on-premise hardware and software.

**9.7. Obligations when Using Third Party Applications.** You can integrate the Services with in particular the following Third Party Applications and websites: Microsoft Azure, Microsoft Office 365, Google, YouTube, Facebook, Twitter, Vimeo, Airl, Darksy, Unsplash. You acknowledge and agree that: (i) any contractual relationship regarding the use of a Third Party Application and any related services or product is solely between you and the provider of the Third Party Application; (ii) ECS is under no obligation to test, validate or otherwise review Third Party Applications; (iii) ECS does not assume any obligation or responsibility with regard to the use of Third Party Applications, its support or any other related services; and (iv) the use of a Third Party Application may enable the provider of the Third Party Application to collect and use User Content and data regarding an End User's usage of the Third Party Application and/or to transfer copies of User Content and usage data of the Third Party Application outside the Platform. ECS shall not be responsible for any consequences resulting from any access to User Content through a Third Party Application.

**9.8. Information Obligations.** If Subscriber becomes aware of any of the following actual or potential events, he shall promptly provide us with reasonable information and assistance regarding their mitigation and resolution: (i) circumstances or incidents affecting the security of the Platform or Services; and (ii) measures by authorities or court decisions specifically relating to Subscriber or End Users use of Services or the Platform which may affect the Platform or the Services.

**9.9. Limited Reliance.** Subscriber acknowledges and agrees that the outcome from any processing of data through

the use of the Services is beyond our control. Subscriber is responsible for the use and the interpretation of the outcome from such processing and any reliance on such outcome.

**10. Legal Compliance** You acknowledge, consent, and agree that ECS may access, preserve, and disclose your information and/or any User Content you submit to the Services if required to do so by law or in a good faith belief that such access, preservation, or disclosure is permitted by ECS' Data Privacy Terms or reasonably necessary or appropriate for any of the following reasons: (i) to comply with legal process; (ii) to enforce these ToU, our Data Privacy Terms, or other contracts with you, including investigation of potential violations thereof; (iii) to respond to claims that any content violates the rights of third parties; (iv) to respond to your request for Subscriber service; and/or (v) to protect the rights, property, or personal safety of ECS, its agents and Affiliates, its users, and the public. This includes exchanging information with other companies and organizations for fraud protection, and spam/malware prevention, and similar purposes.

**11. Privacy.** For information about how we collect, use, and share the data we collect from and about Subscriber and End Users, please see our Data Privacy Terms.

## **12. Fees, Payment Terms and Taxes**

**12.1. General.** By subscribing to the Service and providing payment account information, Subscriber agrees to these payment terms and conditions. Free introductory offers are only available to new Subscribers, except where expressly stated. Fees are non-refundable except as required by law or as explicitly set forth in these ToU. Subscriber will pay all applicable fees when due and, if such fees are being paid via credit card or other electronic means, Subscriber authorizes ECS' intermediary to charge such fees using Subscriber's selected payment method. By default, Subscriber Accounts require recurring payments. Fees will be charged on an annual or monthly basis based on Subscriber's subscription. If Subscriber chooses to terminate the Subscriber Agreement for reasons others than listed in Sections 7.4 and 7.5 of these ToU or because of our material breach referred to in Section 15.1., Subscriber may use the Services until the end of the current Subscription Term but will not be issued a refund for the most recently (or any previously) charged fees and will be obliged to pay all fees for the Subscription Term.

**12.2.** ECS may charge Subscriber for a renewed Subscription Term on or after the renewal date associated with Subscriber Account.

**12.3. Revision of fees.** ECS may revise fee rates for the Services from time to time and will provide Subscriber's with email notice of any changes in fees at least thirty (30) days prior. Subscriber is responsible for providing complete and accurate billing information to ECS. ECS may suspend or terminate, in accordance with these ToU, Subscriber's use of the Service if fees become past due. Subscriber is responsible for all taxes (excluding taxes on ECS' net income) and ECS will charge tax when required to do so by law.

**12.4. Reseller.** You could purchase our Services either on ECS website or from one of our Resellers. If Services are distributed through a Reseller, you shall pay the fees only to such Reseller. If a Subscriber purchases Services through a Reseller, he (and his End Users) has to abide by this ToU, save for this Section 12 that does not apply.

### **13. Liability**

**13.1. Mutual Liability.** Each Party is liable for damage caused to other Party and third parties in accordance with the provisions of the Act of 23 April 1964 - Civil Code (Journal of Laws of 2017, item 459 with further amendments) and the provisions of these ToU. In the event of a damage caused by our willful misconduct, we are liable for any damages incurred by you. We are liable solely for actual damages (*damnum emergens*), and we are not liable for any lost profits. Our liability for Subscriber's actual damages is limited to Subscriber's average monthly fee for the Services (or equivalent in local currency) Our liability towards Subscribers is restricted to actual damages incurred in relation to our Services and we are not liable for damages related either to Azure Active Directory, any Third Party Applications, any other software listed in Section 7.2 and 9.7 or any damages caused by Resellers. We are not liable at all for damages resulting from:

**13.1.1. Interruptions.** Any interruptions in the provision of the Services resulting from Subscriber's non-compliance with technical requirements specified in these ToU.

**13.1.2. Hacking.** Third Party hacking attack or other malicious activities of Internet users.

**13.1.3. Non-compliance.** We are not liable for damages resulting from usage of the Platform by Subscriber or End User in a way non-compliant with instructions provided in these ToU and/or any additional communications from ECS to Subscriber and End Users.

**13.2. Exemption.** Subscriber agrees to exempt ECS and its representatives, employees and Affiliates from liability for loss, damages, expenses or attorneys' fees or other debts ("**Loss**"), irrespective of who claims it or where claim is made, if Loss results from your (i) infringement of ToU, (ii) actions, error or omission while using the Services or while performing for Third Party any services or products based on the Services.

**13.3. Limitation of Exemption.** The exemption provided in Section 13.2 shall apply until termination or expiry of Subscriber Agreement, as well as after termination or expiry of Subscriber Agreement subject to limitations stipulated in the Applicable Law.

### **14. Temporary Suspension**

**14.1. Our right to Suspend.** We may suspend or limit End Users' or Subscriber's use of the Services immediately if we reasonably determine that there is a material breach of these ToU or a security incident or threat to the security of the Platform in connection with Subscriber's or End Users' access to or use of Services; or if such suspension or limitation is required by Laws, a court decision, or a request from a governmental body. Breaches of failure to pay fees within 10 days after receipt of a reminder or failure to comply with Sections 3.3, 5.2, 9.2 or 12. constitute material breaches. In addition, we may limit or terminate computing jobs that we determine degrade the performance of the Services or any component of the Services.

**14.2. Effect of Temporary Suspension.** Subscriber's obligation to pay fees remains unaffected. If you can reasonably remedy the cause of the suspension or limitation, we will notify you of the actions that you must take to reinstate the Services. The suspension or limitation will be lifted as soon as the reason for such suspension or limitation no longer

exists. Our right to terminate pursuant to Section 15 and all other rights and remedies we may have remain unaffected.

### **15. Term and Termination**

**15.1. Termination.** This Subscriber Agreement will remain in effect until Subscriber terminates its subscription to the Services or until this Subscriber Agreement is otherwise terminated as provided for herein. Subscriber may terminate this Subscriber Agreement at any time, effective at the end of the Subscription Term. In addition, either party may terminate this Subscriber Agreement if the other Party is in material breach and fails to cure such breach within twenty (20) days following receipt of written notice from the non-breaching party, effective at the end of the month when the 20 days period elapses. If we are in material breach and we fail to cure such breach as prescribed in the preceding sentence, we will refund any prepaid amounts for the Services on a pro-rata basis for the remainder of the Subscription Term. In the event that this Subscriber Agreement is terminated, the rights granted to Subscriber pursuant to these ToU will cease immediately.

**15.2. Renewal of the Subscription Term.** Subscriber Agreement shall automatically renew, under conditions set in ToU in force at the time of renewal, for another one (1) year Subscription Term unless Subscriber provides notice to us of its intent to terminate the Subscriber Agreement at any time before the end of the current Subscription Term by changing his Subscriber Account's settings prior to the renewal. The renewal takes place once a year, regardless of whether Subscriber chose a monthly or annual payment plan.

**15.3. Particular causes for termination.** Events that entitle us to terminate Subscriber Agreement and to cease provision of the Service include in particular: (i) acts or omissions that entitle us to a suspension or limitation as per Section 14 that remain uncured for a continuous period of 30 days and (ii) our obligation to comply with Laws or requests of a governmental body.

**15.4. Effect of Termination.** On termination of a Service for any reason, you shall immediately cease using the Services. Except as otherwise set out, you must pay to us all fees due at the time of termination and all fees paid by you to us are non-refundable. Any terms and conditions of the ToU, which by their nature should survive a termination or expiry, in particular Section 13 shall survive and continue in full force and effect after such termination or expiry.

**15.5. Post-Termination Phase.** After termination of Subscriber Agreement, we will remove User Content that is associated with such Service from the Platform. We remove User Content 30 days after expiry of the free trial referred to in Section 4.1.3. above. However, upon Subscriber request, we enable Subscriber and End Users to download User Content and in a structured, commonly used and machine-readable format chosen by us. You acknowledge that some of User Content may be retained by us as part of our disaster recovery backup of the Platform until deletion of such files in accordance with our policies.

### **16. Confidentiality, Compelled Disclosure**

**16.1. Confidentiality Obligations.** During the course of their performance under the Subscriber Agreement, each Party may make available to the other Party information that is not generally known to the public and at time of disclosure is either identified as, or should reasonably be understood by the receiving party to be, proprietary or confidential (the

"**Confidential Information**"). Confidential Information shall include, but shall not be limited to: business plans, strategies, forecasts, projects and analyses; financial information and fee structures; business processes, methods and models; employee, Subscriber information; sales and marketing information. With respect to the Subscriber, Confidential Information also includes the Subscriber's data.

**16.2. Obligations.** Except with the express prior written consent of the disclosing Party, or as required by law, the receiving Party will not disclose, transmit or otherwise disseminate to a Third Party any Confidential Information of the disclosing Party. The receiving Party will use the same care and discretion with respect to the Confidential Information received from the disclosing Party as it uses with its own similar information, but in no event less than a reasonable degree of care. ECS may disclose Subscriber's Confidential Information to its employees, consultants, agents or advisors who have a strict need to know such Confidential Information solely for the purpose of performing ECS's obligations under these ToU and only to those who are obligated to maintain the confidentiality of such Confidential Information upon terms at least as protective as those contained in those ToU. Subscriber may disclose ECS's Confidential Information to its employees, consultants, agents or advisors who have a strict need to know such Confidential Information and are obligated to maintain the confidentiality of such Confidential Information upon terms at least as protective as those contained in these ToU.

**16.3. Exclusions.** The obligations set forth in Section 16.2 shall not apply to any Confidential Information that the receiving Party can demonstrate: (i) the receiving Party possessed, without any obligation of confidentiality, prior to disclosure by the disclosing Party; (ii) is or becomes publicly available without breach of these ToU by the receiving Party; (iii) is or was independently developed by the receiving party without the use of any Confidential Information of the disclosing Party; or (iv) is or was received by the receiving Party from a third party that does not have an obligation of confidentiality to the disclosing party or its affiliates. The receiving Party may disclose Confidential Information of the disclosing Party if legally required to do so in connection with any legal or regulatory proceeding, provided, however, that in such event the receiving Party will, if lawfully permitted to do so, notify the disclosing Party within a reasonable time prior to disclosure so as to allow the disclosing Party an opportunity to seek appropriate protective measures.

## 17. General Provisions

**17.1. Assignment.** The Subscriber Agreement will extend to and be binding upon the successors and permitted assigns of the Parties. We may assign any right granted in these ToU to any of our Affiliates that assume our obligations with your prior consent. You shall not assign any of the rights granted in these ToU without our prior written consent.

**17.2. Force Majeure.** Neither Party shall be liable for any failure or delay in its performance due to any cause beyond its reasonable control, including acts of God, earthquake, fire, flood, embargo, riot, sabotage, attacks on IT systems by Third Parties (e.g., hacker attacks), labor shortage or dispute, acts or omissions of civil or military authorities, war, acts of sabotage or terrorism.

**17.3. Dispute Resolution.** The Parties submit all their disputes arising out of or in connection with the Subscriber

Agreement and these ToU to the exclusive jurisdiction of the District Court of Białystok (pol. Sąd Rejonowy w Białymstoku").

**17.4. Applicable Law.** The Subscriber Agreement shall be governed by and construed in accordance with the Laws of Poland.

**17.5. Notices.** We may provide notice to you under the ToU by: (i) posting a notice on your Subscriber Account; or (ii) sending a message to the email address provided to us as an email address associated with your Subscriber Account. It is your responsibility to regularly visit your Subscriber Account and to keep your email address current. If you do not comply with such obligation or if the receipt of a notice by you fails because of technical issues related to equipment or services which are under your or your affiliates' control, notices shall be deemed to have been provided to you 2 days following the date of such notice. Notices to us shall be sent to [hello@elastic365.com](mailto:hello@elastic365.com). Notwithstanding the foregoing, notices of claims or notices regarding disputes shall always be sent by facsimile or postal mail to our contact address provided in Section 17.7.

**17.6. Complaints.** Before filing official complaint, you can contact us via e-mail at [hello@elastic365.com](mailto:hello@elastic365.com). If any issue is not solved by us to your satisfaction in a prompt manner, you may send an official complaint to our postal address specified in Section 17.7 or via e-mail at [hello@elastic365.com](mailto:hello@elastic365.com). Official complaint should contain your organization name, you organization identification number/login, short description of the problem and the date when it occurred. Within 3 days from receipt of the complaint, we will contact you and assign a unique reference number to your case. Within next 3 days, we will investigate the problem and seek to fix it. If the difficulties do not let us fix the problem within this period of time, we will contact you with further explanation. If the problem cannot be resolved within 30 days from receipt of the notification and the problem disables correct use of the Platform, Subscriber will be entitled to terminate Subscriber Agreement under Section 7.4. .

### 17.7. Information about ECS:

Elastic Cloud Solutions Sp. z o.o.

National Court Register number: 0000630696

Tax identification number: 9662105381

ul. Żurawia 71

15-540 Białystok

[hello@elastic365.com](mailto:hello@elastic365.com)