



CUSTOMER GENERAL TERMS AND CONDITIONS

Welcome to the nista.io Customer General Terms and Conditions.

PLEASE READ THESE TERMS CAREFULLY AND COMPLETELY.

1. SCOPE AND DEFINITION

- 1.1. Scope.** These nista.io Customer General Terms and Conditions shall apply to the licensing of the Software as well as the provision of the Platform Services and the Services and/or Deliverables to Customer as set forth in the applicable Order.
- 1.2. Definitions.** Capitalized terms shall have the meaning set forth in this section. Capitalized terms used but not defined in this document shall have the meaning given to such terms in the applicable Order and any schedule and appendices thereto executed by the parties. In case of a conflict of terms the applicable Order shall prevail over these nista.io Customer General Terms and Conditions and the nista.io Customer General Terms and Conditions shall prevail over the schedule and appendices to the applicable Order.
- 1.2.1. **"Acceptance Date"** means the date on which Customer signs the Order.
- 1.2.2. **"Affiliate"** means any individual, corporation, partnership, or business entity that controls, is controlled by, or is under common control by an entity with an ownership of more than 50% of the voting shares.
- 1.2.3. **"Agreement"** means these nista.io Customer General Terms and Conditions, the applicable Order and any schedule and appendices thereto executed by the parties.
- 1.2.4. **"Company"** means the entity identified in the Order, which provides the Products in accordance with the terms of this Agreement.
- 1.2.5. **"Confidential Information"** means any data or information that is disclosed to one party ("**Recipient**") by the other party ("**Discloser**") and not generally publicly available in whatever form, whenever and however disclosed, including but not limited to the Product and Documentation, including all data, code, techniques, algorithms, methods, know-how, logic, architecture, and designs embodied or incorporated therein, client lists, information security plans, business continuity plans, trade secrets and proprietary information, personal identifiable data or any data or information which is either identified as confidential, or which by its nature a reasonable business person would consider to be proprietary or confidential.
- 1.2.6. **"Consultant"** means external third party entities providing expert knowledge required for the Services agreed upon in Order. Company provides a list of Consultants to Customer, if such a list is requested.
- 1.2.7. **"Customer"** means the natural person or entity identified in the Order, who or which receives licenses, subscribes or accesses the Products, Documentation and Support.
- 1.2.8. **"Customer Material"** means any work, material, content, code or data provided to Company by Customer in connection with Customer's use of, or resulting from Customer's use of, the Products.
- 1.2.9. **"Customer System"** means any system owned, operated, or managed by Customer or its Affiliate on which the Software is installed, or which is accessed and used for the Platform Services.

- 1.2.10. "**Deliverable**" means any work or material (including software, reports, test cases, flow charts or documentation) delivered to Customer pursuant to this Agreement as described in or pursuant to the Order.
- 1.2.11. "**Documentation**" means Company's standard written user documentation, explanatory documents, notes and/or handbooks that describe the design, functions, operation, or use of the Products. The latest version of the Documentation applies.
- 1.2.12. "**Fee**" means any fees which Customer is required to pay in accordance with this Agreement.
- 1.2.13. "**Intellectual Property Rights**" or "**IP Rights**" mean any worldwide common law and statutory rights, whether arising under the state of applicable law or any other state, country, jurisdiction, government, or public legal authority, in particular associated with (i) patents, utility models, and invention disclosures and applications therefor, (ii) trade secrets, or proprietary information, (iii) copyrights, (iv) trademarks and service marks, (v) industrial designs, (vi) all rights in databases and data collections, (vii) all economic rights of authors and inventors, however denominated, (viii) rights to apply for, file for, certify, register, record, or perfect or any similar or equivalent rights to any of the foregoing, provided those rights or applications for any of those rights (where such applications can be made) are capable of protection in the applicable jurisdiction.
- 1.2.14. "**Order**" means the order form, or any other document as agreed by the parties, specifying the options chosen by Customer for the Products as well as Fees and additional conditions.
- 1.2.15. "**Parties**" means both Customer and Company together.
- 1.2.16. "**Platform Services**" mean any Software and/or Services made available by Company to Customer on a remote basis as identified in the Order.
- 1.2.17. "**Products**" mean collectively the Software, the Platform Services, Services and/or Deliverables provided by Company to Customer as identified in the Order.
- 1.2.18. "**Services**" mean any services performed to Customer pursuant to and as described in the Order.
- 1.2.19. "**Software**" means any software as standard computer program in executable code, including its components as well as all available technology adapters as set forth in the Order.
- 1.2.20. "**Support**" means standard support services in connection with the Software and/or the Platform Service provided in accordance with Company's Support plan and any applicable service level agreement if set forth in or attached to the Order.
- 1.2.21. "**Term**" means the duration of Customer's rights to use or access the Products including Support as set forth in the Order.
- 1.2.22. "**Third-Party Software**" means software not owned by Company and licensed to or used by Customer, regardless whether it is supplied by Company or a third party.
- 1.2.23. "**User**" means Customer's or Customer's Affiliate employees or contractors for whom the use of Product and Documentation is licensed or subscribed for. Users are Customers.
- 1.2.24. "**Feedback**" means any suggestions, enhancement requests, communications, recommendations or other advice relating to the Products or Documentation.

2. IP RIGHTS

- 2.1. Ownership.** Company retains all rights including all IP Rights, in and to the Products and its Confidential Information and Customer shall retain all rights in and to the Customer Systems, Customer Materials and its Confidential Information. The Products are made available on a limited license or access basis, and no ownership right is conveyed to Customer, irrespective of the use of terms such as "purchase" or "sale". Customer may not remove, alter, or obscure any proprietary rights notices contained in or affixed to the Products. Except for the rights expressly granted in this Agreement, no license or right is granted to Customer by Company by implication or otherwise.
- 2.2. Customer Material.** For the sole purpose of providing the Products, Customer hereby grants to Company and its Affiliates and subcontractors a worldwide, non-exclusive, revocable license to use Customer Materials during the Term. Customer shall ensure that its use of the Products and all Customer Materials are at all times compliant with applicable local, state, federal and international laws and regulations.
- 2.3. Open Source Component.** Customer acknowledges that certain software components of the Product may be covered by open source licenses as promulgated by the Open Source Initiative or by the Free Software Foundation. To the extent required by such open source license, the terms of such license will apply to such open source component in lieu of the relevant provisions of this Agreement. If such open source license prohibits any of the restrictions in this Agreement, such restrictions will not apply to respective open source component. Company shall provide Customer with a list of open source components upon Customer's request.
- 2.4. Feedback.** Customer or its Users may submit Feedback. To the extent that Customer has the right, Customer assigns to Company all rights in and to any IP Rights associated with Feedback that it or its Users provide to Company. The Company may use the assigned rights in every manner (including adaptation, reproduction, editing, alteration, addition to and/or deletion from, rearrangement, transposition, translation of Products and Documentation) and exploit the Feedback in every possible way. Customer agrees not to enforce, and otherwise waives to the fullest extent legally possible, any rights that it or the User may have now or in the future in respect of such Feedback.
- 2.5. Data.** Company may aggregate the metadata and usage data of Customer or User collected or otherwise made available through the Products so that the results are non-personally identifiable with respect to Customer or User ("**Aggregated Data**"). Furthermore, Company collects Sensor Data made available by Customer ("**Sensor Data**"). In

order to provide Services agreed upon in Order, Company can transfer selected parts of this data to Consultants for further use. Both, Sensor Data and Aggregated Data will be deemed Company's Confidential Information, and Customer acknowledges that Company may use the Sensor Data and Aggregated Data, both during and after the Term, (i) for its own internal, statistical analysis, (ii) to develop and improve the Products, and (iii) to create and distribute reports and other materials regarding use of the Products. Company may not publicly identify Customer as the source of any Aggregated Data.

- 2.6. Contractual Penalty.** Customer shall pay the Company a contractual penalty in the amount of EUR 10.000,00 for each violation of the aforementioned provisions irrespective of fault. This contractual penalty clause does not exclude claims for further damage. However, the contractual penalty is payable only once per violation, irrespective of more than one contractual penalty clause applicable for the violation between the parties.

3. PRODUCT USAGE

- 3.1. Usage Rights.** Subject to payment of the Fees by Customer and subject to continuous compliance with the Agreement, Company hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right to use the Products by its Users in accordance with this Agreement and the Documentation during the Term, solely for Customer's internal business purposes. In addition, and unless otherwise specified in the Order, Company shall perform the Services, and shall provide the Deliverables as described in the Order on a time basis.

- 3.2. Delivery.** Company shall execute, perform or otherwise make available the Software electronically and the Platform Services over the Internet and shall deliver the applicable login instructions to the email address(es) provided in the Order. Services are provided remotely if not specified otherwise in the Order.

- 3.3. Restrictions.** Customer shall not allow or assist any third party to and shall be responsible for ensuring that its Users in particular do not (i) modify, adapt, translate, create derivative works of, reverse engineer, decompile, disassemble, reproduce or otherwise attempt to derive the source code of, any part of the Products, any header files or class libraries contained in any part of the Products or any underlying ideas, algorithms, file formats, (ii) sell, resell, license, sublicense, distribute, transfer or provide access to a third party, rent or lease any part or include the Products in a service bureau or outsourcing offering, or otherwise encumber the Products with any lien or grant or allow third parties the registration of a security interest, time share or offer as a service, (iii) use the Products for the benefit of any third party, publish or otherwise disclose to any third party any results of any benchmark or other performance tests of the Products or publicly disseminate information regarding the performance of the Products or incorporate the Products or any part of it into a product or service provided to third parties, (iv) remove, alter, or obscure any proprietary rights notices contained in or affixed to the Products, (v) interfere with any access limitation mechanism in the Products or otherwise circumvent mechanisms in the Products intended to limit the scope of use or to try to gain unauthorized access to or disrupt any service, device, data, account or network, (vi) use the Products in a way prohibited by law, regulation, governmental order or decree, or to violate the rights of others, (vii) spam or distribute malware in a way that could harm the Products or impair anyone else's use of it and (viii) use the Products in a way that could potentially harm the Company or its interests.

- 3.4. Backup.** Customer shall not make copies of the Software. Nothing herein shall limit or restrict Customer from providing Users with copies of the Documentation for their internal business use, in connection with the license granted in this section.

- 3.5. Support.** Subject to payment of the Fees by Customer and subject to continuous compliance with the Agreement, Company provides Customer with Support for the Software and/or the Platform Services during the Term as described in the Order. If not otherwise stated in the Order, Gold Support Plan applies. Company may access Customer's Platform Services account or request access to the Software in order to respond to support requests.

- 3.6. Usage Scope and Verification.** Only Customer and its Users may access and use the Products within the authorized scope of this Agreement and Customer is responsible for all Users' compliance in accordance with this Agreement.

- 3.7. Hosting Platform Provider.** In order to provide the Platform Services, Company uses third party Platform hosting providers. Company's platform hosting providers are identified in the applicable Platform Service infrastructure. Company may change, discontinue or replace platform hosting providers from time to time, provided there is no material change to, discontinuation or termination of the Platform Service or applicable data protection and IT-security standards.

- 3.8. Third-Party Software.** Customer is solely responsible for the installation, maintenance, repair, use, and upgrade of Third-Party Software the Products are used with. Company disclaims all warranties or statutory guarantees of any kind with respect to such Third-Party Software. Customer is liable for any damage resulting out of the use of Third-Party Software together with the Products.

- 3.9. Evaluation or Beta License.** If Products and Documentation are provided to Customer for evaluation, beta, or release candidate purposes, Company grants to Customer a limited, nonexclusive, non-transferable evaluation license to use the Products and Documentation solely for evaluation prior to purchase or implementation ("**Evaluation License**"). The Evaluation License shall terminate immediately upon notice from Company in its sole discretion. Notwithstanding any other provision contained in this Agreement, the Products and Documentation provided pursuant to an Evaluation License are provided to Customer "AS IS" without indemnification, support, or warranty of any kind, express or implied. In case of conflict with any other provisions of this Agreement, this section shall prevail for Evaluation Licenses only.

4. FEES

- 4.1. Payment.** Except as otherwise set forth in the Order, Fees are due and payable thirty (30) days after Customer's receipt of an undisputed invoice. Invoices are deemed to be accepted if not disputed in writing within ten (10) days after receipt. Customer shall provide Company with accurate billing and contact information and notify Company of any changes to such information. All Fees are provided for the Term as set out in the Order and are non-refundable

and non-cancellable except as otherwise set forth herein. If Customer fails to pay, Company shall be entitled, at its sole discretion, to: (i) suspend provision of the Products until Customer fulfills its pending obligations; (ii) charge Customer an interest rate in accordance with [4.3 \(Interest\)](#) below; and (iii) terminate this Agreement. Should Company be required to begin an action against Customer to collect any payment due, Customer shall pay all costs of collection together with interest, and legal and other administrative fees. If Customer exceeds the license capacity designated in the Order, in addition to Company's other remedies, Customer will be charged additional fees.

- 4.2. Fee Modification.** The Fees are in consideration of the current version of the Products and Customer acknowledges that it is not relying on future availability of any Products beyond the current Term or any Product upgrades or feature enhancements in consideration of the Fees paid for the Term. Upon the renewal of the Order, Company reserves the right to modify the Fees payable by Customer upon ninety (90) days' prior the end of the current Term and written notice to Customer.
- 4.3. Interest.** If any sum payable under this Agreement is not paid when due, without prejudice to Company's other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Company, both before and after any judgment at the rate of nine point two percent (9.2%) above the base interest rate or four percent (4%) per year if there is no fault in the delay. In the event Customer in good faith disputes any amount due under any invoice issued by Company, Customer shall pay the undisputed amount, and the parties shall use diligent efforts to resolve any such dispute.
- 4.4. Taxes.** All payments, Fees, and other charges payable by Customer to Company under this Agreement are exclusive of all sorts of taxes, levies, and assessments of any jurisdiction if not specified in Order. Customer shall bear all such taxes, levies, and assessments imposed on Customer or Company arising out of this Agreement, excluding any tax based on Company's net income. If any deduction or withholding is required by law to be made by Customer, the amount of Fees shall be increased to the amount which, after making any deduction or withholding, leaves the amount equal to Fees which would have been due if no deduction or withholding had been required. Prior to any deduction or withholding, Customer shall inform Company about the amount of such deduction or withholding and shall request from Company a tax residency certificate, or any other documents required by law, to claim an exemption from or reduction of any such deduction or withholding. Customer to whom the deduction or withholding applies, shall pay to the relevant taxation authority, or other authorities, as appropriate, the applicable amount of the deduction or withholding, and furnish to Company all documents confirming such deduction or withholding. These documents should include, to the extent existing, any evidence necessary to ensure utilization of tax credit by Company. Company will repay to Customer the portions of a gross-up amount which led to an effective tax saving because of tax credit available to Company.
- 4.5. Expenses.** Except as otherwise set forth in the Order, Customer shall reimburse Company for actual travel and living expenses of its personnel engaged in the performance of the Services at locations other than Company facilities, together with other out-of-pocket expenses incurred in connection with performance of the Service. Company shall endeavor to adhere to travel policies reasonably promulgated by Customer.

5. WARRANTY AND LIABILITY

- 5.1. Representation.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 5.2. Warranty.** Company warrants to Customer that the Services will be performed in a professional and workmanlike manner, and that the Deliverables will conform in all material respects to the Documentation or specifications set forth in the Order. Company shall not have any obligation under this section to the extent a nonconformity of the Products are the result of (a) the Products having been modified, repaired, or reworked by any party other than Company or a third party on behalf of Company, (b) any use of the Products in conjunction with another product or service of a third party, (c) any damage to the Products by power failure, fire, explosion, or any act of God or other cause beyond Company's reasonable control, or (d) any use of or access to the Products not in conformance with the Documentation. Warranty is fully excluded in cases of Evaluation, Beta or free-of-charge (trial) use of the Products. In any case, the Customer must prove that there is a non-conformity to the Documentation or specifications set forth in the Order. Any assumption by law that the non-conformity already existed at the moment of transfer of the Products is excluded.
- 5.3. Reprimand Duty.** With regard to the Products the Customer is obliged to examine and give notice of non-conformities in accordance with section 377 of the Austrian Commercial Code, otherwise the legal consequences of this provision apply.
- 5.4. Remedy.** If the Product does not conform to the warranty as provided in [5.2 \(Warranty\)](#), Company will use commercially reasonable efforts to correct the non-conformity causing the warranty failure in the Product provided the failure can be recreated by the Customer or Company. Customer shall notify Company in writing, specifically describing the non conformity within the warranty period and Company shall verify the existence of such non-conformity before Company proceeds the correction. For any breach of [5.2 \(Warranty\)](#), Customer's sole and exclusive remedy will be as described in this section. Other claims are excluded.
- 5.5. DISCLAIMER.** Except as expressly provided in [5.1 \(Warranty\)](#) and to the maximum extent permitted by applicable law, the Products are provided by Company "AS IS", and neither Company nor its third-party licensors, employees, agents or representatives make any other representations or warranties of any kind, whether express or implied, including warranties arising under statute, usage, trade custom, accuracy, or out of title, course of dealing, performance or otherwise. Company disclaims all warranties, representations, or conditions relating to the products including, warranties of merchantability, or fitness for any intended or particular purpose. Company does not guarantee that the products will be free of defects, run error-free or uninterrupted or meet customer's requirements.
- 5.6. LIABILITY**
- 5.6.1. Notwithstanding any provision of this Agreement to the contrary other than [Subsection 5.5.2](#) below and to the extent

permitted by applicable law (i) neither party shall be liable to the other party, for any consequential special, incidental, punitive or indirect damages, any loss of revenues or profits, loss of goodwill, loss of or inaccurate data, loss of use, failure of security mechanisms, interruption of business, costs of delay or any cost of cover arising out of this Agreement, whether or not such party has been advised of the possibility of such damages; and (ii) each party's aggregate liability for any claim arising out of this Agreement will be limited to the fees actually paid or payable by Customer pursuant to the Order that is the subject of such claim within twelve (12) months preceding the date of the claim.

5.6.2. The provisions of Subsection 5.5.1 shall not apply to contractual penalties agreed between the Parties. Furthermore it shall not apply for a breach of sections 2.1 (Ownership), 3 (Product usage), 6 (Indemnity), 7 (Confidentiality), amounts owed by Customer, personal damage or damage that has been caused by gross negligence or intent.

6. INDEMNITY

6.1. Customer shall defend, or at Customer's option, settle any Claim made or brought against Company, its directors, employees, Affiliates and agents by a third party arising out of (i) Customer's breach of its Product usage rights or restrictions, or (ii) Customer's operation of the Customer Systems and/or use of Customer Material, and shall indemnify Company from any and all costs, damages, liabilities, losses, and expenses (including attorneys' fees) incurred by or awarded against Company as a result of, or for amounts paid by Company under a court-approved settlement of a Claim.

Customer's obligations under this section include claims arising out of the acts or omissions of its Users and anyone who gains access to the Product as a result of Customer's failure to use reasonable security precautions, even if the acts or omissions were not authorized by Customer.

6.2. The obligations in this section 6 (INDEMNITY) apply only if (i) Company notifies Customer within three weeks in writing of a Claim, (ii) Company provides Customer with reasonable assistance, at the Company's reasonable and documented expense, and (iii) Company provides Customer with the right to control and the authority to settle a Claim, provided, however, that Customer will not settle a Claim that admits fault or liability of Company without Company's prior written consent (which shall not be unreasonably withheld) and (iv) Company will have the right to participate in the matter.

7. CONFIDENTIAL INFORMATION

7.1. Confidentiality Obligations. Except as otherwise set forth in a separate Non-Disclosure Agreement, the Recipient shall without time limitation (i) use Confidential Information solely for performing its obligations or exercising its rights under this Agreement, (ii) keep all Confidential Information in strict confidence; and (iii) not disclose, cause or permit disclosure of the Confidential Information to any third party, except as permitted under this Agreement. Specifically, the Recipient shall limit disclosure of any Confidential Information to its directors, officers, employees, Affiliates, agents, or representatives (collectively "**Representatives**") that have a "need to know" in order to carry out the purpose set forth above and ensure that such Representatives have signed an agreement containing disclosure and use provisions similar to those set forth herein. The Recipient shall be held responsible to the same standard of care as it applies to its own confidential information, which shall not be less than reasonable care. The Recipient is obliged to assign these obligations to his legal successor and is responsible for any breach by any natural person or entity he has disclosed Confidential Information.

7.2. Exceptions. Confidential Information shall not include information that the Recipient can demonstrate (i) was in the Recipient's possession prior to disclosure under this Agreement; (ii) is or becomes publicly available through no fault of or failure to act by the Recipient in breach of this Agreement; (iii) was rightfully known by the Recipient prior to disclosure of such information by the Discloser to the Recipient; (iv) was independently developed by the Recipient without any use of or access to the Confidential Information; and (v) is required to be disclosed by a judicial or governmental order, and Discloser has been given timely notice (if legally permissible) of such order so that Discloser may seek legal remedies. If only particular parts or aspects of Confidential Information become subject to any of the foregoing exceptions, all other portions or aspects shall remain subject to this Agreement.

7.3. Contractual Penalty. Any party violating the Confidentiality Obligations shall pay the other party a contractual penalty in the amount of EUR 5.000,00 for each violation and irrespective of fault. This contractual penalty clause does not exclude claims for further damage. However, the contractual penalty is payable only once per violation, irrespective of more than one contractual penalty clause applicable for the violation between the parties.

8. DATA PRIVACY AND IT-SECURITY

8.1. Personal Data. Each party warrants that it shall use, collect, store and/or process personal identifiable data or personal information as defined under and in accordance with any applicable privacy laws ("**Personal Data**").

8.2. Data Collection. Each party acknowledges it is necessary for the cooperation to exchange and allow the use of the other party's contact information relating to their respective Representatives for (i) invoicing, billing and other business inquiries, (ii) contract and customer management and (iii) order fulfilment and deliveries to Customer ("**Contact Data**") and hereby authorizes such exchange, use and processing of Contact Data by the receiving party or its respective Affiliates. Each party agrees that it shall process Contact Data as a controller (where this concept is under the applicable law), in compliance with all applicable privacy laws and regulations and their respective privacy policies and in a safe and secure manner preventing unauthorized access, use or disclosure use of Contact Data only for the purposes outlined herein.

8.3. Data Processing. It is under Customer's sole discretion and Company has no control over the nature, scope, or origin of, the data processed by the Products and Customer shall have sole responsibility for the adequacy, relevancy, accuracy, quality, and legality of it. Customer shall not use any Personal Data in connection with, to input into and process while using the Products. In no event shall Customer use sensitive Personal Data, such as information on health, sexual orientation, political orientation, race, etc. Unless a data processing agreement ("**DPA**") is executed, neither Party authorizes any exchange, use or processing of other Personal Data other than Contact Data.

Notwithstanding the foregoing, if a party requests a DPA to regulate the processing of Personal Data, the DPA shall be deemed an appendix to this Agreement.

8.4. Credentials. Access credential for the Products may not be shared with third parties or by and between Users or other Customer's employees or contractors. Customer shall ensure that all Users keep their user IDs and passwords for the Product strictly confidential and not share such information with any unauthorized persons. User IDs are granted to individual, named persons and shall not be shared. Customer is responsible for all actions taken through use of Customer accounts and passwords. Customer agrees to notify Company immediately if Customer becomes aware of any unauthorized use of the Products.

8.5. Security. Each Party will use adequate contractual and technical mechanisms to protect any data of the other party received by it. Customer acknowledges that use of the Product necessarily involves transmission of Customer Material over networks that are not owned, operated or controlled by Company, and Company is not responsible for any Customer Material's lost, altered, intercepted or stored across such networks. Company cannot guarantee that its security procedures will be error-free, that transmissions of Customer Material will always be secure or that unauthorized third parties will never be able to defeat Company security measures or those of Company's third-party hosting providers. Customer is solely responsible for maintaining the security of its Customer System. Company assumes no responsibility or liability for Customer Material.

9. TERM AND TERMINATION

9.1. Term. This Agreement shall remain in effect for the Term of each underlying Order, unless terminated earlier in writing pursuant to the terms of this section. Upon the renewal of an Order, this Agreement shall be applicable to the extent of any variations set out in the Order.

9.2. Renewals. Unless otherwise stated in the Order, upon expiration of the initial Term, the Term shall automatically renew for successive periods of twelve (12) months each at then current Company list pricing, unless a party cancels such renewal by notifying the other party in writing at least sixty (60) days prior to the expiration of the then-current term. The quantity and license metrics (such as number of Users subscribed or virtual user hours) during any automatic renewal Term shall be the same as of the previous Term unless otherwise agreed at the moment of renewal.

9.3. Termination for Breach. Either party may terminate this Agreement immediately upon written notice to the other party, if the other party is in material breach of this Agreement and fails to correct the breach within thirty (30) days following written notice from the other party specifying the breach. Violations of sections 2 (IP RIGHTS), 3 (Product usage), 4 (FEES), 7 (Confidentiality) and 8 (DATA PRIVACY AND IT-SECURITY) are in any case considered as a material breach of this Agreement. Notwithstanding anything to the contrary, Company may alternatively suspend use of the Product, if Customer violates the Product usage restrictions or if any undisputed sum payable under this Agreement is past due for longer than thirty (30) days. Any use of the Products in breach of this Agreement or the Documentation, that in Company's reasonable judgment threatens the security, integrity or availability of the Product, may result in immediate suspension of Customer's access to the Product. Company shall use commercially reasonable efforts to provide Customer with prior written notice of any planned suspension and an opportunity to remedy such violation or threat before the suspension occurs.

9.4. Termination for Insolvency. Either party may terminate this Agreement immediately upon written notice to the other party with the opening of insolvency proceedings concerning the assets of the other party, but only if the termination does not endanger the continuity of this party or if such insolvency proceeding can not be initiated due to the lack of cost-covering assets for the insolvency proceeding itself.

9.5. Effect of Termination. Expiration or termination of this Agreement will not relieve any party of its obligations to pay any amounts accrued or otherwise owed under this Agreement. Upon termination or non-renewal of this Agreement, all usage or access rights granted to Customer hereunder shall terminate and Customer shall not use the Products, and Company shall have no further obligation to provide the Products. Customer must remove any Customer Materials in the Platform Services prior to termination. Upon termination of an Order for Services or Deliverables, Customer shall pay Company any unpaid fees and expenses incurred on or before the termination date on a time and material basis, based on the rates agreed in the Order. In addition, no later than ten (10) calendar days after termination or non-renewal, each party shall return or certify destruction of all Confidential Information in its possession or control to the other party, if so requested. Any provision that is intended to continue after expiration or termination shall not be affected by the termination of this Agreement.

10. MISCELLANEOUS

10.1. Notices. All notices shall be in writing and addressed to the office location of the parties as set out in the Order or to such address as either party may later provide in writing to the other party by certified or registered mail, courier or email or through Customer's account.

10.2. Publicity. For marketing and promotional purposes, Customer explicitly agrees that Company may identify Customer in Company's promotional, marketing or other materials and refer to Customer by name, trade name and trademark as applicable. Customer hereby grants to Company a license to use Customer's name and applicable trademarks in accordance with this section.

10.3. Non-Solicitation. During the term of this Agreement and for one year thereafter, neither party will solicit any of the other party's employees or contractors to leave their current employment or engagement with the other party. The placement of general employment solicitations and advertisements in public media (e.g. newspapers, company website postings, internet recruiting sites), or the engagement of a recruiting firm who solicits the other party's employees as part of a general solicitation effort, without any direction from the hiring party to solicit individuals from such other party, will not constitute a breach of the terms of this section.

10.4. Injunctive Relief. Each party acknowledges and agrees that any breach of its obligations with respect to Confidential Information and IP Rights may cause substantial harm to the other party that could not be remedied by payment of

damages alone. Accordingly, the other party shall be entitled, in addition to any other rights or remedies, to seek injunctive relief in any jurisdiction where damage may occur.

- 10.5. No Waiver.** A party's failure or delay in exercising any of its rights shall not constitute a waiver of such rights unless expressly waived in writing.
- 10.6. Relationship.** The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute as agents, partners, joint ventures, or otherwise as participants in a joint undertaking, that would give a party the express or implied right, power or authority to create any duty or obligation of the other party.
- 10.7. Assignment.** Neither this Agreement nor any rights granted hereunder may be assigned by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No such consent will be required in the event of an assignment to either party's Affiliate, or a merger or a sale of substantially all of a party's assets; provided that the assigning party provides notice as soon as reasonably practicable. The right of assignment granted herein shall apply only to the business of Customer as it existed prior to such assignment or sale.
- 10.8. Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be interpreted in a manner that best reflects the parties' intentions, and the remaining provisions of this Agreement will remain in full force and effect.
- 10.9. Entire Agreement.** This Agreement constitutes the entire agreement between Company and Customer regarding the subject matter hereof and supersedes all prior oral and written communications. It may be executed in one or more counterparts, all of which together shall be considered one and the same and may be executed and delivered by electronic signature. All amendments or modifications to this Agreement must be in writing and signed by authorized representatives of both parties, however, the General Terms and Conditions may also be incorporated by way of reference in an Order. In the event of any conflict or inconsistency, the order of precedence shall be (1) the Order, (2) these nista.io Customer General Terms and Conditions, and (3) the Documentation.
- 10.10. Law and Jurisdiction.** This Agreement shall be governed by the laws of Austria without reference to conflict of laws principles. Any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in Vienna, Austria. This Agreement excludes the United Nations Convention on Contracts for the International Sale of Goods.
- 10.11. Subsequent Arbitration.** Only if this Agreement is executed by parties located in different countries and such countries have no bilateral treaty regarding litigation and enforcement in place, each party consents to all disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules and such arbitration shall be final binding and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be where the Company as specified in the Order is located, and the arbitration language shall be English.